

UNITED STATES INTERNATIONAL TRADE COMMISSION  
WASHINGTON, D.C.

In the Matter of

CERTAIN DIGITAL IMAGING  
DEVICES AND RELATED  
SOFTWARE

Investigation No. 337-TA-\_\_\_\_

**COMPLAINT OF APPLE INC. UNDER  
SECTION 337 OF THE TARIFF ACT OF 1930, AS AMENDED**

**COMPLAINANT**

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### EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
1.	U.S. Patent No. 6,031,964
2.	U.S. Patent No. RE38,911
3.	Assignment records for U.S. Patent No. 6,031,964
4.	Assignment records for U.S. Patent No. RE38,911
5.	List of each foreign patent, each foreign patent application (not already issued as a patent), and each foreign patent application that has been denied corresponding to each of the Asserted Patents
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41. Receipt from B&H Photo dated March 26, 2010
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B.	Prosecution History for U.S. Patent No. RE38,911
C.	Cited references for U.S. Patent No. 6,031,964
D.	Cited references for U.S. Patent No. RE38,911

## PHYSICAL EXHIBITS

<u>Exhibit Item</u>	<u>Description</u>
1.	Kodak Z915 digital camera
2.	Kodak Z950 digital camera
3.	Kodak Zx3 PLAYSPORT video camera
4.	Apple iPhone 3GS
5.	Apple MacBook Pro laptop computer

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## **I. INTRODUCTION**

1. Apple Inc. (“Apple” or “Complainant”) is a leading designer and manufacturer of personal computers, portable digital media players, and mobile communications devices. Apple’s personal digital media and communications products, such as the iPhone, the iPod line of digital media players, and the iPad, are groundbreaking products that revolutionized their respective industries, enjoy enormous commercial success and popular acclaim, and continue to lead their fields in innovation, performance, and ease of use. Apple’s product portfolio also includes its industry-leading line of Macintosh (or “Mac”) desktop and notebook computers, including the iMac and MacBook products such as the MacBook Pro and ultra-light MacBook Air, and its portfolio of software, such as the Mac OS X operating system that comes pre-installed on every Macintosh computer.

2. Apple’s history of launching products that are technically innovative and commercially successful stems from its ongoing commitment to research and development (“R&D”). Throughout its history, Apple has made substantial investments in R&D in a wide variety of technical fields, including computer hardware and software, graphical and touch-based user interfaces, digital media players, digital imaging, and personal communications. Substantially all of this R&D has been conducted by employees located at the company headquarters in Cupertino, California. Apple’s commitment to R&D has led to pioneering innovations that have laid the groundwork for, and are used extensively in, each of Apple’s product lines, including the iPhone, iPod, iPad, Macintosh computers, and Mac OS X software. Apple has been awarded patent protection for many of its innovations by the U.S. Patent and Trademark Office, and Apple continues to seek and obtain patent protection for its recent and ongoing

innovations, including innovations related to its groundbreaking iPhone and iPad products.

3. Eastman Kodak Company (“Kodak” or “Respondent”) manufactures, imports, sells after importation, services, and repairs digital imaging devices and related software, including digital still and digital video cameras (collectively, the “Accused Products”). The Accused Products manufactured, imported, and sold by Kodak incorporate, without license, many technologies developed by Apple and protected by patents issued to and owned by Apple and its wholly-owned subsidiaries.

4. Accordingly, Apple files this Complaint under Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, based upon the unlawful importation into the United States, the sale for importation into the United States, and the sale within the United States after importation by Kodak of certain digital imaging devices and related software that infringe certain claims of U.S. Patent Nos. 6,031,964 (“the ’964 patent”) and RE38,911 (“the RE ’911 patent”) (collectively, the “Asserted Patents”). The presently asserted claims of these patents are:

Patent Number	Asserted Claims
6,031,964	1-3 and 5-9
RE38,911	15-22, 27, 30-32, and 38-39

5. Apple owns by assignment the entire right, title, and interest in and to each of the Asserted Patents. Certified copies of the Asserted Patents are attached as Exhibits 1 through 2. Certified copies of the assignment records of the Asserted Patents are attached as Exhibits 3 through 4.<sup>1</sup>

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<sup>1</sup> At the time of filing, the U.S. Patent and Trademark Office has not provided Apple with certified copies of the assignment records for the RE ’911 patent. The



6. A domestic industry as required by 19 U.S.C. §§ 1337(a)(2) and (3) exists in the United States relating to the technology protected by the Asserted Patents.

