

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

APPLE INC., and NeXT SOFTWARE, INC., f/k/a
NeXT COMPUTER, INC.

Plaintiffs,

v.

HIGH TECH COMPUTER CORP., a/k/a HTC
CORP., HTC (B.V.I.) CORP., HTC AMERICA,
INC., and EXEDEA, INC.,

Defendants.

C. A. No. 10-166-RK

FILED UNDER SEAL

APPLE INC.,

Plaintiff,

v.

HIGH TECH COMPUTER CORP., a/k/a HTC
CORP., HTC (B.V.I.) CORP., HTC AMERICA,
INC., and EXEDEA, INC.,

Defendants.

C.A. No. 10-167-RK

FILED UNDER SEAL

**DECLARATION OF RICHARD K. HERRMANN IN SUPPORT OF APPLE INC.’S
OPPOSITION TO DEFENDANTS HIGH TECH COMPUTER CORP., A/K/A HTC
CORP., HTC AMERICA, INC. AND EXEDEA, INC.’S
MOTION PURSUANT TO 28 U.S.C. § 1404
TO TRANSFER VENUE TO THE NORTHERN DISTRICT OF CALIFORNIA**

Dated: May 24, 2010

Public Version: June 7, 2010

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Mary B. Matterer (I.D. #2696)
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*Attorneys for Apple Inc. and
NeXT Software, Inc. f/k/a NeXT Computer, Inc.*

I, Richard K. Herrmann, hereby declare that I am an attorney at Morris James LLP, counsel for Apple Inc. in this action, and I am admitted to the United States District Court for the District of Delaware. With sound mind and competence to make this declaration, I have personal knowledge of the facts stated herein. If called as a witness, I could and would testify competently to the following:

1. Attached hereto as Exhibit 1 is a true and correct copy of Apple Inc. and NeXT Software, Inc.'s Motion for Consolidation of the Captioned Cases for the Purpose of Coordinating Pretrial Proceedings, filed on May 24, 2010 before Chief Judge Gregory Sleet.
2. Attached hereto as Exhibit 2 is a complete list of the Apple patents asserted in the four related Apple litigations pending in this District, C.A. Nos. 09-791 GMS, 09-1002 GMS, 10-166 RK, and 10-167 RK.
3. Attached hereto as Exhibit 3 is a true and correct copy of HTC Respondents' Motion for Full Consolidation of Investigation Nos. 337-TA-704 and 337-TA-710, filed with the International Trade Commission ("ITC") on April 15, 2010.
4. Attached hereto as Exhibit 4 is a true and correct copy of HTC's Reply to Apple's Opposition to the Staff's Motion for Partial Consolidation of Investigation Nos. 337-TA-704 and 337-TA-710, filed with the ITC on April 23, 2010.
5. Attached hereto as Exhibit 5 is a true and correct copy of a list of pending district court actions in the United States to which High Tech Computer Corp./HTC Corp. and/or HTC America, Inc. is a party.
6. Attached hereto as Exhibit 6 is a true and correct copy of a list of pending district court patent actions in the United States to which Exedea, Inc. is a party.

7. Attached hereto as Exhibit 7 is a true and correct copy of a list of pending district court actions in the United States to which Google Inc. is a party.
8. Attached hereto as Exhibit 8 is a true and correct copy of excerpts of the May 11, 2010 deposition testimony of Andrew Rubin.

Dated: May 24, 2010

/s/ Richard K. Herrmann

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EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

NOKIA CORPORATION,)	
)	
Plaintiffs,)	
v.)	C.A. No. 09-791 GMS
)	
APPLE INC.,)	
)	
Defendants.)	

NOKIA CORPORATION,)	
)	
Plaintiff,)	
v.)	C.A. No. 09-1002 GMS
)	
APPLE INC.,)	
)	
Defendants.)	

Caption continued on next page

**APPLE INC. AND NEXT SOFTWARE, INC.’S MOTION FOR CONSOLIDATION OF
THE CAPTIONED CASES FOR THE PURPOSE OF
COORDINATING PRETRIAL PROCEEDINGS**

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May 24, 2010

APPLE INC., and NeXT SOFTWARE, INC.,)
f/k/a NeXT COMPUTER, INC.,)

Plaintiffs,)

v.)

C.A. No. 10-166-RK

HIGH TECH COMPUTER CORP., a/k/a)
HTC CORP., HTC (B.V.I.) CORP., HTC)
AMERICA, INC., and EXEDEA, INC.,)

Defendants.)

APPLE INC.,)

Plaintiff,)

v.)

C.A. No. 10-167-RK

HIGH TECH COMPUTER CORP., a/k/a)
HTC CORP., HTC (B.V.I.) CORP., HTC)
AMERICA, INC., and EXEDEA, INC.,)

Defendants.)

Apple Inc. and NeXT Software, Inc. (collectively, “Apple”) hereby move this Court for an order, pursuant to Federal Rule of Civil Procedure 42(a), consolidating the captioned cases before Chief Judge Sleet for all pretrial proceedings and common issues of law and fact relating to fact discovery for the captioned cases. The grounds for this motion are set forth in Apple Inc. and NeXT Software, Inc.’s Brief in Support of Their Motion for Consolidation of the Captioned Cases for the Purpose of Coordinating Pretrial Proceedings and in the Declaration of Richard K. Herrmann filed contemporaneously herewith.

Dated: May 24, 2010

/s/ Richard K. Herrmann

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*Attorneys for Apple Inc. and
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RULE 7.1.1 STATEMENT

Counsel for Apple Inc. and NeXT Software, Inc. hereby states that it contacted opposing counsel in an effort to resolve the issues raised in its Motion to Consolidate, but to no avail. Nokia has not responded to Apple's inquiry and HTC confirmed that it will oppose consolidating the present cases.

Dated: May 24, 2010

/s/ Richard K. Herrmann
Richard K. Herrmann

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

NOKIA CORPORATION,)	
Plaintiff,)	
v.)	C.A. No. 09-791 GMS
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APPLE INC.,)	
Defendant.)	

NOKIA CORPORATION,)	
Plaintiff,)	
v.)	C.A. No. 09-1002 GMS
)	
APPLE INC.,)	
Defendant.)	

APPLE INC., and NeXT SOFTWARE, INC.,)	
f/k/a NeXT COMPUTER, INC.,)	
Plaintiffs,)	
v.)	C.A. No. 10-166-RK
)	

HIGH TECH COMPUTER CORP., a/k/a)	
HTC CORP., HTC (B.V.I.) CORP., HTC)	
AMERICA, INC., and EXEDEA, INC.,)	
Defendants.)	

APPLE INC.,)	
Plaintiff,)	
v.)	C.A. No. 10-167-RK
)	

HIGH TECH COMPUTER CORP., a/k/a)	
HTC CORP., HTC (B.V.I.) CORP., HTC)	
AMERICA, INC., and EXEDEA, INC.,)	
Defendants.)	

[PROPOSED] ORDER

Having considered Apple Inc. and NeXT Software, Inc.'s Motion for Consolidation and the related briefing,

IT IS HEREBY ORDERED this _____ day of _____, 2010 that the Motion is GRANTED. The cases captioned as Nokia Corporation v. Apple Inc. (C.A. Nos. 09-791-GMS and 09-1002-GMS), Apple Inc. and NeXT Software, Inc. v. High Tech Computer Corp., et al., (C.A. No. 10-166-RK) and Apple Inc. v. High Tech Computer Corp., et al. (C.A. No. 10-167-RK) are hereby consolidated for all pretrial proceedings and common issues of law and fact relating to fact discovery.

Gregory M. Sleet, Chief Judge

Motions

[1:09-cv-00791-GMS Nokia Corporation v. Apple Inc.](#)

PATENT

U.S. District Court

District of Delaware

Notice of Electronic Filing

The following transaction was entered by Herrmann, Richard on 5/24/2010 at 8:34 PM EDT and filed on 5/24/2010

Case Name: Nokia Corporation v. Apple Inc.

Case Number: [1:09-cv-00791-GMS](#)

Filer: Apple Inc.

Document Number: [47](#)

Docket Text:

MOTION to Consolidate Cases 09-791; 09-1002; 10-166; and 10-167 - filed by Apple Inc.. (Herrmann, Richard)

1:09-cv-00791-GMS Notice has been electronically mailed to:

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Motions

[1:09-cv-01002-GMS Nokia Corporation v. Apple Inc.](#)

STAYED, PATENT

U.S. District Court

District of Delaware

Notice of Electronic Filing

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Case Number: [1:09-cv-01002-GMS](#)

Filer: Apple Inc.

Document Number: [17](#)

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Motions[1:10-cv-00166-RK Apple Inc. et al v. High Tech Computer Corp. et al](#)**STAYED**, **INTRACIRCUIT**, **PATENT**, **VACANTJUDGESHIP****U.S. District Court****District of Delaware****Notice of Electronic Filing**

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Case Name: Apple Inc. et al v. High Tech Computer Corp. et al**Case Number:** [1:10-cv-00166-RK](#)**Filed:** Apple Inc.**Document Number:** [21](#)**Docket Text:****MOTION to Consolidate Cases 09-791; 09-1002; 10-166; and 10-167 - filed by Apple Inc.. (Herrmann, Richard)****1:10-cv-00166-RK Notice has been electronically mailed to:**

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Motions

[1:10-cv-00167-RK Apple Inc. v. High Tech Computer Corp. et al](#)
[INTRACIRCUIT, PATENT, VACANTJUDGESHIP](#)

U.S. District Court

District of Delaware

Notice of Electronic Filing

The following transaction was entered by Herrmann, Richard on 5/24/2010 at 8:38 PM EDT and filed on 5/24/2010

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Case Number: [1:10-cv-00167-RK](#)
Filer: Apple Inc.
Document Number: [19](#)

Docket Text:

MOTION to Consolidate Cases 09-791; 09-1002; 10-166; and 10-167 - filed by Apple Inc.. (Herrmann, Richard)

1:10-cv-00167-RK Notice has been electronically mailed to:

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1:10-cv-00167-RK Notice has been delivered by other means to:

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d43e77ab240dfa38b3fb34a4afab61b118c5c801c9b9dcff6367d45356ba]]

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

NOKIA CORPORATION,)	
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Plaintiffs,)	
v.)	C.A. No. 09-791 GMS
)	
APPLE INC.,)	
)	
Defendants.)	

NOKIA CORPORATION,)	
)	
Plaintiff,)	
v.)	C.A. No. 09-1002 GMS
)	
APPLE INC.,)	
)	
Defendants.)	

Caption continued on next page

**APPLE INC. AND NEXT SOFTWARE, INC.’S BRIEF IN SUPPORT OF THEIR
MOTION FOR CONSOLIDATION OF THE CAPTIONED CASES FOR
THE PURPOSE OF COORDINATING PRETRIAL PROCEEDINGS**

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May 24, 2010

APPLE INC., and NeXT SOFTWARE, INC.,)
f/k/a NeXT COMPUTER, INC.,)

Plaintiffs,)

v.)

C.A. No. 10-166-RK

HIGH TECH COMPUTER CORP., a/k/a)
HTC CORP., HTC (B.V.I.) CORP., HTC)
AMERICA, INC., and EXEDEA, INC.,)

Defendants.)

APPLE INC.,)

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C.A. No. 10-167-RK

HIGH TECH COMPUTER CORP., a/k/a)
HTC CORP., HTC (B.V.I.) CORP., HTC)
AMERICA, INC., and EXEDEA, INC.,)

Defendants.)

