

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

In the Matter of

**CERTAIN PORTABLE
ELECTRONIC DEVICES AND
RELATED SOFTWARE**

Investigation No. 337-TA-_____

**COMPLAINT OF HTC CORP.
UNDER SECTION 337 OF THE TARIFF ACT OF 1930, AS AMENDED**

COMPLAINANT

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Exhibit 4	Certified copy of U.S. Patent No. 6,320,957
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Confidential Document

Exhibit

Exhibit 33C	Identification of Licensees
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Physical

Exhibit

Physical Exhibit 1	Apple iPhone 3GS (in box with packaging)
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Physical Exhibit 3	Apple iPod Touch (in box with packaging)
Physical Exhibit 4	Nexus One

Physical

Exhibit

Physical Exhibit 5	HTC Pure
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APPENDICES

Appendix	Document
App. A	Certified copy of the prosecution history of U.S. Patent No. 6,999,800 and three copies thereof
App. B	Certified copy of the prosecution history of U.S. Patent No. 5,541,988 and three copies thereof
App. C	Certified copy of the prosecution history of U.S. Patent No. 6,058,183 and three copies thereof
App. D	Certified copy of the prosecution history of U.S. Patent No. 6,320,957 and three copies thereof
App. E	Copy of the prosecution history of U.S. Patent No. 7,716,505 and three copies thereof
App. F	Four copies of each technical reference identified in the prosecution history of U.S. Patent No. 6,999,800
App. G	Four copies of each technical reference identified in the prosecution history of U.S. Patent No. 5,541,988
App. H	Four copies of each technical reference identified in the prosecution history of U.S. Patent No. 6,058,183
App. I	Four copies of each technical reference identified in the prosecution history of U.S. Patent No. 6,320,957
App. J	Four copies of each technical reference identified in the prosecution history of U.S. Patent No. 7,716,505

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 portable electronic devices and related software, that infringe one or more of claims 1-3, 4, 6, 10, 11, 14, and 15 of United States Patent No. 6,999,800 (“the ’800 patent”); claims 1 and 10 of United States Patent No. 5,541,988 (“the ’988 patent”); claims 20, 21, and 30 of United States Patent No. 6,058,183 (“the ’183 patent”); claims 1, 2, 8, 9, 39, and 42-44 of United States Patent No. 6,320,957 (“the ’957 patent”); and claims 1-3 of United States Patent No. 7,716,505 (“the ’505 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 5, respectively.¹ On information and belief, 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. 6 through 10.²

3. The proposed respondent is Apple, Inc. (a/k/a Apple Computer, Inc.). The accused products are certain portable electronic devices and related software, including, but not limited to portable media players, smartphones, portable computers, tablets, and software to be

¹ The ’505 patent issued on May 11, 2010. Accordingly, HTC has not yet obtained a certified copy of the ’505 patent. Exhibit 5, therefore, is not a certified copy of the ’505 patent. HTC will supplement Exhibit 5 with a certified copy of the ’505 patent upon receipt.

² The ’505 patent issued on May 11, 2010. Accordingly, HTC has not yet obtained a certified copy of the recorded assignment for the ’505 patent. Exhibit 10 is a certified copy of the assignments for U.S. Patent Application No. Application No. 11/763,220, which issued as the ’505 patent. HTC will supplement Exhibit 10 with a certified copy of the recorded assignment for the ’505 patent upon receipt.

loaded on such devices (collectively the “Accused Products”). The Accused Products include, but are not limited to, Apple’s iPod, iPhone, and iPad product lines. On information and belief, the Accused Products are manufactured and/or sold for importation into the United States, imported into the United States, and 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 portable electronic devices 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 11, 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 smart phone market, launching many of the industry’s groundbreaking technologies due in part to its own innovation, as well as strategic partnerships with companies such as Microsoft, Google, Texas Instruments, 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, and Sprint, 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 Hewlett Packard/Compaq and Palm.

9. The market has long recognized the value of HTC's smartphones and other portable electronic devices. In 2009, HTC generated approximately \$2 billion in the United States from the sale of its products. *See Exhibit 12, 2009 HTC Business Report, at 34 (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 portable electronic devices, including devices that practice one or more of the inventions of each of the Asserted Patents.

