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THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,

Plaintiff,

v.

BARNES & NOBLE, INC.,
BARNESANDNOBLE.COM LLC, HON HAI
PRECISION INDUSTRY CO., LTD.,
FOXCONN INTERNATIONAL HOLDINGS
LTD., FOXCONN ELECTRONICS, INC.,
FOXCONN PRECISION COMPONENT
(SHENZHEN) CO., LTD., AND INVENTEC
CORPORATION,

Defendants.

No. 2:11-cv-00485 RAJ

**DEFENDANTS BARNES & NOBLE, INC.
AND BARNESANDNOBLE.COM LLC'S
MOTION TO STAY**

**NOTED ON MOTION CALENDAR:
JUNE 3, 2011**

1 Pursuant to 28 U.S.C. § 1659(a), Defendants Barnes & Noble, Inc. and
2 barnesandnoble.com LLC (collectively, “Barnes & Noble”) ask this Court to stay all
3 proceedings in this action. Barnes & Noble moves at this time for a stay because of the
4 statutory requirement to file this request within 30 days of being named as a respondent in a
5 related litigation in the U.S. International Trade Commission (“ITC”) or within thirty days of
6 the filing of this action, whichever is later. *See* 28 U.S.C. § 1659(a).
7

8 By virtue of this motion, Barnes & Noble does not consent to personal jurisdiction,
9 venue, sufficiency of process, or sufficiency of service of process. Barnes & Noble does not
10 waive any other substantive or procedural rights or defenses. Rather, Barnes & Noble
11 expressly reserves its rights to raise by motion, or otherwise, all defenses available, including
12 but not limited to, any defenses under Rule 12 of the Federal Rules of Civil Procedure.
13

14
15 Plaintiff Microsoft Corporation (“Microsoft”) filed this action for patent infringement
16 on March 21, 2011, alleging infringement by Barnes & Noble of five patents: U.S. Patent
17 Nos. 6,957,233 (“the ‘233 patent”), 5,778,372 (“the ‘372 patent”), 5,889,522 (“the
18 ‘522 patent”), 6,891,551 (“the ‘551 patent”), and 6,339,780 (“the ‘780 patent”) (collectively,
19 “the Patents-in-Suit”). On the same day, Microsoft also filed a separate complaint at the ITC
20 under Section 337 of the Tariff Act of 1930, as amended, seeking an exclusion order and a
21 cease and desist order to prevent Barnes & Noble’s importation into or sale after importation
22 within the United States of products that allegedly infringe the Patents-in-Suit. On
23 April 8, 2011 and April 12, 2011, respectively, Microsoft filed an amended complaint and
24 additional exhibits with the ITC. A copy of the ITC amended complaint (excluding exhibits)
25 is attached as Exhibit A. On April 19, 2011, the ITC served Barnes & Noble with a Notice of
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27
28

1 Investigation indicating that it was instituting an investigation based on Microsoft's complaint
2 and naming Barnes & Noble as a respondent in the investigation. On April 25, 2011, the
3 Notice of Investigation was published in the Federal Register. 76 Fed. Reg. 22918 (Apr. 25,
4 2011); *In the Matter of Certain Handheld Electronic Computing Devices, Related Software,*
5 *and Components Thereof*, Inv. No. 337-TA-769 (the "ITC Investigation").

7 Section 1659 of Title 28 mandates that a district court action, such as the present
8 action, be stayed upon the timely request of a party in the district court action that is also a
9 respondent in a Section 337 investigation before the ITC. Specifically, Section 1659(a) of
10 Title 28 provides:

12 (a) Stay - In a civil action involving parties that are also parties to a proceeding
13 before the United States International Trade Commission under section 337 of
14 the Tariff Act of 1930, at the request of a party to the civil action that is also a
15 respondent in the proceeding before the Commission, the district court *shall*
16 *stay*, until the determination of the Commission becomes final, proceedings in
17 the civil action with respect to any claim that involves the same issue involved
18 in the proceeding before the Commission, but only if such request is made
19 within - (1) 30 days after the party is named as a respondent in the proceeding
20 before the Commission, or (2) 30 days after the district court action is filed,
21 whichever is later.

22 (Emphasis added).

23 First, as noted above, Barnes & Noble is a party in this action as well as a respondent
24 in the ITC Investigation. *See* 19 C.F.R. § 210.3 (defining "respondent" as "any person
25 named in a notice of investigation").

26 Second, Barnes & Noble has timely moved to stay this action under Section 1659(a).

27 Third, courts have uniformly enforced this mandatory stay provision, recognizing that
28 to do so not only avoids duplicative litigation, but also allows for a narrowing of the issues
before a knowledgeable federal agency. *See, e.g., Verve, LLC v. Verifone, Inc.*, 2004 U.S.

