

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

**In the Matter of
CERTAIN WIRELESS
COMMUNICATIONS DEVICES AND
COMPONENTS THEREOF**

Investigation No. 337-TA-_____

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

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TABLE OF CONTENTS

I. INTRODUCTION..... 1

II. COMPLAINANT..... 3

III. PROPOSED RESPONDENTS 3

 A. KYOCERA..... 3

 B. SANYO 4

 C. METROPCS..... 5

 D. SPRINT 5

IV. THE TECHNOLOGIES AND PRODUCTS AT ISSUE..... 6

V. THE ‘385 PATENT..... 6

 A. EXCLUSIVE LICENSE TO SPH AMERICA 8

 B. NON-TECHNICAL DESCRIPTION OF THE PATENTED INVENTION 8

 C. LICENSEES 9

VI. THE ‘029 PATENT..... 9

 A. FOREIGN COUNTERPARTS 10

 B. EXCLUSIVE LICENSE TO SPH..... 10

 C. NON-TECHNICAL DESCRIPTION OF THE PATENTED INVENTION 11

 D. LICENSEES 11

VII. UNFAIR ACTS OF PROPOSED RESPONDENTS – PATENT INFRINGEMENT AND IMPORTATION 12

 A. KYOCERA..... 12

 B. SANYO 14

 C. METRO PCS..... 16

 D. SPRINT 17

VIII. HARMONIZED TARIFF SCHEDULE INFORMATION 18

IX. THE DOMESTIC INDUSTRY 19

X. RELATED LITIGATION..... 23

XI. RELIEF REQUESTED 24

VERIFICATION OF COMPLAINT 26

Table of Exhibits

Exhibit No.	Description
1	Certified copy of United States Patent No. RE 40,385 (“’385” Patent)
2	Copy of assignment of the ’385 Patent
3	Certified copy of United States Patent No. 5,960,029 (“’029” Patent)
4	Certified copy of assignment of the ’029 Patent
5	CONFIDENTIAL Exclusive Patent License Agreement and related agreements
6	CONFIDENTIAL License Agreement between SPH America LLC and Sublicensee
7	MetroPCS’s 10K SEC Filing
8	Sprint’s 10K SEC Filing
9	Receipt of purchase for Kyocera Tempo E2000 device from MetroPCS
10	Photos of Kyocera Tempo E2000 device, including shipping label on packaging
11	Product Specification for Kyocera Tempo E2000 device
12	Claim chart demonstrating infringement of ’385 Patent by Kyocera Tempo E2000
13	Claim chart demonstrating infringement of ’029 Patent by Kyocera Tempo E2000
14	Receipt of purchase of Sanyo Katana Eclipse X device from Sprint
15	Photos of Katana Eclipse X device, including product label inside device
16	Printout of Sanyo’s webpage showing names of merchants through which Sanyo sells Katana Eclipse X devices throughout United States
17	Product Specification for Sanyo Katana Eclipse X device
18	Claim chart demonstrating infringement of ’385 Patent by Sanyo Katana Eclipse X device

19	Claim chart demonstrating infringement of '029 Patent by Sanyo Katana Eclipse X device
20	Printout of MetroPCS's webpage showing additional examples of infringing Kyocera devices
21	Printout of Sprint's webpage showing list of wireless communication devices for sale
22	Printout of Sprint's webpage showing locations of Sprint stores in United States
23	CONFIDENTIAL Product Specifications for exemplary wireless communication devices of Sublicensee
24	CONFIDENTIAL Photos of Sublicensee's device
25	CONFIDENTIAL Claim chart comparing claim 20 of '385 Patent to Sublicensee's device
25A	PUBLIC VERSION Claim chart comparing claim 20 of '385 Patent to Sublicensee's device
26	CONFIDENTIAL Claim chart comparing claim 1 of '029 Patent to Sublicensee's device
26A	PUBLIC VERSION Claim chart comparing claim 1 of '029 Patent to Sublicensee's device
27	CONFIDENTIAL "Company Info" page from Sublicensee's website
28	CONFIDENTIAL D&B Report – Duns Market Identifiers
29	CONFIDENTIAL Seattle Times Article on Sublicensee
30	CONFIDENTIAL Annual Report of Sublicensee
31	CONFIDENTIAL "Current Opportunities – Position: Regional Sales Manager" page from the Sublicensee's website
32	CONFIDENTIAL "Current Opportunities – Position: Technical Manager" page from the Sublicensee's website
33	CONFIDENTIAL "Support via Hotline" page from the Sublicensee's website

34	CONFIDENTIAL “Service and Repair” page from the Sublicensee’s website
35	CONFIDENTIAL “Current Opportunities – Director, Product Management” page from the Sublicensee’s website
36	CONFIDENTIAL “Current Opportunities – Software Design Engineer” page from the Sublicensee’s website
37	Copy of Complaint for Patent Infringement, Civil Action No. 1:08cv702
38	Exhibit not used
39	Exhibit not used
40	Exhibit not used
41	Exhibit not used
42	Exhibit not used
43	3GPP2 C.S0002 V.3

Appendix No.	Description
A	Prosecution history of the ‘385 Patent
B	Copies of the ‘385 Patent and each technical reference mentioned in the prosecution history
C	Prosecution history of the ‘029 Patent
D	Copies of the ‘029 Patent and each technical reference mentioned in the prosecution history

I. INTRODUCTION

1. Complainant SPH America, LLC (“SPH America”) requests that the United States International Trade Commission commence an investigation pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“Section 337”), to remedy the unlawful importation into the United States, the sale for importation into the United States, and/or the sale within the United States after importation by the owner, importer, or consignee, of certain wireless communications devices and components thereof, including but not limited to cellular telephones and PDAs.