7. Apple seeks as relief a permanent limited exclusion order prohibiting infringing digital imaging devices and related software manufactured or sold by or on behalf of Kodak from entry into the United States. Apple further seeks a permanent cease and desist order prohibiting Kodak from importing, selling, marketing, advertising, distributing, offering for sale, transporting (except for exportation), and soliciting U.S. agents or distributors for, infringing digital imaging devices and related software.

## **II. COMPLAINANT**

8. Apple Inc. is a California corporation having its principal place of business at 1 Infinite Loop, Cupertino, California, 95014.

9. As set forth above, Apple designs, develops, markets, sells, and distributes (i) the Mac line of desktop and notebook computers, such as the iMac, and MacBook products, such as the MacBook Pro and the ultra-light MacBook Air; (ii) a portfolio of software, such as the Mac OS X operating system that comes pre-installed on every Macintosh computer; (iii) the iPod line of mobile digital devices; (iv) the iPhone (including the iPhone 3G and the iPhone 3GS) and related accessories and services, including a complete software development kit (“SDK”) providing tools for programmers to create their own iPhone applications; (v) the iPad multimedia device; and (vi) a variety of related products, accessories, peripherals, and services, including warranty and customer support. Apple sells its products worldwide through its online stores, its own

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corresponding exhibit contains a non-certified copy. Apple will provide the certified copy as soon as it becomes available.

retail stores, its direct sales force, and third-party wholesalers, resellers, and value-added resellers.

10. Apple researched and developed technology that is protected by the Asserted Patents. Apple has made and continues to make significant investments in the design and development of products protected by the Asserted Patents. These products include the iPhone, Macintosh computers, and Mac OS X software products, among others.

11. Apple uses the technologies covered by the Asserted Patents in the United States, as described in Section X below. In connection with the use of these technologies, Apple has made significant investments in the United States in facilities, equipment, labor, and capital, also as described in Section X below.

### **III. THE PROPOSED RESPONDENT**

12. On information and belief, Eastman Kodak Company is a New Jersey corporation with its principal place of business at 343 State Street, Rochester, New York, 14650. On information and belief, Kodak is engaged in the design, manufacture, importation into the United States, and sale after importation of the Accused Products.

### **IV. THE TECHNOLOGY AND PRODUCTS AT ISSUE**

13. The technologies at issue relate generally to advancements and innovations in the fields of image processing, power management, and memory architectures in portable digital devices.

14. The Accused Products are digital imaging devices, including digital cameras and video cameras, and related software manufactured, marketed, and/or sold by Kodak in the United States. At least the following Kodak models infringe one or more claims of one or more of the Asserted Patents: the Kodak Z Series of Cameras, including

but not limited to the Z915, Z950, Z1085 IS, and Z1485 IS; the Kodak M Series of Cameras, including but not limited to the M340, M341, M380, M381, M530, M550, M1033, and M1093 IS; the Kodak C Series of cameras, including but not limited to the C142, C180, C182, C190, and C913; the Kodak SLICE camera; and the Kodak video cameras, including but not limited to the Zi6, Zi8, Zx1, and the Zx3 PLAYSPORT.<sup>2</sup>

V. **THE PATENTS-IN SUIT AND NON-TECHNICAL DESCRIPTIONS OF THE INVENTIONS**

A. **Overview and Ownership of the Asserted Patents**

15. As set forth below, Apple owns by assignment the entire right, title, and interest in and to each of the Asserted Patents. (See Exhibits 3-4.)

16. As required by Commission Rule 210.12(c), four copies of the certified prosecution histories for each of the Asserted Patents have been submitted with this Complaint as Appendices A through B.<sup>3</sup> As required by Commission Rule 210.12(c), the cited references for each of the Asserted Patents have also been submitted with this Complaint as Appendices C through D.

B. **Non-Technical Description of the '964 Patent**

17. U.S. Patent No. 6,031,964, entitled "System and Method for Using a Unified Memory Architecture to Implement a Digital Camera Device," issued on

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<sup>2</sup> Section IV contains merely a shorthand summary of products currently accused of infringement by Apple. These descriptions, and the examples given therein, are not intended to exclusively define or otherwise limit the categories of Accused Products. Apple expects that Kodak will introduce additional products in the future that will infringe the Asserted Patents. Apple may, if necessary, amend or modify the above descriptions as discovery progresses.