1 Dist. LEXIS 23602, Case No. C 04-03659 JF (N.D. Cal. Nov. 15, 2004); *Universal Tool &*
2 *Stamping Co. v. Ventra Group, Inc.*, 46 U.S.P.Q.2d 1799, 1998 U.S. Dist. LEXIS 11541
3 (N.D. Ind. Jan. 28, 1998). The mandatory stay remains in effect “until the [ITC] proceedings
4 are no longer subject to judicial review,” *i.e.*, until all appeals are exhausted. *In re Princo*
5 *Corp.*, 478 F.3d 1345, 1353-55 (Fed. Cir. 2007).
6

7 Therefore, the Court should stay this action as a matter of right as to all claims that
8 involve the issues involved in the proceeding before the Commission, including the
9 infringement allegations with respect to the Patents-in-Suit, as well as any counterclaims
10 arising as a result of those allegations.
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1 For all of the reasons set forth above, Barnes & Noble respectfully requests that the
2 Court stay all proceedings in this action until the ITC's determination in the ITC Investigation
3 becomes final and is no longer subject to judicial review.
4

5 DATED this 18th day of May, 2011.

6 HILLIS CLARK MARTIN & PETERSON P.S.

7 By s/ Louis D. Peterson

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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of May, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 18th day of May, 2011 at Seattle, Washington.

By s/ Louis D. Peterson

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ND: 20288.002 4827-6503-0153v3

EXHIBIT A

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

In the Matter of

CERTAIN HANDHELD ELECTRONIC
COMPUTING DEVICES,
RELATED SOFTWARE, AND
COMPONENTS THEREOF

Investigation No. _____

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

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EXHIBIT LIST

- Exhibit 1. Microsoft Corporation Form 10-K
- Exhibit 2. Company Profiles of Proposed Respondents
- Exhibit 3. Certified Copy of U.S. Patent No. 5,778,372
- Exhibit 4. Certified Copy of Assignment(s) of U.S. Patent No. 5,778,372
- Exhibit 5. Certified Copy of U.S. Patent No. 5,889,522
- Exhibit 6. Certified Copy of Assignment(s) of U.S. Patent No. 5,889,522
- Exhibit 7. Certified Copy of U.S. Patent No. 6,339,780
- Exhibit 8. Certified Copy of Assignment(s) of U.S. Patent No. 6,339,780
- Exhibit 9. Certified Copy of U.S. Patent No. 6,891,551
- Exhibit 10. Certified Copy of Assignment(s) of U.S. Patent No. 6,891,551
- Exhibit 11. Certified Copy of U.S. Patent No. 6,957,233
- Exhibit 12. Certified Copy of Assignment(s) of U.S. Patent No. 6,957,233
- Exhibit 13. Foreign Patents and Patent Applications Corresponding to U.S. Patent No. 6,957,233
- Exhibit 14C. Patent License and Covenant Agreement (Confidential)
- Exhibit 15C. Declaration of Glen Copping on Behalf of Microsoft Corporation (Confidential)
- Exhibit 16. Claim Chart Demonstrating Practice of U.S. Patent No. 5,778,372 by Windows Phone 7
- Exhibit 17. Claim Chart Demonstrating Practice of U.S. Patent No. 5,889,522 by Windows Phone 7
- Exhibit 18. Claim Chart Demonstrating Practice of U.S. Patent No. 6,339,780 by Windows Phone 7
- Exhibit 19. Claim Chart Demonstrating Practice of U.S. Patent No. 6,891,551 by Windows Phone 7 with March 2011 Update

- Exhibit 20. Claim Chart Demonstrating Practice of U.S. Patent No. 6,957,233 by Amazon.com
- Exhibit 21. Sales Receipts for Exemplary Barnes & Noble Products
- Exhibit 22. Photographs of Exemplary Infringing Products and Their Packaging, and Excerpts from the Barnes & Noble Website
- Exhibit 23. Claim Chart Demonstrating Infringement of U.S. Patent No. 5,778,372 by Barnes & Noble Nook
- Exhibit 24. Claim Chart Demonstrating Infringement of U.S. Patent No. 5,778,372 by Barnes & Noble Nook Color
- Exhibit 25. Claim Chart Demonstrating Infringement of U.S. Patent No. 5,889,522 by Barnes & Noble Nook Color
- Exhibit 26. Claim Chart Demonstrating Infringement of U.S. Patent No. 6,339,780 by Barnes & Noble Nook
- Exhibit 27. Claim Chart Demonstrating Infringement of U.S. Patent No. 6,891,551 by Barnes & Noble Nook
- Exhibit 28. Claim Chart Demonstrating Infringement of U.S. Patent No. 6,891,551 by Barnes & Noble Nook Color
- Exhibit 29. Claim Chart Demonstrating Infringement of U.S. Patent No. 6,957,233 by Barnes & Noble Nook Color
- Exhibit 30. User Manual for Barnes & Noble Nook
- Exhibit 31. User Manual for Barnes & Noble Nook Color
- Exhibit 32. Printed excerpts from TechRepublic.com showing teardown of a Nook Color device
- Exhibit 33. Photographs of a Nook Color device disassembled on April 6, 2011
- Exhibit 34. News article identifying "Foxconn" as original design manufacturer of the Nook device (TechCrunch.com, Dec. 23, 2009)
- Exhibit 35. News article identifying Inventec as producer of Barnes & Noble e-book reader devices (Taiwan Economic News, Feb. 8, 2011)

- Exhibit 36. News article identifying Inventec as producer of Barnes & Noble's e-book reader devices (Taiwan Economic News, Dec. 23, 2010)
- Exhibit 37. News article identifying Inventec as producer of the Nook Color device (TechEye.net, Dec. 3, 2010)
- Exhibit 38C. Licensees of Microsoft Patents (Confidential)