2. The proposed respondents are Kyocera Corporation, Kyocera Wireless Corporation, Kyocera Sanyo Telecom, Inc., MetroPCS Communications, Inc., MetroPCS Wireless, Inc., and Sprint Nextel Corporation (collectively “Respondents”).

3. On information and belief, proposed respondents have violated and continue to violate Section 337 through and in connection with the unlawful 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 wireless communications devices and components thereof that infringe United States Patent No. RE 40,385 entitled “Orthogonal Complex Spreading Method for Multichannel and Apparatus Thereof” (“‘385 Patent”) and/or United States Patent No. 5,960,029 entitled “Coherent Dual-Channel QPSK Modulator/Demodulator for CDMA Systems, and Modulating/Demodulating Methods Therefor” (“‘029 Patent”) (collectively “Asserted Patents”).

4. SPH America asserts that the accused products directly infringe, contributorily infringe, and/or induce the infringement of at least claims 20 - 26, 31 - 33, 43, 48, 51, 53 - 55, 57 - 74, 76 - 80, 82 - 87, 89 - 225, and 227 - 287 of the ‘385 Patent and at least claims 1 - 5 and 14 - 18 of the ‘029 Patent.

5. Certified copies of the '385 and '029 Patents accompany this Complaint as **Exhibits 1 and 3**, respectively. Copies of the prosecution histories of the '385 and '029 Patents also accompany this Complaint as **Appendices A and C**, respectively.¹ SPH America is the exclusive licensee of the Asserted Patents, which are licensed from Electronics and Telecommunications Research Institute ("ETRI"), the assignee of the Asserted Patents. Copies of the recorded assignments of the '385 and '029 Patents accompany the Complaint as **Exhibits 2 and 4**.² Copies of a license agreement and other related agreements, whereby ETRI grants an exclusive license to SPH America, are also attached hereto as **Confidential Exhibit 5**.

6. As required by Section 337(a)(2) and defined by Section 337(a)(3), an industry in the United States exists relating to articles covered by the Asserted Patents. SPH America has licensed the '385 and '029 Patents to a sublicensee ("Sublicensee"), which develops and manufactures products covered by the Asserted Patents, and also provides warranties, support services, and related activities with respect to those products. A copy of the license agreement between SPH America and the Sublicensee is attached hereto as **Confidential Exhibit 6**. The Sublicensee conducts significant domestic industry activities in the United States relating to products practicing the Asserted Patents. These activities include significant investment in plant and equipment, and significant employment of labor or capital in the United States and substantial investment in the exploitation of the '385 and '029 Patents through research and development, and engineering and design activities, as well as licensing.

7. Complainant seeks, as relief, a permanent limited exclusion order barring from entry into the United States infringing Kyocera and Sanyo wireless communication devices and

¹ Certified copies of the prosecution histories of the Asserted Patents have been ordered and will be submitted to the Secretary's Office upon receipt.

² A certified copy of the recorded assignment for the '385 Patent has been ordered and will be submitted to the Secretary's Office upon receipt.

components thereof that are manufactured abroad by or on behalf of Respondents, or imported by or on behalf of Respondents, that infringe one or more of the claims of the Asserted Patents. Complainant also seeks cease and desist orders pursuant to 19 U.S.C. § 1337(f) directing each proposed respondent to cease and desist from engaging in the importation into the United States and/or the marketing, advertising, demonstrating, warehousing inventory of such accused products for distribution, and sale within the United States after importation of such devices that infringe one or more of the claims of the Asserted Patents.

II. COMPLAINANT

8. Complainant SPH America is a Virginia limited liability company, and has a regular and established place of business at 8133 Leesburg Pike, Suite 640, Vienna, Virginia 22182. SPH America is in the business of researching, acquiring and licensing patented technologies in wireless communications. SPH America is the exclusive licensee of the Asserted Patents from ETRI and has all substantial rights in the Asserted Patents. See Confidential Exhibit 5.

9. ETRI is the owner by assignment of all rights, title, and interest in the Asserted Patents. See Exhibits 2 and 4. ETRI is a non-profit, government-funded research organization, which includes a world-renowned information and telecommunications research institute. ETRI was established in South Korea in 1976 and employs over 1,600 scientists in its research programs.

III. PROPOSED RESPONDENTS

A. Kyocera

10. On information and belief, Respondent Kyocera Corporation is a Japanese corporation with its principal place of business at 6 Takeda Tobadono-cho, Fushimi-ku, Kyoto 612-8501, Japan.

11. On information and belief, Respondent Kyocera Wireless Corporation is a wholly owned subsidiary of Kyocera Corporation, and is incorporated under the laws of Delaware, with its principal place of business at 10300 Campus Point Dr., San Diego, CA 92121. On information and belief, Kyocera Wireless Corporation was formed when Kyocera Corporation purchased the terrestrial handset division of Qualcomm, Inc. and Kyocera Wireless Corporation is responsible for the design, engineering, manufacturing, sale, marketing and end-user service of existing QUALCOMM and new Kyocera wireless phones and related equipment in North America.

12. Respondents Kyocera Corporation and Kyocera Wireless Corporation will be referred to herein collectively as “Kyocera” or “Kyocera Respondents.” Kyocera is in the business of developing, manufacturing and selling wireless communications devices and components thereof. On information and belief, Kyocera Respondents import into the United States, sell for importation, or sell within the United States after importation certain wireless communications devices and components thereof that infringe the Asserted Patents.

B. Sanyo

13. On information and belief, Respondent Kyocera Sanyo Telecom, Inc. (“Sanyo”) is a wholly owned subsidiary of Kyocera Corporation, and is incorporated under the laws of Delaware, with a place of business at 2125 Burbank Blvd., Suite 100, Woodland Hills, CA 91367.

