

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

In the Matter of

**CERTAIN PERSONAL DATA AND
MOBILE COMMUNICATIONS DEVICES
AND RELATED SOFTWARE**

**Investigation No. 337-TA-710
Enforcement Proceeding**

**COMPLAINT FOR ENFORCEMENT PROCEEDING AND REQUEST FOR
TEMPORARY EMERGENCY ACTION PURSUANT TO RULES 210.75 AND 210.77**

Complainant:

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

Proposed Enforcement Respondents:

High Tech Computer Corp. a/k/a HTC Corp.
23 Xinghua Road, Taoyuan 330
Taiwan, Republic of China

HTC America, Inc.
13920 SE Eastgate Way, Suite 400
Bellevue, WA 98005

COUNSEL FOR COMPLAINANT

Gregory S. Arovas, P.C.
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

Edward C. Donovan
F. Christopher Mizzo
D. Sean Trainor
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5100

Marcus E. Sernel, P.C.
KIRKLAND & ELLIS LLP
300 North LaSalle Street
Chicago, IL 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200

V. James Adduci
Munford Page Hall, II
Jonathan J. Engler
ADDUCI, MASTRIANI, & SCHAUMBERG LLP
1200 Seventeenth Street, N.W., Fifth Floor
Washington, DC 20036
Telephone: (202) 467-6300
Facsimile: (202) 466-2006

TABLE OF SUPPORTING MATERIALS

EXHIBITS

| <u>Exhibit No.</u> | <u>Description</u> |
|--------------------|--|
| 1. | Limited Exclusion Order, Inv. No. 337-TA-710 (Dec. 19, 2011) |
| 2. | Notice of Investigation, Inv. No. 337-TA-710 (Mar. 31, 2010) |
| 3. | Commission Opinion, Inv. No. 337-TA-710 (Dec. 19, 2011) |
| 4. | Documents detailing purchase of the HTC One S product, including photographs |
| 5. | Documents detailing purchase of the HTC Amaze 4G product, including photographs |
| 6. | Documents detailing purchase of the HTC Rezound product, including photographs |
| 7. | Documents detailing purchase of the HTC One X product |
| 8. | Documents detailing purchase of the HTC EVO 4G LTE product, including photographs |
| 9. | Reuters, <i>HTC Says ITC Decision In Apple Case "A Win For HTC"</i> (Dec. 19, 2011) |
| 10. | All Things Digital, <i>ITC Ruling Seen As A Victory For Apple, But A Narrow One</i> (Dec. 19, 2011) |
| 11. | PCMag.com, <i>HTC: Data-Tapping Feature Will Remain on Phones</i> (Feb. 6, 2012) |
| 12. | Collection of Marketing Documents For HTC Android Products |
| 13. | The Daily Beast, <i>Apple Scores an Android Hit: HTC One X, EVO 4G LTE Held Up at Customs</i> (May 15, 2012) |
| 14. | The Wall Street Journal, <i>HTC's EVO Smartphone Faces U.S. Trade-Review Delay</i> (May 16, 2012) |
| 15. | PC Mag, <i>HTC One V Coming This Summer to U.S.</i> (May 7, 2012) |
| 16. | HTC Press Release, <i>HTC And Verizon Wireless Reveal Droid Incredible 4G LTE</i> (May 7, 2012) |

17. Virgin Mobile USA Press Release, *Virgin Mobile USA Introduces 4G With No-Contract Plans Starting As Low As \$35 Per Month* (May 8, 2012)
18. May 16, 2012 Sprint HTC EVO 4G LTE Update
19. PC World, *Some Phones Now Free From U.S. Customs* (May 21, 2012)
20. May 30, 2012 HTC Press Release
21. May 21, 2012 Email From Victoria Espinel, U.S. Intellectual Property Enforcement Coordinator, Executive Office of the President
22. Infringement claim chart for U.S. Patent No. 5,946,647
23. Infringement claim chart for U.S. Patent No. 5,946,647
24. HTC Production Document (HTC001872920-32) (**Confidential**)
25. HTC Production Document (HTC000632779-88) (**Confidential**)
26. Updated list of licensees to the '647 patent (**Confidential**)
27. Android Community, *HTC EVO 4G LTE Arriving Early For Some* (May 24, 2012)
28. Motoring Crunch, *Sprint HTC EVO 4G LTE Buyers Get Free Treat Thanks To Shipping Delays* (May 27, 2012)
29. Android Authority, *Sprint Gives Free Gel Case, No New Launch Date Yet Of HTC EVO 4G LTE* (May 28, 2012)
30. Mobile & Apps, *HTC EVO 4G LTE: Sprint's Pre-Order Stocks Finally Arriving On May 24; Will The Controversial Phone Outdo Galaxy Nexus Sales? (Specs Comparison)* (May 22, 2012)
31. PC Magazine, *Sprint to Start Shipping HTC EVO 4G LTE On May 24* (May 21, 2012)
32. May 31, 2012 HTC Twitter Post
33. April 17, 2011 Stipulation Regarding Ownership Of Certain Patents (**Confidential**)
34. Apple Quarterly Report for Q2 2012
35. HTC Production Document (HTC007705411-5501) (**Confidential**)
36. WSJ.com, *UPDATE: HTC: All Shipments To US Passed Customs Review; Shares Up* (May 29, 2012)

PHYSICAL EXHIBITS¹

| <u>Exhibit Item</u> | <u>Description</u> |
|---------------------|--|
| 1. | HTC One S (in box with packaging) |
| 2. | HTC Amaze 4G (in box with packaging) |
| 3. | HTC Rezound (in box with packaging) |
| 4. | HTC EVO 4G LTE (in box with packaging) |

¹ Each of the physical exhibits will be made available upon request by the Commission.