APPENDICES

- A. Certified Copy of Prosecution History for U.S. Patent No. 5,778,372
- B. Technical References for U.S. Patent No. 5,778,372
- C. Certified Copy of Prosecution History for U.S. Patent No. 5,889,522
- D. Technical References for U.S. Patent No. 5,889,522
- E. Certified Copy of Prosecution History for U.S. Patent No. 6,339,780
- F. Technical References for U.S. Patent No. 6,339,780
- G. Certified Copy of Prosecution History for U.S. Patent No. 6,891,551
- H. Technical References for U.S. Patent No. 6,891,551
- I. Certified Copy of Prosecution History for U.S. Patent No. 6,957,233
- J. Technical References for U.S. Patent No. 6,957,233

I. INTRODUCTION

1. Complainant Microsoft Corporation ("Microsoft" or "Complainant") requests that the United States International Trade Commission ("the Commission") institute an investigation into violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, by Barnes & Noble, Inc., barnesandnoble.com LLC, Hon Hai Precision Industry Co., Ltd., Foxconn Electronics, Inc., Foxconn Precision Component (Shenzhen) Co. Ltd., Foxconn International Holdings Ltd., and Inventec Corporation (collectively, the "Proposed Respondents").

2. This Complaint is based on the Proposed Respondents' unlawful and unauthorized importation into the United States, sale for importation, and/or sale within the United States after importation of certain handheld electronic computing devices, related software, and components thereof. Proposed Respondents' products infringe at least one or more claims of U.S. Patent No. 5,778,372 ("the '372 patent"); U.S. Patent No. 5,889,522 ("the '522 patent"); U.S. Patent No. 6,339,780 ("the '780 patent"); U.S. Patent No. 6,891,551 ("the '551 patent"); and U.S. Patent No. 6,957,233 ("the '233 patent") (collectively, "the Microsoft Patents"). The Microsoft Patents are valid and enforceable United States Patents, the entire right, title, and interest to which Microsoft owns by assignment.

3. The Microsoft Patents all generally relate to functions performed by electronic devices. The '372 patent describes displaying a portion of a document's content prior to receiving a background image. The Proposed Respondents infringe at least claims 1 and 5 of the '372 patent. The '522 patent provides an application window and an associated control window that includes a tabbed display of application parameters. The Proposed Respondents infringe at least claims 1, 2 and 12 of the '522 patent. The '780 patent describes a graphic element that is displayed to indicate loading of content in a hypermedia browser with a content display area. The Proposed Respondents infringe at least claims 1-6, 9-14, 17-26 and 29-42 of the '780 patent.

The '551 patent is directed to selecting text within an electronic document. The Proposed Respondents infringe at least claims 1-3, 5 and 7-11 of the '551 patent. The '233 patent provides for capturing annotations made in an electronic document, such as an electronic book, without changing the electronic document. The Proposed Respondents infringe at least claims 21 and 22 of the '233 patent.

4. In summary, the Proposed Respondents infringe at least the patents and claims listed in the chart below.

<u>U.S. Patent No.</u>	<u>Asserted Claims</u>
5,778,372	1 and 5
5,889,522	1, 2 and 12
6,339,780	1-6, 9-14, 17-26 and 29-42
6,891,551	1-3, 5 and 7-11
6,957,233	21 and 22

5. The Proposed Respondents' activities with respect to the importation into the United States, the sale for importation into the United States, and/or the sale within the United States after importation of certain handheld electronic computing devices, related software, and components thereof, described more fully *infra*, are unlawful under 19 U.S.C. § 1337(a)(1)(B)(i) in that they constitute infringement of the valid and enforceable Microsoft Patents.

6. Microsoft seeks relief from the Commission in the form of an order permanently excluding from entry into the United States Proposed Respondents' infringing handheld electronic computing devices, related software, and components thereof. Microsoft further seeks a cease and desist order halting the importation, sale, offer for sale, marketing, advertising, or soliciting of handheld electronic computing devices, related software, and components thereof, and other products owned, held, or stored by the Proposed Respondents and their related companies that infringe Microsoft's valid and enforceable United States patents.

II. THE PARTIES

A. Complainant

7. Complainant Microsoft Corporation is a Washington corporation having its headquarters at One Microsoft Way, Redmond, Washington 98052.

8. Founded in 1975, Microsoft is a worldwide leader in computer software, services, and solutions for businesses and consumers. Microsoft does business throughout the world and has offices in more than 100 countries.

9. Microsoft generates revenue by, *inter alia*, developing and licensing a wide range of software products for many computing devices. These software products include operating systems for servers, personal computers, mobile phones, and other intelligent devices; server applications for distributed computing environments; information worker productivity applications such as word processor, spreadsheet, and email and personal productivity software; business solution applications; high-performance computing applications; software development tools; and cloud based computing applications.

10. Windows Mobile is among the operating systems developed, licensed, and supported by Microsoft. Windows Mobile combines an advanced, real-time embedded operating system with powerful tools for rapidly creating smart, connected, small footprint devices, particularly cellular telephones and other handheld electronic computing devices. Windows Phone 7 was released to manufacture on September 1, 2010.