14. Sanyo is in the business of developing, manufacturing and selling wireless communications devices and components thereof. On information and belief, Sanyo imports into the United States, sells for importation, or sells within the United States after importation certain wireless communications devices and components thereof that infringe the Asserted Patents.

C. MetroPCS

15. On information and belief, Respondent MetroPCS Communications, Inc. is a Delaware corporation with its principal place of business at 2250 Lakeside Blvd., Richardson, TX 75082.

16. On information and belief, Respondent MetroPCS Wireless, Inc. is a subsidiary of MetroPCS Communications, Inc., and has its principal place of business at 8144 Walnut Hill Lane, Suite 800, Dallas, TX 75231.

17. Respondents MetroPCS Communications, Inc. and MetroPCS Wireless, Inc. will be referred to herein collectively as “MetroPCS” or “MetroPCS Respondents.” On information and belief, MetroPCS is in the business of providing wireless broadband personal communication services, or PCS, in selected major metropolitan areas in the United States. See Exhibit 7. MetroPCS Respondents also import into the United States, sell for importation, or sell within the United States after importation certain wireless communications devices and components thereof that infringe the Asserted Patents, such as, by way of example, the Kyocera Tempo E2000. As of December 31, 2008, MetroPCS had approximately 5.4 million subscribers in eight states. Id.

D. Sprint

18. On information and belief, Respondent Sprint Nextel Corporation (“Sprint”) is a Kansas Corporation, with its principal place of business at 6200 Sprint Parkway, Overland Park, KS 66251.

19. On information and belief, Sprint is in the business of providing an array of wireless mobile telephone and data transmission services on networks that utilize CDMA and CDMA EV-DO technologies. See Exhibit 8. Sprint also imports into the United States, sells for importation, or sells within the United States after importation certain wireless communications

devices and components thereof that infringe the Asserted Patents, such as the Sanyo Katana Eclipse X. Together with its affiliates, Sprint operates CDMA networks in 360 metropolitan markets, including 341 of the 349 largest U.S. metropolitan areas, where more than 271 million people live or work.

IV. THE TECHNOLOGIES AND PRODUCTS AT ISSUE

20. The technologies at issue relate generally to devices and methods for processing signals in wireless cellular telecommunications systems.

21. The accused products and licensed domestic industry products are wireless cellular devices that process signals in wireless cellular communication systems and components thereof, including, but not limited to, cellular telephones and PDAs.

V. THE '385 PATENT

22. The '385 Patent, entitled "Orthogonal Complex Spreading Method for Multichannel and Apparatus Thereof," issued on June 17, 2008 to inventors Seung-Chan Bang, Jae-Ryong Shim, Ki-Chul Han, Jung-im Kim and Tae-Joong Kim of Daejeon, South Korea and was assigned to ETRI. The '385 Patent was filed in the United States Patent and Trademark Office on September 2, 2004 as Application No. 10/932,227, which is a reissue application of United States Patent No. 6,449,306 ("'306 Patent") (Application No. 09/767,953, filed on March 27, 2001). The '306 Patent is a continuation of Application No. 09/162,764, filed on September 30, 1998, which issued as United States Patent No. 6,222,873 ("'873 Patent") and claims priority to Korean Patent Application Nos. 97-65375 (filed on December 2, 1997) and 98-11923 (filed on April 4, 1998). The '385 Patent has a total of 287 claims, of which 23 are independent claims.

23. Pursuant to Commission Rules 210.12(a)(9)(i) - (ii), a certified copy of the '385 Patent and a copy of the assignment record of the '385 Patent are attached hereto as **Exhibits 1 and 2**, respectively.³

24. Pursuant to Commission Rule 210.12(c)(1) - (2), this Complaint is accompanied by four copies of the prosecution history of the '385 Patent (**Appendix A**), and four copies of each patent and the applicable pages of each technical reference mentioned in the prosecution history of the '385 Patent (**Appendix B**).

25. Pursuant to Commission Rule 210.12(a)(9)(iv), SPH America identifies the following foreign counterpart patents and patent applications relating to the '385 Patent:

COUNTRY	APPLICATION NUMBER	STATUS
Korea	KR 1997-0065375	Withdrawn
Korea	KR 1998-0011923	Issued as KR 100269593B1 on July 21, 2000
Japan	JP 19980281580	Issued as JP 3094292B2 on Aug. 4, 2000
Europe (UK, FR, SW, FI)	EP 98308056.5	Issued as EP 0921652B1 on Aug. 15, 2007
Germany	DE19986038242T	Issued as DE 69838242T2 on Feb. 14, 2008
Europe	EP 04077915.9	Pending
Europe	EP 04077916.7	Withdrawn
Europe	EP 07075393.4	Pending
Europe	EP 07075395.9	Pending
Europe	EP 07010702.4	Pending
Europe	EP 07010769.3	Pending
Europe	EP 07010789.1	Pending
Hong Kong	08101486.1	pending
Hong Kong	08101487.0	pending

³ A certified copy of the '385 Patent's assignment record has been ordered and will be submitted to the Secretary's Office upon receipt.

COUNTRY	APPLICATION NUMBER	STATUS
Hong Kong	08101565.5	pending
Hong Kong	08101592.2	pending
Hong Kong	08101591.3	pending

Complainant knows of no other foreign patents or patent applications corresponding to the ‘385 Patent that have been filed, abandoned, withdrawn or rejected.

A. Exclusive License to SPH America

26. SPH America holds an exclusive license from ETRI, with all substantial rights, to the ‘385 Patent through the Exclusive Patent License Agreement effective July 11, 2006 and a series of related agreements. Pursuant to Rule 210.12(a)(10)(ii) **Confidential Exhibit 5** contains copies of these agreements and certified translations thereof. Complainant knows of no other current licenses to the ‘385 Patent from ETRI.

