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March 24, 2016

The Honorable Lisa R. Barton  
Secretary to the Commission  
U.S. International Trade Commission  
500 E Street, S.W.  
Washington, D.C. 20436

DOCKET NUMBER
3130
Office of the Secretary Int'l Trade Commission

Re: Complaint under 19 U.S.C. § 1337: *In the Matter of Certain Portable Electronic Devices and Components Thereof*, Inv. No. 337-TA-\_\_\_

Dear Secretary Barton:

Enclosed for filing on behalf of Complainants Creative Technology Ltd. and Creative Labs, Inc. (collectively "Creative") are the following documents in support of Creative's request that the Commission commence an investigation under Section 337 of the Tariff Act of 1930, as amended. A request for confidential treatment of **Confidential Exhibit 3** is included with this filing.

Accordingly, Creative submits the following documents:

1. An unbound original and eight (8) bound copies of the verified Complaint and the Statement of Public Interest;
2. One (1) copy of the non-confidential exhibits to the Complaint on CD-ROM;
3. A letter and certification requesting confidential treatment of **Confidential Exhibit 3**;
4. One (1) copy of **Confidential Exhibit 3** to the Complaint on CD-ROM;
5. Nineteen (19) additional copies of the verified Complaint and nineteen (19) additional CD-ROMs that contain the accompanying non-confidential exhibits, and nineteen (19) additional copies of the Statement of Public Interest for service upon the Respondents;
6. Nineteen (19) additional copies of **Confidential Exhibit 3** on CD-ROM for service on Respondents once appropriate subscriptions to a protective order have been filed;

7. One (1) additional copy of the verified Complaint for service upon The Embassy of the People's Republic of China, 3505 International Place, N.W., Washington, D.C. 20008;
8. One (1) additional copy of the verified Complaint for service upon The Embassy of Japan, Massachusetts Avenue, N.W., Washington, D.C. 20008;
9. One (1) additional copy of the verified Complaint for service upon The Embassy of the Republic of Korea, 2450 Massachusetts Avenue, N.W., Washington, D.C. 20008;
10. One (1) additional copy of the verified Complaint for service upon The Embassy of Sweden, 2900 K Street, N.W., Washington, D.C. 20005;
11. One (1) additional copy of the verified Complaint for service upon The Embassy of The Republic of China on Taiwan, 4201 Wisconsin Avenue, N.W., Washington, D.C. 20016;
12. One (1) additional copy of the verified Complaint for service upon The Embassy of Canada, 501 Pennsylvania Avenue, N.W., Washington, D.C. 20001;
13. One (1) non-certified copy of U.S. Patent No. 6,928,433 ("the '433 patent"), a legible copy of which is included in the Complaint as **Exhibit 1**. Creative will supplement with a certified copy shortly;
14. One (1) non-certified copy the Reexamination Certificate for the '433 patent, a legible copy of which is included in the Complaint appended to **Exhibit 1**. Creative will supplement with a certified copy shortly;
15. One (1) non-certified copy of the assignments for the '433 patent, a legible copy of which is included in the Complaint as **Exhibit 2**. Creative will supplement with a certified copy shortly;
16. One (1) certified copy (on CD-ROM) and three (3) additional copies on CD-ROM of the prosecution history for the '433 patent, which has been designated **Appendix A1** to the Complaint;
17. One (1) certified copy (on CD-ROM) and three (3) additional copies on CD-ROM of the Reexamination history for the '433 patent, which has been designated **Appendix A2** to the Complaint;
18. Four (4) copies on CD-ROM of the references cited during the prosecution of the '433 patent, which have been designated as **Appendix B1** to the Complaint;

The Honorable Lisa R. Barton  
March 24, 2016  
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19. Four (4) copies on CD-ROM of the references cited during the Reexamination of the '433 patent, which have been designated as **Appendix B2** to the Complaint;

Thank you for your assistance in this matter. Please do not hesitate to contact me at (424) 268-5200 if you have any questions.

Respectfully submitted,



Jonathan D. Baker  
Counsel for Complainants  
Creative Technology Ltd. and  
Creative Labs, Inc.

Enclosures

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Washington, D.C. 20436

Re: Complaint under 19 U.S.C. § 1337: *In the Matter of Certain Portable Electronic Devices and Components Thereof*, Inv. No. 337-TA-\_\_\_\_\_

Dear Secretary Barton:

In accordance with 19 C.F.R. §§ 201.6 and 210.5, Creative Technology Ltd. and Creative Labs, Inc. (collectively "Creative") request confidential treatment for the information contained in **Confidential Exhibit 3**.

The information for which confidential treatment is sought is proprietary and sensitive information not otherwise publicly available. Specifically, **Confidential Exhibit 3** is a settlement and license agreement between Creative and Apple, Inc. ("Apple"). This is proprietary information of Creative and its licensee.

The information described above qualifies as confidential business information pursuant to Rule 201.6(a) because:

1. It is not publicly available; and
2. Unauthorized disclosure of such information could cause substantial harm to the competitive position of Creative and its licensee.

Please contact me at (424) 268-5200 if you have any questions or if this request is not granted in full. Thank you for your assistance with this matter.

Respectfully submitted,



Jonathan D. Baker  
Counsel for Complainants Creative  
Technology Ltd. and Creative Labs, Inc.

Enclosure

**CERTIFICATION**

I, Jonathan D. Baker, attorney for Complainants Creative Technology Ltd. and Creative Labs, Inc. (collectively "Creative"), do hereby declare:

1. I am duly authorized by Complainants to execute this certification.
2. I have reviewed **Confidential Exhibit 3** to Creative's Complaint for which confidential treatment has been requested.
3. To the best of my knowledge, information, and belief, founded after reasonable inquiry, this exhibit contains confidential information for which substantially identical information is not available to the public.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 24<sup>th</sup> day of March, 2016 in San Mateo, California.

  
Jonathan D. Baker

**UNITED STATES INTERNATIONAL TRADE COMMISSION  
WASHINGTON, D.C.**

**In the Matter of**

**CERTAIN PORTABLE ELECTRONIC  
DEVICES AND COMPONENTS  
THEREOF**

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

**COMPLAINANT CREATIVE'S STATEMENT  
REGARDING THE PUBLIC INTEREST**

Complainants Creative Technology Ltd. and Creative Labs, Inc. (collectively, "Creative") hereby submit this Statement Regarding the Public Interest pursuant to Commission Rule 210.8(b), 19 C.F.R. § 210.8. Issuance of the relief requested will not adversely impact the public health, safety, or welfare conditions in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers. Thus, this Investigation does not present an instance where the Commission, the parties, and the public should be required to undergo the time and expense of discovery and trial for a Recommended Determination by the ALJ on the public interest.

Creative seeks a limited exclusion order specifically directed to the proposed Respondents and certain portable electronic devices and components thereof ("the Accused Products"). Specifically Creative seeks to exclude from entry into the United States the Accused Products that infringe one or more asserted claims of U.S. Patent No. 6,928,433 ("the '433 Patent" or the "Asserted Patent"). Creative also seeks cease and desist orders prohibiting the sale for importation, importation, sale after importation, distribution, offering for sale, promoting, marketing, advertising, testing, demonstrating, warehousing inventory for distribution, solicitation of sales, programming, repairing, maintaining, using, transferring, and other

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commercial activity relating to the Accused Products that infringe one or more of the asserted claims of the Asserted Patent.

The requested Investigation does not implicate a compelling public interest that might supersede the entry of a statutory exclusion order and a cease and desist order. The Accused Products do not implicate any particular public health, safety, or welfare concerns. The Asserted Patent is not essential to any industry standard or subject to any FRAND licensing obligations. Consumers do not face any potential shortage of like or directly competitive products in the United States. Rather, Creative's licensees and third parties can meet the demand for the products that would be subject to the requested remedial orders.

Issuance of the requested remedial orders will provide effective relief in the face of ongoing patent infringement in the United States by the proposed Respondents. Protecting Creative's important intellectual property rights in the United States through the requested remedial orders will accordingly serve the public interest while having little or no adverse effect on health and welfare.

**I. THE REQUESTED REMEDIAL ORDERS ARE IN ACCORD WITH THE PUBLIC INTEREST**

**A. The Targeted Articles Are Used in the United States for Mobile Entertainment and Communication Purposes**

Respondents' products potentially subject to remedial orders in the proposed Investigation are portable electronic devices and components thereof. The portable electronic devices at issue include mobile phones and digital media players. These devices allow users to place and receive telephone calls and/or to run applications, such as digital media players. The specific Accused Products identified in the accompanying Complaint are portable electronic devices that are operable to access media tracks stored on the portable electronic device by navigating through a hierarchical categorization. The Accused Products are used by U.S.

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consumers for mobile entertainment and communication purposes. Notably, the Asserted Patent is not essential to any industry standard or subject to any FRAND licensing obligations.

