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CBI 11-396

August 16, 2011

**VIA HAND DELIVERY**

The Honorable James R. Holbein  
Secretary  
U.S. International Trade Commission  
500 E Street, S.W.  
Washington, DC 20436

DOCKET NUMBER
2841
Office of the Secretary Int'l Trade Commission

Re: *Certain Electronic Devices with Communication Capabilities,  
Components Thereof, and Related Software*

Dear Secretary Holbein:

Enclosed for filing on behalf of complainant HTC Corp. are the following documents in support of Complainant's request that the Commission commence an investigation pursuant to Section 337 of the Tariff Act of 1930, as amended. A request for confidential treatment of Confidential Exhibits 17-23 is included with this filing.

Complainant has obtained permission from the Docket Office and therefore is filing certain documents accompanying this complaint in electronic form. As described below, the original and all required copies of the complaint are in paper form. The original and one copy set of all exhibits are in paper form, and all other copies of exhibits are in electronic form and are being provided on a CD. The appendices are also in electronic form on a CD. Complainants will provide any additional paper copies at the Secretary's request.


Accordingly, Complainant submits the following documents for filing:

1. An original and twelve (12) copies of the verified complaint and an original and six (6) copies of the accompanying exhibits, with the confidential exhibits segregated from the other material submitted (original and one (1) copy unbound, without tabs) (Rules 201.6(c), 210.4(f)(3)(i), and 210.8(a)(1)(i)), all copies of the verified complaint in paper form, two copies of the accompanying exhibits in paper form, four electronic copies of the accompanying exhibits on a CD;
2. One (1) additional copy of the complaint (in paper form) and accompanying non-confidential and confidential exhibits in electronic form (on a CD) for service upon the proposed respondent (Rules 210.4(f)(3)(i), 210.8(a)(1)(iii), and 210.11(a));

3. Certified copies of the following United States Letters Patent: (a) 7,765,414, (b) 7,417,944, and (c) 7,672,219 (collectively the “asserted patents”), included as Exhibits 1 through 3 in the original complaint, and copies thereof included as Exhibits 1 through 3 in all copies of the complaint (Rule 210.12(a)(9)(i)), two copies in paper form, and all other copies on a CD.
4. A certified copy of the assignments involving the asserted patents included as Exhibits 4 through 6 in the original complaint, and copies thereof included as Exhibits 4 through 6 in all copies of the complaint (Rule 210.12(a)(9)(ii)), two copies in paper form, all other copies on a CD;
5. An identification of each licensee under the asserted patents included as Confidential Exhibit 17 (Rule 210.12(a)(9)(iv)), two copies in paper form, all other copies on a CD;
6. A certified copy and three (3) copies thereof of the prosecution histories for each of the asserted patents are included as Appendices A through C (in electronic form) on a CD (Rule 210.12(c)(1));
7. Four (4) copies of reference documents mentioned in the prosecution histories of the applications leading to the issuance of the asserted patents included as Appendices D through F (in electronic form) on a CD (Rule 210.12(c)(2)); and
8. A letter and certification pursuant to Commission Rules 201.6(b) and 210.5(d) requesting confidential treatment of Confidential Exhibits 17-23.

Thank you for your attention to this matter.

Respectfully submitted,

  
Thomas L. Jarvis

Enclosures

THOMAS L. JARVIS  
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August 16, 2010

**VIA HAND DELIVERY**

The Honorable James R. Holbein  
Secretary  
U.S. International Trade Commission  
500 E Street, S.W.  
Washington, D.C. 20436

Re: *Certain Electronic Devices with Communication Capabilities,  
Components Thereof, and Related Software*

Dear Secretary Holbein:

This firm represents Complainant HTC Corp. who is concurrently filing a complaint pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337.

In accordance with Commission Rules 201.6, 210.5, 19 C.F.R. §§ 201.6, and 210.5, HTC Corp. requests confidential treatment of the confidential business information contained in Confidential Exhibit Nos. 17C-23C.

The information for which confidential treatment is sought is proprietary commercial information not otherwise publicly available. Specifically, Confidential Exhibits 17C-23C contain proprietary commercial information concerning HTC Corp. products, licensing of the asserted patents, and investments in the domestic industry.

The information described above qualifies as confidential business information pursuant to Rule 210.6(a) because:


1. it is not available to the public;
2. unauthorized disclosure of such information could cause substantial harm to the competitive position of HTC Corp.; and
3. the disclosure of which could impair the Commission's ability to obtain information necessary to perform its statutory function.

The Honorable James R. Holbein  
August 16, 2011  
Page 2

Please contact me if you have any questions about this request, or if this request is not granted in full.

We appreciate your assistance in this matter.

Respectfully submitted,

  
Thomas L. Jarvis

Enclosures

Washington, DC

Subscribed and sworn to me this 16th day of August, 2011.

  
Notary Public

My commission expires: 08/14/2014

(SEAL)

**Pamela Jo Hennessy**  
Notary Public, District of Columbia  
My Commission Expires 8/14/2014

UNITED STATES INTERNATIONAL TRADE COMMISSION  
WASHINGTON, D.C.

