

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

In the Matter of

**CERTAIN DEVICES FOR MOBILE DATA
COMMUNICATION**

Docket No. 337-TA- ____

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

Complainant:

Openwave Systems Inc.
2100 Seaport Boulevard
Redwood City, CA 94063

Proposed Respondents:

Apple Inc.
1 Infinite Loop
Cupertino, CA 95014

Research In Motion Ltd.
295 Phillip Street
Waterloo, Ontario N2L 3W8
Canada

Research In Motion Corp.
122 West John Carpenter Parkway
Suite 430
Irving, TX 75039

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LIST OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>
1.	U.S. Patent No. 6,233,608
2.	U.S. Patent No. 6,289,212
3.	U.S. Patent No. 6,405,037
4.	U.S. Patent No. 6,430,409
5.	U.S. Patent No. 6,625,447
6.	Assignment of U.S. Patent No. 6,233,608
7.	Assignment of U.S. Patent No. 6,289,212
8.	Assignment of U.S. Patent No. 6,405,037
9.	Assignment of U.S. Patent No. 6,430,409
10.	Assignment of U.S. Patent No. 6,625,447
11.	Apple Inc.'s 2010 Form 10-K
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B.	Copy of each reference cited in the 608 patent and its prosecution history
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D.	Copy of each reference cited in the 212 patent and its prosecution history
E.	Copy of prosecution history for U.S. Patent No. 6,405,037
F.	Copy of each reference cited in the 037 patent and its prosecution history
G.	Copy of prosecution history for U.S. Patent No. 6,430,409
H.	Copy of each reference cited in the 409 patent and its prosecution history
I.	Copy of prosecution history for U.S. Patent No. 6,625,447
J.	Copy of each reference cited in the 447 patent and its prosecution history

I. INTRODUCTION

1. Complainant Openwave Systems Inc. (“Openwave”) files this complaint under Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“Section 337”), based upon the unlawful importation into the United States, the sale for importation, and/or the sale within the United States after importation of certain devices for mobile data communication.

2. The proposed Respondents are Apple Inc., Research In Motion Ltd., and Research In Motion Corp. (collectively, “Respondents”).

3. This complaint is directed to Respondents’ imported devices for mobile data communication, including at least the Apple iPhone 3G, 3GS, and 4, iPod Touch, and iPad 1 and 2; and the RIM Blackberry Curve 9330 and PlayBook (collectively, the “Accused Products”),¹ that infringe United States Patent Nos. 6,233,608 (the “608 patent”); 6,289,212 (the “212 patent”); 6,405,037 (the “037 patent”); 6,430,409 (the “409 patent”); and 6,625,447 (the “447 patent”) (collectively, the “Asserted Patents”).

4. An industry as required by 19 U.S.C. §§ 1337(a)(2) and (3) exists or is in the process of being established in the United States relating to articles protected by the Asserted Patents and Openwave’s investments in licensing the technology disclosed in the Asserted Patents.

5. Openwave seeks a permanent exclusion order prohibiting the entry of Respondents’ infringing devices for mobile data communication into the United States. Openwave also requests permanent cease-and-desist orders prohibiting Respondents from

¹ The term “Accused Products” encompasses all of Respondents’ devices for mobile data communication with components and functionality that comes within the scope of the Asserted Patents’ claims. Upon further investigation and discovery, Openwave may identify additional Accused Products and/or seek to assert additional claims of the Asserted Patents.

importing, admitting or withdrawing from a foreign trade zone, marketing, advertising, demonstrating, warehousing inventory for distribution, distributing, offering for sale, selling, licensing, repairing, maintaining, programming, updating, using, or transferring outside the United States for sale in the United States infringing devices for mobile data communication.

II. COMPLAINANT OPENWAVE SYSTEMS INC.

6. Complainant Openwave Systems Inc. is a pioneer of, among other things, software products that enable mobile network operators to offer mobile Internet access and other mobile value-added services. Openwave contributed significantly to many of the technologies used in mobile data communications. Openwave's innovations and inventions have made smart devices what they are today.

7. Openwave is a corporation organized under the laws of the State of Delaware and has its principal place of business at 2100 Seaport Boulevard, Redwood City, California.

8. Openwave's innovations span many areas of mobile data communications. Openwave invented and was the first company to introduce many of the features that mobile device users now take for granted. For example, Openwave engineers developed the first mobile browser in the world to be deployed in a mobile phone. Openwave also developed the first photo messaging system and the world's first integrated voice and video call answering system. Today, Openwave enables the creation and delivery of innovative data services for leading communication service providers worldwide. Openwave spends tens of millions of dollars annually on research and development of these innovative and necessary applications.

9. Openwave began in 1996 as Libris, Inc. and quickly became known as Unwired Planet. In 1999, Unwired Planet acquired Apiion, Ltd. of Belfast, Ireland and changed its name to Phone.com. After acquiring several high-tech startup companies and merging with Software.com in 2001, it changed its name to Openwave Systems, Inc. as it is known today.

