

## JONES DAY

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JP005576

October 6, 2009

Honorable James Ware  
United States District Court,  
Northern District of California  
280 S. 1st Street  
San Jose, CA 95113

Re: *The Apple iPod iTunes Antitrust Litigation*,  
Case Nos. C 05-00037 JW, C 06-04457 JW

Dear Judge Ware:

At the hearing yesterday, the Court asked about the existence of cases dismissing tying claims for lack of coercion under both the *per se* and rule of reason tests. In addition to the cases cited at the hearing, a subsequent decision in a case cited in the Court's May 15 *per se* decision (Doc. 213, p. 6) is also responsive: *See Innovation Data Processing, Inc. v. Int'l Bus. Machs. Corp.*, 603 F. Supp. 646 (D.N.J. 1984) (and case cited therein).

Respectfully submitted,

/s/ Robert A. Mittelstaedt  
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