

UNITED STATES INTERNATIONAL TRADE COMMISSION  
WASHINGTON, D.C.

In the Matter of

CERTAIN MOBILE DEVICES AND  
RELATED SOFTWARE

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

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

COMPLAINANT

Apple Inc., f/k/a Apple Computer, Inc.  
1 Infinite Loop  
Cupertino, CA 95014  
Telephone: (408) 996-1010

COUNSEL FOR COMPLAINANT

Mark G. Davis  
Robert T. Vlasis  
Edward S. Jou  
WEIL, GOTSHAL & MANGES LLP  
1300 Eye Street, N.W., Suite 900  
Washington, DC 20005  
Telephone: (202) 682-7000  
Facsimile: (202) 857-0940

Matthew D. Powers  
Steven S. Cherensky  
Adrian C. Percer  
Christy M. Von Der Ahe  
WEIL, GOTSHAL & MANGES LLP  
201 Redwood Shores Parkway  
Redwood Shores, CA 94065  
Telephone: (650) 802-3000  
Facsimile: (650) 802-3100

PROPOSED RESPONDENTS

Motorola, Inc.  
1303 East Algonquin Road  
Schaumburg, IL 60196  
Telephone: (847) 576-5000

Motorola Mobility, Inc.  
600 North U.S. Highway 45  
Libertyville, IL 60048  
Telephone: (847) 523-5000

## TABLE OF SUPPORTING MATERIALS

### EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
1.	U.S. Patent No. 7,812,828
2.	Assignment records for U.S. Patent No. 7,812,828
3.	U.S. Patent No. 7,663,607
4.	Assignment records for U.S. Patent No. 7,663,607
5.	U.S. Patent No. 5,379,430
6.	Assignment records for U.S. Patent No. 5,379,430
7.	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
8.	List of licenses for the Asserted Patents ( <b>CONFIDENTIAL</b> )
9.	Infringement claim charts for U.S. Patent No. 7,812,828
10.	Infringement claim charts for U.S. Patent No. 7,663,607
11.	Infringement claim charts for U.S. Patent No. 5,379,430
12.	Apple Inc.'s U.S. SEC Form 10-K (2009)
13.	Declaration of Mark Buckley ( <b>CONFIDENTIAL</b> )
14.	Domestic Industry claim chart for U.S. Patent No. 7,812,828
15.	Domestic Industry claim chart for U.S. Patent No. 7,663,607 ( <b>EXHIBITS 15A and 15B CONFIDENTIAL</b> )
16.	Domestic Industry claim chart for U.S. Patent No. 5,379,430
17.	Photographs of Motorola Droid 2
18.	Receipt for Motorola Droid 2
19.	Photographs of Motorola Droid X
20.	Receipt for Motorola Droid X

21. Photographs of Apple iPhone 4
22. Photograph of Apple MacBook Pro

## APPENDICES

<u>Appendix Item</u>	<u>Description</u>
A.	Prosecution History for U.S. Patent No. 7,812,828
B.	Cited references for U.S. Patent No. 7,812,828
C.	Prosecution History for U.S. Patent No. 7,663,607
D.	Cited references for U.S. Patent No. 7,663,607
E.	Prosecution History for U.S. Patent No. 5,379,430
F.	Cited references for U.S. Patent No. 5,379,430

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	COMPLAINANT .....	3
III.	THE PROPOSED RESPONDENTS .....	4
IV.	THE TECHNOLOGY AND PRODUCTS AT ISSUE .....	5
V.	THE PATENTS-IN SUIT AND NON-TECHNICAL DESCRIPTIONS OF THE INVENTIONS .....	5
	A. Overview and Ownership of the Asserted Patents.....	5
	B. Non-Technical Description of the '828 Patent .....	6
	C. Non-Technical Description of the '607 Patent .....	6
	D. Non-Technical Description of the '430 Patent .....	7
	E. Foreign Counterparts .....	8
	F. Licenses.....	8
VI.	UNLAWFUL AND UNFAIR ACTS OF RESPONDENT—PATENT INFRINGEMENT.....	8
	A. The '828 Patent.....	9
	B. The '607 Patent.....	9
	C. The '430 Patent.....	9
VII.	SPECIFIC INSTANCES OF UNFAIR IMPORTATION AND SALE .....	10
VIII.	HARMONIZED TARIFF SCHEDULE ITEM NUMBERS.....	11
IX.	RELATED LITIGATION .....	11
	A. Pending Litigation Between Apple and Motorola .....	11
	B. Litigation Relating to the Asserted Patents.....	12
X.	THE DOMESTIC INDUSTRY .....	12
	A. United States Investments in the Domestic Industry .....	12
	B. Apple's Practice of the Asserted Patents .....	15
XI.	RELIEF REQUESTED.....	16