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Rules

Federal Rule of Civil Procedure 42(a) 2, 6, 8, 9

I. THE NATURE AND STAGE OF PROCEEDINGS

There currently are four patent infringement actions pending in this District asserting that Nokia Corporation (“Nokia”) and/or High Tech Computer Corp. and its subsidiaries (collectively, “HTC”) infringe a number of Apple patents.¹ The first two cases filed were assigned to Chief Judge Sleet. The second two cases were assigned to Judge Robert Kelly, who is sitting in this District by designation. Pursuant to Federal Rule of Civil Procedure 42(a), Apple requests that the Court consolidate the second set of cases—at least for purposes of coordinating pre-trial activities—with the first two that are pending before Chief Judge Sleet.

Consolidation is appropriate in this instance because the four cases involve numerous common issues of law and fact, including eleven patents that Apple has asserted against both Nokia and HTC. Given the overlapping patents and technologies at issue in the cases, consolidation offers the benefit of conserving resources and promoting judicial economy by avoiding the need for duplicative discovery or any other redundant litigation activities, such as multiple *Markman* hearings concerning the same patents. Importantly, consolidation before a single judge will also ensure that there are no inconsistent pretrial rulings—most notably inconsistent constructions of claim terms in the eleven overlapping patents.

There is no danger of prejudice to any of the parties in these cases as a result of consolidation. All four litigations are still in the very early stages, with only one having reached discovery and two having been stayed pending the outcome of proceedings in the International Trade Commission. HTC has not yet answered, and there is no schedule in place yet in the non-stayed HTC case. Consolidating that case with the non-stayed Nokia case should present no

¹ The four cases are *Nokia Corporation v. Apple Inc.*, C.A. No. 09-791 GMS (the “791 Case”), *Nokia Corporation v. Apple Inc.*, C.A. 09-1002 GMS (the “1002 Case”), *Apple Inc. et al. v. High Tech Computer Corp. et al.*, C.A. No. 10-166 RK (the “166 Case”), and *Apple Inc. v. High Tech Computer Corp. et al.*, C.A. No. 10-167 RK (the “167 Case”).

complications, and the new case would benefit from the fact that Chief Judge Sleet has already considered relevant procedural issues and recently set a schedule in the related Nokia action. Indeed, Nokia and HTC themselves recently argued the merits of consolidation with respect to a set of parallel proceedings at the ITC involving many of the same Apple patents. Nokia and HTC successfully argued that two investigations regarding their infringement of five overlapping patents should be consolidated into a single investigation, contending that consolidation was necessary to “eliminate the waste of the parties’ and [the tribunal’s] time and [of the] expense that would otherwise result from redundant discovery, unnecessarily repetitive briefings and duplicative hearings featuring the same exhibits, witnesses, and evidence.”² These arguments apply with equal force to the present district court actions, which involve the same defendants and multiple overlapping patents—including several of the same patents at issue in the consolidated ITC cases.

The benefits of ensuring consistency and avoiding a waste of judicial resources strongly favor consolidation. Having argued for full consolidation of Apple’s cases in the ITC, HTC and Nokia cannot credibly contend that the cases pending before two judges in this District should not be consolidated for efficient case management and to eliminate duplicative activity and potential inconsistencies. Apple therefore respectfully requests that the Court consolidate the HTC case with the Nokia case.

II. SUMMARY OF ARGUMENT

1. “If actions before the court involve a common question of law or fact, the court may . . . join for hearing or trial any or all matters at issue in the actions.” FED. R. CIV. P. 42(a).

² Ex. 1, Nokia’s Mot. for Full Consolidation of Invest. Nos. 337-TA-704 and 337-TA-710 (the “Nokia ITC Br.”) at 8; Ex. 2, HTC Resp.’s Mot. for Full Consolidation of Invest. Nos. 337-TA-704 and 337-TA-710 (the “HTC ITC Br.”) at 8. Unless otherwise noted, all exhibits referred herein are attached to the Declaration of Richard K. Herrmann submitted with this motion.

This Court has broad authority to consolidate actions—or parts of actions—that involve common questions of fact or law if, in the Court’s discretion, consolidation would facilitate the administration of justice.

2. Consolidation of pretrial activities is warranted in this instance because the four pending cases include patent-infringement allegations brought by Apple against a common pair of defendants, based on an overlapping set of Apple patents and similar sets of accused products (smart phones). The requested consolidation would facilitate the administration of justice by: avoiding the need for redundant pretrial activities, thus reducing the time and resources that the Court and parties must invest in these proceedings; serving the convenience of the many witnesses who will be relevant to the related cases, including potential third parties such as inventors; and eliminating the possibility that separate judges will render inconsistent rulings based on the same issues of fact and law.

3. Given the preliminary posture of all four cases, the parties will not suffer any prejudice from consolidation. Nokia and HTC themselves recently sought and obtained a similar consolidation in a set of related ITC proceedings involving many of the same patents and claims, thus indicating that the result Apple proposes would not pose any genuine prejudice to them.

III. STATEMENT OF FACTS

Four actions are now pending in the District of Delaware in which Apple has asserted patent-infringement claims against Nokia and/or HTC. The first two cases filed are presently pending before Judge Sleet, and the second two have been assigned to Judge Kelly.

The 791 Case. On October 22, 2009, Nokia filed an infringement action in this Court against Apple (the “791 Case”). On February 19, 2010, Apple filed its amended answer to Nokia’s complaint, asserting counterclaims against Nokia for infringement of nine Apple patents. (*See* 791 Case D.I. 21.)

The 1002 Case. On December 29, 2009, Nokia filed a second infringement suit in this Court against Apple (the “1002 Case”). On January 15, 2010, Apple filed a complaint against Nokia at the ITC, asserting infringement of nine Apple patents. The ITC subsequently opened an investigation (the “704 Investigation”). On February 24, Apple filed its answer and counterclaims in the 1002 Case, and asserted the nine patents from the 704 Investigation against Nokia. (*See* 1002 Case D.I. 12.) On March 3, 2010, this Court stayed the 1002 Case pending the outcome of two ITC proceedings, including the 704 Investigation. (*See* D.I. 13.)

The 166 and 167 Cases. On March 2, 2010, Apple filed two complaints in this District for patent infringement against HTC, asserting a total of twenty Apple patents (the “166” and “167 Cases”). Apple filed a corresponding complaint at the ITC asserting infringement of the patents at issue in the 166 Case, and the ITC opened an investigation (the “710 Investigation”). On April 26, this Court stayed the 166 Case pending the outcome of the 710 Investigation. (*See* 166 Case D.I. 17.)

There are numerous commonalities of fact and law among the claims that Apple has brought against Nokia and/or HTC in the 791, 1002, 166, and 167 Cases that are now pending. Significantly, of the 27 total Apple patents being asserted, Apple has asserted *eleven* against both Nokia and HTC.³ Only seven patents are asserted solely against Nokia, and only nine are asserted solely against HTC. Even the individually-asserted patents bear numerous relations to the commonly-asserted ones, as thirteen inventors named on the individually-asserted patents are also named on one or more of their commonly-asserted counterparts. Moreover, many of the individually-asserted patents are directed to related technologies, including object-oriented programming and software architecture, user interfaces and touch screens, networking, and

³ See Ex. 3 for a list of the specific patents asserted in the 791, 1002, 166, and 167 Cases.

computer start-up procedures.

Given the overlapping parties and patents and the similar technologies at issue in these four cases, counsel for Apple sent a letter to this Court on March 24, 2010, explaining the common facts among the litigations and requesting that they be identified as related cases. (*See* Ex. 4.) Apple respectfully submits the present motion as a formal reiteration of that request.

IV. ARGUMENT

In the interest of judicial economy, Apple respectfully requests that the 791, 1002, 166, and 167 Cases be consolidated so that pre-trial matters such as discovery and claim construction can be coordinated by a single judge. Given the numerous overlapping factual and legal issues underlying Apple’s claims against Nokia and HTC—including eleven commonly-asserted patents, many substantially similar claim terms, related sets of patented and accused technologies, and consolidated ITC proceedings on overlapping patents—these matters would best be coordinated by a single chambers, at least through the pre-trial stage.⁴

A. The Legal Standard for Consolidation

Federal Rule of Civil Procedure 42(a) provides: “If actions before the court involve a common question of law or fact, the court may . . . join for hearing or trial any or all matters at issue in the actions.” FED. R. CIV. P. 42(a). “Rule 42(a) gives a district court broad powers to consolidate actions involving common questions of law or fact if, in its discretion, such consolidation would facilitate the administration of justice.” *Alexander v. Minner*, No. 07-041-JJF, 2009 WL 1176456, at *6 (D. Del. May 1, 2009) (citing *In re Lucent Techs. Inc. Securities Litig.*, 221 F. Supp. 2d 472, 480 (D.N.J. 2001)); *see also Tracinda Corp. v. DaimlerChrysler AG*,

⁴ Consistent with common practice, Apple requests that the consolidation occur before the judge assigned to the first-filed of the related cases, Judge Sleet. *See, e.g., Kohus v. Toys “R” Us, Inc.*, Nos. C-1-05-517, C-1-05-671, 2006 WL 1476209, at *2 (S.D. Ohio May 25, 2006) (noting that it is common practice to consolidate cases “into the first-filed case”).

No. CIV. A. 00-984-JJF, et al, 2001 WL 849736, at *1 (D. Del. July 26, 2001) (granting consolidation for pretrial and discovery purposes). Consolidation may be ordered on one party's motion or on the Court's own initiative. *See Ellerman Lines, Ltd. v. Atlantic & Gulf Stevedores, Inc.*, 339 F.2d 673, 675 (3d Cir. 1964). The consolidation of related patent cases to coordinate pretrial proceedings and thus avoid duplicative pretrial activities or contradictory rulings is routine. *See, e.g., Rohm & Haas Co. v. Mobil Oil Corp.*, 525 F. Supp. 1298, 1309-10 (D. Del. 1981) (consolidating actions involving six patents).⁵

B. Nokia and HTC Successfully Moved to Consolidate the Parallel 704 and 710 Investigations at the ITC.

After the ITC opened the 710 Investigation (which involves claims parallel to those in the 166 Case) on March 31, 2010, Nokia and HTC moved for consolidation of all issues relating to the overlapping Apple patents asserted against them in the 704 and 710 Investigations. Nokia and HTC argued that there was “extensive overlap of legal, factual and procedural issues among the two investigations, including substantial overlap among the parties, technology, asserted patents and claims, claim construction arguments, validity arguments, witnesses, third parties, evidence [and] defenses.” (Ex. 1, Nokia ITC Br. at 1; Ex. 2, HTC ITC Br. at 1.) They contended that consolidation “would simplify and reduce duplicative discovery and proceedings, make more efficient use of the Commission’s resources, and prevent [inconsistent rulings].” (*Id.* at 2.) Indeed, HTC and Nokia argued that consolidation of the investigations was the *only* way to avoid

⁵ *See also Kohus*, 2006 WL 1476209, at *1 (“[C]onsolidating the cases for discovery and a *Markman* hearing would prevent two trials from going forward on the basis of inconsistent adjudications of the meaning of the exact same claims.”); *SmithKline Beecham Corp. v. Geneva Pharmaceuticals, Inc.*, No. 99-CV-2926, et al, 2001 WL 1249694, at *5–6 (E.D. Pa. Sept. 26, 2001) (noting that issues of validity and the ability to “separate duplicative discovery” warranted consolidation for pretrial purposes); *Magnavox Co. v. APF Electronics, Inc.*, 496 F. Supp. 29, 32 (N.D. Ill. 1980) (noting that Rule 42(a) “contemplates consolidation for purposes of particular segments of the litigation, such as pretrial proceedings” and that issues of validity and, to some extent, infringement warranted consolidation of pretrial proceedings).

such problems. (*See id.* at 1.)

On April 26, 2010, the ITC ordered partial consolidation of the 704 and 710 Investigations, and reassigned the commonly-asserted patents and all issues relating to them to a single investigation and ALJ. However, despite Nokia and HTC's previous positions, as of the time of filing Nokia failed to respond to Apple's inquiry and HTC confirmed that it will oppose consolidating the present cases—even though many of the same patents that overlap at the ITC also overlap in these cases and many of the same issues that formed the basis for consolidation in the ITC are present here.