In the Matter of

CERTAIN ELECTRONIC  
DEVICES WITH  
COMMUNICATION  
CAPABILITIES, COMPONENTS  
THEREOF, AND RELATED  
SOFTWARE

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

COMPLAINT OF HTC CORP. UNDER SECTION 1337  
OF THE TARIFF ACT OF 1930, AS AMENDED

**COMPLAINANT**

HTC Corp.  
23 Xinghua Rd., Taoyuan City  
Taoyuan County 330, Taiwan,  
(R.O.C.)  
Telephone: +866-3-375-3252

**PROPOSED RESPONDENT**

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

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<b>Exhibit</b>	<b>Document</b>
Exhibit 1	Certified copy of U.S. Patent No. 7, 765,414
Exhibit 2	Certified copy of U.S. Patent No. 7,417,944
Exhibit 3	Certified copy of U.S. Patent No. 7,672,219
Exhibit 4	Certified copy of recorded assignment(s) for U.S. Patent No. 7,765,414
Exhibit 5	Certified copy of recorded assignment(s) for U.S. Patent No. 7,417,944
Exhibit 6	Certified copy of recorded assignment(s) for U.S. Patent No. 7,672,219
Exhibit 7	D&B Business Report for HTC Corp.
Exhibit 8	2010 HTC Corp. Business Review
Exhibit 9	Apple's 2010 Annual Report
Exhibit 10	Foreign patents and patent applications related to U.S. Patent No. 7,765,414
Exhibit 11	Foreign patents and patent applications related to U.S. Patent No. 7,417,944
Exhibit 12	Foreign patents and patent applications related to U.S. Patent No. 7,672,219
Exhibit 13	Infringement claim chart for U.S. Patent No. 7,765,414 and exhibits cited therein
Exhibit 14	Infringement claim chart for U.S. Patent No. 7,417,944 and exhibits cited therein
Exhibit 15	Infringement claim chart for U.S. Patent No. 7,672,219 and exhibits cited therein
Exhibit 16	Documents detailing purchase of Apple iPhone 4 product in the United States, including photographs
<b>Confidential Exhibit</b>	<b>Document</b>
Exhibit 17C	Identification of Licensees
Exhibit 18C	HTC's Motion for Summary Determination that it Satisfies the Economic Prong of the Domestic Industry Requirement in ITC Inv. No. 337-TA-721
Exhibit 19C	Order No. 40, Initial Determination Granting Summary Determination in Inv. No. 337-TA-721
Exhibit 20C	Continuing Economic Investments for the Asserted Patents
Exhibit 21C	Domestic Industry claim chart for U.S. Patent No. 7,765,414
Exhibit 22C	Domestic Industry claim chart for U.S. Patent No. 7,417,944
Exhibit 23C	Domestic Industry claim chart for U.S. Patent No. 7,672,219
<b>Physical Exhibit</b>	
Physical Exhibit 1	Apple iPhone 4 (in box with packaging)
Physical Exhibit 2	HTC Ruby



## APPENDICES

<b>Appendix</b>	<b>Document</b>
App. A	Certified copy of the prosecution history of U.S. Patent No. 7,765,414 and three copies thereof
App. B	Certified copy of the prosecution history of U.S. Patent No. 7,417,944 and three copies thereof
App. C	Certified copy of the prosecution history of U.S. Patent No. 7,672,219 and three copies thereof
App. D	Four copies of technical references identified in the prosecution history of U.S. Patent No. 7,765,414
App. E	Four copies of technical references identified in the prosecution history of U.S. Patent No. 7,417,944
App. F	Four copies of technical references identified in the prosecution history of U.S. Patent No. 7,672,219

## I. INTRODUCTION

1. This Complaint is filed by HTC Corp. (“HTC”) under Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, based on the unlawful importation into the United States, the sale for importation, and the sale within the United States after importation, by proposed Respondent Apple, Inc. (“Apple”) of certain electronic devices with communication capabilities, components thereof, and related software, that infringe one or more of claims 1, 4-13, and 15-21 of United States Patent No. 7, 765,414 (“the ’414 patent”); claim 1 of United States Patent No. 7,417,944 (“the ’944 patent”); and claims 1-5 of United States Patent No. 7,672,219 (“the ’219 patent”) (collectively the “Asserted Claims” of the “Asserted Patents”).

2. Certified copies of each of the Asserted Patents are attached as Exhibit Nos. 1 through 3, respectively. HTC owns all right, title, and interest in each of the Asserted Patents. Certified copies of the recorded assignments for each of the Asserted Patents are attached as Exhibit Nos. 4 through 6. The recorded assignments for the ’944 patent (Exhibit 5) are identical to the recorded assignments for the ’219 patent (Exhibit 6).