**B. No Public Health, Safety, or Welfare Concerns Relate To The Requested Remedial Orders**

Respondents' products do not implicate any public health, safety, or welfare concerns. Specifically, the products at issue are not medical or health devices, are not otherwise health-related, and are not essential for public safety or welfare. Moreover, as discussed below, there are many sources of like, directly competitive, and substitute alternatives in the United States and no health or safety-related features are unique to Respondents' Accused Products. Accordingly, there are no public health, safety, or welfare considerations that would counsel against excluding Respondents' Accused Products.

**C. Creative's Licensees and Third Parties Make Like or Directly Competitive Articles Which Could Replace the Subject Articles if They Were to be Excluded**

Creative's licensees and other manufacturers make like and directly competitive articles that could replace Respondents' products if they are excluded from the United States. Indeed, there are numerous suppliers of smart phones with music player functionality in the United States that would not be subject to the requested exclusion order.

For example, Creative has licensed Apple, Inc. ("Apple"), which has the largest market share for smart phones in the United States, and the second largest market share for smart phones in the world. In addition to Creative's licensees, other manufacturers such as Huawei Technologies Co., Ltd.; Huawei Device USA, Inc.; and FutureWei Technologies, Inc. d/b/a Huawei Technologies (USA) (collectively, "Huawei"), Microsoft Corporation; Microsoft Mobile Oy (Ltd); and Microsoft Mobile Inc. f/k/a Nokia Inc. (collectively "Microsoft"), and Kyocera Corporation and Kyocera, Inc. (collectively "Kyocera") manufacture competing products.

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Huawei has the third largest market share for smart phones in the world, and has announced plans to significantly increase its market share in the United States. As such, Apple, Huawei, Microsoft, Kyocera, and other manufacturers make smart phone products with music player functionality that could replace the articles potentially subject to remedial orders in this Investigation.

**D. Creative's Licensees and Third Parties Have the Capacity to Replace the Volume of Articles Subject to the Requested Remedial Orders in a Commercially Reasonable Time**

Creative's licensees, such as Apple, as well as third party manufacturers have the capacity to replace the volume of products potentially subject to an exclusion order and/or a cease and desist order within a commercially reasonable time in the United States. Apple is the largest smart phone supplier in the United States, and is the number two smart phone supplier in the world. In addition, other manufacturers such as Huawei, Microsoft, and Kyocera, manufacture competing products and will be unaffected by any remedial orders issued in this Investigation. Huawei is the third largest smart phone supplier in the world, and has announced plans to significantly increase its market share in the United States. Accordingly, Apple, Huawei, Microsoft, Kyocera, and other manufacturers have the capacity to replace the volume of articles potentially subject to remedial orders in a commercially reasonable time in the United States.

**E. The Requested Remedial Orders Would Minimally Impact Consumers**

As indicated above, if Respondents' infringing products were excluded, consumers and carriers would not be deprived of like or competitive products and consumers would not be adversely impacted because Creative's licensees and other suppliers would easily meet U.S. market demand with devices not subject to the remedial orders. Competing products are readily available in the United States from other sources, including those licensed by Creative. Thus, the

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potential limited exclusion order and cease and desist order will have no meaningful impact on U.S. consumers. *See Certain Personal Data and Mobile Commc'n Devices and Related Software*, Inv. No. 337-TA-710, Comm'n Op. at 69, USITC Pub. No. 4332 (June 2012) (noting that "the mere constriction of choice cannot be a sufficient basis for denying the issuance of an exclusion order").

## II. CONCLUSION

Issuing a limited exclusion order and cease and desist order in this Investigation against Respondents' infringing products will not negatively affect the public health, safety, or welfare in the United States, competitive conditions in the United States economy, the production of like or competitive articles in the United States, and the availability of such products to consumers. The Accused Products manufactured by these Respondents are not essential to public health and safety. Non-infringing substitute products are available and Respondents' infringing products do not implicate any unique safety-related features. Accordingly, there are no public interest concerns preventing the issuance of a limited exclusion order and a cease and desist order or that would necessitate discovery and trial on this issue by the ALJ.

Dated: March 24, 2016

Respectfully submitted,

By: 

Jonathan D. Baker  
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411 Borel Avenue, Suite 350  
San Mateo, California 94402  
Telephone: (424) 268-5210  
Facsimile: (424) 268-5219

*Counsel for Complainants  
Creative Technology Ltd. and Creative  
Labs, Inc.*

UNITED STATES INTERNATIONAL TRADE COMMISSION  
WASHINGTON, D.C.

**In the Matter of**

**CERTAIN PORTABLE ELECTRONIC  
DEVICES AND COMPONENTS  
THEREOF**

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

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

**COMPLAINANTS:**

Creative Technology Ltd.  
31 International Business Park  
#03-01 Creative Resource  
Singapore 609921  
Telephone: +65 6895 4000

Creative Labs, Inc.  
1901 McCarthy Boulevard  
Milpitas, CA 95035  
Telephone: (408) 428-6600

**COUNSEL FOR COMPLAINANTS:**

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San Mateo, CA 94402  
Telephone: (424) 268-5200  
Facsimile: (424) 268-5219

**PROPOSED RESPONDENTS:**

ZTE Corporation  
ZTE Plaza  
No. 55 Hi-Tech Road South Hi-Tech Industrial  
Park  
Shenzen 518057  
Guangdong, China

ZTE (USA) Inc.  
2425 N. Central Expressway #323  
Richardson, TX 75080

Sony Corporation  
1-7-1 Konan, Minato-ku,  
Tokyo 108-0075, Japan

Sony Mobile Communications, Inc.  
W-building 1- 8-15 Konan 1-chome  
Minato-ku  
Tokyo 108-0075, Japan

Sony Mobile Communications AB  
(Mailing Address)  
Sölvegatan 51,  
223 62 Lund, Sweden  
(Visiting Address)  
Mobilvägen 4,  
221 88 Lund, Sweden

**ORIGINAL**

Sony Mobile Communications (USA), Inc.  
3333 Piedmont Rd NE #600  
Atlanta, GA 30305

Samsung Electronics Co., Ltd.  
1320-10, Seocho 2-dong Seocho-gu  
Seoul, Republic of Korea

Samsung Electronics America, Inc.  
85 Challenger Rd.  
Ridgefield Park, NJ 07660

Samsung Telecommunications America, LLC  
1301 East Lookout Drive  
Richardson, TX 75082

LG Electronics, Inc.  
LG Twin Towers, 20 Yeouido-dong,  
Yeongdeungpo-gu  
Seoul 150-721, Republic of Korea

LG Electronics U.S.A., Inc.  
1000 Sylvan Avenue  
Englewood Cliffs, NJ 07632

LG Electronics Mobilecomm U.S.A., Inc.  
10101 Old Grove Road  
San Diego, CA 92131

Lenovo Group Ltd.  
Shangdi Information Industry Base  
No. 6 Chuang Ye Road, Haidan District  
100085 Beijing, China

Lenovo (United States) Inc.  
1009 Think Place  
Morrisville, NC 27650

Motorola Mobility LLC  
222 W. Merchandise Mart Plaza, Suite 1800  
Chicago, IL 60654

HTC Corporation  
23 Xinghua Road  
Taoyuan 330, Taiwan

HTC America, Inc.  
13920 SE Eastgate Way, Suite #200  
Bellevue, WA 98005

Blackberry Ltd.  
2200 University Ave. E  
Waterloo, Ontario  
Canada N2K 0A7

Blackberry Corporation  
5000 Riverside Drive, Suite 100E  
Irving, Texas 75039

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<b>Exhibit</b>	<b>Document</b>
1	U.S. Patent No. 6,928,433 C1
2	Assignment Documents for U.S. Patent No. 6,928,433
3	<b>CONFIDENTIAL</b> License Agreement between Creative and Apple
4	Claim Chart Demonstrating ZTE's Practice of U.S. Patent No. 6,928,433
5	Claim Chart Demonstrating Sony's Practice of U.S. Patent No. 6,928,433
6A	Claim Chart Demonstrating Samsung's Practice of U.S. Patent No. 6,928,433 Using Google "Play Music" App
6B	Claim Chart Demonstrating Samsung's Practice of U.S. Patent No. 6,928,433 Using "Music" App
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10	Claim Chart Demonstrating Blackberry's Practice of U.S. Patent No. 6,928,433
11	Declaration of Gurtej Singh
12	Apple's 2015 10-K
13	Photos of Apple iPhone 6S
14	Claim Chart applying U.S. Patent No. 6,928,433 to licensed Apple iPhone 6S
15	Apple Webpage on Job Creation printed on January 27, 2016
16	Economic and Fiscal Impacts Generated by Apple in Cupertino – Current Facilities and Apple Campus 2
17	Inside Apple's Plans for Its Futuristic, \$5 Billion Headquarters