TABLE OF CONTENTS

| | | |
|-------|---|----|
| I. | INTRODUCTION | 1 |
| II. | JURISDICTION | 6 |
| III. | PARTIES | 7 |
| | A. Complainant Apple Inc. | 7 |
| | B. Proposed Enforcement Respondents..... | 8 |
| IV. | THE TECHNOLOGY AND PRODUCTS AT ISSUE | 8 |
| V. | THE '647 PATENT AND NON-TECHNICAL DESCRIPTION OF THE INVENTION..... | 9 |
| | A. Overview and Ownership of the '647 Patent..... | 9 |
| | B. Non-Technical Description of the '647 Patent | 10 |
| | C. Foreign Counterparts | 11 |
| | D. Licenses..... | 11 |
| VI. | THE COMMISSION'S ISSUANCE OF A LIMITED EXCLUSION ORDER | 11 |
| VII. | VIOLATION OF THE COMMISSION'S LIMITED EXCLUSION ORDER..... | 12 |
| VIII. | EXCEPTIONAL CIRCUMSTANCES WARRANT TEMPORARY EMERGENCY ACTION..... | 17 |
| IX. | SPECIFIC INSTANCES OF HTC VIOLATING THE LIMITED EXCLUSION ORDER..... | 22 |
| X. | CONCLUSION..... | 24 |
| XI. | RELIEF REQUESTED..... | 24 |

I. INTRODUCTION

1. The United States International Trade Commission (“Commission”) issued a Limited Exclusion Order (“LEO”) on December 19, 2011, which became effective on April 19, 2012, prohibiting the entry into the United States of articles manufactured abroad by or on behalf of, or imported by or on behalf of, High Tech Computer Corp. a/k/a HTC Corp. and HTC America, Inc. (collectively “HTC”) that infringe claims 1 or 8 of United States Patent No. 5,946,647 (“the ‘647 patent”). The Commission allowed HTC four months either to negotiate a license with Apple or to remove the infringing functionality from its Android devices. HTC did neither. Instead, in blatant disregard of the Commission’s LEO and the United States patent system, HTC, or those in concert with HTC, continues manufacturing, importing and/or selling for importation articles that infringe claims 1 or 8 of the ‘647 patent. Complainant Apple Inc. (“Apple”) respectfully requests that the Commission commence a formal enforcement proceeding and take temporary emergency action pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“Section 337”), and 19 C.F.R. §§ 210.75 and 210.77, to remedy HTC’s continuing unfair acts and infringement in violation of the LEO (attached hereto as Exhibit 1).

2. 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 iPad, and the iPod, 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.

3. Proposed Enforcement Respondents, High Tech Computer Corp. a/k/a HTC Corp. and HTC America, Inc. (collectively, “HTC” or “Proposed Enforcement Respondents”), are two

of the three original Respondents of record in this Investigation and are expressly bound by the terms of the LEO. The third original Respondent, Exedea Inc., was a subsidiary of HTC, but has been dissolved and no longer exists. On information and belief, Exedea Inc. was not survived by a successor entity.

4. Apple filed the complaint upon which the underlying Investigation is based with the Commission on March 2, 2010, demonstrating that HTC violated Section 337 by importing into the United States, selling for importation into the United States, selling within the United States after importation, or manufacturing for sale to a U.S. importer, certain personal data and mobile communications devices and related software that infringe valid claims of the '647 patent, among other patents.

5. The Commission instituted the underlying Investigation on March 31, 2010, and set the scope of the Investigation to include "certain personal data or mobile communications devices or related software." (Exhibit 2, Notice of Investigation at 2.)

6. Following a fifteen-day evidentiary hearing, the Administrative Law Judge ("ALJ") found that Apple had established a violation of Section 337 based on HTC's infringement of Apple's valid patent rights. (July 15, 2011, Initial Determination [hereinafter "Init. Det."] at 1.) Specifically, the ALJ found that HTC, by its importation, use, and sale of personal data and mobile communications devices, including, for example, smartphones and other devices running the Android operating system, infringed valid claims 1 and 8 of the '647 patent. (*Id.*) The ALJ also found that a domestic industry exists with respect to the '647 patent. The ALJ recommended that the Commission enter an LEO. (*Id.*)

7. Regarding remedy, HTC alleged that its "inventories of accused products in the U.S. are for testing purposes only, are not approved by the U.S. government, are not for sale, and

therefore cannot by definition be ‘commercially significant.’” (*Id.* at 233.) HTC also alleged that it “surrenders all title and interest to its commercial products when they arrive and are warehoused in the United States.” (*Id.*) Based on those representations, the ALJ recommended that the Commission not issue a cease and desist order (“CDO”). (*Id.*)

8. On December 19, 2011, the Commission issued a Final Determination and Opinion finding a violation of Section 337 based on the unlawful importation, sale for importation, or sale in the United States after importation by HTC of personal data and mobile communications devices that infringe valid claims 1 or 8 of the ‘647 patent. (Exhibit 3, Dec. 19, 2011, Commission Opinion [hereinafter “Comm’n Op.”] at 6.) On the same day, the Commission entered an LEO. (Exhibit 1.) Based on HTC’s representations regarding its domestic inventory, the Commission followed the ALJ’s recommendation and denied Apple’s request for a CDO. (Exhibit 3, Comm’n Op. at 84.)

9. The first non-numbered paragraph of the LEO identified Proposed Enforcement Respondents High Tech Computer Corp. and HTC America, Inc. by name. (Exhibit 1, LEO at 1.)

10. Paragraph 1 of the LEO prohibits from “entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption” “[p]ersonal data and mobile communication devices and related software covered by claims 1 or 8 of the ‘647 patent.” (*Id.* at 2.) This includes HTC’s line of Android-based smartphones and tablets (hereinafter, “HTC Android Products”), which are manufactured abroad and imported into the United States for sale.

11. Although Proposed Enforcement Respondents are expressly bound by the LEO and have full knowledge thereof, they refuse to abide by its provisions or to conform their

conduct to the Commission's directives. As set forth in detail below, on information and belief, the Proposed Enforcement Respondents, acting either solely or in concert, are importing for consumption into the United States, importing for consumption from a foreign-trade zone, and/or withdrawing from a warehouse for consumption personal data and mobile communications devices that infringe claims 1 or 8 of Apple's '647 patent in violation of the LEO. In particular, HTC has imported, attempted to import, manufactured for sale to U.S. importers, and sold for consumption in the United States HTC Android Products, including smartphones such as the HTC One X, HTC One S, and HTC EVO 4G LTE, and tablets that infringe claims 1 or 8 of Apple's '647 patent. HTC's activities have been during the term of the '647 patent, without license from Apple, and are not authorized by law. Moreover, some entries of HTC Android Products that violate the LEO, upon information and belief, took place after the devices were initially detained and then subsequently released by United States Customs and Border Protection ("Customs"), resulting in ineffective enforcement of the LEO. (*See, e.g.*, Exhibits 8, 19-20, 27-32, 36.) Upon information and belief, HTC made representations to Customs regarding those products, and Customs based its decision to release those products at least in part on those representations.