<sup>3</sup> At the time of filing, the U.S. Patent and Trademark Office has not provided Apple with the certified file history for the RE '911 patent. The corresponding exhibit contains a non-certified copy. Apple will provide the certified copy as soon as it becomes available.

February 29, 2000, to inventor Eric C. Anderson. The '964 patent issued from U.S. Patent Application No. 08/666,241, filed on June 20, 1996, and expires June 20, 2016. Apple owns by assignment the entire right, title, and interest to and in the '964 patent. (Exhibit 3.)

18. The '964 patent has 16 claims: four independent claims and twelve dependent claims.

19. The '964 patent relates generally to a digital camera device implemented using a unified memory architecture. The '964 patent discloses as an illustrative embodiment an imaging device for capturing raw image data and a computer for processing, compressing, and storing the multiple image data. A central processing unit allocates storage locations within a dynamic random-access memory depending on the requirements of the system and the current image data. The invention also includes a power management system to protect data stored in the device's memory if a power failure is detected. The invention finds particular applicability in today's digital cameras, which can routinely process multiple captured images simultaneously (for example, when the camera is set in a "burst" mode of image capture). Today's cameras also employ the '964 patent's power management system to monitor battery capacity and provide the user with an alert (such as a visual or audio indication) that the battery is about to run out of power. This helps the user ensure that captured images are properly saved before the battery is completely drained.

**C. Non-Technical Description of the RE '911 Patent**

20. U.S. Patent No. RE38,911, entitled "Modular Digital Image Processing via an Image Processing Chain with Modifiable Parameter Controls," issued on December 6, 2005, to inventors Eric C. Anderson and Gary Chin. The RE '911 patent issued from

U.S. Patent Application No. 09/990,869, filed on November 21, 2001, and expires August 29, 2016. The RE '911 patent is a reissue of U.S. Patent No. 5,991,465, which issued on November 23, 1999, from U.S. Patent Application No. 08/705,325 filed on August 29, 1996. Apple owns by assignment the entire right, title, and interest to and in the RE '911 patent. (Exhibit 4.)

21. The RE '911 patent has forty-one claims: eight independent claims and thirty-three dependent claims.

22. The RE '911 patent relates generally to a digital image capture device with an image processing chain containing two or more image processors. The RE '911 patent discloses as an illustrative embodiment parametric controls within each of the two or more image processors that alter image processing within the digital image capture device. A central processing unit links the two or more image processors. The central processing unit also facilitates access to the parametric controls in order to modify the image processors and alter image processing. The invention of the RE '911 patent is routinely employed by today's digital cameras, which typically provide a menu allowing the user to change the settings on multiple image processing options, such as white balance, color, sharpness, resolution, etc. Those changes are then implemented in image processors within the camera, which apply the altered image processing to captured images.

**D. Foreign Counterparts**

23. A list of the foreign counterparts to the Asserted Patents is included with this Complaint as Exhibit 5. Apple owns all right, title, and interest to each of these foreign counterparts. Apple is aware of no other foreign counterparts or foreign

counterpart applications corresponding to the Asserted Patents that have been issued, abandoned, denied, or which remain pending.

**E. Licenses**

24. Confidential Exhibit 6 includes a list of licensed entities for the Asserted Patents.

**VI. UNLAWFUL AND UNFAIR ACTS OF RESPONDENT—PATENT INFRINGEMENT**

25. On information and belief, Kodak manufactures abroad, sells for importation into the United States, imports into the United States, and/or sells within the United States after importation, digital imaging devices and related software that infringe one or more of the Asserted Patents.

26. Kodak directly infringes and/or will infringe the Asserted Patents by making, using, selling, offering for sale, and importing the articles claimed by, or practicing the claimed methods of, the Asserted Patents. Moreover, Kodak is aware of the Asserted Patents, at least because Kodak was provided with a copy of this Complaint upon its filing. Kodak indirectly infringes the Asserted Patents, at least upon receipt of this Complaint, by contributing to and/or inducing the infringement of these patents by end users of its products.