10. HTC owns all right, title, and interest in the Asserted Patents. Exhibit Nos. 6-10.

III. PROPOSED RESPONDENT

11. 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 13, Apple's 2009 Annual Report.*

12. 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 iPod, iPhone, and iPad products. 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 TECHNOLOGY AND PRODUCTS AT ISSUE

13. The technology at issue relates generally to hardware and software used in a variety of electronic devices, including portable electronic devices imported into and sold within the United States by or on behalf of Apple. The technology at issue in the '988, '183, and '957 patents relate generally to hardware and software used to implement telephone directories within mobile telephone systems. The '800 and '505 patents generally relate to power management methods implemented in portable electronic devices.

14. The Accused Products include, but are not limited to, Apple's iPod, iPhone, and iPad product lines. The Accused Products are imported into and sold within the United States by or on behalf of Apple.

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

A. U.S. Patent No. 6,999,800

1. Identification and Ownership of the '800 Patent

15. United States Patent No. 6,999,800, entitled "Method for Power Management of a Smart Phone," issued on February 14, 2006, to inventors Yu-Chun Peng, Ching-Hsiang, Tzu-Hsun Tung, and Hsi-Cheng Yeh. Exhibit 1. The '800 patent issued from Application No. 10/609,365 filed on July 1, 2003. *Id.* Further investigation and discovery may lead to the assertion of additional claims against Apple.

16. The '800 patent has one independent claim and 14 dependent claims. HTC is currently asserting claims 1-3, 4, 6, 10, 11, 14, and 15 of the '800 patent in this Investigation.

17. The '800 patent is valid, enforceable, and currently in full force and effect until its expiration on February 17, 2024. HTC owns by assignment the entire right, title, and interest in and to the '800 patent. Exhibit 6.

18. Pursuant to Commission Rule 210.12(c), this Complaint is accompanied by a certified copy of the prosecution history of the '800 patent and three copies thereof. App. A. Further, this Complaint is accompanied by four copies of each technical reference identified in the prosecution history of the '800 patent. App. F.

2. Non-Technical Description of the Invention of the '800 Patent

19. The '800 patent generally relates to a method for managing power in a smart phone that includes both a phone system and a PDA system. The '800 patent describes a method of independently managing the power in a smartphone containing both phone and PDA subsystems. For example, the mobile phone system could be operated in a standby, sleep, connection, or off mode while the PDA system can be operated in a normal, sleep, or off mode. The '800 patent provides efficient power management by controlling how the smart phone switches among the various combinations of the operational modes of the PDA system and the mobile phone system. The foregoing nontechnical description does not limit or interpret the claims of the '800 patent.

3. Foreign Counterparts

20. The foreign patents and patent applications related to the '800 patent are identified in Exhibit 14. On information and belief, no other foreign applications or patents corresponding to the '800 patent have been filed, abandoned, or rejected.

4. Licenses

21. On information and belief there are no licenses involving the '800 patent.

B. Three Patents From a Single Original Application

22. On May 6, 1992, Georgi H. Draganoff filed United States Patent Application Serial Number 878,987 ("U.S. Pat. App. Ser. No. 878,987"). From that single original application, through continuation and continuation-in-part applications, the '988, '183, and '957 patents at issue in this investigation were issued.

1. U.S. Patent No. 5,541,988

a) Identification and Ownership of the '988 Patent

23. United States Patent No. 5,541,988, entitled "Telephone Dialler [sic] with a Personalized Page Organization of Telephone Directory Memory," issued on July 30, 1996 to inventor Georgi H. Draganoff. Exhibit 2. The '988 patent issued from Application No. 265,951 filed on June 27, 1994. *Id.*

24. The '988 patent has 3 independent claims and 21 dependent claims. HTC is currently asserting claims 1 and 10 of the '988 patent in this Investigation. Further investigation and discovery may lead to the assertion of additional claims against Apple.

25. The '988 patent is valid, enforceable, and currently in full force and effect until its expiration on July 30, 2013. HTC owns by assignment the entire right, title, and interest in and to the '988 patent. Exhibit 7.