18	Apple Campus 2 Construction Update
19	Apple Campus 2 Project Description
20	Apple Seems Keen on Elk Grove Expansion
21	Something Big is Brewing at Apple's Elk Grove Campus
22	Download iOS 9.0 - 9.2.1 Information
23	Apple Security Updates
24	Software Prototype Designer
25	Apple Music Production UI Engineer
26	Apple Music Client EPM
27	Janina Kutyn LinkedIn page
28	Cherif Yaya LinkedIn page
29	Julian Ross LinkedIn page

## **APPENDIX OF ADDITIONAL MATERIALS**

As required by 19 C.F.R. § 210.12(c), a certified copy of the prosecution history of the patent-at-issue, including the patents and technical references cited therein, is submitted in the following appendices:

- Appendix A1 – Prosecution history for U.S. Patent No. 6,928,433
- Appendix A2 – Prosecution history for the reexamination of U.S. Patent No. 6,928,433
- Appendix B1 – Patents and technical references cited in the prosecution history of U.S. Patent No. 6,928,433
- Appendix B2 – Patents and technical references cited in the prosecution history for the reexamination of U.S. Patent No. 6,928,433

## I. INTRODUCTION

1. This Complaint is filed by Creative Technology Ltd. and its wholly-owned subsidiary Creative Labs, Inc. (collectively “Creative”) 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/or the sale within the United States after importation by the owners, importers, or consignees of certain portable electronic devices and components thereof that use the claimed methods that infringe claims 2, 3, 5, 7, and 17-28 of United States Patent No. 6,928,433 C1 (“the ‘433 Patent” or “Asserted Patent”). The accused products include mobile phones and digital media players. All of the foregoing claims are asserted against all of the proposed respondents.

2. The proposed respondents are: ZTE Corporation; ZTE (USA) Inc.; Sony Corporation; Sony Mobile Communications, Inc.; Sony Mobile Communications AB; Sony Mobile Communications (USA), Inc.; Samsung Electronics Co., Ltd.; Samsung Electronics America, Inc.; LG Electronics, Inc.; LG Electronics U.S.A., Inc.; LG Electronics Mobilecomm U.S.A., Inc.; Lenovo Group Ltd.; Lenovo (United States) Inc.; Motorola Mobility, LLC; HTC Corporation; HTC America, Inc.; Blackberry Ltd.; and Blackberry Corporation.

3. A copy of the Asserted Patent, including the Reexamination Certificate, is attached as **Exhibit 1**.

4. Creative Technology Ltd. owns all right, title, and interest in the Asserted Patent.

5. 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 Patent.

6. Creative seeks as relief a permanent limited exclusion order barring from entry into the United States infringing portable electronic devices and components thereof, including mobile phones and digital media players. Creative also seeks as relief a cease and desist order

prohibiting importation, sale after importation, marketing, advertising, demonstrating, warehousing inventory for distribution, offering for sale, selling, distributing, licensing or use of infringing portable electronic devices and components thereof, including mobile phones and digital media players.

## **II. COMPLAINANTS**

7. Creative Technology Ltd. is a public company organized under the laws of Singapore, with its principal place of business located at 31 International Business Park, #03-01 Creative Resource, Singapore 609921. Creative was founded in 1981 with the vision that multimedia would revolutionize the way people interact with their PCs. Creative rapidly became a worldwide leader in digital entertainment products. Famous for its Sound Blaster sound cards, which set the de-facto standard for PC audio in 1989, Creative continues to innovate in the Personal Digital Entertainment market, using groundbreaking technology and leading-edge designs for not just the technically-savvy consumers, but for everyone who enjoys entertainment. With a strong focus on user-friendly interfaces, multiple features and cool industrial designs, the Creative brand is synonymous with lifestyle Personal Digital Entertainment.

8. Creative Labs, Inc. is a wholly-owned subsidiary of Creative Technology Ltd., and is incorporated under the laws of California. Creative Labs, Inc. has its primary location at 1901 McCarthy Boulevard in Milpitas, California where operations include sales, marketing, product development, testing, and compliance.

## **III. PROPOSED RESPONDENTS**

### **A. ZTE**

9. Upon information and belief, proposed respondent ZTE Corporation is a corporation organized and existing under the laws of the People's Republic of China ("China"), with its principal place of business at ZTE Plaza, No. 55, Hi-Tech Road South Hi-Tech,

Industrial Park, Shenzhen 518057, Guangdong, China. Upon information and belief, ZTE Corporation is involved in at least the design, development, manufacture, sale for importation, importation, and sale after importation of infringing portable electronic devices and components thereof, including mobile phones, in the United States

10. Upon information and belief, proposed respondent ZTE (USA), Inc. is a corporation organized under the laws of the State of New Jersey with a principal place of business at 2425 N. Central Expressway #323, Richardson, Texas 75080. Upon information and belief, ZTE (USA), Inc. is involved in at least the importation, sale after importation, and distribution of ZTE Corporation's infringing portable electronic devices and components thereof, including mobile phones, in the United States.

11. Upon information and belief, ZTE (USA), Inc. is a subsidiary of ZTE Corporation (collectively, "ZTE").

**B. Sony**

12. Upon information and belief, proposed respondent Sony Corporation is a corporation organized under the laws of Japan with its principal place of business at 1-7-1 Konan, Minato-ku, Tokyo 108-0075, Japan. Upon information and belief, Sony is involved in at least the design, development, manufacture, sale for importation, importation, and sale after importation of infringing portable electronic devices and components thereof, including mobile phones, in the United States.

13. Upon information and belief, proposed respondent Sony Mobile Communications, Inc. is a corporation organized under the laws of Japan with its principal place of business at W-building 1- 8-15 Konan 1-chome, Minato-ku, Tokyo 108-0075, Japan. Upon information and belief, Sony Mobile Communications, Inc. is involved in at least the design, development,

manufacture, sale for importation, importation, and sale after importation of infringing portable electronic devices and components thereof, including mobile phones, in the United States.

14. Upon information and belief, proposed respondent Sony Mobile Communications AB is a corporation organized under the laws of Sweden with its principal place of business at Nya Vattentornet SE-221, 88 Lund, Sweden. Upon information and belief, Sony Mobile Communications AB is involved in at least the design, development, manufacture, sale for importation, importation, and sale after importation of infringing portable electronic devices and components thereof, including mobile phones, in the United States.

15. Upon information and belief, proposed respondent Sony Mobile Communications (USA), Inc. is a corporation organized under the laws of the State of Delaware with its principal place of business at 7001 Development Drive, Research Triangle, North Carolina, 27709. Upon information and belief, Sony Mobile Communications (USA), Inc. is involved in at least the importation, sale after importation, and distribution of Sony Corporation, Sony Mobile Communication, Inc., and Sony Mobile Communications AB's infringing portable electronic devices and components thereof, including mobile phones, in the United States.

16. Upon information and belief, Sony Mobile Communications, Inc., Sony Mobile Communications AB, and Sony Mobile Communications (USA), Inc. are subsidiaries of Sony Corporation (collectively, "Sony").

**C. Samsung**

17. Upon information and belief, proposed respondent Samsung Electronics Co., Ltd. is a corporation organized under the laws of the Republic of Korea with its principal place of business at 1320-10, Seocho 2-dong Seocho-gu, Seoul, Republic of Korea. Upon information and belief, Samsung Electronics Co., Ltd. is involved in at least the design, development,

manufacture, sale for importation, importation, and sale after importation of infringing portable electronic devices and components thereof, including mobile phones, in the United States.

18. Upon information and belief, proposed respondent Samsung Electronics America, Inc. is a corporation organized under the laws of the State of New York with a principal place of business at 85 Challenger Road, Ridgefield Park, New Jersey 07660. Upon information and belief, Samsung Electronics America, Inc. is involved in at least the importation, sale after importation, and distribution of Samsung Electronics Co., Ltd.'s infringing portable electronic devices and components thereof, including mobile phones, in the United States.

19. Upon information and belief, Samsung Electronics America, Inc. is a subsidiary of Samsung Electronics Co., Ltd. (collectively, "Samsung").

**D. LG**

20. Upon information and belief, proposed respondent LG Electronics, Inc. is a corporation organized and existing under the laws of the Republic of Korea ("Korea"), with its principal place of business at LG Twin Towers, 20 Yeouido-dong, Yeongdeungpo-gu, Seoul 150-721, Republic of Korea. Upon information and belief, LG Electronics, Inc. is involved in at least the design, development, manufacture, sale for importation, importation, and sale after importation of infringing portable electronic devices and components thereof, including mobile phones, in the United States.

21. Upon information and belief, proposed respondent LG Electronics U.S.A., Inc. is a corporation organized under the laws of the State of Delaware with its principal place of business at 1000 Sylvan Avenue, Englewood Cliffs, New Jersey 07632. Upon information and belief, LG Electronics U.S.A., Inc. is involved in at least the importation, sale after importation, and distribution of LG Electronics, Inc.'s infringing portable electronic devices and components thereof, including mobile phones, in the United States.