11. A copy of Microsoft Corporation's Form 10-K for FY2010 is attached hereto as Exhibit 1. Microsoft had substantial sales in the United States over the past three years, totaling over \$150 billion.

12. In fiscal year 2010 (July 1, 2009 through June 30, 2010), Microsoft sold or licensed more than \$62 billion worth of products and services, including Windows Mobile. Over

the last three fiscal years, Microsoft has invested fifteen percent, or approximately \$8-9 billion, of its yearly revenue in product research and development, including substantial amounts for engineering and research and development on the Windows Phone 7 operating system, which practices Microsoft Patents as set forth elsewhere herein. A portion of Microsoft's prior research and development effort resulted in the Microsoft Patents. As of the end of fiscal year 2010, Microsoft's research and development had resulted in a patent portfolio of more than 56,000 issued and pending patents worldwide (over 26,000 issued U.S. patents and pending applications).

13. Microsoft's continued success depends in substantial part on its ability to establish, maintain, and protect its proprietary technology through, *inter alia*, enforcement of its patent rights. Exhibit 38C (Confidential) identifies each licensee that is a party to an agreement that may cover one or more of the asserted patents.

B. Proposed Respondents

14. On information and belief, Barnes & Noble, Inc. is a Delaware corporation with its principal place of business at 122 Fifth Avenue, New York, New York, 10011.

15. On information and belief, barnesandnoble.com LLC is a Delaware limited liability company with its principal place of business at 76 9th Avenue, 9th Floor, New York, New York 10011.

16. Proposed Respondents Barnes & Noble, Inc. and barnesandnoble.com LLC, will be collectively referred to herein as "Barnes & Noble" or "the Barnes & Noble Respondents." On information and belief, Barnes & Noble is in the business of developing, manufacturing and selling handheld electronic computing devices, related software, and components thereof. On information and belief, the Barnes & Noble Respondents import into the United States, sell for

importation, or sell within the United States after importation certain handheld electronic computing devices, related software, and components thereof that infringe the Microsoft Patents.

17. On information and belief, Hon Hai Precision Industry Co., Ltd, operating under the registered trade name "Foxconn," exists under the laws of the Republic of China, with its principal place of business at 2 Zihyou Street, Tucheng City, Taipei County, 236 Taiwan, ROC.

18. On information and belief, Foxconn Electronics, Inc. is a subsidiary of Hon Hai Precision Industry Co., Ltd, and exists under the laws of the Republic of China, with its principal place of business at 2 Zihyou Street, Tucheng City, Taipei County, 236 Taiwan, ROC.

19. On information and belief, Foxconn Precision Component (Shenzhen) Co. Ltd. is a wholly owned subsidiary of Foxconn Electronics, Inc., and exists under the laws of the People's Republic of China, with a principal place of business at No. 2, East Ring Road, No. 10 Industrial Zone, Yousong, Longhua, Shenzhen, Guandong 518109, PRC.

20. On information and belief, Foxconn International Holdings Ltd. is a subsidiary of Hon Hai Precision Industry Co., Ltd., and exists under the laws of the People's Republic of China in the Special Administrative Region of Hong Kong, with its principal place of business at 8F Peninsula Tower, 538 Castle Peak Road, Cheung Sha Wan Kowloon, New Territories, Hong Kong S.A.R., PRC.

21. Proposed Respondents Hon Hai Precision Industry Co., Ltd, Foxconn Electronics, Inc., Foxconn Precision Component (Shenzhen) Co. Ltd., and Foxconn International Holdings Ltd. will be collectively referred to herein as "Foxconn" or "the Foxconn Respondents." On information and belief, Foxconn is in the business of developing, manufacturing and selling handheld electronic computing devices, related software, and components thereof. On information and belief, the Foxconn Respondents manufacture, import into the United States, sell

for importation, or sell within the United States after importation certain handheld electronic computing devices, related software, and components thereof, including the Barnes & Noble Nook and Nook Color products, that infringe the Microsoft Patents. See Exhibits 32, 33 and 34.

22. On information and belief, Inventec Corporation ("Inventec") exists under the laws of the Republic of China, with its principal place of business at Inventec Building, No. 66 Hou-Kang Street, Shin-Lin District, Taipei County, 111 Taiwan, ROC.

23. On information and belief, Inventec is in the business of developing, manufacturing, processing and trading of computers and related products, including handheld electronic computing devices, related software, and components thereof. On information and belief, Inventec manufactures, imports into the United States, sells for importation, or sells within the United States after importation certain handheld electronic computing devices, related software, and components thereof, including the Barnes & Noble Nook and/or Nook Color products, that infringe the Microsoft Patents. See Exhibits 35, 36, and 37.

24. On information and belief, Barnes & Noble is a supplier of handheld electronic computing devices programmed with various software applications. On information and belief, Barnes & Noble markets and sells these products worldwide through various channels, including business partners and various retail companies including retail stores and through company websites.

25. On information and belief, certain handheld electronic computing devices, related software, and components thereof that infringe the Microsoft Patents are manufactured by or for Barnes & Noble, Foxconn, and Inventec in China and/or elsewhere in Asia. On information and belief, these infringing products are imported, sold for importation, or sold after importation into the United States by the Proposed Respondents.