26. Pursuant to Commission Rule 210.12(c), this Complaint is accompanied by a certified copy of the prosecution history of the '988 patent and three copies thereof. App. B. Further, this Complaint is accompanied by four copies of each technical reference identified in the prosecution history of the '988 patent. App. G.

b) Non-Technical Description of the Invention of the '988 Patent

27. The '988 patent generally relates to a telephone dialer that can store and access information in a telephone directory. By way of example, the telephone directory could be divided into a plurality of pages. A page of the telephone directory could then be selected by using a page selection device. Once a user selects a contact to call from a page of the directory, the telephone dialer could then be used to make the call. The foregoing nontechnical description does not limit or interpret the claims of the '988 patent.

c) Foreign Counterparts

28. The foreign patents and patent applications related to the '988 patent are identified in Exhibit 15. On information and belief, no other foreign applications or patents corresponding to the '988 patent have been filed, abandoned, or rejected.

d) Licenses

29. As required under Commission Rule 210.12(a)(9)(iii), a list of licensed entities is attached to this Complaint as Confidential Exhibit 33C. On information and belief there are no other current licenses involving the '988 patent.

2. U.S. Patent No. 6,058,183

a) Identification and Ownership of the '183 Patent

30. United States Patent No. 6,058,183, entitled "Telephone Dialler [sic] with a Personalized Page Organization of Telephone Directory Memory," issued on May 2, 2000 to inventor Georgi H. Draganoff. Exhibit 3. The '183 patent issued from Application No. 09/082,502 filed on May 21, 1998.

31. The '183 patent has 3 independent claims and 29 dependent claims. HTC is currently asserting claims 20, 21, and 30 of the '183 patent in this Investigation. Further investigation and discovery may lead to the assertion of additional claims against Apple.

32. The '183 patent is valid, enforceable, and currently in full force and effect until its expiration on May 6, 2012. HTC owns by assignment the entire right, title, and interest in and to the '183 patent. Exhibit 8.

33. Pursuant to Commission Rule 210.12(c), this Complaint is accompanied by a certified copy of the prosecution history of the '183 patent and three copies thereof. App. C. Further, this Complaint is accompanied by four copies of each technical reference identified in the prosecution history of the '183 patent. App. H.

b) Non-Technical Description of the Invention of the '183 Patent

34. The '183 patent generally relates to a telephone dialer that can store and access information in a telephone directory. By way of example, the telephone directory could be divided into a plurality of pages. A page of the telephone directory could then be selected by using a page selection device. Once a user selects a contact to call from a page of the directory, the telephone dialer could then be used to make the call. The foregoing nontechnical description does not limit or interpret the claims of the '183 patent.

c) Foreign Counterparts

35. The foreign patents and patent applications related to the '183 patent are identified in Exhibit 16. On information and belief, no other foreign applications or patents corresponding to the '183 patent have been filed, abandoned, or rejected.

d) Licenses

36. As required under Commission Rule 210.12(a)(9)(iii), a list of licensed entities is attached to this Complaint as Confidential Exhibit 33C. On information and belief there are no other current licenses involving the '183 patent.

3. U.S. Patent No. 6,320,957

a) Identification and Ownership of the '957 Patent

37. United States Patent No. 6,320,957, entitled "Telephone Dialler [sic] with Easy Access Memory," issued on November 20, 2001, to inventor Georgi H. Draganoff. Exhibit 4. The '957 patent issued from Application No. 08/947,841 filed on October 9, 1997. *Id.*

38. The '957 patent has 8 independent claims and 36 dependent claims. HTC is currently asserting claims 1, 2, 8, 9, 39, and 42-44 of the '957 patent in this Investigation. Further investigation and discovery may lead to the assertion of additional claims against Apple.

39. The '957 patent is valid, enforceable, and currently in full force and effect until its expiration on May 6, 2012. HTC owns by assignment the entire right, title, and interest in and to the '957 patent. Exhibit 9.