3. The proposed respondent is Apple, Inc. (a/k/a Apple Computer, Inc.). The accused products are certain electronic devices with communication capabilities, components thereof, and related software, including, but not limited to smartphones, tablet computers, portable media players, desktop and portable computers, other wireless devices such as network equipment, display devices, and printers, and software to be loaded on such devices (collectively the “Accused Products”). The Accused Products include, but are not limited to, Apple’s Mac computer products; Apple’s iPhone, iPad, and iPod touch mobile products; Apple’s wireless capable display devices such as Apple TV and third party branded printers; and Apple’s AirPort and Time Capsule wireless network equipment. On information and belief, the Accused

Products are manufactured and/or sold for importation into the United States, imported into the United States, or sold after importation into the United States by or on behalf of Apple.

4. An 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.

5. HTC seeks, as relief, a permanent exclusion order barring from entry into the United States all infringing electronic devices with communication capabilities, components thereof, and related software imported by or on behalf of Apple. HTC also seeks, as relief, a cease and desist order prohibiting Apple's sale for importation, importation, sale after importation, distribution, offer for sale, advertising, testing, loading with software, solicitation of sales, repair, technical support, and any other commercial activity related to the Accused Products that infringe one or more Asserted Claims of the Asserted Patents.

## **II. COMPLAINANT**

6. HTC Corp. ("HTC") is a corporation organized and existing under the laws of Taiwan with its principal place of business at 23 Xinghua Rd., Taoyuan City, Taoyuan County 330, Taiwan, (R.O.C.). *See* Exhibit 7, D&B Business Report for HTC Corp.

7. Founded in 1997, HTC is widely recognized as the company behind many of the most popular operator-branded mobile handsets on the market today. HTC has pioneered the smartphone market, launching many of the industry's groundbreaking technologies due in part to its own innovation, as well as to strategic partnerships with companies such as Microsoft, Google, and Qualcomm. HTC is widely recognized as one of the fastest-growing companies in the mobile sector.

8. HTC's mobile electronic devices are sold throughout the United States by the largest mobile operators in the nation including Verizon, T-Mobile, AT&T, Sprint, as well as many regional mobile operators, and are also available for purchase throughout the United States

at retail outlets such as Best Buy and RadioShack. In addition to its own proprietary lines of mobile handsets, HTC's products have also been sold throughout the United States under the brand names of other companies such as Google, Microsoft, Hewlett Packard/Compaq and Palm.

9. The market has long recognized the value of HTC's smartphones and other portable electronic devices. In 2010, HTC generated approximately \$5 billion in the United States from the sale of its products. *See Exhibit 8, 2010 HTC Business Report, at 30 (total in TWD converted to USD).* HTC, through its subsidiaries, performs several services in the United States including research and development, design, engineering, sales, marketing, repair, product support, and warranty and other after-sales services of HTC's electronic devices with communication capabilities, including devices that practice one or more of the inventions of each of the Asserted Patents.

### **III. PROPOSED RESPONDENT**

10. Respondent Apple Inc., (a/k/a Apple Computer, Inc.) is a corporation organized under the laws of the State of California with its principle place of business at 1 Infinite Loop, Cupertino, CA 95014. *See Exhibit 9, Apple's 2010 Annual Report.*

11. On information and belief, Apple is involved in the design, development, manufacture, importation, and sale after importation of the Accused Products including at least certain Apple Mac computer products; Apple iPhone, iPad, and iPod touch mobile products; Apple TV and third party WiFi printer display devices; and Apple's Airport and Time Capsule wireless network equipment. Apple sells the Accused Products within the United States by various means, including online and through retail stores, direct sales, and third-party resellers. Further, on information and belief, Apple performs several services to support the importation and sale of Accused Products into and within the United States, including marketing of the Accused Products, development and distribution of software, repair of the Accused Products, and

other after-sale services, such as supporting and configuring the Accused Products, as well as providing technical support to U.S.-based customers and distributors to conform the Accused Products to purchaser requests.

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

12. The accused products are certain electronic devices with communication capabilities, components thereof, and related software, including, but not limited to smartphones, tablet computers, portable media players, desktop and portable computers, other wireless devices such as network equipment, display devices, and printers, and software to be loaded on such devices (collectively, "Accused Products"). The Accused Products include certain Apple Mac computer products; Apple iPhone, iPad, and iPod touch mobile products; Apple wireless display devices such as Apple TV and third party branded printers; and Apple's Airport and Time Capsule wireless network equipment.

13. The technology at issue with respect to the '414 patent relates to portable devices that integrate the features and functions of a personal digital assistant ("PDA") and a wireless communication device. Examples of such integrated devices are smartphones, tablet computers, media players and certain other portable electronic devices. Certain Apple mobile devices that integrate wireless communications and PDA functionality, including Apple's iPhone, iPad, and iPod touch products infringe the Asserted Claims of the '414 patent.