B. Non-Technical Description of the Patented Invention⁴

27. The ‘385 Patent generally relates to signal processing in a wireless telecommunication system. In a wireless telecommunication system, all of the mobile devices and base stations must adhere to a set of protocols for processing transmitted and received signals to enable the communication of data. The invention of the ‘385 Patent represents specific technologies for processing signals in a telecommunication system to facilitate the implementation of various telecommunication standards, such as standards using code-division multiple access (CDMA) technology. In particular, the invention of the ‘385 Patent is adopted in the CDMA2000 standards, such as CDMA2000 1x RTT (also known as “CDMA2000 1x” or

⁴ The text in this Complaint, including this section (i.e., “Non-Technical Description of the Patented Invention”), does not, and is not intended, to construe either the specification or the claims of the Asserted Patents.

“CDMA 1x”) and CDMA2000 EV-DO (also known as “CDMA EV-DO,” “CDMA EVDO,” or “EVDO”).

28. The ‘385 Patent covers systems and methods of processing communication signals that improve the efficiency of processing circuits and lower power consumption in telecommunication devices. In mobile telecommunication systems, an important consideration is maximizing the life of batteries used as power sources by lowering mobile device power consumption. A key factor in lowering power consumption is the efficiency of mobile device power amplifier. The invention in the ‘385 Patent provides a novel and inventive signal processing technique that decreases power consumption or maintains it at a lower level in mobile device power amplifier.

C. Licensees

29. SPH America has licensed the ‘385 Patent to Sublicensee. Pursuant to Commission Rule 210.12(a)(10)(ii), copies of the License Agreement between SPH America and Sublicensee involving the ‘385 Patent are attached hereto as **Confidential Exhibit 6**.

VI. THE ‘029 PATENT

30. The ‘029 Patent, entitled “Coherent Dual-Channel QPSK Modulator/Demodulator for CDMA Systems, And Modulating/Demodulating Methods Therefor,” issued on September 28, 1999 to inventors Seong-Rag Kim, Hun Lee, Byung-Shik Kang and Jae-Wook Jung of Daejeon, South Korea and was assigned to ETRI. The ‘029 Patent was filed in the United States Patent and Trademark Office on September 30, 1996 as Application No. 08/723,397, which claims priority to Korean Patent Application No. 95-47060 (filed on December 6, 1995). The ‘029 Patent has 26 claims, of which four are independent claims.

31. Pursuant to Commission Rules 210.12(a)(9)(i) - (ii), a certified copy of the '029 Patent and a copy of the assignment record of the '029 Patent are attached hereto as **Exhibits 3 and 4**, respectively.

32. Pursuant to Commission Rule 210.12(c)(1) - (2), this Complaint is accompanied by four copies of the prosecution history of the '029 Patent (**Appendix C**), and four copies of each patent and the applicable pages of each technical reference mentioned in the prosecution history of the '029 Patent (**Appendix D**).⁵

A. Foreign Counterparts

33. Pursuant to Commission Rule 210.12(a)(9)(v), SPH America identifies the following foreign counterpart patents and patent applications relating to the '029 Patent:

COUNTRY	APPLICATION NUMBER	STATUS
Korea	KR 1995-0047060	Issued as KR 0159201B1 on Aug. 10, 1998
Japan	JP 1996-0246360	Issued as JP 3434141B2 on May 30, 2003

Complainant knows of no other foreign patents or patent applications corresponding to the '029 Patent that have been filed, abandoned, withdrawn or rejected.

B. Exclusive License to SPH

34. SPH America holds an exclusive license from ETRI, with all substantial rights, to the '029 Patent through the Exclusive Patent License Agreement effective July 11, 2006 and a series of related agreements. **Confidential Exhibit 5** contains copies of these agreements and certified translations thereof. Complainant knows of no other current licenses to the '029 Patent from ETRI.

⁵ A certified copy of the prosecution history of the '029 Patent has been ordered and will be submitted to the Secretary's Office upon receipt.

C. Non-Technical Description of the Patented Invention⁶

35. The '029 Patent generally relates to signal processing in a wireless telecommunication system. In a wireless telecommunication system, all of the mobile devices and base stations must adhere to a set of protocols for processing transmitted and received signals in order to enable the communication of data. The invention of the '029 Patent represents specific technologies adopted in various telecommunication standards, such as standards using code-division multiple access (CDMA) technology. In particular, the invention of the '029 Patent is adopted in the CDMA2000 standards, such as CDMA2000 1x RTT (also known as "CDMA2000 1x" or "CDMA 1x") and CDMA2000 EV-DO (also known as "CDMA EV-DO," "CDMA EVDO," or "EVDO").

36. The '029 Patent covers a modulator/demodulator and modulating/demodulating method for a CDMA system. Digital modulation is a technique in which data is transmitted by changing, or modulating, a reference signal or carrier wave. For example, in phase-shift keying (PSK) or quadrature phase-shift keying (QPSK) modulation, the phase of the reference signal is modulated to represent the data signal. The invention in the '029 Patent provides a novel and inventive QPSK modulation/demodulation technique that reduces signal interference, minimizes errors, and improves receiving performance.

D. Licensees

37. SPH America has licensed the '029 Patent to Sublicensee. Pursuant to Commission Rule 210.12(a)(10)(ii), copies of the License Agreement between SPH America and Sublicensee involving the '029 Patent are attached hereto as **Confidential Exhibit 6**.

⁶ The text in this Complaint, including this section (i.e., "Non-Technical Description of the Patented Invention"), does not, and is not intended, to construe either the specification or the claims of the Asserted Patents.