40. Pursuant to Commission Rule 210.12(c), this Complaint is accompanied by a certified copy of the prosecution history of the '957 patent and three copies thereof. App. D. Further, this Complaint is accompanied by four copies of each technical reference identified in the prosecution history of the '957 patent. App. I.

b) Non-Technical Description of the Invention of the '957 patent

41. The '957 patent generally relates to a telephone dialer that can store and access information in a telephone directory. By way of example, the telephone directory could be divided into a plurality of pages. A page of the telephone directory could then be selected by using a page selection device. Once a user selects a contact to call from a page of the directory, the telephone dialer could then be used to make the call. The foregoing nontechnical description does not limit or interpret the claims of the '957 patent.

c) Foreign Counterparts

42. The foreign patents and patent applications related to the '957 patent are identified in Exhibit 17. On information and belief, no other foreign applications or patents corresponding to the '957 patent have been filed, abandoned, or rejected.

d) Licenses

43. As required under Commission Rule 210.12(a)(9)(iii), a list of licensed entities is attached to this Complaint as Confidential Exhibit 33C. On information and belief there are no other current licenses involving the '957 patent.

C. U.S. Patent No. 7,716,505

1. Identification and Ownership of the '505 patent

44. United States Patent No. 7,716,505, entitled "Power Control Methods for a Portable Electronic Device," issued on May 11, 2010, to inventors Chun-Sheng Chao, Ching-Tsung Lai; Chung-An Chien. Exhibit 5. The '505 patent issued from Application No. 11/763,220 filed on June 14, 2007.

45. The '505 patent has 1 independent claim and 3 dependent claims. HTC is currently asserting claims 1-3 of the '505 patent in this Investigation. Further investigation and discovery may lead to the assertion of additional claims against Apple.

46. The '505 patent is valid, enforceable, and currently in full force and effect until its expiration on April 26, 2024. HTC owns by assignment the entire right, title, and interest in and to the '505 patent. Exhibit 10.

47. Pursuant to Commission Rule 210.12(c), this Complaint is accompanied by a four (4) copies of the prosecution history of U.S. Patent Application No. 11/763,220, which issued as

the '505 patent.³ App. E. Further, this Complaint is accompanied by four copies of each technical reference identified in the prosecution history of the '505 patent. App. J.

2. Non-Technical Description of the Invention of the '505 patent

48. The '505 patent discloses a power control method for a smart phone. For example, a smart phone may include a battery and a volatile memory for storing data when the battery supplies sufficient power. When the power supply is low, the smart phone is set to enter a sleep mode and the data that can be accessed from the volatile memory is transferred to a non-volatile memory. When the smart phone is charged and the remaining power of the battery exceeds the amount required for normal device operations, the smart phone supplies power to the volatile memory and accesses data from the non-volatile memory to initiate the normal device operations. The foregoing nontechnical description does not limit or interpret the claims of the '505 patent.

3. Foreign Counterparts

49. The foreign patents and patent applications related to the '505 patent are identified in Exhibit 18. On information and belief, no other foreign applications or patents corresponding to the '505 patent have been filed, abandoned, or rejected.

4. Licenses

50. On information and belief there are no licenses involving the '505 patent.

VI. UNLAWFUL AND UNFAIR ACTS OF RESPONDENT—PATENT INFRINGEMENT

51. 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

³ The '505 patent issued on May 11, 2010. Accordingly, HTC has not yet obtained a certified copy of the prosecution history of the '505 patent. HTC will supplement App. E with a certified copy of the prosecution history of the '505 patent upon receipt.

United States after importation of certain portable electronic devices and related software that infringe one or more of the Asserted Claims of the Asserted Patents. Examples of infringing products include Apple's iPod, iPhone, and iPad product lines.

52. 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 since before the filing of this Complaint, or at a minimum, will receive notice of the Asserted Patents upon filing of this Complaint, which is concurrently being served on Apple. Apple indirectly infringes the Asserted Patents by contributing to and/or inducing the infringement of these patents by end users of the Accused Products.

A. Infringement of the '800 Patent

53. On information and belief, one or more of the Accused Products infringe directly and/or induce or contribute to the direct infringement of at least claims 1-3, 4, 6, 10, 11, 14, and 15 of the '800 patent. On information and belief, Apple directly infringes at least claims 1-3, 4, 6, 10, 11, 14, and 15 of the '800 patent by testing and/or using the Accused Products in the United States. On information and belief, Apple is aware of the '800 patent at least as of the date of this complaint. Further, on information and belief, Apple knowingly induces users of one or more of the Accused Products to infringe at least claims 1-3, 4, 6, 10, 11, 14, and 15 of the '800 patent by configuring the Accused Products to carry out the infringing power management method when available power levels fall below set thresholds when used by consumers. *See*, Exhibit 19 (Infringement claim chart for the '800 patent). On information and belief, Apple also contributes to infringement of at least claims 1-3, 4, 6, 10, 11, 14, and 15 of the '800 patent. In particular, one or more of the Accused Products are specially adapted for an infringing use of

one or more of the Asserted Claims, and the Accused Products are not staple articles of commerce suitable for substantial non-infringing use. An exemplary chart that applies representative claim 1 of the '800 patent to the accused Apple iPhone is attached to this Complaint as Exhibit 19.