22. Upon information and belief, proposed respondent LG Electronics Mobilecomm U.S.A., Inc. is a corporation organized under the laws of the State of California with its principal place of business at 10101 Old Grove Road, San Diego, California 92131. Upon information and belief, LG Electronics Mobilecomm U.S.A., Inc. is involved in at least the importation, sale after importation, and distribution of LG Electronics, Inc.'s infringing portable electronic devices and components thereof, including mobile phones, in the United States.

23. Upon information and belief, LG Electronics U.S.A., Inc. and LG Electronics Mobilecomm U.S.A., Inc. are subsidiaries of LG Electronics, Inc. (collectively, "LG").

**E. Lenovo**

24. Upon information and belief, proposed respondent Lenovo Group Ltd. is a corporation organized and existing under the laws of the People's Republic of China, with its principal place of business at Shangdi Information Industry Base, No 6 Chuang Ye Road, Haidan District, 100085 Beijing, China. Upon information and belief, Lenovo Group Ltd. is involved in at least the design, development, manufacture, sale for importation, importation, and sale after importation of infringing portable electronic devices and components thereof, including mobile phones, in the United States.

25. Upon information and belief, proposed respondent Lenovo (United States) Inc. is a corporation organized under the laws of the State of Delaware with a principal place of business at 1009 Think Place, Morrisville, North Carolina 27650. Upon information and belief, Lenovo (United States) Inc. is involved in at least the importation, sale after importation, and distribution of Lenovo Group Ltd.'s infringing portable electronic devices and components thereof, including mobile phones, in the United States.

26. Upon information and belief, proposed respondent Motorola Mobility LLC is a corporation organized under the laws of the State of Delaware with a principal place of business

at 222 W. Merchandise Mart Plaza, Suite 1800, Chicago, Illinois 60654. Upon information and belief, Motorola Mobility LLC is involved in at least the importation, sale after importation, and distribution of Lenovo Group Ltd.'s infringing portable electronic devices and components thereof, including mobile phones, in the United States.

27. Upon information and belief, Lenovo (United States), Inc. and Motorola Mobility LLC are subsidiaries of Lenovo Group Ltd. (collectively, "Lenovo").

**F. HTC**

28. Upon information and belief, proposed respondent HTC Corporation is a corporation organized under the laws of Taiwan with a principal place of business at 23 Xinghua Road, Taoyuan 330, Taiwan. Upon information and belief, HTC Corporation is involved in at least the design, development, manufacture, sale for importation, importation, and sale after importation of infringing portable electronic devices and components thereof, including mobile phones, in the United States.

29. Upon information and belief, proposed respondent HTC America, Inc. ("HTC America") is a corporation organized under the laws of the State of Washington with its principal place of business at 13920 SE Eastgate Way, Suite #200, Bellevue, Washington 98005. Upon information and belief, HTC America is involved in at least the importation, sale after importation, and distribution of HTC Corporation's infringing portable electronic devices and components thereof, including mobile phones, in the United States.

30. Upon information and belief, HTC America is a subsidiary of HTC Corporation (collectively, "HTC").

**G. Blackberry**

31. Upon information and belief, proposed respondent Blackberry Ltd. is a corporation organized under the laws of Canada with a principal place of business at 2200

University Ave. E, Waterloo, ON, N2K 0A7 Canada. Upon information and belief, Blackberry Ltd. is involved in at least the design, development, manufacture, sale for importation, importation, and sale after importation of infringing portable electronic devices and components thereof, including mobile phones, in the United States.

32. Upon information and belief, proposed respondent Blackberry Corporation is a corporation organized under the laws of the State of Texas with its principal place of business at 5000 Riverside Drive, Suite 100E, Irving, Texas 75039. Upon information and belief, Blackberry Corporation is involved in at least the importation, sale after importation, and distribution of Blackberry Ltd.'s infringing portable electronic devices and components thereof, including mobile phones, in the United States.

33. Upon information and belief, Blackberry Corporation is a subsidiary of Blackberry Ltd. (collectively "Blackberry").

#### **IV. THE TECHNOLOGY**

34. Creative was one of the first companies to invest in the research, development and commercialization of portable media players, then referred to as MP3 players. Creative's first digital media players used flash memory as the storage medium. One drawback of these players was that the storage capacity of flash memory was limited at that time to an hour or two of music. Creative envisioned the market potential for significantly higher capacity portable electronic devices and began development of the NOMAD® Jukebox using a high-capacity hard drive as the storage medium. The number of songs that could be stored on this portable electronic device was dramatically greater than the flash based devices – up to 1,000 songs. However, the large number of tracks/songs presented a significant and pressing challenge – how to conveniently organize and access the ever-growing number of songs stored on these devices in view of their small display screens and limited controls.

35. Excited by the market potential and need for a user interface for organizing, navigating and accessing music on portable electronic devices, Creative seized the opportunity to invent a solution – a way to manage a large amount of music in a manner that allows end users to access songs in a logical and user-friendly manner through sequential steps displayed on the small screen of a portable electronic device. After months of ongoing work and development, a team of Creative’s engineers in Scotts Valley, California invented a user-friendly interface that simplified navigation on portable electronic devices. This now-patented invention is directed to methods of accessing media tracks (e.g., music) stored on a portable electronic device by navigating through a hierarchical categorization such as artist, artist name, and song title or genre, genre type, and song title.

36. Eager to market and benefit from the invention, Creative announced its anticipated release of the NOMAD Jukebox and presented the first prototype devices at the Consumer Electronics Show (CES) in January 2000. With a 6GB storage capacity, the Creative NOMAD Jukebox could store more than 100 hours of digital media and up to 1,000 songs. More importantly, the NOMAD Jukebox used the revolutionary accessing methods claimed in the ‘433 Patent to provide users with a convenient interface for managing and accessing all those songs. The NOMAD Jukebox and the user interface encompassed by the ‘433 Patent set the standard for this new industry of portable media players.

37. On January 16, 2001, Creative announced that it had already shipped 100,000 units of the NOMAD Jukebox portable electronic device. By 2006, Creative’s portable electronic devices featuring its patented user interface had won numerous prestigious awards worldwide, including: The “Best of CES” awards in 2004, 2005 and 2006 and the overall “Best in Show” award at CES in 2006; Best of Show awards in each of the first two, 2004 and 2005,

DigitalLife consumer shows; Editor's Choice or other top editorial awards from PC Magazine, PC Gamer, Laptop, Maximum PC, PC World, Computer Shopper, CNET.com, Sound & Vision magazine and many others.

38. These innovative inventions of the '433 Patent have now become ubiquitous in the industry. While Apple, Inc., which uses these inventions in its iPod and iPhone products, has taken a license, others in the industry have made use of Creative's invention without permission.

**V. THE PATENT-AT-ISSUE AND NON-TECHNICAL DESCRIPTION OF THE INVENTION**

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

39. Creative Technology Ltd. owns by assignment the entire right, title, and interest in and to the Asserted Patent. **Exhibit 2.**

40. Pursuant to Commission Rule 210.12(c), this Complaint includes a certified copy and three additional copies of the prosecution history of the Asserted Patent. *See Appendix A1.* Pursuant to Commission Rule 210.12(c), this Complaint includes four copies of each patent and technical reference mentioned in the prosecution history of the Asserted Patent. *See Appendix B1.*

41. Further, pursuant to Commission Rule 210.12(c), this Complaint includes a certified copy and three additional copies of the prosecution history of the reexamination of the Asserted Patent. *See Appendix A2.* Pursuant to Commission Rule 210.12(c), this Complaint includes four copies of each patent and technical reference mentioned in the prosecution history of the reexamination of the Asserted Patent. *See Appendix B2.*

**B. The '433 Patent**

**1. Identification of the '433 Patent and Asserted Claims**

42. United States Patent No. 6,928,433 entitled "Automatic Hierarchical Categorization of Music by Metadata" issued on August 9, 2005 and a reexamination certificate issued on October 8, 2012. The '433 Patent expires on November 24, 2021 and is based on United States Patent Application No. 09/755,723 filed on January 5, 2001.

43. The '433 Patent has one independent claim that was cancelled during the reexamination. Following the reexamination, there are 16 dependent claims, including 7 claims that depend directly from claim 1.

**2. Non-Technical Description of the '433 Patent<sup>1</sup>**

44. The Asserted Patent claims various methods for accessing different types of data (such as music or video files) on a portable media player.

45. To permit ease of use, the claimed methods utilize data about each music file, such as information about the artist, album, song name, genre, etc. A hierarchical categorization is created that has at least three levels: category, subcategory, and item. The songs are populated throughout the branches of the hierarchy using the associated data such that an individual song can be reached through different routes. Access is provided through a user-friendly interface that has three screens which are displayed sequentially.

46. By utilizing the data associated with each music file and combining a set of display screens, the claimed methods allow a user to navigate to individual songs and to play or add songs, or groups of songs, to playlists. Likewise, if the user desires to play a particular list of songs, the hierarchical categorizations can be used to locate and select the songs to be played.