VII. UNFAIR ACTS OF PROPOSED RESPONDENTS – PATENT INFRINGEMENT AND IMPORTATION

38. On information and belief, Kyocera and Sanyo manufacture certain wireless communications devices and components thereof that infringe at least claims 20 - 26, 31 - 33, 43, 48, 51, 53 - 55, 57 - 74, 76 - 80, 82 - 87, 89 - 225, and 227 - 287 of the '385 Patent and at least claims 1 - 5 and 14 - 18 of the '029 Patent (“Infringing Devices,” or, when referring to a particular device, “Infringing Device”). On information and belief, each of the Respondents are engaged in the importation, the sale for importation, and/or the sale within the United States after importation of the Infringing Devices. The specific instances referenced below of importation, sale of importation, and/or sale within the United States after importation of Infringing Device(s) by each Respondent are a representative sample, and do not in any way limit the scope of the accused products.

39. The representative samples of the Infringing Devices include Kyocera and Sanyo wireless communications devices that conform to the CDMA2000 standards, such as a Kyocera Tempo E2000 device and a Sanyo Katana Eclipse X device, as detailed below.

A. Kyocera

40. Pursuant to Commission Rule 210.12(a)(3), SPH America attaches hereto, as **Exhibit 9**, a receipt from a MetroPCS store in the United States evidencing a sale of the Kyocera Tempo E2000 device on March 12, 2009. Pursuant to Commission Rule 210.12(a)(9)(x), SPH America attaches hereto, as **Exhibit 10**, photographs of the Kyocera Tempo E2000 device, including a photograph of the shipping label on the packaging marked “MADE IN CHINA.” Kyocera Tempo E2000 devices are sold throughout the United States via MetroPCS stores. See, e.g., Exhibit 10.

41. On information and belief, Kyocera makes wireless communications devices that comply with and practice the CDMA2000 standard. For example, the product specification for

the Kyocera Tempo E2000 device states that the device is “CDMA2000® 1x EV-DO and AGPS/E-911 capable” indicating that the Kyocera Tempo E2000 device is both a CDMA 1x and a CDMA EVDO device, and therefore, CDMA2000 compliant. See Exhibit 11.

42. Pursuant to Commission Rule 210.12(a)(9)(viii), SPH America attaches hereto, as **Exhibits 12**, claim charts comparing independent claims 20, 31, 53, 71, 77, 84, 90, 102, 118, 134, 150, 166, 177, 187, 197, 208, 219, 230, 242, 264, 265, 272 and 279 of the ‘385 Patent to the Kyocera Tempo E2000 device. SPH America also attaches **Exhibit 13**, claim charts comparing independent claims 1 and 14 of the ‘029 Patent to the exemplary Kyocera Tempo E2000 device. As demonstrated by these exemplary claim charts, these accused exemplary Kyocera products infringe the asserted claims of the ‘385 and ‘029 Patents. Further discovery may reveal that additional claims of the Asserted Patents are infringed by the accused products.

43. On information and belief, the Infringing Devices are manufactured, assembled and/or packaged and tested overseas, specifically, at least in China. These same products are then imported into the United States, sold for importation into the United States, and/or sold after importation in the United States. The aforesaid acts of Kyocera constitute direct, contributory, and/or induced infringement of the asserted claims. The importation into the United States, sale for importation into the United States, and/or sale after importation into the United States of the accused Kyocera devices directly infringes the asserted claims of the Asserted Patents. Kyocera contributes to the infringement by others of the asserted claims, for example, by providing the accused Kyocera Tempo E2000 devices, which have no substantial non-infringing use, to customers who use the devices in an infringing manner. On information and belief, Kyocera actively induces others to infringe the asserted claims through the sale of the accused Kyocera devices to others, such as MetroPCS, who resell and thereby directly infringe the asserted claims. On information and belief, Kyocera also actively induces others to infringe through the sale of

the Infringing Devices to customers, along with directions, demonstrations, guides, manuals, training for use, and other materials that encourage the infringing use of the accused devices.

44. Kyocera has been given actual notice of its infringement of the Asserted Patents at least by SPH America's service of this Complaint, which is being served on Kyocera at the time of filing with the U.S. International Trade Commission. In addition, Kyocera was given actual notice of its infringement of the Asserted Patents by SPH America's service of the July 9, 2008 complaint in the *SPH America, LLC v. High Tech Computer Corp. et al.*, Civ. Action No. 1:08cv702 (GBL/JFA) case. See Exhibit 37.

B. Sanyo

45. Pursuant to Commission Rule 210.12(a)(3), SPH America attaches hereto, as **Exhibit 14**, a receipt from a Sprint store in the United States showing the purchase of the Sanyo Katana Eclipse X device on March 12, 2009. Pursuant to Commission Rule 210.12(a)(9)(x), SPH America attaches hereto, as **Exhibit 15**, photographs of the Sanyo Katana Eclipse X device, including a photograph of the product label marked "MADE IN MALAYSIA." Sanyo Katana Eclipse X devices are sold throughout the United States via certain merchants, including Sprint. See Exhibits 14, 16.

46. On information and belief, Sanyo makes wireless communications devices that comply with and practice the CDMA2000 standard. For example, the product specification for the Sanyo Katana Eclipse X device, which is both a CDMA 1x device and a CDMA EVDO device, indicates that the Sanyo Katana Eclipse X device is CDMA2000 compliant. See Exhibit 17.

47. Pursuant to Commission Rule 210.12(a)(9)(viii), SPH America attaches hereto, as **Exhibit 18**, claim charts comparing independent claims 20, 31, 53, 71, 77, 84, 90, 102, 118, 134, 150, 166, 177, 187, 197, 208, 219, 230, 242, 264, 265, 272 and 279 of the '385 Patent to the

Sanyo Katana Eclipse device. SPH America also attaches, as **Exhibits 19**, claim charts comparing claims 1 and 14 of the '029 Patent to the Sanyo Katana Eclipse X device. As demonstrated by these exemplary claim charts, the accused Sanyo products infringe the asserted claims of the '385 and '029 Patents. Further discovery may reveal that additional claims of the Asserted Patents are infringed by the accused products.