C. Consolidating the Four Pending Cases Will Conserve Resources, Promote Judicial Economy, and Protect Against the Possibility of Inconsistent Rulings.

As described above, the 791, 1002, 166, and 167 Cases involve numerous common issues of law and fact that militate in favor of consolidation. All four cases involve patent infringement allegations brought by Apple, and nearly half of the Apple patents asserted are directed at both defendants, Nokia and HTC. Further, as Nokia and HTC recently argued at the ITC, even those patents that are only asserted against one of them still involve the same technology.⁶ Given the overlapping patents and technologies among the four cases, issues regarding claim construction, expert and fact discovery, witnesses (including third parties, inventors, and experts), validity and enforceability, and damages will all be related. Indeed, Nokia and HTC recently argued in the parallel ITC proceedings, “*the only unique legal issue* raised in the two investigations may be

⁶ See Ex. 1, Nokia ITC Br. at 5 (“[E]ven [the] patents that do not overlap share the same technology and the same types of accused products.”); see also Ex. 2, HTC ITC Br. at 5-6 (noting that the ’867 and ’983 patents and the ’852 and ’486 patents “both derive from largely identical specifications filed on the same day,” the ’337, ’354, and ’750 patents all relate to “software event handling,” the ’721 and ’705 patents relate to “interprocess communication,” the ’599 and ’431 patents involve “object-oriented technology” and “[t]he remaining four patents also implicate the accused handsets’ operating systems and related software”).

the respondents' technical implementation of the [accused] operating software.” (Ex. 1, Nokia ITC Br. at 8 (emphasis added); Ex. 2, HTC ITC Br. at 8 (same).)

The existence of this overwhelming number of common issues plainly indicates that consolidating these cases would facilitate their orderly and efficient resolution. Judicial economy will be served because there will be no need for duplicative hearings, depositions, or document production. Moreover, given the related nature of the asserted patents and accused devices, similar discovery issues are likely to arise, which it would be most efficient for a single judge to address. Indeed, given the nature of the claims, there is no reason for Nokia and HTC not to coordinate their efforts—as they themselves previously noted to the ITC.⁷ As HTC and Nokia both argued, consolidation “will eliminate the waste of the parties’ and [the tribunal’s] time and [of the] expense that would otherwise result from redundant discovery, unnecessarily repetitive briefings and duplicative hearings featuring the same exhibits, witnesses, and evidence.” (Ex. 1, Nokia ITC Br. at 8; Ex. 2, HTC ITC Br. at 8.) These arguments apply equally in this Court. *Cf. Ford v. Christiana Care Health Systems*, Civil Action No. 06-301-MPT, 2008 WL 1985229, at *1 (D. Del. May 5, 2008) (“The purpose of [Rule 42] is to promote judicial economy and convenience and to avoid unnecessary costs or delay.”).

In addition, consolidation will eliminate the risk of inconsistent pretrial rulings, which is an especially important consideration in patent cases, given the key role of the court’s claim construction rulings in shaping the course of the litigation. To avoid the possibility of

⁷ See Ex. 1, Nokia ITC ITC Br. at 6-7; Ex. 2, HTC Br. at 6 (“There is certain to be substantial overlap . . . in the depositions of experts and fact witnesses—particularly of third parties who are expected to possess prior art critical to both respondents’ defenses. . . . [C]onsolidation will reduce these redundancies and will also relieve experts, inventors, and other deponents . . . from the burden of multiple depositions and multiple appearances during separate proceedings.”).

contradictory outcomes based on the same facts, it would be expedient to have a single judge rule on common issues relating to claim construction, summary judgment of validity and/or enforceability, as well as discovery issues concerning the patents. Indeed, this Circuit recognizes that preventing conflicting rulings in cases involving similar issues of fact and law is a key purpose of consolidation. *See In re TMI Litig.*, 193 F.3d 613, 724 (3d Cir. 1999) (“The purpose of consolidation is to streamline and economize pretrial proceedings so as to avoid duplication of effort, and to prevent conflicting outcomes in cases involving similar legal and factual issues.”) (internal quotes omitted). HTC and Nokia themselves stressed the need to avoid inconsistent rulings when they sought a similar consolidation of Apple’s claims at the ITC.⁸ Under the circumstances, this consideration strongly favors Apple’s motion.

D. Consolidation Will Not Prejudice Nokia or HTC.

Nokia and HTC will not suffer any prejudice if Apple’s motion is granted. All four cases are still in their early stages. The 1002 and 166 Cases are both stayed, pending the outcomes of the parallel ITC investigations, and discovery has only recently commenced in the 791 Case. The defendants have not answered Apple’s complaints in the 166 and 167 Cases, and HTC’s motion to transfer those cases to the Northern District of California remains pending.⁹ Thus, the

⁸ *See* Ex. 1, Nokia ITC Br. at 7 (“Having separate ALJs assess the same patents presents substantial risk of inconsistent initial determinations being presented to the Commission for review.”); Ex. 2, HTC Br. at 7 (noting that “legal arguments as to claim construction are likely to be similar in both Investigations”).

⁹ HTC’s argument that the 166 and 167 Cases should be transferred lacks any merit, in part because a transfer would prevent these four cases from being heard before a single judge. *See* FED. R. CIV. P. 42 (only permitting consolidation of “actions before the court”); *Swindell-Dressler Corp. v. Dumbaule*, 308 F.2d 267, 273 (3d Cir. 1962) (“a cause of action pending in one jurisdiction cannot be consolidated with a cause of action pending in another jurisdiction”). As a result, HTC’s motion seeks to **prevent**—rather than promote—all of the economies and conveniences that would be achieved via consolidation. *See, e.g., In re Volkswagen of Am., Inc.*, 566 F.3d 1349, 1351 (Fed. Cir. 2009) (denying request to vacate district court’s denial of motion

parties have yet to devote significant resources to these cases, and consolidation would not pose any possibility of prejudicial delay in any of the cases.¹⁰

Indeed, Nokia and HTC cannot credibly argue that they will face any prejudice from consolidating these cases, as they both vigorously—and successfully—argued for consolidation of the parallel cases at the ITC. Nokia and HTC both made clear that prejudice was not an issue when they asserted that even “partial consolidation . . . for the purposes of overlapping patents . . . is still preferable to the status quo” (Ex. 5, Nokia Resp. to ITC Staff Mot. at 4) and that “[p]utting the identical patents in the Investigations . . . before the same ALJ from the start resolves the difficult issues inherent in having the Investigations proceed separately” (Ex. 6, HTC ITC Rep. Br. at 5). It would be disingenuous for either of them to argue that Apple’s request for consolidation of these related cases poses any prejudice to them now.

V. CONCLUSION

For the foregoing reasons, given the overwhelming commonality of issues of law and fact among these four patent cases and the significant economies and conveniences that would result from consolidating them, Apple respectfully requests that this Court grant its Motion to Consolidate the Captioned Cases for the Purpose of Coordinating Pretrial Proceedings.

to transfer, where related patent cases were pending in the same court, and noting that “the existence of multiple lawsuits involving the same issues is a paramount consideration.”).

¹⁰ Although the 791 Case has begun to move forward, courts have granted motions for consolidation of cases that are much further apart in their progress than the non-stayed cases here. See e.g., *Fields v. Provident Life & Acc. Ins. Co.*, No. CIV.A. 99-CV-4261, 2001 WL 818353 (E.D. Pa. Jul. 10, 2001), at *6 (ordering consolidation even though one action was ready for trial, while the other was still only in its preliminary stages, because “the discovery and trial preparation necessary for the [second case] will overlap significantly with the work already completed” and “[t]he efficiency achieved by consolidation will far outweigh any inconvenience that may result therefrom”); *Monzo v. American Airlines, Inc.*, 94 F.R.D. 672, 673 (D.C.N.Y. 1982) (“The fact that the cases are at different discovery stages is not fatal to the consolidation motion.”).

Dated: May 24, 2010

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Briefs, Responses and Replies

[1:09-cv-00791-GMS Nokia Corporation v. Apple Inc.](#)

PATENT

U.S. District Court

District of Delaware

Notice of Electronic Filing

The following transaction was entered by Herrmann, Richard on 5/24/2010 at 8:40 PM EDT and filed on 5/24/2010

Case Name: Nokia Corporation v. Apple Inc.

Case Number: [1:09-cv-00791-GMS](#)

Filed: Apple Inc.

Document Number: [48](#)

Docket Text:

OPENING BRIEF in Support re [47] MOTION to Consolidate Cases 09-791; 09-1002; 10-166; and 10-167 filed by Apple Inc.. Answering Brief/Response due date per Local Rules is 6/10/2010. (Herrmann, Richard)

1:09-cv-00791-GMS Notice has been electronically mailed to:

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1:09-cv-00791-GMS Notice has been delivered by other means to:

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Briefs, Responses and Replies

[1:09-cv-01002-GMS Nokia Corporation v. Apple Inc.](#)

STAYED, PATENT

U.S. District Court

District of Delaware

Notice of Electronic Filing

The following transaction was entered by Herrmann, Richard on 5/24/2010 at 8:42 PM EDT and filed on 5/24/2010

Case Name: Nokia Corporation v. Apple Inc.

Case Number: [1:09-cv-01002-GMS](#)

Filed: Apple Inc.

Document Number: [18](#)

Docket Text:

OPENING BRIEF in Support re [17] MOTION to Consolidate Cases 09-791; 09-1002; 10-166; and 10-167 filed by Apple Inc..Answering Brief/Response due date per Local Rules is 6/10/2010. (Herrmann, Richard)

1:09-cv-01002-GMS Notice has been electronically mailed to:

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Briefs, Responses and Replies[1:10-cv-00166-RK Apple Inc. et al v. High Tech Computer Corp. et al](#)**STAYED**, INTRACIRCUIT, PATENT, VACANTJUDGESHIP**U.S. District Court****District of Delaware****Notice of Electronic Filing**

The following transaction was entered by Herrmann, Richard on 5/24/2010 at 8:44 PM EDT and filed on 5/24/2010

Case Name: Apple Inc. et al v. High Tech Computer Corp. et al**Case Number:** [1:10-cv-00166-RK](#)**Filed:** Apple Inc.**Document Number:** [22](#)**Docket Text:**

OPENING BRIEF in Support re [21] MOTION to Consolidate Cases 09-791; 09-1002; 10-166; and 10-167 filed by Apple Inc..Answering Brief/Response due date per Local Rules is 6/10/2010. (Herrmann, Richard)

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1:10-cv-00166-RK Notice has been delivered by other means to:

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Document description:Main Document**Original filename:**n/a**Electronic document Stamp:**

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b0ba7fb67cadb3c350a39c13e3e3f7e3a7ce254ff3fff26fead11a1ada0]]

Briefs, Responses and Replies

[1:10-cv-00167-RK Apple Inc. v. High Tech Computer Corp. et al](#)
[INTRACIRCUIT, PATENT, VACANTJUDGESHIP](#)

U.S. District Court

District of Delaware

Notice of Electronic Filing

The following transaction was entered by Herrmann, Richard on 5/24/2010 at 8:46 PM EDT and filed on 5/24/2010

Case Name: Apple Inc. v. High Tech Computer Corp. et al
Case Number: [1:10-cv-00167-RK](#)
Filed: Apple Inc.
Document Number: [20](#)

Docket Text:

OPENING BRIEF in Support re [19] MOTION to Consolidate Cases 09-791; 09-1002; 10-166; and 10-167 filed by Apple Inc..Answering Brief/Response due date per Local Rules is 6/10/2010. (Herrmann, Richard)

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1:10-cv-00167-RK Notice has been delivered by other means to:

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EXHIBIT 2

Ex. 2: Apple Patents Asserted

C.A. No. 09-791 GMS	C.A. No. 09-1002 GMS (and ITC Inv. No. 337-TA-704)	C.A. No. 10-166 RK (and ITC Inv. No. 337-TA-710)	C.A. No. 10-167 RK
5,315,703			
	5,379,431		
	5,455,599		5,455,599
5,455,854			
		5,481,721	
	5,519,867	5,519,867	
5,555,369			
		5,566,337	
5,634,074			
5,848,105			5,848,105
	5,915,131	5,915,131	
	5,920,726		5,920,726
		5,929,852	
		5,946,647	
	5,969,705	5,969,705	
6,189,034 B1			
6,239,795			
		6,275,983	
	6,343,263	6,343,263	
	6,424,354		6,424,354
			7,362,331
7,383,453 B2			7,383,453
7,469,381 B2			7,469,381
			7,479,949
			7,633,076
			7,657,849
	RE 39,486	RE 39,486	

EXHIBIT 3

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

**Administrative Law Judge
Hon. Carl C. Charneski**

In the Matter of

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

Investigation No. 337-TA-710

**THE HTC RESPONDENTS' MOTION FOR FULL CONSOLIDATION OF
INVESTIGATION NOS. 337-TA-704 AND 337-TA-710 AND RESPONSE TO THE
STAFF'S MOTION FOR PARTIAL CONSOLIDATION, MOTION DOCKET NO. 710-1**

Pursuant to 19 C.F.R. §§ 201.7(a) and 210.15, Respondents HTC Corporation, HTC America, Inc., and Exedea, Inc. (collectively "Respondents" or "HTC") move for complete consolidation of this Investigation and Investigation No. 337-TA-704. HTC understands that a similar motion has been filed by the respondents in the 704 investigation. On April 13, 2010, the Commission Staff filed a motion for partial consolidation as to only the five overlapping patents at issue in these Investigations (Motion Docket No. 710-1). HTC also hereby responds to Motion No. 710-1.

As discussed in the attached memorandum, the Staff and respondents in both Investigations are in full agreement that consolidation is needed because of the extensive overlap of legal, factual and procedural issues among the two Investigations, including substantial overlap among the parties, technology, asserted patents and claims, claim construction arguments, validity arguments, witnesses, third parties, evidence, domestic industry products and the respondents' defenses. Respondents and the staff differ only in how to best accomplish the

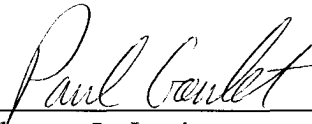
consolidation. Respondents believe that only full consolidation solves the problems identified herein and by the Staff, and that full consolidation need not unreasonably delay the Investigation.

Full consolidation would simplify and reduce duplicative discovery and proceedings, make more efficient use of the Commission's resources, and prevent significant prejudice to HTC from having key issues in this Investigation substantially determined in the 704 investigation before being given the opportunity to prepare its defenses and be heard.

The consolidation issue has been raised and discussed with Complainants and the Commission Staff. HTC has been informed that the Staff does not oppose full consolidation, but that it will be opposed by Complainant.

Dated: April 15, 2010

Respectfully submitted,



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

**Administrative Law Judge
Hon. Carl C. Charneski**

In the Matter of

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

Investigation No. 337-TA-710

**MEMORANDUM IN SUPPORT OF THE HTC RESPONDENTS' MOTION FOR
FULL CONSOLIDATION OF INVESTIGATION NOS. 337-TA-704 AND 337-TA-710
AND RESPONSE TO THE STAFF'S MOTION FOR PARTIAL CONSOLIDATION,
MOTION DOCKET NO. 710-1**

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Certain 3G Mobile Handsets and Components,
Inv. No. 337-TA-613, Order No. 5 (Oct. 24, 2007).....2,3,4,10,12

Certain Semiconductor Timing Signal Generator Devices, Components Thereof, and
Products Containing Same,
Inv. No. 337-TA-465, Order No. 3 (Confidential) (Jan. 22, 2002).....2

Certain Integrated Repeaters, Switches, Transceivers, and Products Containing Same,
ITC Inv. No. 337-TA-435, Order No. 3 (Aug. 24, 2000)3,6,7,8

Certain Processes for the Manufacture of Skinless Sausage Casings and Resulting
Product, Inv. Nos. 337-TA-148/1693

Certain Fluidized Supporting Apparatus and Components Thereof,
Inv. Nos. 337-TA-182/188, 225 U.S.P.Q. 1211, 1214 (U.S.I.T.C. 1984)3,6

Certain Precision Resistor Chips,
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19 C.F.R. § 210.1512

I. INTRODUCTION

The Commission Staff and respondents in both the 704 and 710 Investigations are in complete agreement that consolidation is warranted due to the extensive overlap of the legal, factual, and procedural issues between this Investigation and Investigation No. 337-TA-704, including substantial overlap among the parties, technology, asserted patents and claims, claim construction arguments, validity arguments, witnesses, third parties, evidence, domestic industry products, and the respondents' defenses. Moreover, the two investigations were filed by identical counsel for Apple within six weeks of each other.

Respondents file this separate motion because full consolidation is the best solution to simplify and reduce duplicative discovery and proceedings, make more efficient use of the Commission's resources, and prevent significant prejudice to the HTC Respondents from having key issues in this Investigation substantially determined before being given the opportunity to prepare their defenses and be heard.

II. BACKGROUND

The Commission instituted Investigation No. 337-TA-704 on February 18, 2010 in response to a complaint filed by Apple Inc. The respondents are Nokia Corporation and Nokia Inc. ("Nokia"). The evidentiary hearing is currently scheduled from October 4-15, 2010, and a sixteen month target date has been set for June 24, 2011.

Two weeks after the Commission instituted Investigation No. 337-TA-704, Apple filed a complaint against HTC Corporation, HTC America, Inc. and Exedea, Inc. ("HTC"), which the Commission instituted as Investigation No. 337-TA-710 on March 31, 2010. Presently, there is no hearing or target date set for Investigation No. 337-TA-710.

The technology at issue in both Investigations concerns the operating systems and related

software in certain mobile telephone handsets. In Investigation No. 337-TA-704, Apple alleges that Nokia imports handsets that infringe specific claims of nine patents. In Investigation No. 337-TA-710, Apple has alleged that HTC imports handsets that infringe ten patents, including five of the patents asserted against Nokia. As summarized in the chart on page 3 of the Staff's memorandum in support of its motion for partial consolidation, Apple has asserted five patents against both Nokia and HTC, four patents against Nokia alone, and five patents against HTC alone. Although the patents and claims are numerous, most of them relate to "object-oriented" software governing operation of the accused handsets and should all be addressed together in a single hearing.

III. ADMINISTRATIVE LAW JUDGES HAVE THE AUTHORITY TO CONSOLIDATE INVESTIGATIONS

Authority to consolidate Section 337 investigations is grounded in Commission Rule 201.7(a), which provides "[i]n order to expedite the performance of its functions, the Commission may engage in investigative activities preliminary to and in aid of any authorized investigation, consolidate proceedings before it, and determine the scope and manner of its proceedings." 19 C.F.R. § 201.7(a).

Where two investigations are pending before the same ALJ, the presiding ALJ has routinely relied upon this authority to consolidate separate investigations that involved substantial overlap of technological, factual, legal, and procedural issues. See, e.g., Certain 3G Mobile and Components, Inv. No. 337-TA-613, Order No. 5 at 9 and n. 10 (Oct. 24, 2007) ("3G Handsets") (discussing ALJ's authority and confirming that consolidation is by order and not by initial determination); Certain Semiconductor Timing Signal Generator Devices, Components Thereof, and Products Containing Same, Inv. No. 337-TA-465, Order No. 3 (Jan. 22, 2002)

("Signal Devices"); Certain Integrated Repeaters, Switches, Transceivers, and Products Containing Same, ITC Inv. No. 337-TA-435, Order No. 3 (Aug. 24, 2000) ("Integrated Repeaters").

For example, in Integrated Repeaters, the ALJ noted that the Commission has consolidated investigations where there is an overlap in parties and accused products and where there is a relationship between the intellectual property rights at issue in the two investigations. See *id.*, Order No. 3 at 10 (citing Certain Processes for the Manufacture of Skinless Sausage Casings and Resulting Product, Inv. Nos. 337-TA-148/169, [citation omitted]; Certain Fluidized Supporting Apparatus and Components Thereof, Inv. Nos. 337-TA-182/188, 225 U.S.P.Q. 1211, 1214 (U.S.I.T.C. 1984) ("Fluidized Supporting Apparatus"); Certain Precision Resistor Chips, Inv. Nos. 337-TA-63/65, Order No. 2 (May 23, 1979)). By consolidating the investigations, even though some differences did exist between the two investigations, the ALJ noted that consolidation would avoid "(1) two concurrent and possibly redundant discovery streams and/or sequential discovery, (2) a second hearing in which many of the same witnesses reiterate, at least in part, testimony that they gave at the first hearing, (3) two sets of trial exhibits, many of which would be entered into evidence in both hearings, (4) two sets of pre- and post-trial submissions, (5) two initial determinations, (6) two reviews by the Commission, and (7) two potential appeals to the Federal Circuit." *Id.*, Order No. 3 at 7.

In 3G Handsets, Chief Judge Luckern consolidated two investigations instituted nearly five months apart due to the similarity in the Complainants' claims and the "significant prejudice" that would be faced by Nokia (the latter respondent) if the claims of the common patents were already construed, evaluated for validity and enforceability and if domestic industry and affirmative defenses were already assessed a short time before Nokia had the opportunity to

present its case. See 3G Handsets, Order No. 5 at 11. Judge Luckern consolidated the investigations even though additional patents were asserted in one of the investigations and consolidation required an extension of the target date in the earlier investigation.¹

On July 3, 2008 the Commission ceded control over the ALJ's dockets to Chief Judge Luckern. Respondents respectfully suggest that the presiding judges, in coordination with Chief Judge Luckern, collectively arrive at a solution wherein the entirety of both investigations is transferred and consolidated before a single ALJ.

IV. FULL CONSOLIDATION IS NEEDED DUE TO THE OVERLAP IN PATENTS, DISCOVERY, AND LEGAL AND FACTUAL ISSUES

As the Staff's motion makes clear, the substantial similarities and relationships between Investigation Nos. 337-TA-704 and 337-TA-710 justify consolidation of at least part of the two Investigations into one. Respondents believe that full, rather than partial consolidation, is needed. Indeed, because of the common technological, factual, legal, and procedural issues in the two Investigations, full consolidation will simplify the Commission's Investigations and make more efficient use of Commission resources, and remove the significant prejudice HTC would face if forced to litigate many issues critical to its case shortly after those same key issues have been litigated and potentially decided by a different ALJ. Full consolidation would achieve these benefits with minimal or no prejudice to Complainant.

A. The Investigations Involve Overlapping Technology and Patents

All of the patents at issue in Investigation Nos. 337-TA-704 and 337-TA-710 allegedly pertain to mobile telephone handsets' operating software. The five common patents currently

¹ As discussed below, the Staff's only objection to full consolidation is the potential for a long extension to the target date. See Staff's Mot. at n. 3. However, Respondents believe that the fully consolidated investigation can be completed without unreasonable delays.

asserted in both Investigations are asserted against the same aspects of Nokia and HTC's mobile telephones. Indeed, Apple asserts most of the same claims of the five overlapping patents against both Nokia and HTC.

But even the patents that do not overlap share the same technology and the same types of accused products. At least ten of Apple's fourteen asserted patents involve object-oriented technology and related software features. These include the 867, 983, 852, 486, 337, 354, 705, 721, 599 and 431 patents, which are spread across the existing Investigations. Many of these patents involve implementing previously-known ideas in an object-oriented programming paradigm, a concept that also existed long before Apple's patents. Even the 705 patent, which does not use the term "object-oriented," involves subject matter related to the 337, 354 and 721 patents.