14. The technology at issue with respect to the '944 and '219 patents (collectively "OFDM patents") relates to communication technologies such as orthogonal frequency division multiplexing (OFDM) used with fast Fourier transform (FFT). Features of the Asserted Claims of the OFDM patents are required by the industry standard IEEE 802.11, in particular, versions 802.11a, 802.11g, and 802.11n thereof. Apple imports and sells after importation products that comply with the 802.11 standards, thereby infringing the OFDM patents. For example, Apple's

website states that certain of its current Mac computers, iPad mobile devices, Apple TV, and Apple Airport and Time Capsule networking equipment implement 802.11a, 802.11g, and/or 802.11n. Each implementation of systems or methods of the 802.11a, 802.11g, and/or 802.11n standard features constitutes an independent basis for infringement of the Asserted Claims of the OFDM patents.

**V. THE ASSERTED PATENTS AND NON-TECHNICAL DESCRIPTION OF THE INVENTIONS**

**A. U.S. Patent No. 7,765,414**

**1. Identification and Ownership of the '414 Patent**

15. United States Patent No. 7,765,414, entitled "Circuit And Operating Method For Integrated Interface Of PDA And Wireless Communication System," issued on July 27, 2010, to inventors Hsun-Hsin Chuang, Hsi-Cheng Yeh, Chih-Chao Hsieh, Shi-Je Lin, and Wen-Hsing Lin. Exhibit 1. The '414 patent issued from Application No. 11/844,349, filed on August 23, 2007, which is a continuation of Application No. 10/249,403, filed on April 7, 2003, which claims priority from Taiwanese Application No. 91,118,369, filed on August 15, 2002. *Id.*

16. The '414 patent has four independent claims and 17 dependent claims. HTC is currently asserting claims 1, 4-13, and 15-21 of the '414 patent in this Investigation. Further investigation and discovery may lead to HTC's assertion of additional claims against Apple.

17. The '414 patent is valid, enforceable, and currently in full force and effect until its expiration on December 30, 2023. HTC owns by assignment the entire right, title, and interest in and to the '414 patent. Exhibit 4.

18. Pursuant to Commission Rule 210.12(c), this Complaint is accompanied by a certified copy of the prosecution history of the '414 patent and three copies thereof. App. A. Further, this Complaint is accompanied by four copies of the currently available technical

references identified in the prosecution history of the '414 patent. App. D. HTC continues to search for additional references and will supplement Appendix D accordingly.

## **2. Non-Technical Description of the Invention of the '414 Patent**

19. Prior to the invention of the '414 patent, many portable devices, such as personal digital assistant (“PDA”) devices and wireless communication devices were sold separately. As a result, for certain applications users were required to obtain and carry separate PDAs and wireless communication devices and connect the two using an appropriate interface. While some early devices included both a PDA system and a wireless communication system, there was a need for an appropriate interface to allow improved interactions between the PDA system and the wireless communication system.

20. The '414 patent generally relates to systems and methods using a circuit or an integrated interface for integrating systems in a portable device, such as a smartphone or other portable electronic devices. The circuit or the integrated interface, for example, may integrate a PDA system and a wireless communication system of a portable device by providing one or more ports for exchanging control signals, status data, and audio data between the PDA system and the wireless communication system.

21. The circuit or the integrated interface of the '414 patent allows the PDA system and the wireless communication system to communicate with each other such that, for example, one system can control certain operations of the other system. Such a circuit or integrated interface could be used to control various PDA system and wireless communication system functionalities, such as making and receiving calls, sending and receiving emails, accessing information online, listening to music, and watching videos.

### **3. Related Applications and Patents**

22. The '414 patent has a parent application and patent, a sibling application and patent, and a child application that remains pending.

23. The '414 patent is a continuation of its parent application, Application No. 10/249,403, filed on April 7, 2003, which issued as U.S. Patent No. 7,278,032 on October 2, 2007.

24. The '414 patent's sibling application, Application No. 11/844,347, was filed on August 23, 2007, as a divisional of the '032 patent and issued as U.S. Patent No. 7,925,904 on April 12, 2011.

25. The '414 patent's child application, Application No. 12/788,326, was filed on May 27, 2010, as a continuation of the '414 patent and is currently pending before the U.S. Patent and Trademark Office.

### **4. Foreign Counterparts**

26. The '414 patent has a number of related foreign patents and patent applications that were filed based on the invention described in the '414 patent, all of which are identified in Exhibit 10. On information and belief, no other foreign applications or patents corresponding to the '414 patent have been filed, abandoned, withdrawn, or rejected.

### **5. Licenses**

27. As required under Commission Rule 210.12(a)(9)(iii), a list of licensed entities is attached to this Complaint as Confidential Exhibit 17C.



**B. U.S. Patent No. 7,417,944**

**1. Identification and Ownership of the '944 Patent**

28. United States Patent No. 7,417,944 entitled "Method For Orderwire Modulation," issued on August 26, 2008, to inventor Michael J. Geile. Exhibit 2. The '944 patent issued from Application No. 11/763,166 filed on June 14, 2007. *Id.*

29. The '944 patent has 2 independent claims and no dependent claims. HTC is currently asserting claim 1 of the '944 patent in this Investigation. Further investigation and discovery may lead to the assertion of additional claims against Apple.

30. The '944 patent is valid, enforceable, and currently in full force and effect until its expiration on February 6, 2015. HTC owns by assignment the entire right, title, and interest in and to the '944 patent. Exhibit 5.