12. As a consequence of Proposed Enforcement Respondents' violations of the LEO, Apple respectfully requests, pursuant to 19 C.F.R. § 210.75, enforcement of the LEO, as well as the imposition of sanctions against the Proposed Enforcement Respondents, including, but not limited to, appropriate penalties. To that end, in view of HTC's knowing disregard of the LEO, Apple also respectfully requests that the Commission enter a CDO to prevent the further unlawful sale and distribution in the United States of infringing HTC Android Products. Although HTC represented in the underlying Investigation, and the Commission found, that HTC

does not maintain commercially significant inventories in the United States, HTC's conduct since the effective date of the LEO suggests otherwise. It appears that HTC does maintain control over commercially significant volumes of the infringing devices in the United States, and that it is willing to import and facilitate the distribution of large volumes of infringing articles in violation of the LEO. Under these circumstances, the entry of a CDO and the civil penalties associated with the violation of a CDO are necessary to ensure HTC's compliance with the Commission's remedial orders.

13. Apple also respectfully requests that the Commission take temporary emergency action in order to remedy the substantial harm caused by HTC's continued violations. Apple requests that, pursuant to 19 C.F.R. § 210.77, the Commission immediately modify its LEO to make express that all of HTC's Android Products, including smartphones and tablets, be excluded from entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption pending resolution of this Enforcement Proceeding. Without such an express statement, HTC will continue to flout the terms of the LEO, which has caused and will continue to cause Apple to suffer substantial harm, and contravenes the public interest in the enforcement of the Commission's LEO. Apple further requests that, pursuant to 19 C.F.R. § 210.77 and 19 U.S.C. § 1337(f)(2), the Commission impose a CDO barring HTC from importing, offering for sale, selling, advertising, or distributing in the United States all HTC Android Products during the pendency of this Enforcement Proceeding.

14. As an alternative to the CDO and excluding all HTC Android Products, Apple respectfully requests that the Commission modify the LEO to impose a bond equivalent to 100% of the domestic value of each imported HTC device during the pendency of the Enforcement

Proceeding. A bond should be imposed for each entry of HTC Android Products, including smartphones and tablets, as well as any HTC Android Products already present in the United States in violation of the LEO, to protect the integrity and credibility of the Commission's hearings and orders from further blatant violation. *See* 19 U.S.C. § 1337(f)(2) (authorizing the Commission to impose a maximum civil penalty for violation of its CDOs and consent orders in an amount "not more than the greater of \$100,000 or twice the domestic value of the articles entered or sold"); *see also Ninestar Tech. Co. v. Int'l Trade Comm'n*, 667 F.3d 1373, 1380 (Fed. Cir. 2012) (acknowledging the Commission may impose a civil penalty "to serve as a deterrent, because '[t]he public interest is not served if intellectual property rights are not respected, and the imposition of a penalty that is substantial enough to deter future violations is in the public interest'" (quoting *Certain Ink Cartridges and Components Thereof*, Inv. No. 337-TA-565, USITC Pub. 4196 (Sep. 24, 2009) at 38). A 100% bond is necessary in this Enforcement Proceeding to ensure that HTC does not gain financially from further violations of the LEO.

15. If the Commission declines to impose a 100% bond as a deterrent against further violations, Apple requests that the Commission at least modify the LEO to impose a bond, based on the price differential, equal to \$290 for each imported HTC Android Product, including smartphones and tablets, to protect Apple from further injury during the pendency of the Enforcement Proceeding.

II. JURISDICTION

16. The Commission has jurisdiction over this matter and the proposed parties pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337.

III. PARTIES

A. Complainant Apple Inc.

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

18. As set forth above, Apple designs, develops, markets, sells, and distributes (i) the Mac line of desktop and notebook computers, including the iMac, Mac mini, Mac Pro, MacBook Pro and ultra-light MacBook Air; (ii) a portfolio of software, such as the Mac OS X operating system that comes pre-installed on every Mac computer, and the iOS operating system that comes pre-installed on every iPhone, iPod touch and iPad; (iii) the iPhone (including the iPhone 4S and iPhone 4) and related accessories and services, including a complete software development kit providing tools for programmers to create their own iPhone applications; (iv) the iPad multimedia device; (v) the iPod line of mobile digital devices; and (vi) a variety of related products, accessories, software, 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.

19. Apple researched and developed the technologies that are protected by the '647 patent and continues to do so. Apple has made and continues to make significant investments in the design and development of products protected by the '647 patent. These products include the iPhone, iPad, iPods, Mac computers, Mac OS X software products, and iOS software products, among others.

20. Apple uses the technology covered by the '647 patent in the United States, as the Commission found in the underlying Investigation.

B. Proposed Enforcement Respondents

21. On information and belief, High Tech Computer Corp. is a corporation organized and existing under the laws of Taiwan and having its principal place of business at 23 Xinghua Road, Taoyuan City, Taoyuan County 330, Taiwan, Republic of China. On information and belief, High Tech Computer Corp. is engaged in the design, manufacture, importation into the United States, use in the United States, and sale after importation of the HTC Android Products.

22. On information and belief, HTC America is a corporation organized and existing under the laws of the State of Texas and having a principal place of business at 13920 SE Eastgate Way, Suite 400, Bellevue, Washington 98005. On information and belief, HTC America is a wholly-owned subsidiary of HTC (BVI) Corp., which itself is not a named Respondent. On information and belief, HTC America performs several services to support the importation and sale of HTC Android Products into and within the United States, including marketing, repair, and use of the HTC Android Products, and other after-sale services, such as supporting and configuring the HTC Android Products, as well as interfacing with U.S.-based customers and distributors to conform the HTC Android Products to purchaser requests.

23. Both of the Proposed Enforcement Respondents were Respondents in the underlying Investigation, and are subject to the terms of the LEO entered by the Commission.

