

Exhibit 40

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NOKIA CORPORATION,)
)
Plaintiff,)
)
v.)
)
APPLE INC.,)
)
Defendant.)

C.A. No. 09-791 (GMS)

APPLE INC.,)
)
Counterclaim Plaintiff,)
)
v.)
)
NOKIA CORPORATION and NOKIA INC.,)
)
Counterclaim Defendants.)

**NOKIA CORPORATION'S AND NOKIA INC.'S OPENING BRIEF
IN SUPPORT OF THEIR MOTION TO STAY
APPLE INC.'S PATENT CLAIMS PENDING REEXAMINATION**

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August 3, 2010

The PTO agreed that the newly cited references create a substantial new question of patentability, and on July 14, 2010, granted Nokia's request for reexamination (Koppelman Dec., Ex. 7).

U.S. Patent No. 7,469,381 ("the 381 patent") generally relates to scrolling documents on a touch screen device beyond the edge of the document then snapping the document back to the edge of the screen. Apple accuses Nokia's N900 handset of infringing this patent. Nokia's reexamination request explains how the 381 patent would have been obvious in view of an article describing the Glimpse system in combination with the other newly cited references (Koppelman Dec., Ex. 8). The PTO agreed that the newly cited references create a substantial new question of patentability, and on July 14, 2010, granted Nokia's request for reexamination (Koppelman Dec., Ex. 9).

U.S. Patent No. 5,555,369 ("the 369 patent") is directed to a graphically-based software development tool for developing applications on one computer for use on another computer that has a pen or pointer-based touch screen. Apple accuses the Carbide.c++ software development tool of infringing this patent. Nokia's reexamination request explains how the 369 patent is anticipated by Visual Basic 2.0 (Koppelman Dec., Ex. 10). The PTO initially denied the request on July 14, 2010 (Koppelman Dec., Ex. 11). Nokia filed a petition for review of this denial on July 23, 2010 based on clear errors by the examiner in denying the request (Koppelman Dec., Ex. 12).

U.S. Patent No. 5,634,074 ("the 074 patent") generally relates to a method of identifying an input/output device connected to a computer through a serial cable. Apple accuses Nokia products having USB functionality, including the E71 handset, of infringing this patent. Nokia's reexamination request explains how the 074 patent would have been obvious in view of

In *Magna Donnelly*, the court was faced with a very similar case where the accused infringer filed requests for reexamination for all nine of the asserted patents. *Magna Donnelly*, 2007 WL 772891, at *1. Before the PTO had ruled on the requests, the accused infringer filed a motion to stay. *Id.* at *1. The court granted the motion to stay pending reexamination because the patents were extremely technical and it was “statistically likely that reexamination will result in at least some modification of the claims, even if no patents are canceled.” *Id.* at *4. The court noted that “both discovery and trial on the matter will be greatly simplified by having the opinion and expertise of the PTO before the Court.” *Id.* at *4. Nokia’s motion to stay all nine Apple patents should be granted for these and the additional reasons set out in this brief.

CONCLUSION

For the foregoing reasons, Nokia respectfully requests that the Court grant its motion to stay proceedings on Apple’s patent infringement counterclaims pending reexamination of those patents.

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August 3, 2010
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CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2010, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to:

Richard L. Horwitz, Esquire
David E. Moore, Esquire
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I further certify that I caused to be served copies of the foregoing document on August 3, 2010, upon the following in the manner indicated:

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EXHIBIT 8

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Ording
U.S. Patent No.: 7,469,381
Issued: December 23, 2008
Group Art Unit: 2174
Serial No: 11/956,969
Examiner: B. Pesin
Filed: December 14, 2007
For: LIST SCROLLING AND DOCUMENT TRANSLATION,
 SCALING, AND ROTATION ON A TOUCH-SCREEN
 DISPLAY
Attorney Docket No. 0919/01028

April 28, 2010

Mail Stop *Ex Parte* Reexam
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

REQUEST FOR REEXAMINATION

Reexamination of United States Patent 7,469,381 (hereinafter, "the '381 patent"), which issued December 23, 2008 to Ording is requested under 35 U.S.C. §§ 302-307, and under 37 C.F.R. § 1.510. This patent is still in force.¹ A copy of the patent in accordance with 37 C.F.R. § 1.510(b)(4) is submitted herewith as Exhibit A. Related continuation applications are pending².

I. Claims for which Reexamination is Requested

The '381 patent describes a computer-implemented method according to which an electronic document displayed on a touch screen may be translated to display different portions of the document, and if an edge of the document is reached while translating, an area beyond the edge of

¹ Indeed, a counterclaim for alleged infringement of the '381 patent has been filed in the U.S. District Court for the District of Delaware, *Nokia Corp. v. Apple Inc.*, Case No. 1:09-cv-00791-GMS. That litigation is in its early stages and no discovery regarding the '381 patent has taken place. If the litigation proceeds, third party requester expects there will be a challenge to the validity of the '381 patent therein.

² Application Serial Nos. 12/270,810 filed on 11-13-2008, 12/270,812 filed on 11-13-2008, 12/270,815 filed on 11-13-2008, 12/270,805 filed on 11-13-2008, and 12/270,807 filed on 11-13-2008.

III. Conclusion

The Glimpse article, Inside Out, and the Robbins application, were not previously considered, and they are not cumulative with the references previously considered. Consideration of obvious combinations of these references in accordance with the proposed Grounds for Rejection, and, for some dependent claims, in view of the Zimmerman patent, leads to the conclusion that these references create substantial new questions of patentability for claims 1-20 of the '381 patent. Third party requester further submits that claims 1-20 must be rejected as unpatentable.

Respectfully submitted,

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PATENT & TRADEMARK OFFICE ON April 28, 2010.**