31. Pursuant to Commission Rule 210.12(c), this Complaint is accompanied by a certified copy of the prosecution history of the '944 patent and three copies thereof. App. B. Further, this Complaint is accompanied by four copies of the currently available technical references identified in the prosecution history of the '944 patent. App. E. HTC continues to search for additional references and will supplement Appendix E accordingly.

**2. Non-Technical Description of the Invention of the '944 Patent**

32. The '944 patent generally describes an enhanced communications systems. Prior to the invention of the '944 patent, there was a need in the field of communications to expand then-existing systems designed only for telephony (narrowband) communications or only for video (broadband) communications to provide both telephony and video services. Attempts were made to combine telephony services and video services into a single network. For example, some suggested replacing the telephony network with passive optical network. Others suggested a hybrid optical fiber/coaxial cable television system (CATV) architecture, which

could use already existing CATV distribution systems that lacked the improvements of the '944 patent. None of these proposals, however, offered the enhanced communication system of the '944 patent that is now used in wireless communication systems.

33. The '944 patent solved the problems of the prior art systems, enabling communication systems that improved network reliability and minimized interference or other degradation to the quality of service. In one described embodiment, for example, the '944 patent provides a communication system that includes a host unit ("head end") and multiple remote devices such as telephones, computers, or video equipment, where the communication from a remote device to the host unit is carried out using orthogonal frequency division multiplexing (OFDM) technology. Different types of information for upstream or downstream transmission may be transmitted using different modulation techniques. For example, control information is necessary for providing transport of telephony information between the host unit and the multiple remote units. Because of such importance in the system, control information that is transmitted to the host unit is modulated with robust, lower rate modulation technique such as binary phase shift keying (BPSK), whereas telephony information can be sent with higher rate, but less robust modulation techniques such as quadrature amplitude modulation (QAM). This use strikes a balance between communication reliability and speed.

### **3. Related Applications**

34. The '944 patent has a series of parent applications.

35. The '944 patent is a continuation of application No. 11/420,851, filed on May 30, 2006, which is a division of application No. 09/903,273, filed on July 11, 2001, now Pat. No. 7,069,577, which is a continuation of application No. 09/397,443, filed on September 15, 1999, now Pat. No. 6,279,158, which is a division of application No. 08/673,002, filed on June 28, 1996, now Pat. No. 6,334,219, which is a continuation-in-part of application No. 08/650,408,

filed on May 20, 1996, now abandoned, and a continuation-in-part of application No. 08/457,295, filed on June 1, 1995, now abandoned, and a continuation-in-part of application No. 08/457,317, filed on June 1, 1995, now abandoned, and a continuation-in-part of application No. 08/384,659, filed on February 6, 1995, now abandoned.

#### **4. Foreign Counterparts**

36. The '944 patent has a number of related foreign patents and patent applications that were filed based on the invention described in the '944 patent, all of which are identified in Exhibit 11. On information and belief, no other foreign applications or patents corresponding to the '944 patent have been filed, abandoned, or rejected.

#### **5. Licenses**

37. As required under Commission Rule 210.12(a)(9)(iii), a list of licensed entities is attached to this Complaint as Confidential Exhibit 17C. On information and belief there are no other current licenses involving the '944 patent.

### **C. U.S. Patent No. 7,672,219**

#### **1. Identification and Ownership of the '219 Patent**

38. United States Patent No. 7,672,219, entitled "Multipoint-to-Point Communication Using Orthogonal Frequency Division Multiplexing," issued on March 2, 2010, to inventor Michael J. Geile, from U.S. Patent Application No. 11/671,786, filed on February 6, 2007. Exhibit 3.

39. The '219 patent has three independent claims and nine dependent claims. HTC is currently asserting claims 1-5 of the '219 patent in this Investigation. Further investigation and discovery may lead to HTC's assertion of additional claims against Apple.

40. The '219 patent is valid, enforceable, and currently in full force and effect until its expiration on March 23, 2016. The '219 patent's term was extended under 35 U.S.C. § 154(b)

by 411 days. Exhibit 3. HTC owns by assignment the entire right, title, and interest in and to the '219 patent. Exhibit 6.

41. Pursuant to Commission Rule 210.12(c), this Complaint is accompanied by a certified copy of the prosecution history of the '219 patent and three copies thereof. App. C. Further, this Complaint is accompanied by four copies of the currently available technical references identified in the prosecution history of the '219 patent. App. F. HTC continues to search for additional references and will supplement Appendix F accordingly.

## **2. Non-Technical Description of the Invention of the '219 Patent**

42. The '219 patent generally describes an enhanced communications systems. Prior to the invention of the '219 patent, there was a need in the field of communications to expand then-existing systems designed only for telephony (narrowband) communications or only for video (broadband) communications to provide both telephony and video services. Attempts were made to combine telephony services and video services into a single network. For example, some suggested replacing the telephony network with passive optical network. Others suggested a hybrid optical fiber/coaxial cable television system (CATV) architecture, which could use already existing CATV distribution systems that lacked the improvements of the '219 patent. None of these proposals, however, offered the enhanced communication system of the '219 patent that is now used in wireless communication systems.