26. The company profiles of the Proposed Respondents are attached as Exhibit 2.

III. THE PRODUCTS AT ISSUE

27. Barnes & Noble's infringing products include handheld electronic computing devices, related software, and components thereof, including operating systems (such as the Android operating system), user interfaces, and other application software designed for use on, and loaded onto, such devices. Upon information and belief, these products are imported into and sold within the United States by or on behalf of the Proposed Respondents. These products include, but are not limited to, the Barnes & Noble Nook and the Barnes & Noble Nook Color¹, and the related software loaded onto these handheld electronic computing devices by or on behalf of the Proposed Respondents.

IV. THE PATENTS AT ISSUE

A. U.S. Patent No. 5,778,372

1. Identification of the Patent and Ownership by Microsoft

28. Microsoft owns by assignment the entire right, title, and interest in the '372 patent entitled "Remote Retrieval and Display Management of Electronic Document with Incorporated Images," which issued on July 7, 1998. A certified copy of the '372 patent is attached as Exhibit 3. A certified copy of the recorded assignment of the '372 patent is attached as Exhibit 4.

29. Pursuant to Commission Rule 210.12(c), a certified copy and three additional copies of the prosecution histories of the '372 patent, as well as four copies of the applicable pages from each technical reference cited in the prosecution history, are attached as Appendices A and B, respectively.

¹ The Nook is sometimes marketed as, sold as, and/or otherwise referred to as the "NOOK" or "nook." The Nook Color is sometimes marketed as, sold as, and/or otherwise referred to as the "color nook," the "nook color," and/or the "NOOKcolor."

2. Non-Technical Description of the Patented Inventions²

30. The '372 patent relates to retrieving an electronic document that includes an embedded background image.

31. Electronic documents such as web pages typically include numerous graphics or images to be displayed along with other types of content, such as text or links.

32. A typical website may be stored as a particular type of document (e.g., an HTML document) having a predefined format. This format may specify the location and form of interactive elements to be displayed on the page.

33. Images or pictures to be displayed, such as a background image, may be larger than the total size of the particular document. Therefore, large background images can delay the rendering of the entire document.

34. The '372 patent describes displaying a portion of the document's content prior to receiving a background image. This provides an enhanced perception of responsiveness because content is loaded before receiving the background image, allowing the user to see a partial rendering of the electronic document prior to receiving all of its parts.

35. Once the background image has been received, the document is redrawn to include the background image.

3. Foreign Counterparts to the '372 Patent

36. Pursuant to Commission Rule 210.12(a)(9)(v), Microsoft submits that there are no foreign counterpart applications corresponding to the '372 patent that have been issued, abandoned, denied, or that remain pending.

² The text in this and all subsequent sections entitled "Non-technical Description of the Patented Inventions" does not, and is not intended to, construe either the specification or the claims of any Microsoft Patents.

B. U.S. Patent No. 5,889,522

1. Identification of the Patent and Ownership by Microsoft

37. Microsoft owns by assignment the entire right, title, and interest in the '522 patent entitled "System Provided Child Window Controls," which issued on March 30, 1999. A certified copy of the '522 patent is attached as Exhibit 5. A certified copy of the recorded assignment of the '522 patent is attached as Exhibit 6.

38. Pursuant to Commission Rule 210.12(c), a certified copy and three additional copies of the prosecution history of the '522 patent, as well as four copies of the applicable pages from each technical reference cited in the prosecution history, are attached as Appendices C and D, respectively.

2. Non-Technical Description of the Patented Inventions

39. The '522 patent provides an application window and an associated control window that includes a tabbed display of application parameters.

40. For example, an Internet browser may have an associated application window that displays a current webpage and an associated control window with history and favorites tabs. The tab functionality is implemented via a pre-defined tab control class that provides information to application programs. The tab control class includes tab control images each defining a page having a tab.

3. Foreign Counterparts to the '522 Patent

41. Pursuant to Commission Rule 210.12(a)(9)(v), Microsoft submits that there are no foreign counterpart applications corresponding to the '522 patent that have been issued, abandoned, denied, or that remain pending.

C. **U.S. Patent No. 6,339,780**

1. **Identification of the Patent and Ownership by Microsoft**

42. Microsoft owns by assignment the entire right, title, and interest in the '780 patent entitled "Loading Status in a Hypermedia Browser Having a Limited Available Display Area," which issued on January 15, 2002. A certified copy of the '780 patent is attached as Exhibit 7. A certified copy of the recorded assignment of the '780 patent is attached as Exhibit 8.

43. Pursuant to Commission Rule 210.12(c), a certified copy and three additional copies of the prosecution history of the '780 patent as well as four copies of the applicable pages from each technical reference cited in the prosecution history, are attached as Appendices E and F, respectively.

2. **Non-Technical Description of the Patented Inventions**

44. The '780 patent is generally directed to a graphic element that is displayed to indicate loading of content in a hypermedia browser with a content display area.

45. Maximization of the browser's content display area may be desirable in, for example, smaller, portable computer systems with limited display size.

46. To maximize the browser's content display area, the graphic element is displayed inside the content display area as opposed to, for example, permanently reserving a separate display area for the graphic element. However, so as not to permanently obstruct content in the content display area, the graphic element is displayed only temporarily while content is actually being loaded.