48. On information and belief, the Infringing Devices are manufactured, assembled and/or packaged and tested overseas, specifically, at least in Malaysia. These same products are then imported into the United States, sold for importation into the United States, and/or sold after importation in the United States. The aforesaid acts of Sanyo constitute direct, contributory, and/or induced infringement of the asserted claims. The importation into the United States, sale for importation into the United States, and/or sale after importation into the United States of the accused Sanyo devices directly infringes the asserted claims of the Asserted Patents. Sanyo contributes to the infringement by others of the asserted claims by providing the accused Sanyo devices, which have no substantial non-infringing use, to customers who use the devices in an infringing manner. On information and belief, Sanyo actively induces others to infringe the asserted claims through the sale of the accused Sanyo devices to others, such as Sprint, who resell and thereby directly infringe the asserted claims. On information and belief, Sanyo also actively induces others to infringe through the sale of the infringing products to customers, along with directions, demonstrations, guides, manuals, training for use, and other materials that encourage the infringing use of the accused devices.

49. Sanyo has been given actual notice of its infringement of the Asserted Patents at least by SPH America's service of this Complaint, which is being served on Sanyo at the time of filing with the U.S. International Trade Commission. In addition, Sanyo was given actual notice of its infringement of the Asserted Patents by SPH America's service of the July 9, 2008

complaint in the *SPH America, LLC v. High Tech Computer Corp. et al.*, Civ. Action No.

1:08cv702 (GBL/JFA) case. See Exhibit 37

C. Metro PCS

50. Pursuant to Commission Rule 210.12(a)(3), SPH America attaches hereto, as **Exhibit 9**, a receipt from a MetroPCS store in the United States showing a sale of the Kyocera Tempo E2000 device on March 12, 2009. Pursuant to Commission Rule 210.12(a)(9)(x), SPH America attaches hereto, as **Exhibit 10**, photographs of the Kyocera Tempo E2000 device, including a photograph of the shipping label on the packaging marked “MADE IN CHINA.”

51. MetroPCS imports into the United States, sells for importation, or sells within the United States after importation Kyocera wireless communications devices including mobile cellular telephones and PDAs that conform with the CDMA2000 specifications and infringe the Asserted Patents, such as the Kyocera Tempo E2000. See, e.g., Exhibits 9, 10, 20 (<http://www.metropcs.com/shop/phonelist.aspx>) provides additional examples of infringing Kyocera devices that MetroPCS distributes and sells throughout the United States.

52. On information and belief, the Infringing Devices are manufactured, assembled and/or packaged and tested overseas, specifically, at least in China. These same products are then imported into the United States, sold for importation into the United States, and/or sold after importation in the United States. The aforesaid acts of MetroPCS constitute direct, contributory and/or induced infringement of the asserted claims. The importation into the United States, sale for importation into the United States, and/or sale after importation into the United States of the accused Kyocera devices directly infringes the asserted claims of the Asserted Patents. MetroPCS contributes to the infringement by others of the asserted claims, for example, by selling the accused Kyocera Tempo E2000 devices, which have no substantial non-infringing use, to customers who use the devices in an infringing manner. On information and belief, MetroPCS

actively induces others to infringe the asserted claims through the sale of the accused Kyocera devices to customers, along with directions, demonstrations, guides, manuals, training for use, and other materials that encourage the infringing use of the accused Kyocera devices.

53. MetroPCS has been given actual notice of its infringement of the Asserted Patents at least by SPH America's service of this Complaint, which is being served on MetroPCS at the time of filing with the U.S. International Trade Commission. In addition, on information and belief, MetroPCS was given notice of its infringement of the Asserted Patents by SPH America's July 9, 2008 complaint in the *SPH America, LLC v. High Tech Computer Corp. et al.*, Civ. Action No. 1:08cv702 (GBL/JFA) case. See Exhibit 37.

D. Sprint

54. Pursuant to Commission Rule 210.12(a)(3), SPH America attaches hereto, as **Exhibit 14**, a receipt from a Sprint store in the United States showing the sale of the Sanyo Katana Eclipse X device on March 12, 2009. Pursuant to Commission Rule 210.12(a)(9)(x), SPH America attaches hereto, as **Exhibit 15**, photographs of the Sanyo Katana Eclipse X device, including a photograph of the product label marked "MADE IN MALAYSIA."

55. Sprint imports into the United States, sells for importation, or sells within the United States after importation Sanyo wireless communications devices, including cellular telephones and PDAs that conform with the CDMA2000 specifications and, thereby, infringe the Asserted Patents, such as the Sanyo Katana Eclipse X devices. See Exhibit 21. Sprint's web site also has a page depicting a number of Sprint store locations in the United States. See Exhibit 22.

56. On information and belief, the Infringing Devices are manufactured, assembled and/or packaged and tested overseas, specifically, at least in Malaysia. These same products are then imported into the United States, sold for importation into the United States, and/or sold after

importation in the United States. The aforesaid acts of Sprint constitute direct, contributory and/or induced infringement of the asserted claims. The importation into the United States, sale for importation into the United States, and/or sale after importation into the United States of at least the accused Sanyo devices directly infringes the asserted claims of the Asserted Patents. Sprint contributes to the infringement by others of the asserted claims by selling the accused Sanyo devices, which have no substantial non-infringing use, to customers who use the devices in an infringing manner. On information and belief, Sprint actively induces others to infringe the asserted claims through the sale of the accused Sanyo devices to customers, along with directions, demonstrations, guides, manuals, training for use, and other materials that encourage the infringing use of the accused Sanyo devices.