43. The '219 patent solved the problems of the prior art systems, enabling communication systems that improved network reliability and minimized interference or other degradation to the quality of service. In one described embodiment, for example, the '219 patent provides a communication system that includes a host unit ("head end") and multiple remote devices, such as telephones, computers, or video equipment, where the communication between the host unit and the remote devices is bi-directional and may be carried out using OFDM

technology and employing QAM or phase-shifting keying (PSK) modulation and fast Fourier transform (FFT). The use of OFDM, especially on the upstream communication path—i.e., the path from the remote units to the host unit—together with the remote units receiving synchronization signals from the host unit allow for a high data throughput.

### **3. Related Applications**

44. The '219 patent has a series of parent applications.

45. The '219 patent is a continuation of application No. 11/420,851, filed on May 30, 2006, which is a division of application No. 09/903,273, filed on July 11, 2001, now Pat. No. 7,069,577, which is a continuation of application No. 09/397,443, filed on September 15, 1999, now Pat. No. 6,279,158, which is a division of application No. 08/673,002, filed on June 28, 1996, now Pat. No. 6,334,219, which is a continuation-in-part of application No. 08/650,408, filed on May 20, 1996, now abandoned, and a continuation-in-part of application No. 08/457,295, filed on June 1, 1995, now abandoned, and a continuation-in-part of application No. 08/457,317, filed on June 1, 1995, now abandoned, and a continuation-in-part of application No. 08/384,659, filed on February 6, 1995, now abandoned.

### **4. Foreign Counterparts**

46. The '219 patent has a number of related foreign patents and patent applications that were filed based on the invention described in the '219 patent, all of which are identified in Exhibit 12. On information and belief, no other foreign applications or patents corresponding to the '219 patent have been filed, abandoned, or rejected.

### **5. Licenses**

47. As required under Commission Rule 210.12(a)(9)(iii), a list of licensed entities is attached to this Complaint as Confidential Exhibit 17C. On information and belief there are no other current licenses involving the '219 patent.

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

48. Apple has engaged in unfair trade practices, including the manufacture abroad, sale for importation into the United States, importation into the United States, and sale in the United States after importation of certain electronic devices with communication capabilities, components thereof, and related software that infringe one or more of the Asserted Claims of the Asserted Patents. Examples of infringing products include Apple's Mac computer product line, as well as Apple's iPhone, iPad, and iPod touch mobile products lines.

49. Apple infringes the Asserted Patents by practicing, testing, or using the Accused Products within the United States and/or by making, using, selling, offering for sale, and importing the articles claimed in the Asserted Claims of the Asserted Patents. On information and belief, Apple has had notice of the Asserted Patents at least as early as HTC's filing in the United States District Court of a complaint for patent infringement asserting these same patents. Apple indirectly infringes the Asserted Patents by contributing to and/or inducing the infringement of these patents by end users of the Accused Products, for example by providing instruction on its websites directing users to practice the methods of the claimed inventions.

### **A. Infringement of the '414 Patent**

50. On information and belief, Apple infringes directly and/or induces or contributes to the direct infringement of at least claims 1, 4-13, and 15-21 of the '414 patent through the manufacture and/or sale for importation, importation, testing, use, and sale after importation of one or more Accused Products.

51. On information and belief, Apple directly infringes at least claims 1, 4-13, and 15-21 of the '414 patent at least through its manufacture, sale for importation, importation, use, and sale after importation of one or more Accused Products, and directly infringes at least claims 9-

13 and 15 of the '414 patent at least through its testing and/or use of one or more of the Accused Products.

52. On information and belief, Apple knowingly induces users of one or more of the Accused Products to infringe at least claims 9-13 and 15 of the '414 patent by encouraging, instructing, and aiding end users to use one or more of the Accused Products in an infringing manner.

53. On information and belief, Apple contributes to the infringement of at least claims 9-13 and 15 of the '414 patent. One or more of the Accused products are specially adapted for infringing uses of one or more of the Asserted Claims of the '414 patent, including at least claims 9-13 and 15 of the '414 patent, and one or more of the Accused Products are not staple articles of commerce suitable for substantial non-infringing use.

54. A claim chart that applies each of the asserted independent claims of the '414 patent to an exemplary Accused Product, the Apple iPhone 4, is attached to this Complaint as Exhibit 13.

**B. Infringement of the '944 Patent**

55. On information and belief, Apple directly infringes and/or induces or contributes to the direct infringement of at least claim 1 of the '944 patent because of Apple's manufacture and/or sale for importation, importation, sale after importation, testing, and/or use of the Accused Products.

56. On information and belief, Apple directly infringes at least claim 1 of the '944 patent at least by its testing and/or use of the Accused Products.

57. On information and belief, Apple knowingly induces users of the Accused Products to infringe at least claim 1 of the '944 patent by encouraging, instructing and aiding end users to use those products in an infringing manner.