3. **Foreign Counterparts to the '780 Patent**

47. Pursuant to Commission Rule 210.12(a)(9)(v), Microsoft submits that there are no foreign counterpart applications corresponding to the '780 patent that have been issued, abandoned, denied, or that remain pending.

D. U.S. Patent No. 6,891,551

1. Identification of the Patent and Ownership by Microsoft

48. Microsoft owns by assignment the entire right, title, and interest in the '551 patent entitled "Selection Handles in Editing Electronic Documents," which issued on May 10, 2005. A certified copy of the '551 patent is attached as Exhibit 9. Certified copies of the recorded assignments of the '551 patent are attached as Exhibit 10.

49. Pursuant to Commission Rule 210.12(c), a certified copy and three additional copies of the prosecution history of the '551 patent as well as four copies of the applicable pages from each technical reference cited in the prosecution history, are attached as Appendices G and H, respectively.

2. Non-Technical Description of the Patented Inventions

50. The '551 patent generally relates to selecting text within an electronic document.

51. The user selects a word or phrase by, for example, tapping on a touch screen display. Such a selection may be shown by highlighting the selected word or phrase. The user is presented with selection handles on one or both ends of the selected area. By moving one or both of the handles, the user can change the selection area to include more or less text.

3. Foreign Counterparts to the '551 Patent

52. Pursuant to Commission Rule 210.12(a)(9)(v), Microsoft submits that there are no foreign counterpart applications corresponding to the '551 patent that have been issued, abandoned, denied, or that remain pending.

E. U.S. Patent No. 6,957,233

1. Identification of the Patent and Ownership by Microsoft

53. Microsoft owns by assignment the entire right, title, and interest in the '233 patent entitled "Method and Apparatus for Capturing and Rendering Annotations for Non-Modifiable

Electronic Content," which issued on October 18, 2005. A certified copy of the '233 patent is attached as Exhibit 11. Certified copies of the recorded assignments of the '233 patent are attached as Exhibit 12.

54. Pursuant to Commission Rule 210.12(c), a certified copy and three additional copies of the prosecution history of the '233 patent as well as four copies of the applicable pages from each technical reference cited in the prosecution history, are attached as Appendices I and J, respectively.

2. Non-Technical Description of the Patented Inventions

55. The '233 patent provides for capturing annotations made in an electronic document, such as an electronic book, without changing the electronic document.

56. For example, the user selects placement of an annotation on a page of an electronic book. Then the user enters the annotation. The annotation and its location are stored separately from the electronic book. The user is able to review all annotations for the electronic book and is also able to select each of the annotations. Upon selection of one of the annotations, the user is navigated to the page of the electronic book on which the annotation was originally placed.

3. Foreign Counterparts to the '233 Patent

57. Pursuant to Commission Rule 210.12(a)(9)(v), lists of all foreign patents and patent applications corresponding to the '233 patent, including an indication of status, are attached as Exhibit 13. There are no other foreign counterpart applications that have been issued, abandoned, denied, or that remain pending.

V. THE DOMESTIC INDUSTRY

A. Microsoft's Domestic Industry

58. Microsoft's investment with respect to Microsoft Patents in the United States constitutes a domestic industry under 19 U.S.C. § 1337(a)(2).

59. Microsoft has engaged in a broad range of qualifying domestic industry activities in the United States directed to articles protected by patents asserted in this Complaint.

60. Those activities include significant investment in plant and equipment and labor and capital in the development and production of the Windows Phone 7 operating system and software products (the "domestic industry products"). Those activities relate directly to the practice of one or more claims of each of the Microsoft Patents.

61. Microsoft's investments and activities are substantial both in absolute terms and relative to Microsoft's overall operations, taking into account the nature of such expenditures in the software industry in general, the Complainant's relative size, and the relative importance of Microsoft's domestic operations compared to its activities overseas.

62. Microsoft's domestic industry activities are important to the protected articles and represent significant domestic added value. Moreover, Microsoft's domestic industry activities are significant in the context of comparable products, the company's overall investments, and the relevant marketplace.

63. These activities include, *inter alia*, labor and capital tied to creating the software code and functionalities implementing claimed technology, as well as testing and debugging directed to implementing claimed technology. These activities have occurred in the past and are ongoing with respect to future versions of Microsoft operating system and software products currently under development.

64. Microsoft's foreign product-related investment and employment activities related to the domestic industry products are relatively small compared to the domestic activities.

65. Microsoft also engages in substantial domestic investment in engineering and research and development activities directed to products that directly exploit the technology protected by asserted patents. These activities include, *inter alia*, engineering, research and development, and design tied to claimed technology implemented in software code, as well as other software features that allow claimed technology to function in articles protected by Microsoft Patents. These activities have occurred in the past and are ongoing with respect to future versions of Microsoft operating systems and software currently under development.

66. Microsoft's investments are substantial in the context of the company's own operations, comparable products, the relevant marketplace, and the software industry. In addition, Microsoft's investments bear directly on the practice of asserted patents. These domestic activities are also substantial in comparison to the company's worldwide activities.

67. Microsoft's foreign engineering and research and development activities directed to the exploitation of the asserted intellectual property are relatively small compared to the substantial level of its domestic activities.