Some relationships are especially close. For example, the 867 and 983 patents, which involve an interface between an object-oriented application and a procedural operating system, both derive from largely identical specifications filed on the same day. The 852 and 486 patents, involving a system for network components, likewise derive from largely identical specifications filed on the same day. The 337, 354 and 705 patents all relate to software event handling. The 721 and 705 patents both relate to interprocess communication. Each of these subgroups is spread across both Investigations. Even the 599 and 431 patents, which involve graphics and system booting, respectively, share the common thread of object-oriented technology.

The remaining four patents also implicate the accused handsets' operating systems and related software. The 131 patent relates to programming interfaces for input/output services provided by the operating system. The 263 patent relates to the realtime processing of streams of data sent to and from a handset using a realtime operating system. The 647 patent relates to

software involving structures in data. Finally, the 726 patent relates to software and hardware that manages power in a handset's camera.

While it is likely that the respondents' software implementations in their telephone handsets' operating systems differ to some degree, interpretation of that software will involve similar investigation, explanation and testimony. See Integrated Repeaters, Order No. 3 at 10; Fluidized Supporting Apparatus, 225 U.S.P.Q. at 1214.

Given this overlap in subject matter and asserted patent rights, full consolidation of the two Investigations will assist the ALJ and OUII attorneys in understanding the technology and patent claims at issue, and, as discussed below, will also eliminate the redundancy and duplication in tutorials, expert reports and testimony, fact witnesses and exhibits that would otherwise occur if the two related investigations remain separated.

B. Full Consolidation Will Avoid Redundant Discovery and Proceedings

Because of the overlapping technology, parties, and patents at issue in the two investigations, the parties' discovery requests and responses will be redundant and unnecessarily burdensome unless the investigations are consolidated. See Integrated Repeaters, Order No. 3 at 3-7. There is certain to be substantial overlap in document production, as well as overlap in the depositions of experts and fact witnesses – particularly of third parties who are expected to possess prior art critical to both respondents' defenses. Full consolidation will reduce these redundancies and will also relieve experts, inventors, and other deponents – as well as the parties' counsel and the OUII attorneys – from the burden of multiple depositions and multiple appearances during separate proceedings. See id.

Full consolidation before a single ALJ will also avoid the need for a second hearing in the 337-TA-710 Investigation in which many of the same witnesses will be required to repeat the

testimony given in the 337-TA-704 investigation. See id. at 7. A fully consolidated Investigation would also reduce the total number of pre- and post-trial submissions regarding the same patents and technologies. See id.

Finally, full consolidation would permit a single ALJ to issue a single final initial determination, which would significantly expedite and simplify the Commission's review proceedings and would conserve overall Commission resources. See id. Having separate ALJs assess the same patents presents substantial risk of inconsistent initial determinations being presented to the Commission for review. Indeed, if the Commission receives a first ID in the 704 investigation, with awareness that a second ID in the 710 investigation will issue shortly, it is very possible that the Commission would sua sponte delay review of the former ID until both opinions regarding the patents are before it. This delayed review would effectively consolidate the investigations at the back-end, after all of the duplicative and wasteful effort getting to that point had already taken place.

C. The Legal and Factual Issues in the Current Investigations Substantially Overlap

As five of the asserted patents are common to both Investigations – largely at the level of the specific claims asserted against both Nokia and HTC – and since the remaining patents also pertain to the same overall technology, the legal and factual issues involved in the two investigations will be very similar.

For example, legal arguments as to claim construction are likely to be similar in both Investigations. With respect to the five overlapping patents, many of the same claim terms and intrinsic and extrinsic evidence will be in issue in both investigations. Accordingly, the evidence presented in support of claim construction, the prior art references, and other issues arising as the

parties present positions on claim construction will overlap extensively in the 337-TA-704 and 337-TA-710 Investigations.

Based upon a review of Nokia's response to the 704 Complaint, HTC may present similar affirmative defenses, such as defenses concerning patent invalidity, including, for example, arguments pertaining to the obviousness of the asserted patent claims. These efforts will require substantial third party discovery likely targeting the same third parties. Both respondents will also present similar challenges to Apple's alleged domestic industry. In fact, the only unique legal issue raised in the two Investigations may be the respondents' technical implementation of the operating software at issue.

D. Full Consolidation Will Make the Greatest Use of Commission Resources

By seeking the institution of separate Investigations against Nokia and HTC within a very short timeframe notwithstanding the commonality of the subject matter and asserted patent claims, Apple has already unnecessarily consumed Commission resources. Complete consolidation of the two Apple Investigations will eliminate the waste of the parties' and the Commission's time and expense that would otherwise result from redundant discovery, unnecessarily repetitive briefings and duplicative hearings featuring the same exhibits, witnesses, and evidence. See *id.* at 3-7; see also Certain Airless Paint Spray Pumps and Components Thereof, Inv. No. 337-TA-90, Comm'n Op. at 30 (1981) (discussing the Commission's preference for avoiding a series of related investigations so as to avoid "burden[ing] the Commission with redundant investigations"). The Commission and its ALJs are highly burdened at the present time, and should not be asked to entertain redundant litigations simply because Apple filed them a few weeks apart.

V. HTC WILL BE SIGNIFICANTLY PREJUDICED IF THE INVESTIGATIONS PROCEED SEPARATELY

HTC, named by Apple in the later filed 710 Investigation, faces significant prejudice if an ALJ were to construe the common patents, assess the patents' validity and enforceability, make findings regarding Apple's alleged domestic industry, and rule on Nokia's affirmative defenses in Investigation No. 337-TA-704 a short time before the hearing in Investigation No. 337-TA-710, without HTC having any opportunity to be heard. While HTC would be legally entitled to proceed on a clean slate in this Investigation, Apple will already have had the benefit of a trial run at the case, and the ALJ may have difficulty in not deferring to or at least favorably considering his colleague's earlier decisions on issues that have been considered in considerable detail in the 704 Investigation without HTC's participation. These problems may be amplified if early initial determinations are granted and reviewed in the 704 Investigation.

In addressing the identical situation that HTC now faces, Chief Judge Luckern held:

The administrative law judge finds that Nokia would face significant prejudice if the undersigned in the 601 investigation were to construe certain claims of the '004, '966 and '579 patents in issue, assess the patents' validity and enforceability, make findings regarding InterDigital's alleged domestic industry as to those patents and rule on certain affirmative defenses as to those patents in which Nokia is not a respondent a short-time before the identical issues were to be heard in the '613 investigation in which Nokia is a respondent.

3G Handsets, Order No. 5 at 11 (emphasis added).

The simple means to cure this significant prejudice is to consolidate the Investigations, allow HTC to participate meaningfully in addressing Apple's allegations the first time, and decide these common issues only once.

VI. APPLE WILL NOT BE PREJUDICED BY FULL CONSOLIDATION

Although it may be slow to recognize them, Apple will also realize substantial efficiencies in a consolidated investigation and can only complain about the short delay to the first investigation caused by its own circumvention of the Commission's policy of naming all known respondents in a single investigation by attempting to pursue separate investigations arising under the same subject matter and patent claims. Both Nokia and HTC were importing and selling accused telephone handsets in the United States well before the complaint in the 704 investigation was filed. Consequently, the minimal delay to the first investigation necessary to bring the consolidated investigations in line was solely a result of the tactical timing chosen by Apple to file the second complaint.

Apple's arguments as to patent validity, claim construction, domestic industry, and infringement will be similar in both Investigations. Accordingly, Apple stands to benefit from the same efficiencies that would be achieved by the Commission and by the respondents. For example, Apple will not have to suffer redundant discovery, because Nokia and HTC are likely to seek similar document production from Apple and seek to depose largely the same Apple witnesses and experts. Furthermore, Apple will be spared the burden of reproducing the same trial exhibits, crafting duplicative pre- and post-hearing submissions, and participating in two evidentiary hearings featuring the same witnesses and covering ostensibly the identical factual and legal issues.

VII. COMPLETE CONSOLIDATION IS PREFERABLE TO PARTIAL CONSOLIDATION

Only complete consolidation fully resolves the problems associated with current state of affairs while maximizing efficiency and conserving the Commission's resources. Given the

overlap in technology among all of the asserted patents, partial consolidation as suggested by the Staff carries with it many of the inefficiencies present with the current situation that can be eliminated by complete consolidation. Partial consolidation of the common patents into one of the existing investigations also means that at least one respondent must face two complete investigations on substantially related technology. Partial consolidation means that two ALJs need to become versed in complex object-oriented software technology, from which they will be expected to deliver similar or at least consistent determinations. And partial consolidation means two appearances by the same experts, fact witnesses and third parties at the hearing and in depositions. But full consolidation results in a single Investigation means that a single ALJ can manage as he sees fit, without regard to a pending investigation before a different ALJ. Full consolidation prevents the inherent prejudice accruing to the respondent whose investigation proceeds second. Finally, full consolidation means a single final initial determination written by a single ALJ that the Commission can review as a whole.

From the Staff's separate motion, it is apparent that the only issue holding back the Staff's complete endorsement of the full consolidation option is the potential delay to full resolution of the Investigations that could inure to management of a consolidated, 14 patent investigation. See Staff's Mot. at n.3 ("The Staff agrees with HTC and Nokia that complete consolidation of the 704 and 710 investigations would address many of the problems with the current arrangement of the two investigations, but is concerned that complete consolidation would likely require an exceptionally long target date."). Respondents do not believe this concern is warranted. First, any inherent delay from consolidation was caused by Apple's tactical behavior. As noted by Judge Luckern noted in the 613 investigation, "it is complainants who, through the filing of a complaint in March 2007 and another complaint in August 2007, put identical patents and

identical claims in issue in two investigations." 3G Handsets, Order No. 5 at 9. Had Apple started by naming both Nokia and HTC as respondents, delay would not even enter the picture.

However, respondents believe that, without prejudicing respondents' rights to defend themselves in the consolidated Investigation, a consolidated investigation can be managed in an efficient manner that results in resolution of the complete investigation in approximately the same time period as would be required to litigate the investigations separately and without unreasonable delay. Indeed, the Commission has smoothly and effectively run several Investigations involving more than 10 patents. *See, e.g.*, 337-TA-452 (11 patents with a 19 month target date); 337-TA-557 (14 design patents with a 17 month target date); 337-TA-565 (11 patents with a 19 month target date).

VIII. CONCLUSION

Pursuant to 19 C.F.R. §§ 201.7(a) and 210.15, full consolidation of the 337-TA-704 and 337-TA-710 Investigations is appropriate and warranted. There is considerable overlap of legal, factual, technological and procedural issues in both investigations. The parties, technology, patents, claim construction arguments, validity arguments, witnesses, evidence, domestic industry products, and the respondents' anticipated defenses in the two investigations are all identical or substantially related. Accordingly, for the reasons stated herein and in the Staff's motion, consolidation of the 337-TA-704 and 337-TA-710 would simplify and expedite the Commission's proceedings, make more efficient use of Commission resources, spare both the Complainant and Respondents from the time and expense of duplicative discovery, proceedings, and briefings, and eliminate the significant prejudice to HTC from potentially having some key issues in this investigation substantially determined before it has the opportunity to prepare its

defenses and be heard. Investigation No. 337-704 should therefore be consolidated with Investigation No. 337-TA-710 before a single Administrative Law Judge.