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<sup>1</sup> This non-technical description of the '433 Patent is intended to provide a generalized explanation of the patent rather than a legal description of its metes and bounds. Accordingly, this non-technical description should not be used for claim construction purposes.

**C. Foreign Counterparts to the Asserted Patent**

47. No foreign patent applications have been filed that correspond to the Asserted Patent. Accordingly, there are no foreign counterparts to the Asserted Patent.

**D. Licenses**

48. The Asserted Patent has been licensed to Apple Inc. (“Apple”).

49. As disclosed in public press releases, on or about October 6, 2006, Apple paid Creative \$100,000,000 for a nonexclusive license under the Asserted Patent. A copy of the Apple license agreement is attached as **Confidential Exhibit 3**.

50. The Asserted Patent has also been licensed to Archos S.A. and Archos, Inc. (collectively, “Archos”).

51. The Asserted Patent has not been licensed to any other third parties.

**VI. UNFAIR ACTS OF THE PROPOSED RESPONDENTS**

**A. ZTE**

52. On information and belief, infringing portable electronic devices and components thereof, including mobile phones, are sold for importation, imported, and sold after importation in the United States by or on behalf of ZTE.

53. Examples of ZTE accused devices are the Axon Pro mobile phone and other ZTE mobile phones containing either: (a) the Google “Play Music” app (version 5.8.1810R.1720607), or (b) the ZTE “Music” app (version 3.0.0.7272), which has been installed on the phone prior to importation. This identification of specific products, models, apps, and versions is not intended to limit the scope of the investigation, and any remedy should extend to all infringing products. On information and belief, these products infringe claims 2, 3, 5, 7, and 17-28 of the ’433 Patent.

54. A chart comparing claims 2, 3, 5, 7, and 17-28 of the '433 Patent to ZTE's Axon Pro is attached as **Exhibit 4**.

### **1. Direct Infringement**

55. ZTE has directly infringed and continues to directly infringe, both literally and under the doctrine of equivalents, Creative's '433 Patent by practicing the claimed methods of the '433 Patent through activities such as use, testing, and product support of the ZTE accused devices.

### **2. Inducement of Infringement**

56. ZTE also actively and knowingly aids and abets the direct infringement of Creative's '433 Patent by ZTE's customers, constituting active inducement to infringe under 35 U.S.C. § 271(b).

57. ZTE induces infringement of the method claims of the '433 Patent by actively inducing its customers in the United States to operate the ZTE accused devices in a manner that directly infringes the asserted claims at least by selling the devices with a user interface that is designed to encourage users to operate the devices in an infringing manner, and by providing instructions, manuals, and technical support. ZTE has engaged in these actions with either the specific intent to cause infringement or with willful blindness to the infringement that it is causing. On information and belief, at least one customer and/or end user of the ZTE accused devices has directly infringed one or more of the asserted claims of the '433 Patent.

58. Creative provided actual notice of the '433 Patent and the Reexamination Certificate to ZTE in a letter sent on or about March 16, 2016.

59. ZTE has had actual knowledge of the '433 Patent and its infringement thereof through actual notice provided by Creative before the filing of this Complaint, at least as of the date of receipt of the March 16, 2016 letter.

60. ZTE engages in these unlawful acts despite its actual knowledge of the '433 Patent.

**B. Sony**

61. On information and belief, infringing portable electronic devices and components thereof, including mobile phones, are sold for importation, imported, and sold after importation in the United States by or on behalf of Sony.

62. Examples of Sony accused devices are the Xperia Z3+ mobile phone and other Sony mobile phones containing either: (a) the Google "Play Music" app (version 5.9.1854R.1904527), or (b) the Sony "Music" app (version 9.0.2.A.0.0), which has been installed on the phone prior to importation. This identification of specific products, models, apps, and versions is not intended to limit the scope of the investigation, and any remedy should extend to all infringing products. On information and belief, these products infringe at least claims 2, 3, 5, 7, and 17-28 of the '433 Patent.

63. A chart comparing claims 2, 3, 5, 7, and 17-28 of the '433 Patent to Sony's Xperia Z3+ is attached as **Exhibit 5**.

**1. Direct Infringement**

64. Sony has directly infringed and continues to directly infringe, both literally and under the doctrine of equivalents, Creative's '433 Patent by practicing the claimed methods of the '433 Patent through activities such as use, testing, and product support of the Sony accused devices.

**2. Inducement of Infringement**

65. Sony also actively and knowingly aids and abets the direct infringement of Creative's '433 Patent by Sony's customers, constituting active inducement to infringe under 35 U.S.C. § 271(b).

66. Sony induces infringement of the method claims of the '433 Patent by actively inducing its customers in the United States to operate the Sony accused devices in a manner that directly infringes the asserted claims at least by selling the devices with a user interface that is designed to encourage users to operate the devices in an infringing manner, and by providing instructions, manuals, and technical support. Sony has engaged in these actions with either the specific intent to cause infringement or with willful blindness to the infringement that it is causing. On information and belief, at least one customer and/or end user of the Sony accused devices has directly infringed one or more of the asserted claims of the '433 Patent.

67. Creative provided actual notice of the '433 patent to Sony in a letter sent on or about February 16, 2007. Creative also provided actual notice to Sony of the issuance of the Reexamination Certificate for the '433 Patent in a letter sent on or about November 11, 2013.

68. Sony has had actual knowledge of the '433 Patent and its infringement thereof through actual notice provided by Creative before the filing of this Complaint, at least as of the date of receipt of the February 16, 2007 and/or November 11, 2013 letters.

69. Sony engages in these unlawful acts despite its actual knowledge of the '433 Patent.

**C. Samsung**

70. On information and belief, infringing portable electronic devices and components thereof, including mobile phones, are sold for importation, imported, and sold after importation in the United States by or on behalf of Samsung .

71. Examples of Samsung accused devices are the Galaxy S6 mobile phone and other Samsung mobile phones containing either: (a) the Google "Play Music" app (version 5.9.1854R.1904527), or (b) the Samsung "Music" app (version 6.0.1508051449), which has been installed on the phone prior to importation. This identification of specific products, models,

apps, and versions is not intended to limit the scope of the investigation, and any remedy should extend to all infringing products. On information and belief, these products infringe at least claims 2, 3, 5, 7, and 17-28 of the '433 Patent.

72. A chart comparing claims 2, 3, 5, 7, and 17-28 of the '433 Patent to Samsung's Galaxy S6 using the pre-installed Google Play Music app is attached as **Exhibit 6A**. A chart comparing claims 2, 3, 5, 7, 17-20, 23, and 24 of the '433 Patent to Samsung's Galaxy S6 using the pre-installed Samsung Music app is attached as **Exhibit 6B**.

### **1. Direct Infringement**

73. Samsung has directly infringed and continues to directly infringe, both literally and under the doctrine of equivalents, Creative's '433 Patent by practicing the claimed methods of the '433 Patent through activities such as use, testing, and product support of the Samsung accused devices.

### **2. Inducement of Infringement**

74. Samsung also actively and knowingly aids and abets the direct infringement of Creative's '433 Patent by Samsung's customers, constituting active inducement to infringe under 35 U.S.C. § 271(b).

75. Samsung induces infringement of the method claims of the '433 Patent by actively inducing its customers in the United States to operate the Samsung accused devices in a manner that directly infringes the asserted claims at least by selling the devices with a user interface that is designed to encourage users to operate the devices in an infringing manner, and by providing instructions, manuals, and technical support. Samsung has engaged in these actions with either the specific intent to cause infringement or with willful blindness to the infringement that it is causing. On information and belief, at least one customer and/or end user of the

Samsung accused devices has directly infringed one or more of the '433 Patent.

76. Creative provided actual notice of the '433 patent to Samsung in a letter sent on or about February 22, 2007. Creative also provided actual notice to Samsung of the issuance of the Reexamination Certificate for the '433 Patent in a letter sent on or about November 11, 2013.

77. Samsung has had actual knowledge of the '433 Patent and its infringement thereof through actual notice provided by Creative before the filing of this Complaint, at least as of the date of receipt of the February 22, 2007 and/or November 11, 2013 letters.

78. Samsung engages in these unlawful acts despite its actual knowledge of the '433 Patent.

**D. LG**

79. On information and belief, infringing portable electronic devices and components thereof, including mobile phones, are sold for importation, imported, and sold after importation in the United States by or on behalf of LG .

80. Examples of LG accused devices are the LG G4 mobile phone and other LG mobile phones containing either: (a) the Google "Play Music" app (version 5.9.1854R.1904527), or (b) the LG "Music" app (version 4.51.8), which has been installed on the phone prior to importation. This identification of specific products, models, apps, and versions is not intended to limit the scope of the investigation, and any remedy should extend to all infringing products. On information and belief, these products infringe at least claims 2, 3, 5, 7, and 17-28 of the '433 Patent.