68. The investments described above are set forth in the Declaration of Glen Copping, attached as Exhibit 15C (Confidential). Claim charts showing at least one representative claim practiced by at least one domestic industry product are attached as Exhibits 16 through 19.

B. Amazon.com's Domestic Industry

69. On information and belief, Microsoft's licensee Amazon.com, Inc. ("Amazon.com") practices at least one claim of the '233 patent in the United States. The relevant patent license is attached as Exhibit 14C (Confidential). Amazon.com, a major online retailer in the United States, holds a license to the '233 patent. On information and belief, Amazon.com

exploits the technology protected by the '233 patent in its Kindle handheld electronic computing device ("Kindle"). On information and belief, the Kindle practices at least one claim of the '233 patent in the United States. On information and belief, Amazon.com's investment with respect to the '233 patent in the United States constitutes a domestic industry under 19 U.S.C. § 1337(a)(2). A chart comparing a representative claim of the '233 patent to the Kindle is submitted as Exhibit 20.

70. On information and belief, Amazon.com has engaged in qualifying domestic industry activities in the United States directed to the Kindle. On information and belief, those activities include significant investment in plant and equipment and labor and capital in the development and production of the Kindle. On information and belief, those activities relate directly to the practice of one or more claims of the '233 patent.

71. On information and belief, Amazon.com's investments and activities are substantial both in absolute terms and relative to Amazon.com's overall operations, taking into account the nature of such expenditures in the handheld electronic computing device industry in general, and the relative importance of Amazon.com's domestic operations compared to its activities overseas.

72. On information and belief, Amazon.com's domestic industry activities with respect to the Kindle are important and represent significant domestic added value. On information and belief, Amazon.com's domestic industry activities are also significant in the context of comparable products, Amazon.com's overall investments, and the relevant marketplace.

73. On information and belief, Amazon.com makes investments in plant and equipment related to the functionalities implementing the claimed technology, has employment

and labor and capital related to the claimed technology, as well as testing and debugging directed to implementing the claimed technology. On information and belief, these activities have occurred in the past and are ongoing with respect to future versions of the Kindle.

74. On information and belief, Amazon.com also engages in substantial domestic investment in engineering and research and development activities directed to the Kindle product that directly exploits the technology protected by the '233 patent. On information and belief, these activities include, *inter alia*, engineering, research and development, and design tied to the articles protected by the patent, as well as other software features that allow the claimed technology to function on the Kindle. On information and belief, these activities have occurred in the past and are ongoing with respect to future versions of the Kindle product.

75. On information and belief, Amazon.com's investments in exploiting the '233 patent are substantial in the context of the company's own operations, comparable products, the relevant marketplace, and the handheld electronic computing device industry. On information and belief, Amazon.com's investments bear directly on the practice of the '233 patent. On information and belief, these domestic activities are also substantial in comparison to the company's worldwide activities.

VI. SPECIFIC INSTANCES OF IMPORTATION AND SALE

76. On information and belief, the Proposed Respondents import, sell for importation, and/or sell within the United States after importation infringing handheld electronic computing devices, related software, and components thereof. Specific instances of importation of infringing handheld electronic computing devices, related software, and components thereof, set forth below, are representative examples of the Proposed Respondents' unlawful importation of infringing products.

77. On information and belief, the Barnes & Noble Nook and the Barnes & Noble Nook Color are imported into the United States by or on behalf of the Proposed Respondents.

78. Sales receipts for exemplary Barnes & Noble products, purchased from retailers in the United States, are attached as Exhibit 21.

79. These products are marked as a product of China. Photographs of exemplary infringing products and their packaging, and excerpts from Barnes & Noble's website are attached as Exhibit 22.

80. Microsoft believes that Barnes & Noble's infringing products fall under one or more of the following classifications of the Harmonized Tariff Schedule ("HTS") of the United States: Heading Nos. 8470.10.0060 (related to "pocket-size data recording, reproducing and displaying machines with calculating functions"); 8471.30.01, 8471.41.01, or 8471.49.00 (related to handheld computers); 8543.70.92 or 8543.70.96 (related to electrical machines and apparatus having individual functions); and/or 8523 ("Discs, tapes, solid-state non-volatile storage devices, 'smart cards' and other media for the recording of sound or of other phenomena, whether or not recorded, including matrices and masters for the production of discs, but excluding products of Chapter 37"), et seq. These HTS identifications are illustrative and not exhaustive. The identifications are not intended to limit the scope of the Investigation, nor are they intended to restrict the scope of any exclusion order or other remedy ordered by the Commission.

**VII. UNLAWFUL AND UNFAIR ACTS
COMMITTED BY THE PROPOSED RESPONDENTS**

81. On information and belief, the Proposed Respondents unlawfully sell for importation, import, and/or sell after importation into the United States certain handheld electronic computing devices, related software, and components thereof that infringe the

Microsoft Patents. Based on information discovered through investigation, the infringing products infringe at least: claims 1 and 5 of the '372 patent; claims 1, 2 and 12 of the '522 patent; claims 1-6, 9-14, 17-26 and 29-42 of the '780 patent; claims 1-3, 5 and 7-11 of the '551 patent; and claims 21 and 22 of the '233 patent. Attached as Exhibits 23 through 29 are claim charts that provide examples of how the asserted independent claims of the Microsoft Patents read on the Exemplary Barnes & Noble Products.