**A. The '964 Patent**

27. On information and belief, Kodak's digital cameras and digital video cameras infringe at least claims 1-3 and 5-9 of the '964 patent. Additionally, on information and belief, Kodak is aware of the '964 patent. On information and belief, Kodak knowingly induces users of its digital cameras and digital video cameras to infringe at least claims 1-3 and 5-9 of the '964 patent. Further, on information and

belief, Kodak contributes to the infringement of at least claims 1-3 and 5-9 of the '964 patent because Kodak knows that its digital cameras and digital video cameras are made for use in infringement of these claims and are not staple articles of commerce suitable for substantial noninfringing use. Exemplary claim charts comparing each asserted independent claim of the '964 patent to the representative Accused Z950 digital camera and the representative Accused Zx3 PLAYSPORT digital video camera are attached as Exhibit 7.

**B. The RE '911 Patent**

28. On information and belief, Kodak's digital cameras infringe at least claims 15-22, 27, 30-32, and 38-39 of the RE '911 patent. Additionally, on information and belief, Kodak is aware of the RE '911 patent. On information and belief, Kodak knowingly induces users of its digital cameras to infringe at least claims 15-22, 27, 30-32, and 38-39 of the RE '911 patent. Further, on information and belief, Kodak contributes to the infringement of at least claims 15-22, 27, 30-32, and 38-39 of the RE '911 patent because Kodak knows that its digital cameras are made for use in infringement of these claims and are not staple articles of commerce suitable for substantial noninfringing use. Exemplary claim charts comparing each asserted independent claim of the RE '911 patent to the representative Accused Z915 digital camera are attached as Exhibit 8.

**VII. SPECIFIC INSTANCES OF UNFAIR IMPORTATION AND SALE**

29. Kodak, either itself or through subsidiaries or third parties acting on its behalf, is engaged in the manufacture, importation, sale for importation, offer for sale after importation, sale and/or use after importation into the United States of infringing digital imaging devices, including but not limited to digital cameras and digital video cameras manufactured, marketed, and/or sold by Kodak in the United States.

30. The C142 digital camera is manufactured in China. (See Exhibit 13, photographs of a Kodak C142 (indicating the device is “Made in China.”)) The Kodak C142 is imported into the United States. For example, the photographed Kodak C142 was purchased from Kodak.com on March 24, 2010, and shipped to an address in Washington, DC. The receipt for this purchase is attached as Exhibit 44.

31. The C180 digital camera is manufactured in China. (See Exhibit 14, photographs of a Kodak C180 (indicating the device is “Made in China.”)) The Kodak C180 is imported into the United States. For example, the photographed Kodak C180 was purchased from Kodak.com on March 24, 2010, and shipped to an address in Washington, DC. The receipt for this purchase is attached as Exhibit 44.

32. The C182 digital camera is manufactured in China. (See Exhibit 15, photographs of a Kodak C182 (indicating the device is “Made in China.”)) The Kodak C182 is imported into the United States. For example, the photographed Kodak C182 was purchased from Buy.com on February 16, 2010, and shipped to an address in Washington, DC. The receipt for this purchase is attached as Exhibit 42.

33. The C190 digital camera is manufactured in China. (See Exhibit 16, photographs of a Kodak C190 (indicating the device is “Made in China.”)) The Kodak C190 is imported into the United States. For example, the photographed Kodak C190 was purchased from Kodak.com on March 24, 2010, and shipped to an address in Washington, DC. The receipt for this purchase is attached as Exhibit 44.

34. The C913 digital camera is manufactured in China. (See Exhibit 17, photographs of a Kodak C913 (indicating the device is “Made in China.”)) The Kodak C913 is imported into the United States. For example, the photographed Kodak C913



was purchased from Buy.com on February 16, 2010, and shipped to an address in Washington, DC. The receipt for this purchase is attached as Exhibit 42.

35. The M340 digital camera is manufactured in China. (*See* Exhibit 18, photographs of a Kodak M340 (indicating the device is “Made in China.”)) The Kodak M340 is imported into the United States. For example, the photographed Kodak M340 was purchased from Buy.com on February 16, 2010, and shipped to an address in Washington, DC. The receipt for this purchase is attached as Exhibit 42.