IV. THE TECHNOLOGY AND PRODUCTS AT ISSUE

24. The technology at issue relates generally to software used in a variety of devices, including personal data and mobile communications equipment imported into and sold within the United States by or on behalf of Respondents.

25. The technology at issue in the '647 patent generally relates to software architectures, frameworks, and implementations.

26. The products at issue in the underlying Investigation and this Enforcement Action include computing and mobile communication devices, including but not limited to smartphones and tablets, together with software designed for use on, and intended to be loaded onto, such devices.

27. In particular, the products accused of infringing the '647 patent in the underlying Investigation include smartphones, tablets, and other mobile communications devices that run an operating system platform known as "Android," which includes a variety of functionalities found to infringe the '647 patent. These products are referred to herein as the "HTC Android Products." Exemplary HTC Android Products include the HTC One X, the HTC One S, the HTC One V, the HTC Inspire 4G, the HTC Vivid, the HTC Status, the HTC Sensation, the HTC Sensation 4G, the HTC Wildfire, the HTC Wildfire S, the HTC Hero, the HTC Hero S, the HTC EVO 4G LTE, the HTC EVO 4G, the HTC EVO V 4G, the HTC EVO Design 4G, the HTC EVO 3D, the HTC Amaze 4G, the HTC Droid Incredible 4G LTE, the HTC myTouch 4G, the HTC myTouch 4G Slide, the HTC Merge, the HTC Rezound, the HTC Rhyme, the HTC ThunderBolt, the HTC Flyer, the HTC Jetstream, the HTC EVO View 4G, and the Droid Incredible 2 by HTC.

V. THE '647 PATENT AND NON-TECHNICAL DESCRIPTION OF THE INVENTION

A. Overview and Ownership of the '647 Patent

28. As stipulated by the parties in the underlying Investigation, Apple owns by assignment the entire right, title, and interest in and to the '647 patent. (Confidential Exhibit 33,

April 17, 2011 Stipulation Regarding Ownership of Certain Patents; *see also* Exhibit 15 to Apple's March 2, 2010 Complaint.)

29. Pursuant to Commission Rule 210.12(c), four copies of the prosecution history of the '647 patent were submitted with Apple's March 2, 2010 Complaint as Appendix E, and the cited references for the '647 patent were submitted with Apple's March 2, 2010 Complaint as Appendix O.

B. Non-Technical Description of the '647 Patent

30. United States Patent No. 5,946,647 is entitled "System and Method for Performing an Action on a Structure in Computer-Generated Data" and issued on August 31, 1999. The '647 patent issued from United States Patent Application No. 08/595,257, filed on February 1, 1996, and expires on February 1, 2016. The '647 patent names inventors James R. Miller, Thomas Bonura, Bonnie Nardi, and David Wright.

31. The '647 patent generally relates to a computer-based system and method for detecting structures and performing computer-based actions on the detected structures. In particular, this invention recognizes that computer data may contain structures, for example, phone numbers, post-office addresses, and dates, and performs actions with that data. The '647 patent accomplishes this by identifying structures, enabling selection of a structure, associating candidate actions to the structure, enabling selection of an action, and automatically performing the selected action on the selected structure. For instance, the system may receive data that includes a phone number, highlight it for a user, and then, in response to a user's selection of the highlighted phone number, offer the user the choice of making a phone call to the number or adding the phone number to the user's contacts.

C. Foreign Counterparts

32. A list of the foreign counterparts to the '647 patent is attached as Exhibit 21 to Apple's March 2, 2010 Complaint. Complainant own all right, title, and interest in and to each of these foreign counterparts. Complainant is aware of no other foreign counterparts or foreign counterpart applications corresponding to the '647 patent that have been issued, abandoned, denied, or which remain pending.

D. Licenses

33. Confidential Exhibit 57, attached to Apple's March 2, 2010 Complaint, includes a list of licensed entities for the '647 patent. An updated list of licensees is attached hereto as Confidential Exhibit 26.

VI. THE COMMISSION'S ISSUANCE OF A LIMITED EXCLUSION ORDER

34. As set forth above, on December 19, 2012, having found a violation of Section 337, the Commission entered an LEO excluding "[p]ersonal data and mobile communications devices and related software covered by claims 1 or 8 of the '647 patent." (Exhibit 1, LEO at 2, ¶1.) As the Commission's Opinion makes clear, these products include all HTC products running the Android operating system. (*See, e.g.*, Exhibit 3 at 70.)

35. In its Opinion, the Commission explained that the "exclusion of articles subject to the order shall commence on April 19, 2012" to "minimize[e] the impact on third parties." (Exhibit 3 at 83.) It also carved out a "a narrow exemption," permitting HTC "to import into the United States until December 19, 2013, refurbished handsets to be provided to consumers as replacements under warranty or an insurance contract." (*Id.*) In the Notice of the Commission's Final Determination and Issuance of a LEO, the Commission made clear the exemption for

“refurbished handsets” “does not permit HTC to call new devices ‘refurbished’ and to import them as replacements.” (Exhibit 1, Notice at 3.)

36. Paragraph 1 of the LEO orders that:

Personal data and mobile communication devices and related software covered by claims 1 or 8 of the ‘647 patent that are manufactured abroad by or on behalf of, or imported by or on behalf of, Respondents or any of their affiliated companies, parents, subsidiaries, successors, assigns, or other related business entities, *are excluded from entry* for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, for the remaining term of the patent, except under license of the patent’s owner or as provided by law, and except for refurbished articles imported on or before December 19, 2013, for use as a replacement under warranty or insurance contract for an identical article that was imported prior to April 19, 2012.

(*Id.*, LEO at 1 (emphasis added).)

VII. VIOLATION OF THE COMMISSION’S LIMITED EXCLUSION ORDER

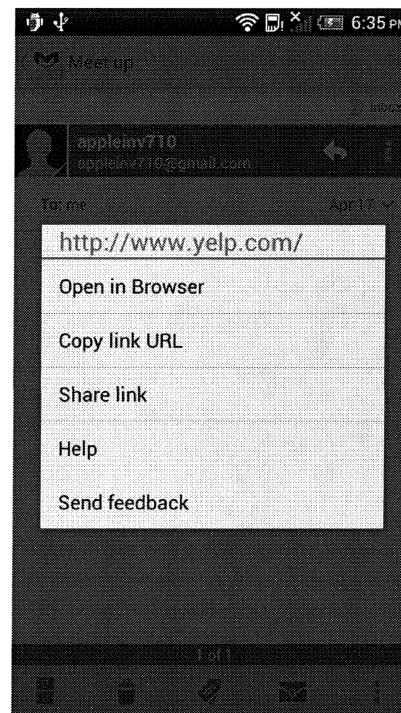
37. On information and belief, notwithstanding their obligation to comply, the Proposed Enforcement Respondents have violated the Commission’s LEO, refusing to conform their conduct to the directives of the Commission and to cease their unlawful activity.