58. On information and belief, Apple also contributes to the infringement of at least claim 1 of the '944 patent. In addition, the Accused Products are specially adapted for infringing uses of at least claim 1 of the '944 patent, and the Accused Products are not staple articles of commerce suitable for substantial non-infringing use.

59. The Accused Products infringe the Asserted Claims of the '944 patent by virtue of their implementations of the relevant IEEE 802.11 standard (also referred to as "Wi-Fi"). Multiple distinct aspects of the 802.11 standard, e.g. 802.11a, 802.11g, and 802.11n, form independent bases for HTC's infringement allegations with respect to the '944 patent. On information and belief, all of the Accused Products implement the features and methods of 802.11a, 802.11g, or 802.11n.

60. A claim chart that applies each of the asserted independent claims of the '944 patent to an exemplary accused product, the Apple iPhone 4, is attached to this Complaint as Exhibit 14.

**C. Infringement of the '219 Patent**

61. On information and belief, Apple directly infringes at least claims 1-5 of the '219 patent at least by its manufacture, sale for importation, importation, and sale after importation of the Accused Products.

62. The Accused Products infringe the Asserted Claims of the '219 patent by virtue of their implementations of the relevant IEEE 802.11 standard. Multiple distinct aspects of the 802.11 standard, e.g. 802.11a, 802.11g, and 802.11n, form independent bases for HTC's infringement allegations with respect to the '219 patent. On information and belief, all of the Accused Products implement the features and methods of 802.11a, 802.11g, or 802.11n.



63. A claim chart that applies each of the asserted independent claims of the '219 patent to an exemplary accused product, the Apple iPhone 4, is attached to this Complaint as Exhibit 15.

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

64. On information and belief, either by itself, through its subsidiaries, or through third parties acting on its behalf, Apple is engaged in the manufacture, importation, sale for importation, offer for sale after importation, and sale and/or use after importation into the United States of infringing portable electronic devices. *See* Exhibit 9, Apple 2010 Annual Report, at 6, 9. An example of Apple's specific instance of importation of an Accused Product is set forth below.

65. The Apple iPhone 4 is assembled in China. *See* Exhibit 16, documents detailing the purchase of an Apple iPhone 4 in the United States, and photographs of an Apple iPhone 4 and packaging (indicating that the device is "Assembled in China"). The Apple iPhone 4 is imported into the United States. For example, the photographed Apple iPhone 4 was purchased from the Apple Store in Georgetown, Washington, DC on July 22, 2011. *Id.* The receipt for this purchase is included in Exhibit 16. The photographed Apple iPhone 4, in its packaging, is submitted as Physical Exhibit 1.

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

66. On information and belief, the Harmonized Tariff Schedule of the United States item numbers under which the infringing portable electronic devices and related software have been imported into the United States may include at least the following HTS numbers: 8471, 8471.30.01.00, 8471.41.01, or 8471.49 (automatic data processing machines such as desktop computers, laptop computers, or tablet computers); 85.17 or 8517.12.00 (mobile phones); 8519.81.40, 8519.89.30, or 8521.90.00 (portable media players); 85.28 (reception apparatus for

television); 8443.32 (printers capable of connecting to automatic data processing machines); and 8517.61 (machines for the reception, conversion and transmission of data, including switching and routing apparatus)

## **IX. RELATED LITIGATION**

67. The Asserted Patents are also the subject of an action for patent infringement filed in the United States District Court for the District of Delaware, *HTC Corp. v. Apple, Inc.*, Civ. Action No. 1:11-cv-00715-UNA. On information and belief, the Asserted Patents have not been the subject of any foreign or domestic court or agency litigation.

## **X. THE DOMESTIC INDUSTRY**

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

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

69. HTC makes extensive use of the inventions claimed in the Asserted Patents in numerous products. With respect to the '944 and '219 patents, HTC's smartphones including, but not limited to, the Thunderbolt, Evo 3D, Incredible 2, Holiday, Ruby, Vigor, and Evo Shift practice one or more claims of these patents. With respect to the '414 patent, at least HTC's Ruby and Holiday products practice one or more claims of the patent. HTC's Ruby and Holiday products are under development and are soon-to-be released. To the extent that HTC does not have a domestic industry with respect to the Ruby and Holiday products, HTC is in the process of establishing a domestic industry with respect to those products.

70. HTC, through its subsidiaries has made significant investments in plant and equipment with respect to the HTC products that practice the Asserted Patents. Those significant investments in plant and equipment are dedicated to research, development, engineering, repair,

product support, and other customer support services for HTC's devices that practice the Asserted Patents.

71. HTC, through its subsidiaries has made significant investment in labor and capital with respect to the HTC products that practice the Asserted Patents. Those significant investments in labor and capital are dedicated to research, development, engineering, repair, product support, and other customer support services for HTC's devices that practice the Asserted Patents.