36. The M341 digital camera is manufactured in China. (*See* Exhibit 19, photographs of a Kodak M341 (indicating the device is “Made in China.”)) The Kodak M341 is imported into the United States. For example, the photographed Kodak M341 was purchased from Kodak.com on March 24, 2010, and shipped to an address in Washington, DC. The receipt for this purchase is attached as Exhibit 44.

37. The M380 digital camera is manufactured in China. (*See* Exhibit 20, photographs of a Kodak M380 (indicating the device is “Made in China.”)) The Kodak M380 is imported into the United States. For example, the photographed Kodak M380 was purchased from Buy.com on February 16, 2010, and shipped to an address in Washington, DC. The receipt for this purchase is attached as Exhibit 42.

38. The M381 digital camera is manufactured in China. (*See* Exhibit 21, photographs of a Kodak M381 (indicating the device is “Made in China.”)) The Kodak M381 is imported into the United States. For example, the photographed Kodak M381 was purchased from Buy.com on February 16, 2010, and shipped to an address in Washington, DC. The receipt for this purchase is attached as Exhibit 42.

39. The M530 digital camera is manufactured in China. (*See* Exhibit 22, photographs of a Kodak M530 (indicating the device is “Made in China.”)) The Kodak M530 is imported into the United States. For example, the photographed Kodak M530 was purchased from BestBuy.com on March 25, 2010, and shipped to an address in Washington, DC. The receipt for this purchase is attached as Exhibit 39.

40. The M550 digital camera is manufactured in China. (*See* Exhibit 23, photographs of a Kodak M550 (indicating the device is “Made in China.”)) The Kodak M550 is imported into the United States. For example, the photographed Kodak M550 was purchased from BestBuy.com on March 25, 2010, and shipped to an address in Washington, DC. The receipt for this purchase is attached as Exhibit 39.

41. The M1033 digital camera is manufactured in China. (*See* Exhibit 24, photographs of a Kodak M1033 (indicating the device is “Made in China.”)) The Kodak M1033 is imported into the United States. For example, the photographed Kodak M1033 was purchased from Amazon.com on March 25, 2010, and shipped to an address in Washington, DC. The receipt for this purchase is attached as Exhibit 38.

42. The M1093 IS digital camera is manufactured in China. (*See* Exhibit 25, photographs of a Kodak M1093 IS (indicating the device is “Made in China.”)) The Kodak M1093 IS is imported into the United States. For example, the photographed Kodak M1093 IS was purchased from Amazon.com/Outlet on March 2, 2010, and shipped to an address in Washington, DC. The receipt for this purchase is attached as Exhibit 43.

43. The Z915 digital camera is manufactured in China. (*See* Exhibit 26, photographs of a Kodak Z915 (indicating the device is “Made in China.”)) The Kodak

Z915 is imported into the United States. For example, the photographed Kodak Z915 was purchased from Buy.com on February 16, 2010, and shipped to an address in Washington, DC. The receipt for this purchase is attached as Exhibit 42. The Kodak Z915 device, in its packaging, is submitted as Physical Exhibit 1.

44. The Z950 digital camera is manufactured in China. (*See* Exhibit 27, photographs of a Kodak Z950 (indicating the device is “Made in China.”)) The Kodak Z950 is imported into the United States. For example, the photographed Kodak Z950 was purchased from Buy.com on February 16, 2010, and shipped to an address in Washington, DC. The receipt for this purchase is attached as Exhibit 42. The Kodak Z950 device, in its packaging, is submitted as Physical Exhibit 2.

45. The Z1085 IS digital camera is manufactured in China. (*See* Exhibit 28, photographs of a Kodak Z1085 IS (indicating the device is “Made in China.”)) The Kodak Z1085 IS is imported into the United States. For example, the photographed Kodak Z1085 IS was purchased from BigValueInc.com on March 2, 2010, and shipped to an address in Washington, DC. The receipt for this purchase is attached as Exhibit 40.

46. The Z1485 IS digital camera is manufactured in China. (*See* Exhibit 29, photographs of a Kodak Z1485 IS (indicating the device is “Made in China.”)) The Kodak Z1485 IS is imported into the United States. For example, the photographed Kodak Z1485 IS was purchased from B&H Photo on March 26, 2010, and shipped to an address in Washington, DC. The receipt for this purchase is attached as Exhibit 41.