## **I. INTRODUCTION**

1. Apple Inc. (“Apple”) 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, 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, 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. Motorola, Inc. and its subsidiary, Motorola Mobility, Inc. (collectively “Motorola”) manufacture, import, sell for importation, sell after importation, and service and repair mobile communications devices and associated software (collectively, the “Accused Products”). The Accused Products manufactured, imported, sold for importation, and sold after importation by Motorola incorporate, without license, many of the 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 Motorola of certain mobile devices and related software that infringe certain claims of U.S. Patent Nos. 7,812,828 (“the ’828 patent”), 7,663,607 (“the ’607 patent”), and 5,379,430 (“the ’430 patent”) (collectively, the “Asserted Patents”). The presently asserted claims of these patents are:

Patent Number	Asserted Claims
7,812,828	1, 2, 10-11, 24-26, 29
7,663,607	1-7, 10
5,379,430	1, 3, 5

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, 3, and 5. Certified copies of the assignment records of the Asserted Patents are attached as Exhibits 2, 4, and 6.

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 mobile devices and related software manufactured or sold by or on behalf of Motorola from entry into the United States. Apple further seeks a permanent cease and desist order prohibiting Motorola from importing, selling, marketing, advertising, distributing, offering for sale, transporting (except for exportation), and soliciting U.S. agents or distributors for, infringing mobile devices and related software. Apple also seeks the imposition of a bond upon Motorola's importation of infringing articles into the United States during the 60-day Presidential review period pursuant to 19 U.S.C. § 1337(j)

## **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, including the iMac, 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 3GS and iPhone 4) 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 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 RESPONDENTS**

12. On information and belief, Motorola, Inc. is a corporation organized under the laws of Delaware with its principal place of business at 1303 East Algonquin Road, Schaumburg, Illinois 60196. On information and belief, Motorola, Inc. is engaged in the design, manufacture, importation into the United States, sale for importation, and sale after importation of the Accused Products.

13. On information and belief, Motorola Mobility, Inc. is a wholly-owned subsidiary of Motorola, Inc. organized under the laws of Delaware with its principal place of business at 600 North U.S. Highway 45, Libertyville, Illinois 60048. On information and belief, Motorola Mobility, Inc. is engaged in the design, manufacture, importation into the United States, sale for importation, and sale after importation of the Accused Products.

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

14. The technologies at issue relate generally to software and methods used in a variety of electronic devices, including mobile devices imported into and sold within the United States by or on behalf of Motorola.

15. The Accused Products are mobile devices, such as smartphones, and associated software, including operating systems, user interfaces, and other application software designed for use on, and loaded onto, such devices. Upon information and belief, these products are manufactured, marketed and/or sold by Motorola in the United States. At least the following Motorola mobile devices infringe one or more claims of one or more of the Asserted Patents: Droid, Droid 2, Droid X, Cliq, Cliq XT, BackFlip, Devour A555, i1 and Charm.<sup>1</sup>

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

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

16. As set forth below, Apple owns by assignment the entire right, title, and interest in and to each of the Asserted Patents. (*See* Exhibits 2, 4, and 6.)

17. 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, C, and E. 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 B, D, and F.

---

<sup>1</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 Motorola will introduce additional products in the future that will infringe the Asserted Patents.

**B. Non-Technical Description of the '828 Patent**

18. U.S. Patent No. 7,812,828, entitled "Ellipse Fitting for Multi-Touch Surfaces," issued on October 12, 2010, to inventors Wayne Westerman and John G. Elias. (Exhibit 1.) The '828 patent issued from U.S. Patent Application No. 11/677,958, filed on February 22, 2007, which was a continuation of U.S. Patent Application No. 11/015,434, filed on December 17, 2004, which was a continuation of Application No. 09/236,513, filed on January 25, 1999, which claims priority to Provisional Application No. 60/072,509, filed on January 26, 1998. The '828 patent expires on January 25, 2019. Apple owns by assignment the entire right, title, and interest to and in the '828 patent. (Exhibit 2.)