72. In *Certain Portable Electronic Devices and Related Software*, ITC Inv. No. 337-TA-721, Complainant HTC moved for summary determination that it satisfied the economic prong of the domestic industry requirement based on HTC's investments in the United States with respect to HTC's T-Mobile G1, the HTC Hero, the HTC Droid Eris, the HTC Incredible, and the HTC Evo 4G products—a small subset of the HTC products that practice the '944 and '219 patents.

73. Exhibit 18C, HTC's Motion for Summary Determination in the 721 Investigation, sets forth in detail HTC's specific investments in plant and equipment, labor and capital, and research, development, and engineering related to HTC's T-Mobile G1, the HTC Hero, the HTC Droid Eris, the HTC Incredible, and the HTC Evo 4G products.

74. Attached as Exhibit 19C is Order No. 40 from Inv. No. 337-721. Order No. 40 issued on March 15, 2011, and is an initial determination finding that HTC's investments in the T-Mobile G1, the HTC Hero, the HTC Droid Eris, the HTC Incredible, and the HTC Evo 4G products alone satisfy the economic prong of the domestic industry requirement. *Certain Portable Electronic Devices and Related Software*, ITC Inv. No. 337-TA-721, Order No. 40 (March 15, 2011). On April 5, 2011, the Commission determined not to review that initial

determination. *Id.*, Notice of Commission Determination Not to Review an Initial Determination Granting Complainant's Motion for Summary Determination That It Has Met the Economic Prong of the Domestic Industry Requirement (April 5, 2001).

75. After acquisition of the '944 and '219 patents, HTC has continued to make additional investments in the United States with respect to its products practicing those patents. Exhibit 20C sets forth HTC's total estimated investments in plant, equipment, labor, and capital including investments dedicated to research, development, engineering, repair, product support, and other customer support services for a subset of devices that practice the '944 and '219 patents. Exhibit 20C further identifies those estimated investments based on the percentage of time allocated to each of the development and support projects for each of those devices.

76. HTC leads the smartphone industry by rapid development of new products. HTC, through its subsidiaries HTC America and One & Co., has made significant investments in plant, equipment, labor, and capital used in the research, development, engineering, and customer support for new products that practice the '414 patent. Exhibit 20C sets forth HTC's total estimated investments in plant, equipment, labor, and capital including investments dedicated to research, development, engineering, repair, product support, and other customer support services for a subset of devices that practice the '414 patent. Exhibit 20C further identifies those estimated investments based on the percentage of time allocated to each of the development and support projects for each of those devices.

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

77. As noted above, multiple HTC smartphones practice the Asserted Patents.

78. As an example, the HTC Ruby is provided with this Complaint as Physical

Exhibit 2.

79. An exemplary claim chart comparing the HTC Ruby to representative claim 16 of the '414 patent is attached as Exhibit 21C.

80. An exemplary claim chart comparing the HTC Ruby to representative claim 1 of the '944 patent is attached as Exhibit 22C.

81. An exemplary claim chart comparing the HTC Ruby to representative claim 1 of the '219 patent is attached as Exhibit 23C.

## **XI. RELIEF REQUESTED**

82. WHEREFORE, by reason of the foregoing, HTC respectfully requests that the United States 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 by the Apple based upon their manufacture and/or sale for importation, importation, and/or sale after importation into the United States of certain electronic devices with communication capabilities, components thereof, and related software that infringe one or more of the Asserted Claims of HTC's United States Patent Nos. 7,765,414; 7,417,944; and 7,672,219;

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

(c) Issue a limited exclusion order pursuant to 19 U.S.C. § 1337(d)(1), barring from entry into the United States all imported electronic devices with communication capabilities, components thereof, and related software of Apple, Inc., that infringe one or more of the asserted claims of HTC's United States Patent Nos. 7,765,414; 7,417,944; and 7,672,219;

(d) Issue a permanent cease and desist order, pursuant to 19 U.S.C. § 1337(f), directing Apple, Inc., to cease and desist from importing, marketing, advertising, demonstrating, sampling, warehousing inventory for distribution, offering for sale, selling, distributing,

licensing, providing technical support, or using certain electronic devices with communication capabilities, components thereof, and related software that infringe one or more of the Asserted Claims of HTC's United States Patent Nos. 7,765,414; 7,417,944; and 7,672,219; 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: August 16, 2011

Respectfully submitted,

Handwritten signature of Thomas L. Jarvis in black ink, written over a horizontal line.

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Thomas W. Winland  
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VERIFICATION OF COMPLAINT

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

I am a Vice President of HTC Corporation and am duly authorized to sign this Complaint on behalf of HTC Corporation;

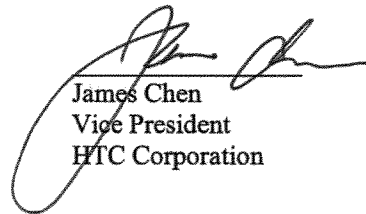
I have read the foregoing Complaint;

To the best of my knowledge, information, and belief, based on reasonable inquiry, the foregoing Complaint is well-founded in fact and is warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

The allegations and other factual contentions have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

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

Executed on August 16, 2011.

  
James Chen  
Vice President  
HTC Corporation