47. The SLICE digital camera is manufactured in China. (*See* Exhibit 30, photographs of a Kodak SLICE (indicating the device is “Made in China.”)) The Kodak SLICE is imported into the United States. For example, the photographed Kodak

SLICE was purchased from Amazon.com February 25, 2010, and shipped to an address in Washington, DC. The receipt for this purchase is attached as Exhibit 36.

48. The Zi6 video camera is manufactured in China. (See Exhibit 30, photographs of a Kodak Zi6 (indicating the device is “Made in China.”)) The Kodak Zi6 is imported into the United States. For example, the photographed Kodak Zi6 was purchased from Buy.com on February 16, 2010, and shipped to an address in Washington, DC. The receipt for this purchase is attached as Exhibit 42.

49. The Zi8 video camera is manufactured in China. (See Exhibit 32, photographs of a Kodak Zi8 (indicating the device is “Made in China.”)) The Kodak Zi8 is imported into the United States. For example, the photographed Kodak Zi8 was purchased from Amazon.com on March 2, 2010, and shipped to an address in Washington, DC. The receipt for this purchase is attached as Exhibit 37.

50. The Zx1 video camera is manufactured in China. (See Exhibit 33, photographs of a Kodak Zx1 (indicating the device is “Made in China.”)) The Kodak Zx1 is imported into the United States. For example, the photographed Kodak Zx1 was purchased from Buy.com on February 16, 2010, and shipped to an address in Washington, DC. The receipt for this purchase is attached as Exhibit 42.

51. The Zx3 PLAYSPORT video camera is manufactured in China. (See Exhibit 34, photographs of a Kodak Zx3 PLAYSPORT (indicating the device is “Made in China.”)) The Kodak Zx3 PLAYSPORT is imported into the United States. For example, the photographed Kodak Zx3 PLAYSPORT was purchased from Amazon.com on February 25, 2010, and shipped to an address in Washington, DC. The receipt for

this purchase is attached as Exhibit 35. The Kodak Zx3 PLAYSPOORT device, in its packaging, is submitted as Physical Exhibit 3.

### **VIII. HARMONIZED TARIFF SCHEDULE ITEM NUMBERS**

52. On information and belief, the Accused Products fall within at least the following classifications of the Harmonized Tariff Schedule (“HTS”) of the United States: 8521.90 and 8525.08. The HTS number is intended to be for illustration only and is not exclusive of the products accused of infringement by Apple. The HTS number is not intended to limit the scope of the investigation.

### **IX. RELATED LITIGATION**

#### **A. Pending Litigation Between Apple and Kodak**

53. On January 14, 2010, Kodak filed a complaint with the U.S. International Trade Commission seeking institution of an investigation under Section 337 and naming Apple, Research in Motion, Ltd., and Research in Motion Corporation as the proposed respondents. The patent at issue is U.S. Patent No. 6,292,218 (“the ’218 patent”). The Commission instituted the investigation, which is now pending as *Certain Mobile Telephones and Wireless Communication Devices Featuring Digital Cameras, and Components Thereof*, Inv. No. 337-TA-703.

54. On January 14, 2010, Kodak filed two complaints for patent infringement against Apple in the U.S. District Court for the Western District of New York, one asserting infringement of the ’218 patent and U.S. Patent No. 5,493,335 (case no. 6:10-cv-06021-MAT-JWF), and the other asserting infringement of three other Kodak patents (case no. 6:10-cv-06022-MAT-JWF). These cases are currently pending.

**B. Litigation Relating to the Asserted Patents**

55. Concurrently with the filing of this complaint, Apple will file a civil action in the U.S. District Court for the Northern District of California accusing Kodak of infringing the Asserted Patents.

56. None of the Asserted Patents have been the subject of any other foreign or domestic court or agency litigation.

**X. THE DOMESTIC INDUSTRY**

57. A domestic industry exists, as defined under 19 U.S.C. § 1337(a)(3)(A), (B), and (C), comprising significant investments in physical operations, employment of labor and capital, and exploitation of the Asserted Patents.

**A. United States Investments in the Domestic Industry**

58. Apple makes extensive use of the inventions claimed in the Asserted Patents in numerous products. Apple currently makes and sells Macintosh computers, including the iMac and MacBook portable computers, with pre-installed software including Mac OS X v.10.6 Snow Leopard, iTunes, iPhoto, Photo Booth and other software. Apple also currently makes and sells the iPhone. The iPhone and Macintosh computers are developed in the United States, manufactured abroad, and sold within the United States. As set forth in greater detail below, these products practice the Asserted Patents.