B. Infringement of the '988 Patent

54. On information and belief, one or more of the Accused Products infringe directly and/or induce or contribute to the direct infringement of at least claims 1 and 10 of the '988 patent. On information and belief, Apple directly infringes at least claims 1 and 10 of the '988 patent by testing and/or using the Accused Products in the United States. On information and belief, Apple is aware of the '988 patent at least as of the date of this complaint. Further, on information and belief, Apple knowingly induces users of one or more of the Accused Products to infringe at least claims 1 and 10 of the '988 patent by instructing end users to perform the infringing method for operating a telephone dialer using the Accused Products. *See e.g.*, Exhibit 24 (Apple iPhone User Guide) at 20-37, and 47-54. On information and belief, Apple also contributes to infringement of at least claims 1 and 10 of the '988 patent. In particular, one or more of the Accused Products are specially adapted for an infringing use of one or more of the Asserted Claims, and the Accused Products are not staple articles of commerce suitable for substantial non-infringing use. An exemplary chart that applies representative claim 1 of the '988 patent to the accused Apple iPhone product line is attached to this Complaint as Exhibit 20.

C. Infringement of the '183 Patent

55. On information and belief, one or more of the Accused Products infringe directly and/or induce or contribute to the direct infringement of at least claims 20, 21, and 30 of the '183 patent. On information and belief, Apple directly infringes at least claims 20, 21, and 30 of the '183 patent by testing and/or using the Accused Products in the United States. On information

and belief, Apple is aware of the '183 patent at least as of the date of this complaint. Further, on information and belief, Apple knowingly induces users of one or more of the Accused Products to infringe at least claims 20, 21, and 30 of the '183 patent by instructing end users to perform the infringing method for operating a telephone dialer using the Accused Products. *See e.g.*, Exhibit 24 at 20-37, and 47-54. On information and belief, Apple also contributes to infringement of at least claims 20, 21, and 30 of the '183 patent. In particular, one or more of the Accused Products are specially adapted for an infringing use of one or more of the Asserted Claims, and the Accused Products are not staple articles of commerce suitable for substantial non-infringing use. An exemplary chart that applies representative claims 20 and 30 of the '183 patent to the accused Apple iPhone product line is attached to this Complaint as Exhibit 21.

D. Infringement of the '957 Patent

56. On information and belief, one or more of the Accused Products infringe directly and/or induce or contribute to the direct infringement of at least claims 1, 2, 8, 9, 39, and 42-44 of the '957 patent. On information and belief, Apple directly infringes at least claims 1, 2, 8, 9, 39, and 42-44 of the '957 patent by testing and/or using the Accused Products in the United States. On information and belief, Apple is aware of the '957 patent at least as of the date of this complaint. Further, on information and belief, Apple knowingly induces users of one or more of the Accused Products to infringe at least claims 1, 2, 8, 9, 39, and 42-44 of the '957 patent by instructing end users to perform the infringing method for operating a telephone dialer using the Accused Products. *See e.g.*, Exhibit 24 at 20-37, and 47-54. On information and belief, Apple also contributes to infringement of at least claims 1, 2, 8, 9, 39, and 42-44 of the '957 patent. In particular, one or more of the Accused Products are specially adapted for an infringing use of one or more of the Asserted Claims, and the Accused Products are not staple articles of commerce suitable for substantial non-infringing use. An exemplary chart that applies

representative claims 1, 8, and 39 of the '957 patent to the accused Apple iPhone product line is attached to this Complaint as Exhibit 22.