19. The '828 patent has thirty-five claims: three independent claims and thirty-two dependent claims.

20. The '828 patent relates generally to a method for electronic devices such as mobile communications devices to integrate different types of manual input such as typing, multiple degree-of-freedom manipulation, and handwriting on a touch-sensitive surface. By mathematically fitting an ellipse to a group of pixels on the touch-sensitive surface, ellipse parameters such as position, shape, size, and orientation may be used as control signals for the electronic device. Changes in these parameters can be used to detect different gestures, such as a tapping, holding, sliding, or pinching, which can be used to for typing, pointing, scrolling, 3D manipulation, or handwriting on the touch-sensitive surface of the electronic device.

**C. Non-Technical Description of the '607 Patent**

21. U.S. Patent No. 7,663,607, entitled "Multipoint Touchscreen," issued on February 16, 2010, to inventors Steve Hotelling, Joshua A. Strickon, and Brian Q. Huppi.

(Exhibit 3.) The '607 patent issued from U.S. Patent Application No. 10/840,862, filed on May 6, 2004. The '607 patent expires on May 6, 2024. Apple owns by assignment the entire right, title, and interest to and in the '607 patent. (Exhibit 4.)

22. The '607 patent has eleven claims: two independent claims and nine dependent claims.

23. The '607 patent relates generally to a touch panel having transparent conductive layers that is capable of recognizing multiple touches by the fingers of a user. Lines in the conductive layers detect changes in capacitance to detect touch events at distinct points across the touch panel. The conductive layers are separated by non-conductive material, and the conductive lines may be formed from a material such as indium tin oxide (ITO).

**D. Non-Technical Description of the '430 Patent**

24. U.S. Patent No. 5,379,430, entitled "Object-Oriented System Locator System," issued on January 3, 1995, to inventor Frank T. Nguyen. (Exhibit 5.)

The '430 patent issued from U.S. Patent Application No. 102,080, filed on August 4, 1993. The '430 patent expires on August 4, 2013. Apple owns by assignment the entire right, title, and interest to and in the '430 patent. (Exhibit 6.)

25. The '430 patent has twenty-three claims: two independent claims and twenty-one dependent claims.

26. The '430 patent relates generally to a method for adding components or applications to a computer system "on the fly" without running an installation program or rebooting the operating system. The '430 patent describes a process for using search criteria to locate related hardware or software components and adding support for those components.

**E. Foreign Counterparts**

27. A list of the foreign counterparts to the Asserted Patents is included with this Complaint as Exhibit 7. 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.

**F. Licenses**

28. Confidential Exhibit 8 includes a list of licensed entities for the Asserted Patents.

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

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

30. Motorola 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, Motorola is aware of the Asserted Patents, at least because Motorola was provided with a copy of this Complaint upon its filing. Motorola 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 '828 Patent**

31. On information and belief, Motorola's mobile devices infringe at least claims 1, 2, 10-11, 24-26, and 29 of the '828 patent. Additionally, on information and belief, Motorola has knowledge of the '828 patent and knowingly induces users of its mobile devices to infringe at least claims 1, 2, 10-11, 24-26, and 29 of the '828 patent. Further, on information and belief, Motorola contributes to the infringement of at least claims 1, 2, 10-11, 24-26, and 29 of the '828 patent because Motorola knows that its mobile devices 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 independent claims of the '828 patent to the Motorola Droid 2 are attached as Exhibit 9.

**B. The '607 Patent**

32. On information and belief, Motorola's mobile devices infringe at least claims 1-7 and 10 of the '607 patent. Additionally, on information and belief, Motorola has knowledge of the '607 patent and knowingly induces users of its mobile devices to infringe at least claims 1-7 and 10 of the '607 patent. Further, on information and belief, Motorola contributes to the infringement of at least claims 1-7 and 10 of the '607 patent because Motorola knows that its mobile devices 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 independent claims of the '607 patent to the Motorola Droid X are attached as Exhibit 10.