59. Apple has made significant investment in plant and equipment with respect to the Apple products that practice the Asserted Patent. Apple's headquarters are located in Cupertino, California. (Exhibit 9, Apple 2009 Form 10-K at 24.) As of

September 26, 2009,<sup>4</sup> Apple owned facilities for R&D and corporate functions in Cupertino, California, including land for the future development of its second corporate campus in Cupertino, California. (*Id.* at 24.) Apple also owned a data center in Newark, California, and facilities in Elk Grove, California, that included warehousing and distribution operations and a customer support center. Apple purchased additional land in North Carolina in 2009 for a future data center facility. (*Id.*) Substantially all the research, development, design, engineering, and testing of the Apple products that practice the Asserted Patents was done by Apple employees using or working within these Apple facilities in the United States.

60. Moreover, at the end of fiscal year 2009, Apple had opened a total of 273 retail stores, including 217 stores in the United States. (*Id.* at 2.) Apple has made substantial investments in its 217 United States retail stores which, in addition to sales, provide product advice, service, and training for Apple hardware and software, including the Apple products that practice the Asserted Patents. (*See id.*) In fiscal year 2009, Apple's cash payments for capital asset purchases for its retail store facilities were \$369 million. (*Id.* at 50.)

61. Apple has been and is engaged in significant employment of labor with respect to the Apple products that practice the Asserted Patents. As of September 26, 2009, Apple had approximately 34,300 full-time equivalent employees and an additional 2,500 temporary equivalent employees and contractors. (*Id.* at 13.) Most of Apple's key employees are located in Silicon Valley, California. (*Id.* at 20.) Substantially all

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<sup>4</sup> Apple's fiscal year is the 52 or 53-week period that ends on the last Sunday of September. Unless otherwise stated, all information presented is based on Apple's fiscal calendar. (*See Exhibit 9, Apple 2009 Form 10-K at 1.*)

of the research, development, design, engineering, and testing of the Apple products that practice the Asserted Patents was done by Apple employees working within the United States. (*See* Confidential Exhibit 10, Teksler Decl. ¶ 6.)

62. Apple has made substantial investments in the Apple products that practice the Asserted Patents, including by way of example, investments in engineering, research, and development. Detailed information regarding Apple's R&D expenditures may be found in the accompanying Confidential Declaration of Boris Teksler. (*See* Confidential Exhibit 10, Teksler Decl. ¶ 6.) Substantially all of the R&D covered by these investments took place in the United States. (*See id.*) In particular, the Apple products that practice the Asserted Patents were conceived, researched, and developed in the United States. (*See id.*)

63. Apple has established a network of authorized service centers in the United States to provide repair and replacement services for Apple products, including the Apple products that practice the Asserted Patents. For instance, Apple has developed a training and certification program for Apple-certified technicians to ensure that Apple's customers receive industry-leading support for its iMac and iPhone products and related software and services. Apple has also established an extensive support program for developers to create applications for the iPhone. (*See* Confidential Exhibit 10, Teksler Decl. ¶ 10.)

64. For the 2009 fiscal year, Apple's net revenues were \$36.54 billion, including \$13.78 billion from Macintosh product sales, \$2.41 billion from software licensing and services, and \$6.75 billion from iPhone sales and related products and services. (Exhibit 9 at 41.) During the 2009 fiscal year, Apple sold 10.4 million



Macintosh units and 20.7 million iPhone units. (*Id.*) The United States represents Apple's largest geographic marketplace. (*Id.* at 12.) Approximately 54% of Apple's net sales in fiscal year 2009 came from sales to customers inside the United States. (*Id.*)

65. Additional confidential business information regarding Apple's investments in plant, equipment, labor, and R&D related to products that incorporate the technology of the Asserted Patents is set forth in the Declaration of Boris Teksler, Apple's Director of Patent Strategy and Licensing, attached as Confidential Exhibit 10.