81. A chart comparing claims 2, 3, 5, 7, and 17-28 of the '433 Patent to LG's G4 is attached as **Exhibit 7**.

## **1. Direct Infringement**

82. LG has directly infringed and continues to directly infringe, both literally and under the doctrine of equivalents, Creative's '433 Patent by practicing the claimed methods of the '433 Patent through activities such as use, testing, and product support of the LG accused devices.

## **2. Inducement of Infringement**

83. LG also actively and knowingly aids and abets the direct infringement of Creative's '433 Patent by LG's customers, constituting active inducement to infringe under 35 U.S.C. § 271(b).

84. LG induces infringement of the method claims of the '433 Patent by actively inducing its customers in the United States to operate the LG accused devices in a manner that directly infringes the asserted claims at least by selling the devices with a user interface that is designed to encourage users to operate the devices in an infringing manner, and by providing instructions, manuals, and technical support. LG has engaged in these actions with either the specific intent to cause infringement or with willful blindness to the infringement that it is causing. On information and belief, at least one customer and/or end user of the LG accused devices has directly infringed one or more of the asserted claims of the '433 Patent.

85. Creative provided actual notice of the '433 patent to LG in a letter sent on or about February 16, 2007. Creative also provided actual notice to LG of the issuance of the Reexamination Certificate for the '433 Patent in a letter sent on or about November 11, 2013.

86. LG has had actual knowledge of the '433 Patent and its infringement thereof through actual notice provided by Creative before the filing of this Complaint, at least as of the date of receipt of the February 16, 2007 and/or November 11, 2013 letters.

87. LG engages in these unlawful acts despite its actual knowledge of the '433 Patent.

**E. Lenovo**

88. On information and belief, infringing portable electronic devices and components thereof, including mobile phones, are sold for importation, imported, and sold after importation in the United States by or on behalf of Lenovo .

89. Examples of Lenovo accused devices are the Moto X mobile phone and other Lenovo mobile phones containing the Google “Play Music” app (version 5.9.1854R.1904527), which has been installed on the phone prior to importation. This identification of specific products, models, apps, and versions is not intended to limit the scope of the investigation, and any remedy should extend to all infringing products. On information and belief, these products infringe at least claims 2, 3, 5, 7, and 17-28 of the ’433 Patent.

90. A chart comparing claims 2, 3, 5, 7, and 17-28 of the ’433 Patent to Lenovo’s Moto X Pure Edition is attached as **Exhibit 8**.

**1. Direct Infringement**

91. Lenovo has directly infringed and continues to directly infringe, both literally and under the doctrine of equivalents, Creative’s ’433 Patent by practicing the claimed methods of the ’433 Patent through activities such as use, testing, and product support of the Lenovo accused devices.

**2. Inducement of Infringement**

92. Lenovo also actively and knowingly aids and abets the direct infringement of Creative’s ’433 Patent by Lenovo’s customers, constituting active inducement to infringe under 35 U.S.C. § 271(b).

93. Lenovo induces infringement of the method claims of the ’433 Patent by actively inducing its customers in the United States to operate the Lenovo accused devices in a manner that directly infringes the asserted claims at least by selling the devices with a user interface that

is designed to encourage users to operate the devices in an infringing manner, and by providing instructions, manuals, and technical support. Lenovo has engaged in these actions with either the specific intent to cause infringement or with willful blindness to the infringement that it is causing. On information and belief, at least one customer and/or end user of the Lenovo accused devices has directly infringed one or more of the asserted claims of the '433 Patent.

94. Creative provided actual notice of the '433 patent to Motorola Mobility LLC (f/k/a Motorola, Inc. and Motorola Mobility, Inc.) in a letter sent on or about April 12, 2010. Creative also provided actual notice to Motorola Mobility LLC of the issuance of the Reexamination Certificate for the '433 Patent in a letter sent on or about November 11, 2013. Upon information and belief, Lenovo (United States), Inc. and Lenovo Group Ltd. received actual notice of the '433 patent and of the issuance of the Reexamination Certificate via their subsequent acquisition of Motorola Mobility LLC.

95. Lenovo has had actual knowledge of the '433 Patent and its infringement thereof through actual notice provided by Creative before the filing of this Complaint, at least as of the date of receipt of the April 12, 2010 and/or November 11, 2013 letters.

96. Lenovo engages in these unlawful acts despite its actual knowledge of the '433 Patent.

**F. HTC**

97. On information and belief, infringing portable electronic devices and components thereof, including mobile phones, are sold for importation, imported, and sold after importation in the United States by or on behalf of HTC .

98. Examples of HTC accused devices are the One M9 mobile phone and other HTC mobile phones containing either: (a) the Google "Play Music" app (version 5.7.1788Q.1634597), or (b) the HTC "Music" app (version 7.0.49336), which has been installed

on the phone prior to importation. This identification of specific products, models, apps, and versions is not intended to limit the scope of the investigation, and any remedy should extend to all infringing products. On information and belief, these products infringe at least claims 2, 3, 5, 7, and 17-28 of the '433 Patent.

99. A chart comparing claims 2, 3, 5, 7, and 17-28 of the '433 Patent to HTC's One M9 using the pre-installed Google Play Music app is attached as **Exhibit 9A**. A chart comparing claims 2, 3, 5, 7, 17-20, 23, and 24 of the '433 Patent to HTC's One M9 using the pre-installed HTC Music app is attached as **Exhibit 9B**.

### **1. Direct Infringement**

100. HTC has directly infringed and continues to directly infringe, both literally and under the doctrine of equivalents, Creative's '433 Patent by practicing the claimed methods of the '433 Patent through activities such as use, testing, and product support of the HTC accused devices.

### **2. Inducement of Infringement**

101. HTC also actively and knowingly aids and abets the direct infringement of Creative's '433 Patent by HTC's customers, constituting active inducement to infringe under 35 U.S.C. § 271(b).

102. HTC induces infringement of the method claims of the '433 Patent by actively inducing its customers in the United States to operate the HTC accused devices in a manner that directly infringes the asserted claims at least by selling the devices with a user interface that is designed to encourage users to operate the devices in an infringing manner, and by providing instructions, manuals, and technical support. HTC has engaged in these actions with either the specific intent to cause infringement or with willful blindness to the infringement that it is

causing. On information and belief, at least one customer and/or end user of the HTC accused devices has directly infringed one or more of the asserted claims of the '433 Patent.

103. Creative provided actual notice of the '433 patent to HTC in a letter sent on or about October 28, 2009. Creative also provided actual notice to HTC of the issuance of the Reexamination Certificate for the '433 Patent in a letter sent on or about November 11, 2013.

104. HTC has had actual knowledge of the '433 Patent and its infringement thereof through actual notice provided by Creative before the filing of this Complaint, at least as of the date of receipt of the October 28, 2009 and/or November 11, 2013 letters.

105. HTC engages in these unlawful acts despite its actual knowledge of the '433 Patent.

#### **G. Blackberry**

106. On information and belief, infringing portable electronic devices and components thereof, including mobile phones, are sold for importation, imported, and sold after importation in the United States by or on behalf of Blackberry .

107. Examples of Blackberry accused devices are the Priv mobile phone and other Blackberry mobile phones containing the Google "Play Music" app (version 6.0.1945S.2039625), which has been installed on the phone prior to importation. This identification of specific products, models, apps, and versions is not intended to limit the scope of the investigation, and any remedy should extend to all infringing products. On information and belief, these products infringe at least claims 2, 3, 5, 7, and 17-28 of the '433 Patent.

108. A chart comparing claims 2, 3, 5, 7, and 17-28 of the '433 Patent to Blackberry's Priv is attached as **Exhibit 10**.

## **1. Direct Infringement**

109. Blackberry has directly infringed and continues to directly infringe, both literally and under the doctrine of equivalents, Creative's '433 Patent by practicing the claimed methods of the '433 Patent through activities such as use, testing, and product support of the Blackberry accused devices.

## **2. Inducement of Infringement**

110. Blackberry also actively and knowingly aids and abets the direct infringement of Creative's '433 Patent by Blackberry's customers, constituting active inducement to infringe under 35 U.S.C. § 271(b).

111. Blackberry induces infringement of the method claims of the '433 Patent by actively inducing its customers in the United States to operate the Blackberry accused devices in a manner that directly infringes the asserted claims at least by selling the devices with a user interface that is designed to encourage users to operate the devices in an infringing manner, and by providing instructions, manuals, and technical support. Blackberry has engaged in these actions with either the specific intent to cause infringement or with willful blindness to the infringement that it is causing. On information and belief, at least one customer and/or end user of the Blackberry accused devices has directly infringed one or more of the asserted claims of the '433 Patent.

112. Creative provided actual notice of the '433 patent to Blackberry in a letter sent on or about October 9, 2009. Creative also provided actual notice to Blackberry of the issuance of the Reexamination Certificate for the '433 Patent in a letter sent on or about November 11, 2013.