E. Infringement of the '505 Patent

57. On information and belief, one or more of the Accused Products infringe directly and/or induce or contribute to the direct infringement of at least claims 1-3 of the '505 patent. On information and belief, Apple directly infringes at least claims 1-3 of the '505 patent by testing and/or using the Accused Products in the United States. On information and belief, Apple is aware of the '505 patent at least as of the date of this complaint. Further, on information and belief, Apple knowingly induces users of one or more of the Accused Products to infringe at least claims 1-3 of the '505 patent by configuring the Accused Products to carry out the infringing power management method when available power levels fall below set thresholds when used by consumers. *See*, Exhibit 23 (Infringement claim chart for the '505 patent). On information and belief, Apple also contributes to infringement of at least claims 1-3 of the '505 patent. In particular, one or more of the Accused Products are specially adapted for an infringing use of one or more of the Asserted Claims, and the Accused Products are not staple articles of commerce suitable for substantial non-infringing use. An exemplary chart that applies representative claim 1 of the '505 patent to the accused Apple iPhone product line is attached to this Complaint as Exhibit 23.

VII. SPECIFIC INSTANCES OF UNFAIR IMPORTATION AND SALE

58. 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 13, Apple 2009 Annual Report, at

12. Examples of Apple's specific instances of importation of the Accused Products are set forth below.

59. The Apple iPhone 3GS is assembled in China. *See* Exhibit 27, documents detailing purchase of Apple iPhone 3GS product in the United States, and photographs of an Apple iPhone 3GS and packaging (indicating that the device is "Assembled in China"). The Apple iPhone 3GS is imported into the United States. For example, the photographed Apple iPhone 3GS was purchased from the Mac Store at Bethesda Row on April 19, 2010. *Id.* The receipt for this purchase is included in Exhibit 27. The photographed Apple iPhone 3GS device, in its packaging, is submitted as Physical Exhibit 1.

60. The Apple iPod Touch is assembled in China. *See* Exhibit 29, documents detailing purchase of Apple iPod Touch product in the United States, and photographs of an Apple iPod Touch and packaging (indicating that the device is "Assembled in China"). The Apple iPod Touch is imported into the United States. For example, the photographed Apple iPod Touch was purchased from Mac Store at Bethesda Row on April 19, 2010. *Id.* The receipt for this purchase is included in Exhibit 29. The photographed Apple iPod Touch device, in its packaging, is submitted as Physical Exhibit 3.

61. The Apple iPad is assembled in China. *See* Exhibit 28, documents detailing purchase of Apple iPad product in the United States, and photographs of an Apple iPad and packaging (indicating that the device is "Assembled in China"). The Apple iPad is imported into the United States. For example, the photographed Apple iPad was purchased from online Apple store (<https://store.apple.com/us>), on April 20, 2010. *Id.* The receipt for this purchase is included in Exhibit 28. The photographed Apple iPad device, in its packaging, is submitted as Physical Exhibit 2.

VIII. HARMONIZED TARIFF SCHEDULE ITEM NUMBERS

62. 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: 8517.12.00 (mobile phones); 8519.81.40, 8519.89.30, or 8521.90.00 (portable media players); and/or 8471.30.01, 8471.41.01, or 8471.49.00 (portable computers).

IX. RELATED LITIGATION

63. The '183 patent was asserted in a patent infringement complaint brought by prior assignee GEZ Microsystems, Inc., in the United States District Court for the Northern District of Eastern Illinois Eastern Division (filed June 30, 2003), in *GEZ Microsystems, Inc. v. Samsung Elec. Co. Ltd.*, 1:03cv4526. Exhibit 30. The complaint was voluntarily dismissed on September 19, 2003, without prejudice or costs, prior to any response having been filed.

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

X. THE DOMESTIC INDUSTRY

65. There is a domestic industry 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

66. HTC makes extensive use of the inventions claimed in the Asserted Patents in numerous products. HTC has made and/or sold a variety of smartphones including, but not limited to the Nexus One, HTC Pure, Droid Incredible by HTC, Droid Eris by HTC, HTC Hero, T-Mobile myTouch 3G, T-Mobile G1, HTC HD2, HTC Imagio, HTC Tilt2, HTC Touch Pro2, HTC Snap, T-Mobile Dash 3G, HTC Ozone, HTC Touch Cruise, HTC Touch Pro, HTC Touch

Diamond, HTC Touch, T-Mobile Shadow, Verizon XV6900, HTC Advantage, HTC S640, HTC Tilt, Mogul by HTC, and HTC S743. Additionally, HTC conducts research and development, engineering, and repairs, and provides technical support for those products within the United States. As set forth in greater detail below, each of these products practice the Asserted Patents.