Openwave is not, and has never been, a large company. However, despite Openwave's small size, its technology has been used by the Respondents in their accused products to generate substantial revenue in the U.S.

10. Openwave believes that it is only fair that it be properly compensated by the Respondents who are profiting greatly from their unlicensed use of Openwave's intellectual property. To that end, Openwave has sought unsuccessfully to license its technology to each Respondent. In choosing not to compensate Openwave for their use of its IP, Respondents have given Openwave no choice but to seek to exclude their infringing products from the United States.

III. THE PROPOSED RESPONDENTS

A. APPLE INC.

11. Respondent Apple Inc. ("Apple") is a corporation existing under the laws of the State of California, with its principal place of business at 1 Infinite Loop, Cupertino, California.

12. Apple is in the business of, *inter alia*, importing and selling devices for mobile data communication, including mobile phones, mobile tablets, and portable music players.

13. Further information regarding Apple may be found in Exhibit 11, which includes Apple's 2010 Form 10-K.

B. RESEARCH IN MOTION LTD.

14. Respondent Research In Motion Ltd. is a foreign corporation existing under the laws of Canada, with its principal place of business at 295 Phillip Street, Waterloo, Ontario, N2L 3W8 Canada.

15. Research In Motion Ltd. is in the business of importing and selling devices for mobile data communication, including mobile phones and mobile tablets.

C. RESEARCH IN MOTION CORP.

16. Respondent Research In Motion Corp. is a wholly owned subsidiary of Respondent Research In Motion Ltd., with its principal place of business at 122 West John Carpenter Parkway, Suite 430, Irving, Texas.

17. Upon information and belief, Respondent Research In Motion Corp. imports and/or distributes devices for mobile data communication, including mobile phones and mobile tablets, to customers in the United States and elsewhere in North America.

18. Respondents Research In Motion Ltd. and Research In Motion Corp. are referred to herein collectively as "RIM."

19. Further information regarding RIM may be found in Exhibit 12, which includes Research In Motion Ltd.'s Form 40-F for the fiscal year ending February 26, 2011.

IV. THE TECHNOLOGY AND PRODUCTS IN ISSUE

20. Despite their small size and portability, mobile devices today provide an incredible amount of functionality. Our mobile devices shape our world in ways nobody could ever have imagined just 20 years ago. Mobile devices do not simply connect us to wired telephone networks. They connect us via SMS, MMS, and e-mail messaging. They connect us to friends via social-networking services. They provide us a mechanism to shop via a mobile browser. They are our mobile calendars, address books, cameras, GPS navigators, music players, and televisions. Openwave's engineers were some of the first to realize that with the right application, mobile devices could be more than a phone. With its inventors' ingenuity, Openwave foresaw a world nobody would have believed possible.

21. The Asserted Patents demonstrate just a small part of the contribution that Openwave has made to mobile computing. These innovations, however, changed the landscape of the mobile-technology market. Openwave's research and development allowed the

development of smartphones and other mobile devices that allow consumers to surf the web, download applications, share information between devices, and stay connected with the world.

22. Mobile-device consumers welcomed Openwave's innovations. Consumers not only want to make phone calls, but they want to be connected to the digital world wherever they go. At the same time, consumers want their mobile devices to be small and compact. Today's mobile devices are small and weigh very little. Because of their small size, mobile devices do not have the same processing power and memory that personal computers have. In the mid-nineties, when Openwave was developing the inventions in this Investigation, memory and processing power were expensive and took up a lot of space. This presented challenges to mobile-phone development.

23. Openwave's engineers looked beyond these challenges. Despite the shortcomings of mobile devices, Openwave developed and patented the fundamental technology that underlies features that consumers demand from today's mobile devices. For example, consumers often use their mobile devices to browse the web. Openwave's 447 patent makes this possible. Openwave's 447 invention provides the mechanism to allow users to interact with web pages on their mobile device using an interface that is compatible with the mobile device. The Openwave 409 patent provides the fundamental mechanism that allows both webpages and applications to communicate to a server wirelessly from a mobile device.

24. Consumers also demand cloud computing. Being able to access data from anywhere in the world from any device in the world without having to load it into multiple devices is an important concept for mobile users. Years ago, Openwave foresaw the importance of cloud computing. The 608 patent presents a solution that allows data to be shared and accessed across different devices.

25. Mobile device users appreciate the expanded functionality they can get through different applications or, as they are commonly referred to, “apps.” These apps provide a variety of different services and options for a user to choose how to customize a personal mobile device. While Respondents laud the availability of these apps for their respective platforms, it is Openwave’s innovative technology that makes this accessibility possible. Before apps on mobile devices gained popularity, Openwave knew the importance they would play for mobile device users. The 037 patent provides a way for a user to access important updates to apps.