**C. The '430 Patent**

33. On information and belief, Motorola's mobile devices infringe at least claims 1, 3, and 5 of the '430 patent. Additionally, on information and belief, Motorola

has knowledge of the '430 patent and knowingly induces users of its mobile devices to infringe at least claims 1, 3, and 5 of the '430 patent. Further, on information and belief, Motorola contributes to the infringement of at least claims 1, 3, and 5 of the '430 patent because Motorola knows that its mobile devices 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 an independent claim of the '430 patent to the Motorola Droid 2 are attached as Exhibit 11.

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

34. Motorola, 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 mobile devices.

35. The Motorola Droid 2 is manufactured in China. (*See* Exhibit 17, photographs of a Motorola Droid 2 (indicating the device is “Made in China.”)) The Motorola Droid 2 is imported into the United States. For example, the photographed Motorola Droid 2 was purchased from VerizonWireless.com on October 18, 2010, and shipped to an address in Redwood City, CA. The receipt for this purchase is attached as Exhibit 18.

36. The Motorola Droid X is manufactured in China. (*See* Exhibit 19, photographs of a Motorola Droid X (indicating the device is “Made in China.”)) The Motorola Droid X is imported into the United States. For example, the photographed Motorola Droid X was purchased from Verizon Wireless on October 27, 2010, in Washington, DC. The receipt for this purchase is attached as Exhibit 20.

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

37. On information and belief, the Accused Products fall within at least the following classifications of the Harmonized Tariff Schedule (“HTS”) of the United States: 8517.12.00. 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 Motorola**

38. On October 6, 2010, Motorola Mobility, Inc. filed a complaint with the U.S. International Trade Commission seeking institution of an investigation under Section 337 and naming Apple as the proposed respondent. The patents at issue are U.S. Patent Nos. 6,272,333, 6,246,862, 6,246,697, 5,359,317, 5,636,223, and 7,751,826. This case is currently pending institution.

39. On October 6, 2010, Motorola Mobility, Inc. filed a complaint for patent infringement against Apple in the U.S. District Court for the Northern District of Illinois asserting infringement of U.S. Patent Nos. 5,311,516, 5,319,712, 5,490,230, 5,572,193, 6,175,559, and 6,359,898 (case no. 1:10-cv-066381). This case is currently pending.

40. On October 6, 2010, Motorola Mobility, Inc. filed a complaint for patent infringement against Apple in the U.S. District Court for the Southern District of Florida asserting infringement of U.S. Patent Nos. 5,710,987, 5,754,119, 5,958,006, 6,008,737, 6,101,531, and 6,377,161 (case no. 1:10-cv-23580). This case is currently pending.

41. On October 8, 2010, Motorola Mobility, Inc. filed a complaint for a declaratory judgment against Apple and NeXT Software, Inc. in the U.S. District Court for the District of Delaware asserting non-infringement and invalidity of U.S. Patent Nos.



5,455,599, 5,519,867, 5,566,337, 5,915,131, 5,929,852, 5,946,647, 5,969,705, 6,275,983, 6,343,263, 6,424,354, and RE 39,486 (case no. 1:10-cv-00867). This case is currently pending.

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

42. Concurrently with the filing of this complaint, Apple will file a civil action in the U.S. District Court for the Western District of Wisconsin accusing Motorola of infringing the Asserted Patents.

43. On June 28, 2010, the '403 patent was asserted against Nokia, Inc. and Nokia Corporation in a counterclaim in the U.S. District Court for the Western District of Wisconsin (case no. 3-10-cv-00249). Neither the '828 patent nor the '607 patent have been the subject of any other foreign or domestic court or agency litigation.

**X. THE DOMESTIC INDUSTRY**

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

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

45. Apple makes extensive use of the inventions claimed in the Asserted Patents in numerous products. Apple currently designs and sells Macintosh computers, including the iMac and MacBook portable computers, with pre-installed software including Mac OS X v.10.6.3 Snow Leopard. Apple also currently designs and sells the iPhone 3GS and iPhone 4. The iPhones 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.

46. Apple has made significant investment in plant and equipment for the design of Apple products that practice the Asserted Patent. Apple's headquarters are located in Cupertino, California. (Exhibit 12, Apple 2009 Form 10-K at 24.) As of September 26, 2009,<sup>2</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. 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.