Dated: April 15, 2010

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Katherine Pape, hereby certify that on April 15, 2010, copies of the foregoing document were filed and served upon the following parties as indicated:

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(Original and 6 Copies)

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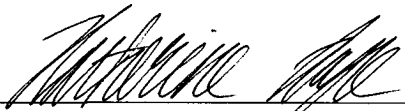

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EXHIBIT 4

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

**Administrative Law Judge
Hon. Carl C. Charneski**

In the Matter of

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

Investigation No. 337-TA-710

**HTC'S REPLY TO APPLE'S OPPOSITION TO THE STAFF'S MOTION FOR
PARTIAL CONSOLIDATION OF INVESTIGATION NOS. 337-TA-704 AND 337-TA-710
(MOTION DOCKET NO. 710-1)**

Pursuant to 19 C.F.R. § 210.15, Respondents HTC Corp., HTC America, Inc. and Exedeia, Inc. (collectively "HTC") submit this Reply to Apple's Opposition to the Staff's Motion for Partial Consolidation of Investigation Nos. 337-TA-704 and 337-TA-710 (Motion Docket No. 710-2).¹

This Reply is necessary because Apple's Opposition trivializes the significant prejudice HTC faces, and improperly suggests that any such prejudice could be simply alleviated by permitting HTC to participate in the upcoming *Markman* hearing in the 704 Investigation scheduled to begin June 14. In opposing partial consolidation Apple also relies on prior decisions that have been specifically rejected in this context. Finally, Apple improperly alleges that HTC is simply seeking to cause delay through consolidation. HTC, however, is seeking to avoid the significant prejudice that would result if the 704 and 710 Investigations are not partially consolidated.

¹ On April 22, 2010, the ALJ issued Order No. 8 denying HTC's Motion for Full Consolidation. Apple continues to oppose partial consolidation.

As HTC discussed in its Motion for Full Consolidation, HTC will suffer significant prejudice if Judge Bullock, in the 704 Investigation, issues his upcoming *Markman* ruling construing the identical claims of identical patents asserted against HTC without HTC ever having had any opportunity to be heard. As Apple readily admits, those claim construction rulings will then drive the parties' infringement and validity contentions. Based on those contentions, Judge Bullock will make rulings regarding the validity of the identical patents asserted against HTC. Thus, absent consolidation, HTC will have had no input on the critical claim construction issues and validity contentions and evidence that will form the basis of Judge Bullock's determinations with respect to the very same patents and claims asserted against HTC.

Apple trivializes this prejudice and improperly suggests it could be alleviated because Apple would not object to HTC's participation in the upcoming *Markman* hearing in the 704 Investigation. Such a suggestion is unworkable and prejudicial to HTC, and has already been rejected by Chief Judge Luckern when faced with the same issue. Indeed, in *3G Mobile Handsets and Components*, 337-TA-613, Respondents argued the significant prejudice they would face if the identical patents and claims asserted against them were construed in a prior Investigation without any opportunity to be heard. Complainant raised the same argument Apple does now in suggesting that any such prejudice could be alleviated by Respondents' participation in the claim construction briefing of the earlier investigation:

Your Honor, there could be-- as long as we're thinking of other possible alternatives, I'm not sure that there is anything to prevent you from allowing Nokia, for example, to present claim-construction arguments around the same time as the prehearing statements are due in the 601 case. If you want to let them file a paper on what their proposed claim construction should be, and give us a chance to respond to it, I don't know that there is anything that prevents you from doing that without consolidating the cases.

Id., Order No. 5 at 11, citing Oral Hearing Tr. at 192.

Chief Judge Luckern specifically rejected this argument, acknowledging that he could not render a claim construction ruling without proper context, including relevant discovery from the respondent in the latter investigation. Thus, he found that consolidation, as opposed to permitting the latter respondent to participate in claim construction briefing, to be the only way to alleviate the significant prejudice on the latter respondent. *Id.* at 12-14.

Likewise, Apple's argument must be similarly rejected. Indeed, there currently is no mechanism by which HTC could participate in the 704 Investigation other than through partial consolidation. Further, HTC has not received any discovery in the 704 Investigation, nor has it provided any discovery in that Investigation. To suggest that HTC could now, suddenly, participate in a *Markman* process where the parties' claim constructions are due in two weeks, briefing on claim construction is due in three weeks, and a hearing is just over a month away is not only impractical but equally prejudicial. As in *3G Mobile Handsets*, the only cure for the significant prejudice HTC will suffer is partial consolidation.

Apple also trivializes the prejudice to HTC by arguing that "Judges all the time have to deal with issues that may have been ruled on, in one form or another, by another Judge." Apple Opposition at 13. But Apple fails to understand that the ALJ's rulings are subject to Commission review. Thus, absent consolidation, HTC may be faced with a situation where the Commission has already made a final determination on patents asserted against HTC, without any opportunity for HTC to be heard. Conversely, the Commission may recognize that the ALJs would be issuing two independent analyses of identical patents and thus delay any final determination in either Investigation in order to reconcile potentially conflicting rulings, perhaps even requiring

remand in at least one of the Investigations—a situation that likely neither the Commission nor the ALJs want to face.

In attempting to suggest that partial consolidation is not appropriate, Apple further cites to several prior decisions in which consolidation was not granted. But Apple ignores the key reason why consolidation was not granted in those investigations, but was granted in *3G Mobile Handsets*, and should be granted here. Specifically, none of the investigations Apple cites involved the assertion of identical patents and claims by the same Complainant in both investigations. It is for this very reason that Chief Judge Luckern in *3G Mobile Handsets* distinguished several investigations, including *Certain Programmable Logic Devices and Products Containing Same*, 337-TA-453, upon which Apple relies in its Opposition, reasoning that “in all of those investigations identical patent claims were not in issue.” *3G Mobile Handsets*, Order No. 5 at 9. Yet each of the cases Apple relies upon in its Opposition do not involve identical patents asserting identical claims in both investigations. In fact, *Certain NAND Flash Memory Devices and Products Containing Same*, Inv. No. 337-TA-553, specifically cited by Apple in its Opposition, states:

Although the 552 and 553 investigations may in some respects involve certain same or similar products, neither of the two Hynix patents asserted in this investigation is asserted in the 552 investigation, and none of the three Toshiba patents asserted in the 552 investigation is asserted here. The fact that the 552 and 553 investigations are based on disparate patents weighs heavily against consolidation.

Id., Order No. 3 at 9 (emphasis added). Likewise, the fact that the 704 and 710 Investigations involve identical patents and identical claims asserted by the same Complainant weighs heavily in favor of consolidation with respect to those identical patents.

Finally, Apple suggests that HTC is merely seeking delay through consolidation. Yet both HTC and the Staff agree that consolidating the 704 and 710 investigations in some manner is necessary and would eliminate the possibility of inconsistent decisions and promote greater judicial efficiency. Curiously, Apple does not accuse the Staff of improperly seeking delay. Rather, Apple claims that partial consolidation would involve inherent delay. Apple Opposition at 10.

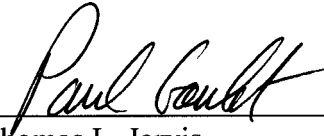
On April 19 and 20, 2010 however, the ALJ, issued Order Nos. 6 and 7 setting an 18-month target date and procedural schedule Order No. 6 at 2; Order No. 7. Given that the ALJ's 18-month target date in this Investigation is not "exceptionally long" under Commission standards, HTC submits that Apple's concerns regarding "inherent delay" have been addressed, and partial consolidation under that schedule is appropriate.

Due to the significant prejudice to HTC, the substantial overlap in legal, factual and procedural issues, including substantial overlap among the parties, technology, asserted patents and claims, claim construction arguments, validity arguments, witnesses, third parties, evidence, domestic industry products and the respondents' defenses, Apple should not expect the Commission to issue its final determination in this investigation in advance of its determination in the 704 investigation, even without partial consolidation. Putting the identical patents in the Investigations on the same procedural track and before the same ALJ from the start resolves the difficult issues inherent in having the Investigations proceed separately that were presented by the Staff in its motion, and that were largely avoided in Apple's response thereto. Because a partially consolidated Investigation can be completed within the 18-month scheduled in this Investigation, partial consolidation is a better and more efficient option to resolve the difficult issues raised by Apple's deliberate strategy of filing sequential investigations on the same

technology and patents.

Dated: April 23, 2010

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CERTIFICATE OF SERVICE

I, Katherine Pape, hereby certify that on April 23, 2010, copies of the foregoing document were filed and served upon the following parties as indicated:

Ms. Marilyn R. Abbott, Secretary
U.S. International Trade Commission
500 E Street, SW Room 116
Washington, DC 20436
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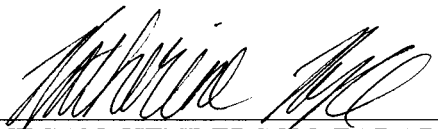

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EXHIBIT 5

Search Result List

Court	Docket Number	Description	Participant	Filed	Date Retrieved	Active or Closed	Identification
U.S. District - Delaware	1:08cv139	Flashpoint Technology Inc v. Aiptek Inc et al	Htc America Inc	03/07/2008	05/10/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - Texas Eastern	2:10cv112	Mobilemedia Ideas LLC v. HTC Corporation et al	Htc America Inc	03/31/2010	05/10/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - Illinois Northern	1:08cv3248	SP Technologies, LLC v. Garmin Limited et al	Htc America Inc	06/05/2008	05/10/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - Colorado	1:09cv2578	E.digital Corporation v. Pentax of America, Inc et al	Htc America Inc	11/02/2009	05/10/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - Illinois Northern	1:09cv3684	MSTG, Inc v. Motorola, Inc et al	Htc America Inc	06/18/2009	05/10/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - Delaware	1:06cv404	St Clair Intellectual Property Consultants Inc v. LG Electronics Inc Et A	Htc America Inc	06/26/2006	05/07/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - Texas Eastern	2:07cv229	Minerva Industries, Inc v. Motorola, Inc et al	Htc America Inc	06/06/2007	05/10/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - Texas Eastern	2:08cv21	Minerva Industries, Inc v. Motorola, Inc et al	Htc America Inc	01/22/2008	05/10/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - Virginia Western	3:08cv53	Dicam, Inc v. Sprint Nextel Corporation et al	Htc America Inc	11/18/2008	05/10/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - Texas Eastern	6:10cv108	The Pacid Group, LLC v. Asustek Computer Inc et al	Htc America Inc	03/26/2010	05/10/2010	Active	NOS: (830) Patent; Cause: Patent Infringement

U.S. District - Delaware	1:08cv140	Flashpoint Technology Inc v. AT&T Mobility LLC et al	Htc America Inc	03/07/2008	05/07/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - California Northern	5:08cv882	HTC Corporation et al v. Technology Properties Limited et al	Htc America Inc	02/08/2008	05/10/2010	Active	NOS: (830) Patent; Cause: Declaratory Judgement
U.S. District - Illinois Northern	1:09cv2945	Intellect Wireless, Inc v. HTC Corporation et al	Htc America Inc	05/14/2009	03/15/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - Texas Eastern	6:09cv527	Klausner Technologies, Inc v. Research in Motion Corporation Et A	Htc America Inc	11/23/2009	05/03/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - Texas Southern	4:09cv4109	Fujinon Corporation v. HTC Corporation et al	Htc America Inc	12/28/2009	04/19/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - District of Columbia	1:08cv1897	HTC Corporation et al v. Ipcom GMBH & Co, KG	Htc America Inc	11/03/2008	04/16/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - California Northern	3:08cv882	HTC Corporation et al v. Technology Properties Limited et al	Htc America Inc	02/08/2008	05/01/2008	Active	NOS: (830) Patent; Cause: Declaratory Judgement

Search Result List

Court	Docket Number	Description	Participant	Filed	Date Retrieved	Active or Closed	Identification
U.S. District - Illinois Northern	1:10cv1456	ADC Technology Inc v. LG Electronics Mobilecomm USA, Inc Et A	Htc America Inckyocera Corporation Nokia Corporation States Cellular Corporation	03/04/2010	05/04/2010	Active	NOS: (830) Patent; Cause: Patent Infringement