66. Apple's investments in the relevant domestic industry are continuing and ongoing.

**B. Apple's Practice of the Asserted Patents**

67. Apple makes extensive use of the Asserted Patents in numerous different products. As noted above, Apple currently makes and sells the iPhone. This product practices at least the '964 patent. The allocation of R&D expenses and related items for this product is captured by the "iPhone" category in the accompanying Teksler Declaration. Apple also currently makes and sells Macintosh computers, including but not limited to the iMac and MacBook product lines, with pre-installed software including Mac OS v.10.6.2 Snow Leopard, iPhoto, Photo Booth, and other software. These products practice at least the RE '911 patent. The allocations of R&D expenses and related items for these products are captured by the sum of the "Mac hardware," "Mac OS X," and "Apple software" categories in the accompanying Teksler Declaration (Confidential Exhibit 10).

68. An exemplary claim chart comparing Apple's iPhone 3GS to a representative claim of the '964 patent is attached as Confidential Exhibit 11.

69. An exemplary claim chart comparing Apple's MacBook Pro running Mac OS X v.10.6.2 Snow Leopard and Photo Booth to a representative claim of the RE '911 patent is attached as Exhibit 12.

70. A sample iPhone 3GS is provided concurrently with this Complaint as Physical Exhibit 4.

71. A sample of Mac OS X v.10.6.2 Snow Leopard and Apple's iPhoto and Photo Booth software, in this case running on an Apple MacBook Pro laptop computer, are provided concurrently with this Complaint as Physical Exhibit 5.

#### **XI. RELIEF REQUESTED**

72. WHEREFORE, by reason of the foregoing, Apple respectfully requests that the U.S. International Trade Commission:

(a) Institute an immediate investigation, pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337(a)(1)(B)(i) and (b)(1), with respect to violations of Section 337 based on the importation, sale for importation, and sale after importation, into the United States of Kodak's digital imaging devices and related software, and digital imaging devices and related software made on behalf of Kodak, that infringe one or more claims of Apple's '964 and RE '911 patents;

(b) Schedule and conduct a hearing on said unlawful acts and, following said hearing;

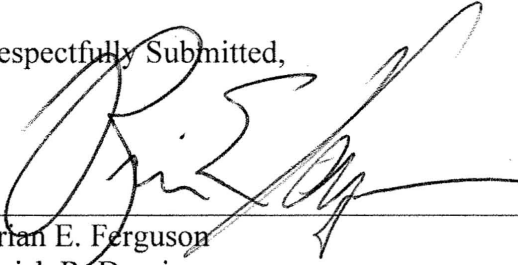
(c) Issue a permanent exclusion order, pursuant to 19 U.S.C. § 1337(d)(1), barring from entry into the United States all digital imaging devices and related software made by or on behalf of Kodak, that infringe one or more asserted claims of Apple's '964 and RE '911 patents;

(d) Issue a permanent cease and desist order, pursuant to 19 U.S.C. § 1337(f), prohibiting Kodak and others acting on its behalf from importing, selling, marketing, advertising, distributing, offering for sale, transporting (except for exportation), and soliciting U.S. agents or distributors for, infringing digital imaging devices and related software that infringe one or more asserted claims of Apple's '964 and RE '911 patents; and

(e) Grant such other and further relief as the Commission deems just and proper based on the facts determined by the investigation and the authority of the Commission.

Dated: April 15, 2010

Respectfully Submitted,



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*Attorneys for Complainant Apple Inc.*

## VERIFICATION OF COMPLAINT

I, Boris Teksler, declare, in accordance with 19 C.F.R. §§ 210.4 and 210.12(a), under penalty of perjury, that the following statements are true:

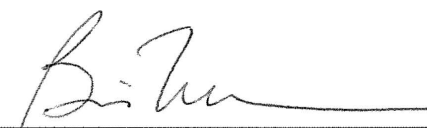
1. I am currently Apple's Director of Patent Strategy and Licensing. I am duly authorized by Apple to verify the foregoing Complaint.

2. To the best of my knowledge, information, and belief, formed after a reasonable inquiry, the allegations and other factual contentions of the Complaint are well-grounded in fact and have evidentiary support, or, where specifically identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

3. To the best of my knowledge, information, and belief, formed after a reasonable inquiry, the claims and other legal contentions set forth in the Complaint are warranted by existing law or by a good faith, non-frivolous argument for extension, modification, or reversal of existing law, or by the establishment of new law.

4. The Complaint is not being filed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Executed this 13<sup>th</sup> day of April, 2010

  
\_\_\_\_\_  
Boris Teksler  
Apple Inc.