38. On information and belief, the Proposed Enforcement Respondents, either alone or in concert with others, manufacture abroad, sell for importation into the United States, import into the United States, use and/or sell within the United States after importation, personal data and mobile communications devices and components thereof that are covered by claims 1 or 8 of the ‘647 patent, and are therefore covered by the Commission’s LEO. On information and belief, this activity has occurred, and continues to occur after the LEO went into effect on April 19, 2012. Exemplary claim charts comparing claims 1 and 8 of the ‘647 patent to the HTC Android Products that appear to have entered the United States since the April 19, 2012 effective date of the LEO are attached as Exhibits 22 and 23. For example, and without limitation, the

below screenshots show the material similarity between functionality found to infringe on HTC devices (left), and functionality that HTC continues to import (right):



Functionality adjudicated as infringing and excluded by Commission order: multiple actions linked to a detected structure (Browser application)



Functionality still present on HTC Android Products that appear to have entered the United States since April 19, 2012, e.g., HTC One S devices: multiple actions linked to a detected structure (Gmail application)

39. HTC Android Products that use the infringing functionality are excluded from entry into the United States. Shortly after the Commission issued its Final Determination and LEO, HTC promised to “completely remove” the infringing functionality from “all of our phones soon.” (Exhibits 9-10.) HTC also declared, “[w]hile disappointed that a finding of violation was still found on two claims of the ’647 patent, we are well prepared for this decision, and our designers have created alternate solutions for the ’647 patent.” (Exhibit 10.)

40. Less than two months later, however, HTC backtracked, claiming in press reports that it “can merely alter the feature” and “leav[e] the core functionality intact.” (Exhibit 11.)

Instead, according to an HTC spokesperson, “we were found to infringe the interface, not the functionality.” (*Id.*)

41. Despite the Commission’s carve-out of a prolonged four-month grace period, and despite HTC’s initial public statements, on information and belief, HTC continues to import into the United States, sell for importation into the United States, manufacture for sale to U.S. importers, and/or sell after importation in the United States personal data and mobile communications devices that infringe claims 1 or 8 of the ‘647 patent.

42. For example, HTC Android Products are being offered for sale and advertised on HTC’s web site. (*See, e.g.,* Exhibit 12.) HTC is actively and aggressively marketing these infringing products in the United States. (*See, e.g., id.*)

43. Moreover, HTC has launched *new* HTC Android Products, including the HTC One X, the HTC One S, and the HTC EVO 4G LTE, in the United States *after* the LEO went in to effect on April 19, 2012. HTC launched the One S on April 25, 2012, the One X on May 7, 2012, and the HTC EVO 4G LTE no later than June 2, 2012. HTC has imported, and is attempting to import, the HTC One S, the HTC One X, and the HTC EVO 4G LTE. (Exhibits 13, 20.)

44. During the original Investigation, HTC represented to the Commission that it did not maintain inventories of the accused devices in the United States, such that a CDO was not necessary. On that basis, the Commission determined not to issue a CDO. HTC has now been reported as saying that, “[s]ome shipments [of the One X and EVO 4G LTE] reached the U.S. before April 19 and have already been sold, but an extended customs review [of detained shipments] *could deplete its inventories in the U.S.*” (Exhibit 14 (emphasis added).) HTC’s representation that its U.S. inventories could be depleted is inconsistent with HTC’s

representations to the Commission in the original Investigation that it does not maintain commercially significant U.S. inventories. The continued availability and sale in the United States of HTC Android Products after the April 19, 2012 effective date of the LEO is further evidence that HTC maintains commercially significant inventories of the devices in the United States. It is also likely that additional discovery, taken in the course of the Enforcement Proceeding, will demonstrate that HTC now maintains commercially significant inventories of the infringing devices in the United States, and that it knowingly stockpiled commercially significant volumes of infringing devices in the United States before the April 19, 2012 effective date of the LEO in an attempt to circumvent the Commission's LEO.

45. On information and belief, HTC intends to launch additional HTC Android Products in the United States in the coming days and weeks, including, for example, the HTC Droid Incredible 4G LTE and the HTC One V. (*See, e.g.*, Exhibits 15-18.) In fact, on May 30, 2012, HTC issued a press release claiming that "HTC devices have been released" from Customs and that "future shipments should continue to enter the US." (Exhibit 20; *see also* Exhibit 36 (quoting an HTC official as saying "the devices were released and will reach customers in the U.S. soon").) For example, PC Magazine reports that the "HTC One V will be coming to 'a variety of U.S. carriers' this summer." (Exhibit 15.) On May 7, 2012, Verizon Wireless and HTC issued a press release announcing the HTC Droid Incredible 4G LTE, which they claim "will be available in Verizon Wireless Communications Stores and online . . . in the coming weeks." (Exhibit 16.)

46. HTC's imminent release of new infringing HTC Android Products would cause substantial harm to Apple. On information and belief, HTC, if left undeterred, will inundate the U.S. market with infringing devices, as such launches of new devices are likely to result in the

sales of hundreds of thousands, if not millions, of infringing products. For instance, HTC sold [] units of the HTC EVO 4G within just four days of its U.S. launch. (Exhibit 24 at HTC001872923 (**Confidential**)). Similarly, HTC sold [] units of the HTC Droid Incredible within the first two months of its U.S. launch. (Exhibit 25 at HTC000632780 (**Confidential**)).