	Name	Court	Case No.	Filed	NOS	Closed
1	HTC CORP. Flashpoint Technology Inc. v. Aiptek Inc. et al	dedce	1:2008cv00139	03/07/2008	830	
3	HTC CORP. Flashpoint Technology Inc. v. AT&T Mobility LLC et al	dedce	1:2008cv00140	03/07/2008	830	
5	HTC CORP. Apple Inc. et al v. High Tech Computer Corp. et al	dedce	1:2010cv00166	03/02/2010	830	
6	HTC CORP. Apple Inc. v. High Tech Computer Corp. et al	dedce	1:2010cv00167	03/02/2010	830	
9	HTC CORP. Xpoint Technologies Inc. v. Microsoft Corporation et al	dedce	1:2009cv00628	08/21/2009	830	
10	HTC CORP. McKinney v. Google, Inc. et al	candce	5:2010cv01177	03/22/2010	890	
12	HTC CORP. Figa v. High Tech Computer Corp. et al	madce	1:2010cv10575	04/06/2010	830	
13	HTC CORPORATION Microunity Systems Engineering Inc v. Acer Inc et al	txedce	2:2010cv00091	03/16/2010	830	
14	HTC CORPORATION The PACID Group, LLC v. Asustek Computer Inc. et al	txedce	6:2010cv00108	03/26/2010	830	
15	HTC CORPORATION MobileMedia Ideas LLC v. HTC Corporation et al	txedce	2:2010cv00112	03/31/2010	830	

21	HTC CORPORATION	txedce	2:2009cv00206	06/29/2009	830
	DownUnder Wireless, LLC v. HTC Corporation et al				
23	HTC CORPORATION	txedce	2:2007cv00229	06/06/2007	830
	Minerva Industries, Inc. v. Motorola, Inc. et al				
25	HTC CORPORATION	dedce	1:2006cv00404	06/26/2006	830
	St. Clair Intellectual Property Consultants Inc. v. LG Electronics Inc. et al				
27	HTC CORPORATION	txedce	6:2009cv00527	11/23/2009	830
	Klausner Technologies, Inc. v. Research In Motion Corporation et al				
29	HTC CORPORATION	dedce	1:2009cv00628	08/21/2009	830
	Xpoint Technologies Inc. v. Microsoft Corporation et al				
30	HTC CORPORATION	candce	5:2008cv00882	02/08/2008	830
	HTC Corporation et al v. Technology Properties Limited et al				
	Innovative Patented Technology LLC v. HTC Corporation et al				
33	HTC CORPORATION	dcdce	1:2008cv01897	11/03/2008	830
	HTC CORPORATION et al v. IPCOM GMBH & CO., KG				
35	HTC CORPORATION	ilndce	1:2009cv02572	04/28/2009	840
	Specht et al v. Google Inc et al				
36	HTC CORPORATION	codce	1:2009cv02578	11/02/2009	830
	e.Digital Corporation v. Pentax of America, Inc. et al				

38	HTC CORPORATION	ilndce	1:2009cv02945	05/14/2009	830	
Intellect Wireless, Inc. v. HTC Corporation et al						
41	HTC CORPORATION	ilndce	1:2008cv03248	06/05/2008	830	
SP Technologies, LLC v. Garmin Limited et al						
45	HTC CORPORATION	txsdce	4:2009cv04109	12/28/2009	830	
Fujinon Corporation v. HTC Corporation et al						

EXHIBIT 6

Search Result List

Court	Docket Number	Description	Participant	Filed	Date Retrieved	Active or Closed	Identification
U.S. District - Texas Eastern	2:10cv91	Microunity Systems Engineering Inc v. Acer Inc et al	Exedea Inc	03/16/2010	05/10/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - Delaware	1:10cv166	Apple Inc et al v. High Tech Computer Corp et al	Exedea Inc	03/02/2010	05/10/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - Delaware	1:10cv167	Apple Inc v. High Tech Computer Corp et al	Exedea Inc	03/02/2010	05/10/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - Massachusetts	1:10cv10575	Figa v. High Tech Computer Corp et al	Exedea Inc	04/06/2010	04/07/2010	Active	NOS: (830) Patent; Cause: Patent Infringement

Name	Court	Case No.	Filed	NOS	Close d	
PACER:	EXEDEA INC.	ilndce	1:2010cv01456	03/04/2010	830	
ADC Technology Inc. v. LG Electronics Mobilecomm U.S.A., Inc. et al						

EXHIBIT 7

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Court	Docket Number	Description	Participant	Filed	Date Retrieved	Active or Closed	Identification
U.S. District - New York Southern	1:07cv2103	Viacom International, Inc et al v. Youtube, Inc et al	Google Inc	03/13/2007	05/10/2010	Active	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - Texas Eastern	2:09cv142	FPX, LLC v. Google, Inc et al	Google Inc	05/11/2009	05/10/2010	Active	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - Texas Eastern	2:09cv151	John Beck Amazing Profits, LLC v. Google Inc et al	Google Inc	05/14/2009	05/10/2010	Active	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - Delaware	1:09cv628	Xpoint Technologies Inc v. Microsoft Corporation et al	Google Inc	08/21/2009	05/10/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - Virginia Eastern	1:09cv736	Rosetta Stone Ltd v. Google Inc	Google Inc	07/10/2009	05/10/2010	Active	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - New York Southern	1:07cv3582	The Football Association Premier League Limited et al v. Youtube, Inc Et A	Google Inc	05/04/2007	05/10/2010	Active	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - Delaware	1:09cv525	Personalized User Model LLP v. Google Inc	Google Inc	07/16/2009	05/10/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - Illinois Northern	1:07cv3371	Vulcan Golf, LLC et al v. Google Inc et al	Google Inc	06/15/2007	05/07/2010	Active	NOS: (470) Rico; Cause: Trademark Infringement
U.S. District - Delaware	1:10cv136	Xerox Corporation v. Google Inc et al	Google Inc	02/19/2010	05/10/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - Arkansas Western	5:09cv5151	Neeley v. Namemedia, Inc	Google Inc	07/22/2009	05/10/2010	Active	NOS: (840) Trademark; Cause: Trademark Infringement (Lanham Act)
U.S. District - Texas Eastern	2:07cv102	Antor Media Corporation v. Metacafe, Inc	Google Inc	03/27/2007	05/10/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - Texas Eastern	2:09cv102	Actus, LLC v. Bank of	Google Inc	04/09/2009	05/10/2010	Active	NOS: (830) Patent; Cause:

		America Corp et al					Patent Infringement
U.S. District - Texas Eastern	2:09cv147	API Technologies, LLC v. Facebook, Inc et al	Google Inc	05/12/2009	05/10/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - Ohio Northern	4:08cv817	Emsat Advanced Geo-Location Technology, LLC et al v. T-Mobile USA, Inc	Google Inc	03/31/2008	05/10/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - Texas Eastern	6:09cv269	Bedrock Computer Technologies, LLC v. Softlayer Technologies, Inc Et A	Google Inc	06/16/2009	05/10/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - Texas Eastern	6:09cv446	Eolas Technologies Incorporated v. Adobe Systems Incorporated Et A	Google Inc	10/06/2009	05/10/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - Oregon	3:09cv642	Google Inc v. Traffic Information LLC	Google Inc	06/09/2009	05/03/2010	Active	NOS: (830) Patent; Cause: Declaratory Judgment
U.S. District - New York Southern	1:05cv8136	The Author's Guild et al v. Google Inc	Google Inc	09/20/2005	05/10/2010	Active	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - Florida Middle	2:09cv159	Ezzo v. Google, Inc et al	Google Inc	03/17/2009	05/04/2010	Active	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - Texas Eastern	2:07cv371	Bright Response LLC v. Google Inc et al	Google Inc	08/27/2007	04/28/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - Indiana Southern	1:10cv312	One Number Corporation v. Google Inc	Google Inc	03/16/2010	05/05/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - Texas Eastern	2:07cv486	Northeastern University et al v. Google, Inc,	Google Inc	11/06/2007	03/25/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - California Eastern	2:09cv3065	Jurin v. Google Inc	Google Inc	11/03/2009	05/03/2010	Active	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California	2:10cv1847	Michael M Edelstein v.	Google Inc	03/15/2010	05/04/2010	Active	NOS: (820) Copyrights; Cause:

Central		Google Inc					Copyright Infringement
U.S. District - California Northern	3:08cv3172	Google Inc et al v. Egger et al	Google Inc	07/01/2008	07/08/2008	Active	NOS: (830) Patent; Cause: Declaratory Judgement
U.S. District - New York Southern	1:10cv1841	Wireless Ink Corporation v. Facebook, Inc et al	Google Inc	03/09/2010	04/30/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - Texas Eastern	2:09cv343	Webmap Technologies LLC v. City Accomodations Network Inc Et A	Google Inc	11/03/2009	04/28/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - Oregon	3:10mc9020	IP Innovation LLC v. Google Inc	Google Inc	01/14/2010	03/11/2010	Active	NOS: (0) ; Cause:
U.S. District - California Central	2:10cv1648	Michael M Edelstein v. Google, Inc	Google Inc	03/05/2010	03/11/2010	Active	NOS: (820) Copyrights; Cause: Forma Pauperis Denial
U.S. District - Massachusetts	1:09cv11813	Red Bend Software, Inc et al v. Google	Google Inc	10/26/2009	04/27/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - Texas Eastern	2:07cv279	Function Media, LLC v. Google, Inc et al	Google Inc	07/03/2007	04/27/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - New York Southern	1:07cv11450	Touchtunes Music Corp v. Rowe International Corp et al	Google Inc	12/20/2007	04/23/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - Delaware	1:09cv494	Market America Inc v. Google Inc et al	Google Inc	07/07/2009	03/05/2010	Active	NOS: (370) Fraud; Cause: Diversity-Fraud
U.S. District - Rhode Island	1:10cv102	Souvalian v. Google Inc	Google Inc	03/03/2010	03/05/2010	Active	NOS: (890) Other Statutory Actions; Cause: Fed. Question
U.S. District - California Northern	3:10cv668	Flowbee International, Inc et al v. Google, Inc	Google Inc	02/18/2010	03/05/2010	Active	NOS: (840) Trademark; Cause: Trademark Infringement (Lanham Act)
U.S. District - California Northern	5:10cv1713	Parts Geek, LLC v. US Auto Parts Network, Inc et al	Google Inc	04/22/2010	04/23/2010	Active	NOS: (890) Other Statutory Actions; Cause: Racketeering (RICO) Act
U.S. District -	2:10cv336	Stayart v.	Google Inc	04/20/2010	04/22/2010	Active	NOS: (360)