67. HTC, through its subsidiary HTC America, Inc. (“HTC America”), has made significant investments in plant and equipment with respect to the HTC products that practice the Asserted Patents. HTC America has made significant investments in plant and equipment dedicated to repair, product support, and other customer support services for HTC’s devices that practice the Asserted Patents. Confidential Exhibit 39C sets forth in detail those investments in plant and equipment in the United States.

68. HTC, through its subsidiary HTC America, has made significant investment in labor and capital with respect to the HTC products that practice the Asserted Patents. HTC America has made significant investments in labor and capital dedicated to the repair, product support, and other customer support services for HTC’s devices that practice the Asserted Patents. Confidential Exhibit 40C sets forth in detail those investments in labor and capital in the United States.

69. HTC, through its subsidiaries HTC America and One & Company Design, Inc. (“One & Co.”) has made substantial investments in the exploitation of the Asserted Patents through research and development and engineering for HTC’s devices that practice the Asserted Patents. Confidential Exhibit 41C sets forth in detail those investments in research and development and engineering in the United States.

70. HTC's investments in the relevant domestic industry are continuing and ongoing. In the event that HTC were to be found not to have established a domestic industry, it is in the process of establishing one.

B. HTC's Practice of the Asserted Patents

71. HTC makes extensive use of the Asserted Patents in several of its own products. As noted above, HTC has made and/or sold a variety of smartphones including, *e.g.* the Nexus One, HTC Pure, Droid Incredible by HTC, Droid Eris by HTC, HTC Hero, T-Mobile myTouch 3G, T-Mobile G1, HTC HD2, HTC Imagio, HTC Tilt2, HTC Touch Pro2, HTC Snap, T-Mobile Dash 3G, HTC Ozone, HTC Touch Cruise, HTC Touch Pro, HTC Touch Diamond, HTC Touch, T-Mobile Shadow, Verizon XV6900, HTC Advantage, HTC S640, HTC Tilt, Mogul by HTC, and HTC S743. Each of these products practice the Asserted Patents.

72. As an example, the Nexus One is provided with this Complaint as Physical Exhibit 4.

73. As another example, the HTC Pure is provided with this Complaint as Physical Exhibit 5.

74. An exemplary claim chart comparing the HTC Pure to a representative claim of the '800 patent is attached as Exhibit 34C.

75. An exemplary claim chart comparing the Nexus One to a representative claim of the '988 patent is attached as Exhibit 35C.

76. An exemplary claim chart comparing the Nexus One to a representative claim of the '183 patent is attached as Exhibit 36C.

77. An exemplary claim chart comparing the Nexus One to a representative claim of the '957 patent is attached as Exhibit 37C.

78. An exemplary claim chart comparing the HTC Pure to a representative claim of the '505 patent is attached as Exhibit 38C.

XI. RELIEF REQUESTED

79. 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 portable electronic devices and related software, that infringe one or more of the Asserted Claims of HTC's United States Patent Nos. 6,999,800; 5,541,988; 6,058,183; 6,320,957; and 7,716,505;

(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 portable electronic devices and related software of Apple, Inc., that infringe one or more of the asserted claims of HTC's United States Patent Nos. 6,999,800; 5,541,988; 6,058,183; 6,320,957; and 7,716,505;

(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, repairing, providing technical support, or using certain portable electronic devices and related software that infringe one or more of the Asserted Claims of HTC's United States Patent Nos. 6,999,800; 5,541,988; 6,058,183; 6,320,957; and 7,716,505; and

80. (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.

81.

Dated:

Respectfully submitted,



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Attorneys for Complainant HTC Corp.

VERIFICATION OF COMPLAINT

I, Jason B. Makenzie, 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 the HTC Vice President of North America, and am duly authorized to sign this Complaint on behalf of Complainant HTC Corp.;


2. I have read the foregoing Complaint;

3. 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;

4. 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

5. 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 5/10, 2010.



Jason B. Makenzie
HTC Vice President, North America
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