57. Sprint has been given actual notice of its infringement of the Asserted Patents at least by SPH America's service of this Complaint, which is being served on Sprint at the time of filing with the U.S. International Trade Commission. In addition, on information and belief, Sprint was given notice of its infringement of the Asserted Patents by SPH America's July 9, 2008 complaint in the *SPH America, LLC v. High Tech Computer Corp. et al.*, Civ. Action No. 1:08cv702 (GBL/JFA) case. See Exhibit 37.

VIII. HARMONIZED TARIFF SCHEDULE INFORMATION

The accused products are believed to fall within at least the following classifications of the Harmonized Tariff Schedule ("HTS") of the United States: 8517, 8517.12.00, 8519, 8521, 8525, 8525.80, 8525.80.50, 8528, 8528.72, 8528.72.68, 8528.72.72, 8528.72.72 (10), 8528.72.72 (50). These HTS numbers are illustrative, and are not intended to limit in any way the scope of this investigation.

IX. THE DOMESTIC INDUSTRY

58. As required by Section 337(a)(2) and defined by Section 337(a)(3), an industry in the United States exists relating to articles covered by the Asserted Patents. SPH America has licensed the '385 and '029 Patents to Sublicensee, which develops and manufactures products covered by the Asserted Patents. While Sublicensee manufactures the above covered products abroad, Sublicensee conducts significant domestic activities in the United States relating to these products practicing the Asserted Patents. These activities include significant investment in plant and equipment, significant employment of labor or capital in the United States and substantial investment in the exploitation of the Asserted Patents through research and development, engineering and design activities, as well as domestic licensing activities.

59. Sublicensee develops and manufactures a range of wireless communication devices which practice the Asserted Patents. See Confidential Exhibit 23 (identifying several CDMA 2000 compliant Sublicensee devices that practice the Asserted Patents). Photographs of an exemplary Sublicensee device are attached as **Confidential Exhibit 24**. Claim charts comparing a representative claim (i.e., claim 20) of the '385 Patent to the exemplary Sublicensee device are attached as **Confidential Exhibit 25**⁷. Claim charts comparing a representative claim (i.e., claim 1) of the '029 Patent to the exemplary Sublicensee device are attached as **Confidential Exhibit 26**⁸.

60. Sublicensee is one of the fastest-growing companies in the wireless communication devices industry and has achieved remarkable recognition over the past couple of years. Sublicensee's wireless communication devices and components thereof are sold worldwide through strategic partnerships with some of the largest mobile operators, including

⁷ Exhibit 25A is the Public Version of Confidential Exhibit 25.

⁸ Exhibit 26A is the Public Version of Confidential Exhibit 26.

Orange, O2, T-Mobile, Vodafone, Cingular, AT&T, Verizon, and NTT DoCoMo. See

Confidential Exhibit 27. Many of Sublicensee's wireless communication products, including the exemplary Sublicensee device, use Microsoft Windows operating systems and Sublicensee is the largest manufacturer of Windows devices in the world. **Confidential Exhibit 29.**

Sublicensee's most recent Annual Report is attached hereto as **Confidential Exhibit 30.**

61. Sublicensee has significant commercial, research and development activities in the United States relating to products practicing the Asserted Patents. On information and belief, these activities include Sublicensee's investment in plant and equipment, employment of labor and capital, and substantial investment in the exploitation of the Asserted Patents and the investment in these activities by a related entity.

62. Sublicensee has made and continues to make significant investment in plant facilities and equipment in the United States dedicated to the sales, research, development, distribution, product and customer support, testing and quality management, and warranty and repair services for products covered by the Asserted Patents. For example, on information and belief, Sublicensee has approximately 400 employees in the United States, 150 of whom are involved in computer maintenance and repair related to its products covered by the Asserted Patents.⁹ **Confidential Exhibits 28 and 29.** Approximately 168 of Sublicensee's United States employees are attributable to products practicing the Asserted Patents. Sixty-three of these employees are involved in maintenance and repair related to products practicing the Asserted Patents. This includes approximately 29 of the 70 employees located at Sublicensee's facility in Houston, Texas, who are involved in computer maintenance and repair are attributable to

⁹ On information and belief, 14 of Sublicensee's wireless communication products practice the Asserted Patents of the 33 total Sublicensee's wireless communication products. This represents approximately 42% of Sublicensee's products. Accordingly, approximately 42% of Sublicensee's employees can be attributed to the products practicing the Asserted Patents.

products practicing the Asserted Patents. **Confidential Exhibit 28.** Approximately 17 of the 40 employees located in Sublicensee's Washington facilities, which support collaboration with Microsoft on CDMA2000-compliant products are attributable to products practicing the Asserted Patents. This includes 5 employees of a 12-person engineering team to responsible for design of Sublicensee wireless products. Id.

63. On information and belief, Sublicensee also recently acquired a San Francisco-based lifestyle design firm, which has worked on the design of Sublicensee's CDMA2000 compliant wireless devices, including products identified in **Confidential Exhibit 23.** Other plant facilities and equipment used in connection with Sublicensee's products are located in California, Illinois, Texas, Kansas, and other locations in the United States.

64. Sublicensee has employed and continues to employ a significant number of employees in the above-mentioned facilities that devote substantial man-hours toward the sales, research, development, distribution, product and customer support, testing and quality management, and warranty and repair services for products covered by the Asserted Patents. For example, in its Chicago and Dallas facilities, the Sublicensee sales team manages relationships with Sublicensee's key accounts in order to achieve defined business goals and works closely with various carrier business units. See Confidential Exhibit 31. In its Washington and Kansas facilities, Sublicensee has employees who are responsible for the technical relationship between the Sublicensee corporate product and technical teams based in Taiwan and the Sublicensee product and technical teams in North America to ensure that all specified product expectations and issues presented by carriers are precisely communicated and managed throughout the corporate Sublicensee engineering and product process. See Confidential Exhibit 32.