Wisconsin Eastern		Google Inc					Personal Injury; Cause: Fed. Question: Personal Injury
U.S. District - New York Southern	1:05cv8881	The McGraw-Hill Companies, Inc et al v. Google Inc	Google Inc	10/19/2005	03/16/2010	Active	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - Oregon	1:09cv3013	Harry and David v. Pathak	Google Inc	02/11/2009	04/15/2010	Active	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - New York Western	1:10cv149	Williams v. II Criminal Justice System et al	Google Inc	02/23/2010	02/25/2010	Active	NOS: (530) Prisoner - General; Cause: Petition for Writ of Habeas Corpus (State)
U.S. District - California Northern	4:09cv5718	Netlist, Inc v. Google Inc	Google Inc	12/04/2009	04/14/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - California Northern	3:09mc80097	Intermec Technologies Corp v. Palm, Inc	Google Inc	05/08/2009	02/20/2010	Active	NOS: (0) ; Cause:
U.S. District - North Carolina Middle	1:08mc42	Software Rights Archive, LLC v. Google, Inc	Google Inc	09/19/2008	02/16/2010	Active	NOS: (0) ; Cause:
U.S. District - New York Southern	1:10cv2977	The American Society of Media Photographers, Inc et al v. Google, Inc	Google Inc	04/07/2010	04/09/2010	Active	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - Illinois Central	3:09cv3295	Martin v. Washington Post Company et al	Google Inc	11/10/2009	04/09/2010	Active	NOS: (440) Other Civil Rights; Cause: Notice of Removal- Civil Rights Act
U.S. District - California Northern	5:10cv1433	Feldman v. Google, Inc	Google Inc	04/05/2010	04/07/2010	Active	NOS: (370) Fraud; Cause: Fed. Question
U.S. District - California Northern	5:10cv672	Hibnick v. Google Inc	Google Inc	02/17/2010	04/09/2010	Active	NOS: (890) Other Statutory Actions; Cause: Fed Question: Fed Communications Act of 1934
U.S. District - California Northern	4:10cv668	Flowbee International, Inc et al v. Google, Inc	Google Inc	02/18/2010	02/19/2010	Active	NOS: (840) Trademark; Cause: Trademark Infringement (Lanham Act)
U.S. District - California	5:10mc80034	In Re Beluga Shipping GMBH	Google Inc	02/05/2010	04/02/2010	Active	NOS: (890) Other Statutory Actions;

Northern		& Co KD "Beluga Fantastic" v. Suzlon Energy Ltd, Federal Court Proceeding					Cause: Personal Injury
U.S. District - Texas Eastern	2:07cv511	Software Rights Archive, LLC v. Google Inc et al	Google Inc	11/21/2007	04/01/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - California Northern	3:09cv5718	Netlist, Inc v. Google Inc	Google Inc	12/04/2009	12/14/2009	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - New York Western	1:10mc11	Williams et al v. Criminal Justice System et al	Google Inc	02/02/2010	03/26/2010	Active	NOS: (0) ; Cause:
U.S. District - California Northern	5:08cv3172	Google Inc et al v. Egger et al	Google Inc	07/01/2008	03/25/2010	Active	NOS: (830) Patent; Cause: Declaratory Judgement
U.S. District - New York Eastern	1:08cv3139	Web Tracking Solutions, Inc et al v. Google, Inc	Google Inc	07/31/2008	03/25/2010	Active	NOS: (830) Patent; Cause: Fed. Question
U.S. District - Texas Eastern	2:06cv549	Intertainer, Inc, v. Apple Computer, Inc et al	Google Inc	12/29/2006	03/25/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - Texas Eastern	6:09cv304	Aloft Media, LLC v. Oracle Corporation et al	Google Inc	07/14/2009	03/25/2010	Active	NOS: (830) Patent; Cause: Fed. Question
U.S. District - Delaware	1:10cv77	St Clair Intellectual Property Consultants Inc v. Google Inc	Google Inc	01/29/2010	03/23/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - Louisiana Western	6:10cv133	Firefly Digital Inc v. Google Inc	Google Inc	01/29/2010	03/22/2010	Active	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - Texas Eastern	2:08cv61	Paid Search Engine Tools, LLC v. Google, Inc et al	Google Inc	02/12/2008	03/02/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - California Northern	3:06cv7297	Person v. Google Inc	Google Inc	11/27/2006	01/04/2007	Active	NOS: (410) Antitrust; Cause: Antitrust Litigation
U.S. District - California Northern	3:09cv3459	Google Inc v. John Beck Amazing Profits LLC	Google Inc	07/28/2009	08/03/2009	Active	NOS: (840) Trademark; Cause: Trademark Infringement

U.S. District - New York Southern	1:05cv6487	Elwell v. Google, Inc et al	Google Inc	07/18/2005	09/27/2005	Active	NOS: (442) Employment; Cause: Job Discrimination (Employment)
U.S. District - New York Southern	2:05cv6487	Elwell v. Google, Inc et al	Google Inc	07/18/2005	01/19/2007	Active	NOS: (442) Employment; Cause: Job Discrimination (Employment)
U.S. District - Arizona	2:06mc96	Google Inc v. American Blind & Wallpaper Factory, Inc	Google Inc	08/22/2006	01/09/2007	Active	NOS: (890) Other Statutory Actions; Cause: Civil Miscellaneous Case
U.S. District - California Northern	3:05cv925	Compression Labs Incorporated v. Acer America Corporation et al	Google Inc	03/03/2005	08/26/2005	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - California Northern	3:08cv4144	Google Inc v. Netlist, Inc	Google Inc	08/29/2008	10/19/2008	Active	NOS: (830) Patent; Cause: Declaratory Judgement
U.S. District - Illinois Northern	1:07cv92	Leo Stoller VS Google Inc	Google Inc	01/08/2007	03/20/2007	Active	NOS: (422) Appeal 28 USC 158; Cause: Notice of Appeal re Bankruptcy Matter (BAP)

Search Result List

Court	Docket Number	Description	Participant	Filed	Date Retrieved	Active or Closed	Identification
U.S. District - California Northern	5:08mc80181	Loudo Trailers, Inc et al v. Bray Trailers, Inc	Google Inc 3rd Party	09/15/2008	02/07/2010	Active	NOS: (0) ; Cause:

Search Result List

Court	Docket Number	Description	Participant	Filed	Date Retrieved	Active or Closed	Identification
U.S. District - Utah	2:09cv1043	Dazzlesmile et al v. Epic Advertising et al	Google A Delaware Corporation	11/23/2009	05/03/2010	Active	NOS: (840) Trademark; Cause: Trademark Infringement (Lanham Act)

Search Result List

Court	Docket Number	Description	Participant	Filed	Date Retrieved	Active or	Identification
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						Closed	
U.S. District - California Northern	5:09cv4552	Textscape, LLC v. Google, Inc	Google Inc A California Corporation	09/25/2009	04/19/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - California Northern	5:01cv20425	Xtraplus Corporation v. Google Inc	Google Inc A California Corporation	05/15/2001	12/30/2006	Active	NOS: (840) Trademark; Cause: Trademark Infringement

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Court	Docket Number	Description	Participant	Filed	Date Retrieved	Active or Closed	Identification
U.S. District - Florida Southern	1:10cv21119	Harris v. Google, Inc	Google Inc A California Corporation Doing Business as Google Phonebook	04/08/2010	04/09/2010	Active	NOS: (360) Personal Injury; Cause: Diversity-Notice of Removal

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Court	Docket Number	Description	Participant	Filed	Date Retrieved	Active or Closed	Identification
U.S. District - California Central	2:04cv9484	Perfect 10 Inc v. Google Inc et al	Google Inc A Corporation	11/19/2004	05/10/2010	Active	NOS: (820) Copyrights; Cause: Copyright Infringement

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Court	Docket Number	Description	Participant	Filed	Date Retrieved	Active or Closed	Identification
U.S. District - Illinois Northern	1:09cv2572	Specht et al v. Google Inc et al	Google Inc A Delaware Corporation	04/28/2009	05/10/2010	Active	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - Texas Eastern	2:09cv175	Beneficial Innovations, Inc v. Careerbuilder, LLC et al	Google Inc A Delaware Corporation	06/01/2009	05/10/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - California Northern	5:08cv3369	"in Re Google Adwords Litigation"	Google Inc A Delaware Corporation	07/11/2008	05/07/2010	Active	NOS: (890) Other Statutory Actions; Cause: Diversity-Other Contract
U.S. District - Texas Eastern	2:07cv555	Beneficial Innovations, Inc v. Aol, LLC et al	Google Inc A Delaware Corporation	12/20/2007	05/04/2010	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - California Northern	3:10cv1824	Google Inc v. Blues Destiny Records, LLC	Google Inc A Delaware Corporation	04/28/2010	05/04/2010	Active	NOS: (820) Copyrights; Cause: Constitutionality of State Statutes
U.S. District -	5:10cv489	Anshu Pathak v. United States	Google Inc A Delaware	04/01/2010	04/08/2010	Active	NOS: (840) Trademark; Cause:

California Central		Patent and Trademark Offices Et A	Corporation				Trademark Infringement
U.S. District - California Northern	3:08cv3888	Pulaski & Middleman, LLC v. Google Inc	Google Inc A Delaware Corporation	08/14/2008	09/28/2008	Active	NOS: (190) Other Contract; Cause: Diversity-Other Contract
U.S. District - California Northern	5:10cv1177	McKinney v. Google, Inc et al	Google Inc A Delaware Corporation	03/22/2010	03/23/2010	Active	NOS: (890) Other Statutory Actions; Cause: Petition for Removal
U.S. District - California Northern	3:09cv3414	Olabode v. Google Inc,	Google Inc A Delaware Corporation	07/24/2009	07/28/2009	Active	NOS: (410) Antitrust; Cause: Fed. Question: Anti-trust
U.S. District - New York Eastern	2:05cv1779	Google Inc v. Wolfe	Google Inc A Delaware Corporation	04/08/2005	12/31/2006	Active	NOS: (840) Trademark; Cause: Trademark Infringement
U.S. District - California Northern	3:04cv3934	Google Inc v. Compression Labs Inc et al	Google Inc A Delaware Corporation	09/17/2004	08/26/2005	Active	NOS: (830) Patent; Cause: Patent Infringement
U.S. District - California Northern	3:05cv598	Google, Inc v. Affinity Engines, Inc	Google Inc A Delaware Corporation	02/09/2005	02/11/2005	Active	NOS: (820) Copyrights; Cause: Copyright Infringement
U.S. District - California Northern	4:04cv3934	Google Inc v. Compression Labs Inc et al	Google Inc A Delaware Corporation	09/17/2004	10/26/2004	Active	NOS: (830) Patent; Cause: Patent Infringement

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Court	Docket Number	Description	Participant	Filed	Date Retrieved	Active or Closed	Identification
U.S. District - California Central	2:07cv8127	VV Sterling Corporation et al v. C Casey Bennett et al	Google Inc A Delaware Corporation Terminated 09 08 2009	12/13/2007	05/10/2010	Active	NOS: (820) Copyrights; Cause: Copyright Infringement

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Court	Docket Number	Description	Participant	Filed	Date Retrieved	Active or Closed	Identification
U.S. District - Washington Western	2:09cv789	Soaring Helmet Corporation v. Bill Me Inc et al	Google Inc A Delaware Corporation Terminated 10 15 2009	06/09/2009	03/29/2010	Active	NOS: (840) Trademark; Cause: Trademark Infringement

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Court	Docket Number	Description	Participant	Filed	Date Retrieved	Active or Closed	Identification
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U.S. District - California Northern	5:10cv241	Largo Cargo Co v. Google, Inc	Google Inc A Delaware Corporation	01/19/2010	04/30/2010	Active	NOS: (370) Fraud; Cause: Diversity-Fraud
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Court	Docket Number	Description	Participant	Filed	Date Retrieved	Active or Closed	Identification
U.S. District - Texas Eastern	2:07cv403	Paid Search Engine Tools, LLC v. Yahoo! Inc	Google Inc Consol	09/13/2007	04/21/2010	Active	NOS: (830) Patent; Cause: Patent Infringement

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Court	Docket Number	Description	Participant	Filed	Date Retrieved	Active or Closed	Identification
U.S. District - Delaware	1:06cv319	Langdon v. Google Inc et al	Google Inc Doing Business as Delaware Google Inc	05/17/2006	03/18/2007	Active	NOS: (440) Other Civil Rights; Cause: Civil Rights Act

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Court	Docket Number	Description	Participant	Filed	Date Retrieved	Active or Closed	Identification
U.S. District - New Jersey	3:09cv5354	Novins v. Cannon et al	Google Incorporated A Corporation Doing Business State New Jersey Terminated 04 27 2010	10/20/2009	05/09/2010	Active	NOS: (360) Personal Injury; Cause: Diversity-Notice of Removal

EXHIBIT 8

EXHIBIT REDACTED IN ITS ENTIRETY