113. Blackberry has had actual knowledge of the '433 Patent and its infringement thereof through actual notice provided by Creative before the filing of this Complaint at least as of the date of receipt of the October 9, 2009 and/or November 11, 2013 letters.

114. Blackberry engages in these unlawful acts despite its actual knowledge of the '433 Patent.

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

### **A. ZTE**

115. On information and belief, ZTE imports, sells for importation into the United States and/or sells within the United States after importation, portable electronic devices and components thereof, including mobile phones, that infringe the asserted claims of the '433 Patent. An exemplary product is the Axon Pro mobile phone.

116. Prior to filing the Complaint, representatives for Creative purchased a representative imported ZTE portable electronic device in the United States. **Exhibit 11**, Singh Declaration at Attachments A and B, includes a receipt for the purchase of a representative ZTE Axon Pro, and a series of photographs of the device and of the box in which the device was delivered. The label on the box discloses a ZTE logo, as does a label on the device itself. *See id.* A label on the box states that the device was made in China. *See id.* The Google Play Music app was already on the device at the time the device was first powered on. *See Exhibit 11.*

### **B. Sony**

117. On information and belief, Sony imports, sells for importation into the United States and/or sells within the United States after importation, portable electronic devices and components thereof, including mobile phones, that infringe the asserted claims of the '433 Patent. An exemplary product is the Xperia Z3+ mobile phone.

118. Prior to filing the Complaint, representatives for Creative purchased a representative imported Sony portable electronic device in the United States. **Exhibit 11**, Singh Declaration at Attachments C and D, includes a receipt for the purchase of a representative Sony Xperia Z3+, and a series of photographs of the device and of the box in which the device was

delivered. The label on the box discloses a Sony logo, as does a label on the device itself. *See id.* A label on the box states that the device was made in China. *See id.* The Google Play Music app was already on the device at the time the device was first powered on. *See Exhibit 11.*

**C. Samsung**

119. On information and belief, Samsung imports, sells for importation into the United States and/or sells within the United States after importation, portable electronic devices and components thereof, including mobile phones, that infringe the asserted claims of the '433 Patent. An exemplary product is the Galaxy S6 mobile phone.

120. Prior to filing the Complaint, representatives for Creative purchased a representative imported Samsung portable electronic device in the United States. **Exhibit 11**, Singh Declaration at Attachments E and F, includes a receipt for the purchase of a representative Samsung Galaxy S6, and a series of photographs of the device and of the box in which the device was delivered. The label on the box discloses a Samsung logo, as does a label on the device itself. *See id.* A label on the backside of the phone states that the device was made in Vietnam. *See id.* The Google Play Music app and the Music app were already on the device at the time the device was first powered on. *See Exhibit 11.*

**D. LG**

121. On information and belief, LG imports, sells for importation into the United States and/or sells within the United States after importation, portable electronic devices and components thereof, including mobile phones, that infringe the asserted claims of the '433 Patent. An exemplary product is the G4 mobile phone.

122. Prior to filing the Complaint, representatives for Creative purchased a representative imported LG portable electronic device in the United States. **Exhibit 11**, Singh Declaration at Attachments G and H, includes a receipt for the purchase of a representative LG

G4, and a series of photographs of the device and of the box in which the device was delivered. The label on the box discloses a LG logo, as does a label on the device itself. *See id.* A label on the box states that the device was made in Korea. *See id.* The Google Play Music app was already on the device at the time the device was first powered on. *See Exhibit 11.*

**E. Lenovo**

123. On information and belief, Lenovo imports, sells for importation into the United States and/or sells within the United States after importation, portable electronic devices and components thereof, including mobile phones, that infringe the asserted claims of the '433 Patent. An exemplary product is the Moto X Pure Edition mobile phone.

124. Prior to filing the Complaint, representatives for Creative purchased a representative imported Lenovo portable electronic device in the United States. **Exhibit 11**, Singh Declaration at Attachments I and J, includes a receipt for the purchase of a representative Lenovo Moto X Pure Edition, and a series of photographs of the device and of the box in which the device was delivered. The label on the box discloses a Motorola logo, as does a label on the device itself. *See id.* A label on the box states that the device was made in China. *See id.* The Google Play Music app was already on the device at the time the device was first powered on. *See Exhibit 11.*

**F. HTC**

125. On information and belief, HTC imports, sells for importation into the United States and/or sells within the United States after importation, portable electronic devices and components thereof, including mobile phones, that infringe the asserted claims of the '433 Patent. An exemplary product is the One M9 mobile phone.

126. Prior to filing the Complaint, representatives for Creative purchased a representative imported HTC portable electronic device in the United States. **Exhibit 11**, Singh

Declaration at Attachments K and L, includes a receipt for the purchase of a representative HTC One M9, and a series of photographs of the device and of the box in which the device was delivered. The label on the box discloses a HTC logo, as does a label on the device itself. *See id.* A label on the box states that the device was made in Taiwan. *See id.* The Google Play Music app and the Music app were already on the device at the time the device was first powered on. *See Exhibit 11.*

**G. Blackberry**

127. On information and belief, Blackberry imports, sells for importation into the United States and/or sells within the United States after importation, portable electronic devices and components thereof, including mobile phones, that infringe the asserted claims of the '433 Patent. An exemplary product is the Priv mobile phone.

128. Prior to filing the Complaint, representatives for Creative purchased a representative imported Blackberry portable electronic device in the United States. **Exhibit 11**, Singh Declaration at Attachments M and N, includes a receipt for the purchase of a representative Blackberry Priv, and a series of photographs of the device and of the box in which the device was delivered. The label on the box discloses a Blackberry logo, as does a label on the device itself. *See id.* A label on the box states that the device was made in Mexico. *See id.* The Google Play Music app was already on the device at the time the device was first powered on. *See Exhibit 11.*

**VIII. HARMONIZED TARIFF SCHEDULE ITEM NUMBERS**

129. On information and belief, the infringing products have been imported into the United States under, at a minimum, sections 8517.11.00 and 8517.12.00 and their subsections of the United States Harmonized Tariff Schedule. These Harmonized Tariff Schedule numbers are

illustrative only and are not intended to restrict the accused products and/or the scope of this investigation.

## **IX. DOMESTIC INDUSTRY**

130. In accordance with Section 337(a)(2) and (a)(3), a domestic industry exists or is in the process of being established in the United States in connection with the Asserted Patent. Specifically, the domestic industry in the United States for products covered by the Asserted Patent has been developed by Creative's licensee under the Asserted Patent.

### **A. Licensee Activities in the United States**

131. Creative has granted a license to practice the Asserted Patent to Apple, Inc., a California company, which has established a domestic industry in the United States relating to the Asserted Patent.

132. Apple—a market leader of portable electronic devices—has made extensive use of the inventions claimed in the Asserted Patent. Apple has sold and continues to sell iPod and iPhone products in the United States that practice the inventions of the Asserted Patent (the “Apple Licensed Products”).

133. Images of examples of the Apple Licensed Products are attached hereto as **Exhibit 13**. Claim charts showing that the Apple Licensed Products practice at least claim 5 of the Asserted Patent are attached hereto as **Exhibit 14**.

134. Creative is informed and believes, and thereon alleges, that Apple has made and continues to make significant investments in plant and equipment and to employ significant labor and capital in the United States with respect to the Apple Licensed Products. Additionally, Creative is informed and believes, and thereon alleges, that Apple has made and continues to make substantial investments in exploitation of the Asserted Patent in the United States including research, development, and engineering of the Apple Licensed Products. For example, Apple is

headquartered in Cupertino, California and each iPod and iPhone product prominently states on the back of the device that it was “Designed by Apple in California.” See **Exhibit 15** (Photos of Apple iPhone 6S).

135. Apple also reports employing more than 76,000 people in the United States and owning or leasing 25.6 millions square feet of building space, primarily in the United States in 2015. See **Exhibits 12 and 15** (Apple’s 2015 Form 10-K; and 2016-01-27 About – Job Creation – Apple). Apple’s U.S. plants include “facilities and land for R&D and corporate functions in San Jose, California and Cupertino, California.” See **Exhibit 12** (Apple’s 2015 Form 10-K). Among these facilities is Apple’s current headquarters at 1 Infinite Loop, Cupertino, California, which hosts 3,000 employees on an 865,000 square foot campus. See **Exhibit 16** (Economic and Fiscal Impacts Report). Additionally, Apple has “facilities in Elk Grove, California that included warehousing and distribution operations.” See **Exhibit 12** (Apple’s 2015 Form 10-K).