47. HTC is marking certain HTC Android Products with the label “710RD,” which appears to refer to an alleged 710 redesign. Despite HTC’s resort to self-help to evade the terms of the LEO, the products labeled “710RD” are not redesigned products, as HTC has not removed the infringing functionality from the Android operating system. As such, the products labeled “710RD” still infringe claims 1 or 8 of the ‘647 patent and are therefore subject to the Commission’s LEO. On information and belief, HTC has not sought or obtained an advisory opinion from the Commission under 19 C.F.R. § 210.79 or a modification proceeding under 19 U.S.C. § 1337(k)(2) regarding whether its supposed redesign products still infringe the ‘647 patent. Further, on information and belief, as of June 4, 2012, HTC has not obtained a Customs’ Ruling Letter under 19 C.F.R. Part 177 regarding its purported redesign.

48. Instead of removing the infringing functionality from these products labeled “710RD,” HTC has merely altered the user interface (by removing or altering the look of pop-up menus), not the core functionality, as HTC declared in news reports. (See Exhibit 11.) Neither claim 1 nor 8 of the ‘647 patent is limited to a particular user interface. Therefore, by simply removing or altering pop-up menus, but retaining the core functionality, HTC continues to infringe claims 1 or 8 of the ‘647 patent. Indeed, even absent the pop-up menu user interface, there are other ways a user can invoke the linked actions that infringe claims 1 or 8 of the ‘647 patent.

49. On information and belief, all of the HTC Android Products—including those labeled “710RD” and those introduced after the Commission issued its LEO and the LEO went into effect—infringe claim 1 and/or 8 of the ‘647 patent and are therefore subject to the terms of the LEO.

50. Because HTC does not manufacture any HTC Android Product in the United States, and controls the importation of its products into the United States, the availability of these products both online and in retail stores demonstrates that the Proposed Enforcement Respondents have acted in violation of the Commission’s LEO.

VIII. EXCEPTIONAL CIRCUMSTANCES WARRANT TEMPORARY EMERGENCY ACTION

51. Pursuant to 19 C.F.R. § 210.77, the circumstances here warrant temporary emergency action in the form of (1) an order by the Commission to U.S. Customs and Border Protection that all HTC Android Products should be excluded from the United States pending final disposition of this Enforcement Proceeding under 19 C.F.R. § 210.75(b), and (2) a cease and desist order directed to HTC barring HTC from importing, offering for sale, selling, advertising, or distributing in the United States all HTC Android Products until resolution of this Enforcement Proceeding. As an alternative to the CDO and an explicit instruction excluding all HTC Android Products, Apple requests that the Commission modify the LEO to impose a bond as set forth below.

52. The Commission should direct Customs to detain all HTC devices running the Android operating system upon entry to the United States under the LEO, pending final disposition of this Enforcement Proceeding, given that HTC has not sought a modification proceeding pursuant to 19 U.S.C. § 1337(k)(2), which provides that “[i]f any person who has previously been found by the Commission to be in violation of this section petitions the

Commission for a determination that the petitioner is no longer in violation of this section or for a modification or rescission of an exclusion from entry or order under subsection (d), (e), (f), (g), or (i) of this section . . . *the burden of proof in any proceeding before the Commission regarding such petition shall be on the petitioner.*” (Emphasis added). Until such time as a determination is made that any purported “redesigned” HTC Android Products are, in fact, non-infringing, the scope of the Commission’s LEO presumptively includes all HTC Android Products and detention of all such entries should continue. Given that HTC knowingly and purposefully continued to import its infringing HTC Android Products in disregard of the LEO, and failed to seek an Advisory Opinion from Commission before doing so, the Commission, to protect the integrity of its Orders, should order the seizure and forfeiture of all post-April 19, 2012 entries of HTC Android Products.

53. Imposition of a CDO is also necessary and justified, given strong circumstantial evidence that HTC maintains commercially significant inventories of infringing devices in the United States, contrary to its representation to the Commission during the underlying Investigation. (*See* ¶ 44 *supra.*) Absent a CDO enjoining the sale and distribution of HTC Android Products that have entered the United States in violation of the LEO, there is direct evidence that HTC has and would continue to circumvent the LEO by selling from U.S. inventory. Consequently, Apple requests that the Commission, pursuant to 19 C.F.R. § 210.77, during the pendency of this proceeding, modify the existing LEO to include a CDO barring the further sale, offer for sale, advertisement, or distribution of HTC Android Products in the United States by HTC or any entity acting in concert with HTC.

54. As an alternative to the CDO and an explicit instruction excluding all HTC Android Products, Apple requests that the Commission modify the LEO to impose a bond

equivalent to 100% of the domestic value of each imported HTC device during the pendency of the Enforcement Proceeding. A bond should be imposed for each entry of HTC Android Products, including smartphones and tablets, as well as any HTC Android Products already present in the United States in violation of the LEO, to protect the integrity and credibility of the Commission's hearings and orders from further blatant violation. *See* 19 U.S.C. § 1337(f)(2) (authorizing the Commission to impose a maximum civil penalty for violation of its CDOs and consent orders in an amount "not more than the greater of \$100,000 or twice the domestic value of the articles entered or sold"); *see also Ninestar Tech. Co. v. Int'l Trade Comm'n*, 667 F.3d 1373, 1380 (Fed. Cir. 2012) (acknowledging the Commission may impose a civil penalty "to serve as a deterrent, because '[t]he public interest is not served if intellectual property rights are not respected, and the imposition of a penalty that is substantial enough to deter future violations is in the public interest'" (quoting *Certain Ink Cartridges and Components Thereof*, Inv. No. 337-TA-565, USITC Pub. 4196 (Sep. 24, 2009) at 38). A 100% bond is necessary in this Enforcement Proceeding to ensure that HTC does not gain financially from further violations of the LEO.

55. If the Commission declines to impose a 100% bond as a deterrent against further violations, Apple requests that the Commission at least modify the LEO to impose a bond equal to \$290 for each imported HTC Android Product, including smartphones and tablets, to protect Apple from further injury during the pendency of the Enforcement Proceeding. The \$290 bond request is the price differential between the average selling price ("ASP") of Apple's domestic product (the iPhone) and HTC's infringing Android Products. (*See* Exhibit 34 at 26 (showing the iPhone had an ASP of \$647, calculated by dividing the iPhone revenue (\$22,690M) by the number of units sold (35,064,000)); Exhibit 35 (**Confidential**) (showing HTC's Android

smartphones had an ASP of \$357, calculated by dividing HTC's smartphone revenue (\$[]M) by the number of units sold ([])).)