65. The Sublicensee products covered by the Asserted Patents are supported by an extensive warranty and service program. For example, Sublicensee has a 7-days-a-week hotline to accommodate customer service requests. See Confidential Exhibit 33. Sublicensee's warranty and repair services allow customers to submit repair cases directly to Sublicensee and check on the status of their devices, which include Sublicensee's covered products, by calling or emailing Sublicensee. See Confidential Exhibit 34. On information and belief, Sublicensee products covered by the Asserted Patents are also refurbished in the United States and certain replacement parts are readily available.

66. On information and belief, Sublicensee has invested and continues to invest significant capital in its facilities toward the sales, research, development, distribution, product and customer support, testing and quality management, and warranty and repair services for products covered by the Asserted Patents. For example, Sublicensee's Washington facilities are responsible for product creation and launch, by managing the product lifecycle to ensure internal workflow is effective, on-time and that both the customer and Sublicensee product quality standards are met. See Confidential Exhibit 35.

67. On information and belief, Sublicensee has made and continues to make substantial investment in the exploitation of its rights in the Asserted Patents. For example, in Seattle, Washington, Sublicensee has an Innovation Branch to deliver devices and software experiences which delight users and continuously improve quality, brand loyalty, and business growth for Sublicensee and Software Engineering teams which influence the direction of hardware and software platforms, helping to define what goes into new wireless communications devices given the latest trends, directions, and available features. See Confidential Exhibit 36.

68. There exists a domestic industry with respect to the Asserted Patents, as defined under 19 U.S.C. § 1337(a)(3). Specifically, a domestic industry exists based on the significant

investment in plant and equipment, significant employment of labor and capital, and/or substantial investment in the exploitation of the patents by Sublicensee, a licensee of the Asserted Patents.

69. SPH America's domestic activities contribute a substantial investment in its exploitation of the asserted patents. SPH America conducts substantial licensing activities in the United States with respect to the Asserted Patents.

X. RELATED LITIGATION

70. On July 9, 2008, SPH America filed a complaint for patent infringement in the United States District Court for the Eastern District of Virginia ("the District Court Action") against High Tech Computer Corporation and HTC America, Inc. (collectively "HTC"), Kyocera Corporation, Kyocera Wireless Corporation, and Kyocera Sanyo Telecom, Inc. (collectively "Kyocera"), and Sony Ericsson Mobile Communications AB and Sony Ericsson Mobile Communications (USA), Inc (collectively "Sony Ericsson"). SPH America alleged that HTC, Kyocera, and Sony Ericsson each infringe the '385 Patent and the '029 Patent, as well as U.S. Patent No. RE 40,253. That action was styled *SPH America, LLC v. High Tech Computer Corp. et al.*, Civ. Action No. 1:08cv702 (GBL/JFA). A copy of that complaint is attached hereto as **Exhibit 37**. U.S. Patent No. RE 40,253 has been voluntarily withdrawn from that action and is also not at issue in this ITC Complaint.

71. On September 30, 2008, SPH America voluntarily dismissed Sony Ericsson from the District Court Action without prejudice pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i). Also, on October 21, 2008, SPH America voluntarily dismissed HTC pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i).

72. On November 20, 2008, the District Court Action was transferred to the United States District Court for the Southern District of California as Civil Action No. 08cv2146 DMS

(RBB). The parties to that case participated in an Early Neutral Evaluation Conference on February 26, 2009, but could not reach a settlement. The District Court Action is pending.

73. On March 16, 2009, Kyocera filed a request for *ex parte* reexamination of the '029 Patent and a request for an *inter partes* reexamination of the '385 Patent.

74. On information and belief, other than the aforementioned District Court Action, the Accused Patents have not been involved in any other judicial or administrative proceeding.

XI. RELIEF REQUESTED

75. WHEREFORE, by reason of the foregoing, SPH America 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 violations of Section 337 based on the proposed respondents' unlawful importation into the United States, sale for importation into the United States, and/or sale within the United States after importation of certain wireless communication devices and components thereof, which infringe one or more claims of United States Patent Nos. RE 40,385 and 5,960,029;
- (b). Schedule and conduct a hearing on the unlawful acts and, following the hearing, determine that there has been a violation of Section 337;
- (c). Issue a permanent limited exclusion order, pursuant to Section 337(d) of the Tariff Act of 1930, as amended, excluding from entry into the United States all of the proposed respondents' certain wireless communication devices and components thereof that infringe one or more claims of United States Patent Nos. RE 40,385 and 5,960,029;

- (d). Issue a permanent cease and desist order, pursuant to Section 337(f) of the Tariff Act of 1930, as amended, directing the proposed respondents to cease and desist from the importation, marketing, advertising, demonstrating, warehousing inventory for distribution, sale and use of certain wireless communication devices, that infringe one or more claims of United States Patent Nos. RE 40,385 and 5,960,029; and
- (e). Grant such other and further relief as the Commission deems just and proper based on the facts determined by the investigation and the authority of the Commission.

Respectfully submitted,



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Dated: March 25, 2009

Counsel for Complainant SPH America, LLC

VERIFICATION OF COMPLAINT

I, Yong-Jin Jun, 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 Senior Manager of Complainant SPH America, LLC and am duly authorized to sign this Complaint on behalf of Complainant;
2. I have read the foregoing Complaint;
3. To the best of my knowledge, information, and belief, based on reasonable inquiry, the foregoing Complaint is well-founded in fact and is warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
4. The allegations and other factual contentions have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
5. The foregoing Complaint is not being filed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Executed on March 24, 2009.

Yong-Jin Jun