136. Additionally, as of the filing date of this Complaint, Apple is continuing to expand its facilities in Cupertino and Elk Grove. For example, Apple is in the process of building its “second corporate campus” in Cupertino, CA. See **Exhibit 12** (Apple’s 2015 Form 10-K). This new facility, which is currently under construction, is estimated to cost between \$3 and \$5 billion U.S. Dollars, and is expected to be completed by the end of 2016. See **Exhibits 17 & 18** (Inside Apple’s Plans for Its Futuristic, \$5 Billion Headquarters; and Apple Campus 2 Construction Update ). This new facility is expected to accommodate approximately 12,000 Apple employees in its 2.8 million square feet main building. See **Exhibit 19** (Apple Campus 2 Project Description). Apple’s current Cupertino-based employees are estimated to earn approximately \$2 billion U.S. Dollars in annual salary, and with completion of Apple’s second campus, that salary is expected to rise to \$2.9 billion U.S. Dollars. See **Exhibit 16** (Economic

and Fiscal Impacts Report). At Apple's facility in Elk Grove, in September of 2015, Apple sought approval to add 1,400 parking spaces to the facility, where in addition to "warehousing and distribution operations," it is also believed that in excess of 750 employees perform repairs on at least Apple's iPhone products. *See Exhibits 12 & 20* (Apple's 2015 Form 10-K; and Apple Seems Keen on Elk Grove Expansion). Additionally, in December of 2015, it was reported that Apple was performing substantial improvements to its facilities in Elk Grove, California, "converting a 134,000-square-foot warehouse into a logistics operation." *See Exhibit 21* (Something Big is Brewing at Apple's Elk Grove Campus).

137. Apple also reports its iPhone products, which includes the Apple Licensed Products, as its foremost product category. *See Exhibit 12* (Apple's 2015 Form 10-K). In particular, Apple's iPhone products account for approximately 66.3% of Apple's worldwide sales. *See Exhibit 12* (Apple's 2015 Form 10-K). Accordingly, on information and belief, a substantial portion of the Apple total investments in plant and equipment, employment of labor and capital, and investments in engineering and research and development has been related to the Apple Licensed Products in an amount that will be determined in discovery. Apple reports spending \$8.0 billion U.S. Dollars on research and development in 2015. *See Exhibit 12* (Apple's 2015 Form 10-K). On information and belief, all or substantially all of Apple's research and development for the Apple Licensed Products is conducted in the United States. Conservatively assuming that Apple's research and development budget is allocated to product categories in proportion to the relative sales revenue generated by those product categories, it is estimated from the foregoing figures that Apple's annual expenditure for research and development in the United States related to the Apple Licensed Products is at least \$5.3 billion U.S. Dollars.

138. Further, Creative is informed and believes, and thereon alleges, that Apple provides customer support, technical service, and repair and replacement of parts for the Apple Licensed Products in the United States. For example, as stated above, Apple's Elk Grove, California facility is reported to employ in excess of 750 employees for repair of iPhone products. Additionally, Apple reports that it has customer support call centers in Elk Grove, California, and Austin, Texas. See **Exhibit 12** (Apple's 2015 Form 10-K).

139. Apple's investment in plant, equipment, labor, capital, engineering, and research and development in the United States is also specifically related to those portions of the Apple Licensed Products primarily responsible for practicing the Asserted Patent. As further demonstrated in **Exhibit 14**, the Apple Licensed Products have pre-installed software called "iOS," which is a combination of operating system software and other Apple applications which come pre-installed on each Apple Licensed Product. Apple continually releases new versions of the iOS software, and the Apple Licensed Products generally come with a recent version of the iOS software pre-installed. Additionally, users of Apple Licensed Products can also upgrade to more recent versions of Apple's iOS software when such versions are released. Also as identified in **Exhibit 14**, among the applications included in iOS on the Apple Licensed Products is the "Music" or "Apple Music" application which is largely responsible for performing the functionality of the Asserted Patent in the Apple Licensed Products. Apple explains that its "financial condition and operating results depend substantially on the Company's ability to continually improve iOS and iOS devices in order to maintain their functional and design advantages." See **Exhibit 12** (Apple's 2015 Form 10-K). Thus, Apple continually develops and improves the iOS software, including the Apple Music application. For example, in "iOS 9.2," released by Apple on December 8, 2015, Apple implemented a new version of the Apple Music

application, including new “improvements,” such as “create a new playlist when adding a song to a playlist,” “recently changed playlist is now listed at the top when adding songs to playlists,” and “[s]ee which songs have been downloaded with the new download indicator next to each song in My Music and Playlists.” See **Exhibits 22 & 23** (Download iOS 9.0 - 9.2.1 Information; and Apple Security Updates).

140. Apple’s iOS and Apple Music software are developed by Apple’s employees performing engineering and research and development in the United States. For example, Apple presently lists numerous vacant positions available for employees to work on iOS and Apple Music in California. See **Exhibits 24-26** (Apple Job Listings). Additionally, numerous Apple employees have posted resumes identifying that they have worked on Apple’s iOS and/or Apple Music products while employed by Apple in California. See **Exhibits 27-29** (Apple Employee Resumes). Upon information and belief, Apple’s employees in the United States are presently developing new versions of, and new functionality for, Apple’s iOS and Apple Music software.

## **X. RELATED LITIGATION**

### **A. Prior Litigation**

141. The Asserted Patent was previously asserted in 2006 in Investigation No. 337-TA-573, entitled *Certain Portable Digital Media Players, Components Thereof, and Products Containing Same*. The investigation involved Apple’s iPod products. The parties settled and the investigation was terminated on October 25, 2006 pursuant to a joint motion to terminate.

142. The Asserted Patent was also previously asserted in a district court action, *Creative Technology Ltd. v. Apple Computer, Inc.*, No. 4-06-cv-03218 (N.D. Cal.), concurrent to Investigation No. 337-TA-573. After the parties settled, the case was dismissed by a stipulation of dismissal filed by Creative Technology Ltd. on August 29, 2006.

**B. Current Litigation**

143. There is no related litigation involving the Asserted Patent at this time. However, Creative will be filing concurrent district court actions involving the Proposed Respondents.

**XI. RELIEF REQUESTED**

144. WHEREFORE, by reason of the foregoing, Complainants Creative Technology Ltd. and Creative Labs, Inc. respectfully request 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 based on the importation, sale for importation, and sale after importation, into the United States of all Proposed Respondents' portable electronic devices and components thereof manufactured by or on behalf of, or imported by or on behalf of, each of the Proposed Respondents or their affiliates, that infringe one or more of the asserted claims of Creative's United States Patent No. 6,928,433;

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

(c) Issue a permanent limited exclusion order pursuant to 19 U.S.C. § 1337(d)(1) barring from entry into the United States all products made by or on behalf of any of the Proposed Respondents, that infringe one or more asserted claims of Creative's United States Patent No. 6,928,433;

(d) Issue permanent cease and desist orders, under 19 U.S.C. § 1337(f), directing each Proposed Respondent and others acting on their behalf, to cease and desist from importing, marketing, advertising, demonstrating, warehousing inventory for distribution, offering for sale, selling, distributing, licensing, or using portable electronic

devices and components thereof that infringe one or more asserted claims of Creative's United States Patent No. 6,928,433;

(e) Impose a bond upon Proposed Respondents who continue to import infringing articles during the 60-day Presidential review period per 19 U.S.C. § 1337(j); and

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

Dated: March 24, 2016

Respectfully submitted,

By:



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Michael D. Saunders  
Gurtej Singh  
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*Counsel for Complainants  
Creative Technology Ltd. and Creative  
Labs, Inc.*

## VERIFICATION OF COMPLAINT

I, S. Sivananthan, am Vice President of Legal Services of Creative Technology Ltd.

I submit this verification on behalf of Creative Technology Ltd. in accordance with 19 C.F.R.

§§ 210.4 and 210.12(a), and declare as follows:

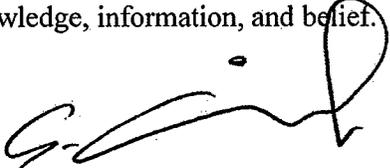
1. I am duly authorized to execute this verification.
2. I have read the foregoing Complaint and am familiar with its contents.
3. To the best of my knowledge, information, and belief formed after reasonable

inquiry:

- a. The Complaint and statements made therein are not being presented for any improper purpose;
- b. The claims and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; and
- c. The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: March 24, 2016

By: 

S. Sivananthan  
Vice President of Legal Services  
Creative Technology Ltd.

ORIGINAL

## VERIFICATION OF COMPLAINT

I, Russell N. Swerdon, am Director of Intellectual Property of Creative Labs, Inc.

I submit this verification on behalf of Creative Labs, Inc. in accordance with 19 C.F.R. §§ 210.4 and 210.12(a), and declare as follows:

1. I am duly authorized to execute this verification.
2. I have read the foregoing Complaint and am familiar with its contents.
3. To the best of my knowledge, information, and belief formed after reasonable

inquiry:

- a. The Complaint and statements made therein are not being presented for any improper purpose;
- b. The claims and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; and
- c. The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: March 24, 2016

By:

  
\_\_\_\_\_  
Russell N. Swerdon  
Director of Intellectual Property  
Creative Labs, Inc.

ORIGINAL