47. 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 that, 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.) Detailed information regarding Apple's significant investment in plant and equipment may be found in the accompanying Confidential Declaration of Mark Buckley. (*See* Confidential Exhibit 13, Buckley Decl. ¶¶ 7-9.)

---

<sup>2</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 12, Apple 2009 Form 10-K at 1.)

48. 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 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 13, Buckley Decl. ¶ 10.)

49. 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 Mark Buckley. (*See* Confidential Exhibit 13, Buckley Decl. ¶¶ 11-13.) 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.*)

50. 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 Mac, iPhone, iPod, and iPad products and related software and services. Apple has also established an

extensive support program for developers to create applications for the iPhone, iPod Touch, or iPad. (See Confidential Exhibit 13, Buckley Decl. ¶ 14.)

51. 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 12 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.*)

52. 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 Mark Buckley, attached as Confidential Exhibit 13.

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

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

54. Apple makes extensive use of the Asserted Patents in numerous different products. As noted above, Apple currently makes and sells the iPhone 4 with pre-installed software including iOS 4.1. A photograph of an iPhone 4 is attached as Exhibit 21. This product practices at least the asserted claims of the '828 and '607 patents. The allocation of R&D expenses and related items for this product is captured by the "iPhone" category, and prior to its introduction, by other categories, including portions of the "iPod" category, in the accompanying Buckley Declaration (Confidential Exhibit 13). Apple also currently makes and sells Macintosh computers with pre-

installed software including Mac OS X v.10.6.3 Snow Leopard. These products practice at least the asserted claims of the '430 patent. A photograph of an exemplary Mac OS X computer is attached as Exhibit 22. 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 Buckley Declaration (Confidential Exhibit 13).

55. An exemplary claim chart comparing Apple's iPhone 4 to a representative claim of the '828 patent is attached as Exhibit 14.

56. An exemplary claim chart comparing Apple's iPhone 4 to a representative claim of the '607 patent is attached as Exhibit 15.

57. An exemplary claim chart comparing Apple's Mac OS X computers to a representative claim of the '430 patent is attached as Exhibit 16.

## **XI. RELIEF REQUESTED**

58. 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 Motorola's mobile devices and related software, and mobile devices and related software made on behalf of Motorola, that infringe one or more claims of Apple's '828, '607, and '430 patents;

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

(c) Render a determination that the importation, sale for importation, and/or sale after importation of Motorola's infringing mobile devices and related software constitute one or more violations of Section 337 of the Tariff Act of 1930, as amended 19 U.S.C. § 1337;

(d) Issue a permanent exclusion order, pursuant to 19 U.S.C. § 1337(d)(1), barring from entry into the United States all mobile devices and related software made by or on behalf of Motorola, that infringe one or more asserted claims of Apple's '828, '607, and '430 patents;

(e) Issue a permanent cease and desist order, pursuant to 19 U.S.C. § 1337(f), prohibiting Motorola 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 mobile devices and related software that infringe one or more asserted claims of Apple's '828, '607, and '430 patents; and

(f) Impose a bond upon Motorola's importation of infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. § 1337(j); and

(g) 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: October 29, 2010

Respectfully Submitted,



---

Mark G. Davis  
Robert T. Vlasis  
Edward S. Jou  
WEIL, GOTSHAL & MANGES LLP  
1300 Eye Street, N.W., Suite 900  
Washington, DC 20005  
Telephone: (202) 682-7000  
Facsimile: (202) 857-0940

Matthew D. Powers  
Steven S. Cherensky  
Adrian C. Percer  
Christy M. Von Der Ahe  
WEIL, GOTSHAL & MANGES LLP  
201 Redwood Shores Parkway  
Redwood Shores, CA 94065  
Telephone: (650) 802-3000  
Facsimile: (650) 802-3100

*Attorneys for Complainant Apple Inc.*

## VERIFICATION OF COMPLAINT

I, Eric Jue, 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 the senior product marketing manager for the Apple iPhone products. 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 complaint is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of the investigation.

3. To the best of my knowledge, information, and belief, formed after a reasonable inquiry, the claims, defenses, and other legal contentions in the complaint are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

4. The allegations and other factual contentions in the complaint have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

Executed this 28 day of October, 2010

  
Eric Jue  
Apple Inc.