56. The continued importation of infringing HTC Android Products into the United States during the pendency of an Enforcement Proceeding, in violation of the LEO, will cause substantial harm to Apple, to the credibility of the Commission and its remedial orders, and to the protection of U.S. patent rights. Without immediate and expedited action, Apple will face substantial harm in the form of lost sales and the unjust and unlicensed use of its patented inventions due to the continued massive imports of HTC's infringing products.

57. Apple will suffer substantial harm unless the Commission directs Customs to continue to detain all HTC Android Products pending final disposition of this Enforcement Proceeding. Subsequent action by the Commission would not adequately repair that substantial harm because those sales would be permanently lost by Apple to HTC and the Commission does not have the authority to order the payment of damages to Apple by HTC. For this reason, the ultimate imposition of a modified LEO or CDO to expressly cover the new HTC devices would not remedy the substantial harm that Apple would suffer during the pendency of the Enforcement Proceeding from ongoing, unlawful sales of the HTC devices at issue.

58. Apple's continued success and extensive U.S. employment engaged in the research and development of the company's popular products depends on the continued protection and exploitation of its valuable intellectual property, including the '647 patent. Apple relies on the U.S. patent system and the effective enforcement of its patent rights. If HTC is permitted to violate Apple's patent rights with impunity, and is not prevented from actively flouting the terms of the Commission's LEO, Apple's domestic operations and competitive position will suffer substantial harm. Apple's rivals will conclude that they, like HTC, can copy

Apple's technology with impunity, notwithstanding any ITC remedial orders that may issue. This will lead to the decline in the value of Apple's intellectual property and will have a substantial and negative effect on Apple's domestic operations.

59. Consequently, upon institution of this Enforcement Proceeding, Apple respectfully requests that the Commission direct Customs to exclude all models of HTC devices that run the Android operating system, unless and until the Commission determines that HTC has met its burden under Section 337(k) to demonstrate that each "redesigned" HTC Android Product is non-infringing and therefore beyond the scope of the LEO.

60. Further, the public interest would be served by taking temporary emergency action to ensure proper enforcement of the LEO. The Commission recently completed an analysis of the effect of an LEO on the public health and welfare, the competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers. (Exhibit 3, Comm'n Op. at 67-84.) Upon its careful consideration of those factors, the Commission determined that those factors "do not weigh against the issuance of a limited exclusion order in this investigation." (*Id.* at 83.) The Commission also provided HTC a four-month grace period in which to cease its infringing activity to minimize the impact on third parties. (*Id.*) Because the relief requested here is consistent with the relief granted by the LEO, the effect on the public health and welfare, the competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers, continues to favor the temporary emergency relief Apple is requesting.

61. Moreover, the Commission has stated that the public interest favors the protection of intellectual property and promotes a climate of predictability that fosters investment, innovation, and the exchange of technology and associated intellectual property rights. *See*

Certain Digital Televisions and Certain Products Containing Same and Methods of Using Same, Inv. No. 337-TA-617, 2009 WL 1124461, Comm'n Op. at *7 (Apr. 23, 2009). Indeed, the Obama Administration has recently stressed that “the United States, as the world’s leader for innovation, must serve as an example to the international community and send a clear message that the U.S. Government will be vigorous in protecting intellectual property.” (Exhibit 21.) To that end, the Obama Administration remains “committed to encouraging economic growth through healthy competition and robust enforcement of law in intellectual property-intensive fields.” (*Id.*) Thus, the public interest weighs heavily in favor of enforcing the LEO.

IX. SPECIFIC INSTANCES OF HTC VIOLATING THE LIMITED EXCLUSION ORDER

62. Proposed Enforcement Respondents, either themselves or through subsidiaries or third parties acting on behalf of Proposed Enforcement Respondents, are engaged in the manufacture, importation, sale for importation, offer for sale after importation, sale and/or use after importation into the United States of personal data and mobile communication devices in violation of the Commission’s LEO.

63. On information and belief, Proposed Enforcement Respondents, either themselves or through subsidiaries or third parties acting on their behalf, manufacture all HTC Android Products abroad, including in Taiwan and China.

64. For example, the HTC One S is manufactured in Taiwan. (*See* Exhibit 4, containing photograph of a HTC One S (indicating that the device is “Made in Taiwan”).) The HTC One S is imported into the United States. For example, the photographed HTC One S was purchased from T-Mobile, 801 15th St. NW, Washington, DC 20005 on April 27, 2012. The receipt for this purchase is attached as a part of Exhibit 4. The photographed HTC One S device, in its packaging, will be made available upon request as Physical Exhibit 1.

65. The HTC Amaze 4G is manufactured in China. (See Exhibit 5, containing photograph of a HTC Amaze 4G (indicating that device is “Made in China”).) The HTC Amaze 4G is imported into the United States. For example, the photographed HTC Amaze 4G was purchased from Mobile-2-Mobile Wireless, 716 14th St. NW, Washington, DC 20005 on April 27, 2012. The receipt for this purchase is attached as a part of Exhibit 5. The photographed HTC Amaze 4G device, in its packaging, will be made available upon request as Physical Exhibit 2.

66. The HTC Rezound is manufactured in Taiwan. (See Exhibit 6, containing photograph of an HTC Rezound (indicating that device is “Made in Taiwan”).) The HTC Rezound is imported into the United States. For example, the photographed HTC Rezound was purchased from Verizon Wireless, 1314 F Street NW, Washington, DC 20005 on May 22, 2012. The receipt for this purchase is attached as a part of Exhibit 6. The photographed HTC Rezound device, in its packaging, will be made available upon request as Physical Exhibit 3.

67. On information and belief, the HTC One X is manufactured abroad and imported into the United States. For example, the photographed HTC One X was purchased from AT&T, 1518 Connecticut Ave. NW, Washington, DC 20036 on May 11, 2012. The receipt for this purchase is attached as part of Exhibit 7.