82. The infringement allegations contained in this Complaint include direct and indirect infringement. The Proposed Respondents have been given actual notice of their infringement of the Microsoft Patents by Microsoft's service of this Complaint, which is being served on the Proposed Respondents at the time of filing with the Commission. On information and belief, the Proposed Respondents directly infringe the Microsoft Patents through the operation, development, and testing of their products in the United States.

83. The Proposed Respondents also directly infringe the apparatus claims of the Microsoft Patents by offering for sale and/or selling their infringing products in the United States.

84. The Proposed Respondents knowingly induce others in the United States to use products covered by the Microsoft Patents and to perform methods covered by certain claims of the Microsoft Patents. The Proposed Respondents' inducement of infringement includes, but is not limited to: (i) knowledge of the Microsoft Patents; (ii) intent to induce direct infringement of the Microsoft Patents; (iii) knowingly aiding and abetting infringement by providing instruction manuals and other directions that instruct the purchaser or user of an accused device to use that device in a manner that infringes certain claims of the Microsoft Patents; and (iv) actual or constructive knowledge that their actions induce infringement. Attached as Exhibits 30 and 31

are instruction manuals for two of the Proposed Respondents' handheld electronic computing devices, i.e., the Barnes & Noble Nook and the Barnes & Noble Nook Color.

VIII. RELATED LITIGATION

85. On March 21, 2011, the '372, '522, '780, '551, and '233 patents were asserted against the Proposed Respondents in *Microsoft Corp. v. Barnes & Noble, Inc.*, No. 2:11-cv-00485-RAJ (W.D. Wa.). No motions had been filed and no orders had issued in this case as of the filing of this Amended Complaint. Additionally, the '780 patent was asserted by Microsoft by way of a patent infringement counterclaim against *Motorola Mobility, Inc.*, in *Motorola Mobility, Inc. v. Microsoft Corporation*, Western District of Washington (2:11-cv-00343-JLR). That case was originally filed in the Western District of Wisconsin on November 11, 2010, where it was assigned case number 2:11-cv-00343-MJP. This case was in discovery as of the filing of this Amended Complaint.

86. Other than the instance listed above, no other domestic or foreign court or agency is or has been involved with the Microsoft Patents (or their foreign counterparts).

IX. RELIEF REQUESTED

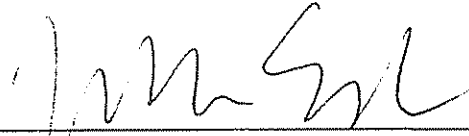
WHEREFORE, by reason of the foregoing, Complainant Microsoft respectfully requests that the United States International Trade Commission:

- (a) institute an immediate investigation pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, with respect to the Proposed Respondents' violations of that section based on the importation into the United States, sale for importation, and/or the sale within the United States after importation of Proposed Respondents' infringing products;
- (b) set a target date of no more than fifteen months;

- (c) schedule and conduct a hearing on permanent relief pursuant to 19 U.S.C. § 1337(c) for the purposes of receiving evidence and hearing argument concerning whether there has been a violation of Section 337, and following the hearing, to determine that there has been a violation of Section 337;
- (d) issue a permanent exclusion order, pursuant to 19 U.S.C. § 1337(d) forbidding entry into the United States of Proposed Respondents' products that infringe one or more claims of U.S. Patent Nos. 5,778,372; 5,889,522; 6,339,780; 6,891,551; and 6,957,233; and
- (e) issue a permanent cease and desist order, pursuant to 19 U.S.C. § 1337(f), prohibiting the Proposed Respondents and their related companies from engaging in the importation, sale for importation, marketing, distribution, offering for sale, the sale after importation of, or otherwise transferring within the United States products that infringe United States Patents Nos. 5,778,372; 5,889,522; 6,339,780; 6,891,551; and 6,957,233; and
- (f) issue such other and further relief as the Commission deems just and proper under the law, based upon the facts determined by the investigation and the authority of the Commission.

Dated: April 8, 2011

Respectfully submitted,



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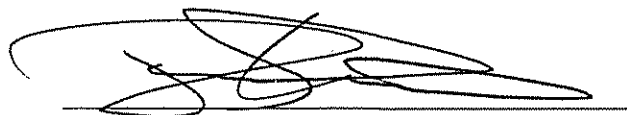
VERIFICATION OF AMENDED COMPLAINT

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

1. I am Corporate Vice President for complainant Microsoft Corporation and am duly authorized by Microsoft to verify this amended complaint of Complainant.
2. I have read the foregoing Amended Complaint of Microsoft Corporation and am aware of the Amended Complaint's contents, exhibits, declarations, and appendices.
3. To the best of my knowledge, information, and belief, founded upon reasonable inquiry, the Amended Complaint and all of its supporting materials (exhibits, declarations, and appendices) are not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
4. To the best of my knowledge, information, and belief, founded upon reasonable inquiry, the claims and legal contentions of this Amended Complaint are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.
5. To the best of my knowledge, information, and belief founded upon reasonable inquiry, any allegations or factual contentions in this Amended Complaint have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

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

Executed on April 7, 2011



David M. Howard
Corporate Vice President