68. The HTC EVO 4G LTE is manufactured in Taiwan. (See Exhibit 8, containing photograph of an HTC EVO 4G LTE (indicating that device is “Made in Taiwan”).) Indeed, press reports indicate that HTC unlawfully tried to import the HTC EVO 4G LTE and, at least initially, Customs had detained the smartphone at the ports of entry. (Exhibit 13.) Press reports indicate that HTC has imported the HTC EVO 4G LTE, that it has been shipped to customers (Exhibits 27-31), that HTC planned to launch the device for sale in Sprint’s U.S. retail stores on

June 2nd (Exhibit 32), and that the HTC EVO 4G LTE is in fact now on sale in the U.S. through Sprint retail stores. For example, the photographed HTC EVO 4G LTE was purchased from Sprint Store, 1517 El Camino Real, Redwood City, CA 94063 on June 2, 2012. The receipt for this purchase is attached as a part of Exhibit 8. The photographed HTC EVO 4G LTE device, in its packaging, will be made available upon request as Physical Exhibit 4.

X. CONCLUSION

69. Proposed Enforcement Respondents' importation, sale for importation, and/or sale after importation of personal data and mobile communications devices and related software is an ongoing violation of Section 337 and a violation of the terms of the Commission's LEO.

XI. RELIEF REQUESTED

70. WHEREFORE, by reason of the foregoing, Complainant respectfully requests that the United States International Trade Commission:

(a) Promptly institute a formal enforcement proceeding, pursuant to 19 C.F.R. § 210.75, to confirm the violations of the LEO;

(b) Take temporary emergency action pursuant to 19 C.F.R. § 210.77, to modify the December 19, 2011 Limited Exclusion Order to:

(i) direct Customs to detain all HTC Android Products, including but not limited to the HTC One X, the HTC One S, the HTC One V, the HTC Inspire 4G, the HTC Vivid, the HTC Status, the HTC Sensation, the HTC Sensation 4G, the HTC Wildfire, the HTC Wildfire S, the HTC Hero, the HTC Hero S, the HTC EVO 4G LTE, the HTC EVO 4G, the HTC EVO V 4G, the HTC EVO Design 4G, the HTC EVO 3D, the HTC Amaze 4G, the HTC Droid Incredible 4G LTE, the HTC myTouch 4G, the HTC myTouch 4G Slide, the HTC Merge, the HTC Rezound, the HTC Rhyme, the HTC

ThunderBolt, the HTC Flyer, the HTC Jetstream, the HTC EVO View 4G, and the Droid Incredible 2 by HTC; and

(ii) impose a cease and desist order directed to HTC barring the importation, offer for sale, sale, advertisement, or distribution in the United States of all HTC Android Products during the pendency of this Enforcement Proceeding. Alternatively, the Commission should modify the LEO to impose a bond equivalent to 100% of the domestic value of each imported HTC Android Product, including smartphones and tablets, during the pendency of the Enforcement Proceeding, to protect the integrity of the Commission's proceedings and respect for the LEO. At a minimum, the Commission should impose a bond of \$290 for each imported HTC Android Product, including smartphones and tablets, during the pendency of the Enforcement Proceeding, to allow for the mitigation of harm to Apple due to sales lost as a consequence of HTC's unlawful importations;

(c) Promptly refer this matter to the Administrative Law Judge for issuance of an Initial and Final Determination on the issues of the enforcement violation and remedy requested;

(d) Direct the Administrative Law Judge to (i) issue a supplemental protective order to protect Proposed Enforcement Respondents' confidential business information; (ii) permit a necessary and expedited period for fact discovery on Proposed Enforcement Respondents' violations of the LEO; (iii) hold a hearing; and (iv) issue a Final Determination on Enforcement within four months of initiation of the enforcement proceedings; and

(e) After the enforcement proceeding, in the event the Commission determines that there has been a violation of the Commission's LEO, issue the following remedies:

(i) issue a permanent cease and desist order pursuant to 19 U.S.C. § 1337(f) and 19 C.F.R. § 210.75, prohibiting Proposed Enforcement Respondents and parties acting in concert with them from importing, offering for sale, selling, advertising, or distributing all HTC Android Products and from engaging in any other illegal activities;

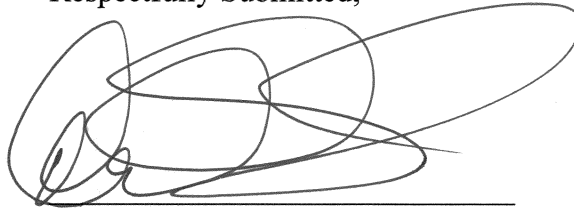
(ii) modify the Commission's LEO pursuant to 19 C.F.R. § 210.75 in any manner that would assist in the prevention of the unfair practices that were originally the basis for issuing such orders or assist in the detection of violations of such orders;

(iii) impose any available civil penalties for violation of the LEO, and if necessary, bring a civil action in an appropriate United States District Court pursuant to 19 C.F.R. § 210.75(c) and 19 U.S.C. § 1337(f) requesting the imposition of such civil penalties or the issuance of such injunctions as the Commission deems necessary to enforce its orders and protect the public interest;

(iv) order the forfeiture to Apple in the full amount of any bonds posted by HTC or any importers of the HTC Android Products during the pendency of the Enforcement Proceeding; and

(v) impose such other remedies and sanctions as are appropriate and within the Commission's authority.

Respectfully Submitted,



Dated: June 4, 2012

Gregory S. Arovas, P.C.
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

Edward C. Donovan
F. Christopher Mizzo
D. Sean Trainor
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5100

Marcus E. Sernel, P.C.
KIRKLAND & ELLIS LLP
300 North LaSalle Street
Chicago, IL 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200

V. James Adduci
Munford Page Hall, II
Jonathan J. Engler
**ADDUCI, MASTRIANI, & SCHAUMBERG
LLP**
1200 Seventeenth Street, N.W., Fifth Floor
Washington, DC 20036
Telephone: (202) 467-6300
Facsimile: (202) 466-2006

VERIFICATION OF COMPLAINT

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

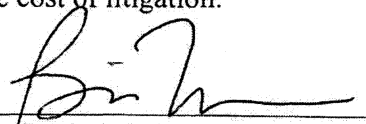
1. I am currently Apple's Director, Patent Licensing & Strategy. I am duly authorized by Apple to verify the foregoing Confidential Complaint for Enforcement Proceeding and Request for Temporary Emergency Action Pursuant to Rules 210.75 and 210.77 (the "Complaint").

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

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

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

Executed this 4th day of June, 2012


Boris Teksler
Apple Inc.