26. In using mobile devices, consumers want to be productive at all times. Despite the advancements in technology, users often encounter “dead zones” where they do not have access to a network. Furthermore, there are times, such as on an airplane, where users are forced to turn off their network connectivity. Users want to be able to continue to use their mobile devices during these periods of no network connectivity. Openwave’s innovations make this productivity possible. The 212 patent provides a way for users to access and interact with their email even when there is no network connection.

V. THE ASSERTED PATENTS AND NON-TECHNICAL DESCRIPTIONS OF THE INVENTIONS THEREIN²

A. The 608 Patent

27. The 608 patent, entitled “Method and System for Securely Interacting With Managed Data from Multiple Devices,” issued on May 15, 2001 to inventors Andrew L. Laursen, Bruce K. Martin Jr., and Alain S. Rossman. The 608 patent issued from U.S. Patent

² All non-technical descriptions of the inventions herein are presented to give a general background of those inventions. These statements are not intended to, nor should they, be used for purposes of patent claim interpretation. Openwave presents these statements subject to and without waiver of their right to argue that claim terms should be construed in a particular way as contemplated by claim interpretation jurisprudence and the relevant evidence.

Application Serial No. 09/320,296, filed on June 7, 1999. The 608 patent expires on December 9, 2017.

28. Openwave owns by assignment the entire right, title, and interest in and to the 608 patent.

29. A copy of the 608 patent is attached as Exhibit 1.

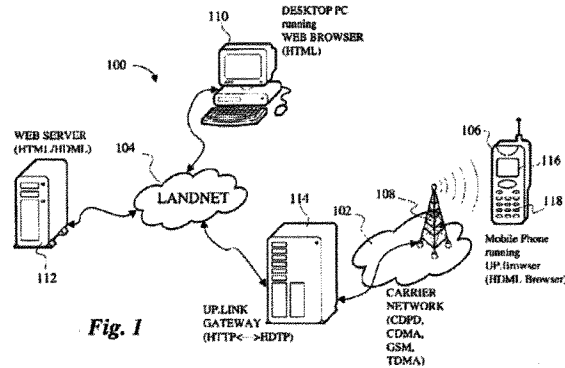
30. A copy of the assignment for the 608 patent is attached as Exhibit 6.

31. A copy of the prosecution history of the 608 patent and copies of each reference cited in the 608 patent and its prosecution history are included in Appendices A and B, respectively.

32. The 608 patent has 50 claims, 6 of which are independent claims. Openwave currently asserts claims 1, 3, 5-9, 33-36, and 47-50.

33. Cloud computing is a popular concept that allows users of both personal computers and mobile devices to access data from anywhere. Traditionally, for users to be able to access the data from multiple devices, they would have to enter information and data into each device. This process is frustrating for consumers, particularly if they wish to manipulate and change the data on every one of their devices.

34. Openwave recognized the frustrations this could cause consumers. As shown in Figure 1 of the 608 patent (reproduced below), the inventors of the 608 patent disclosed an elegant solution to securely manage data through a server that is accessible to the user's mobile device and desktop computer, eliminating the need for the user to enter information redundantly.



B. The 212 Patent

35. The 212 patent, entitled “Method and Apparatus for Providing Electronic Mail Services During Network Unavailability,” issued on September 11, 2001 to inventors Lawrence M. Stein, Peter F. King, Bruce K. Martin, Jr., Bruce V. Schwartz, and Paul A. Smethers. The 212 patent issued from U.S. Patent Application Serial No. 09/172,105, filed on October 13, 1998. The 212 patent expires on October 13, 2018.

36. Openwave owns by assignment the entire right, title, and interest in and to the 212 patent.

37. A copy of the 212 patent is attached as Exhibit 2.

38. A copy of the assignment for the 212 patent is attached as Exhibit 7.

39. A copy of the prosecution history of the 212 patent and copies of each reference cited in the 212 patent and its prosecution history are included in Appendices C and D, respectively.

40. The 212 patent has 38 claims, 5 of which are independent claims. Openwave currently asserts claims 1-11, 14-24, 28-33, and 35-38.

41. Consumers have become reliant on their mobile devices to communicate via email. Traditionally, these consumers had to be connected to a network to be able to access their

email from an email server. There are times, however, when a network is unavailable. For example, after boarding an airplane, consumers must disable the wireless transceiver on their mobile devices. Despite this requirement, consumers still wish to interact with their devices while offline and still wish to perform various electronic mail operations when the network is unavailable.

42. The inventors of the 212 patent recognized the fact that a network will not always be available for mobile devices. Besides having to turn the transceivers off when on an airplane, mobile phones are also subject to “dead zones,” or areas where cellular coverage is not available. Openwave conceived of a way for consumers to continue to work with their devices when not on a network. The 212 invention provides a way for consumers to perform electronic mail operations on their devices when the network is not available. Although the mail server centrally manages email services, consumers’ mobile devices can locally perform certain mail services when the network is unavailable.

C. The 037 Patent

43. The 037 patent, entitled “Method and Architecture for an Interactive Two-Way Data Communication Network,” issued on June 11, 2002 to inventor Alain Rossmann. The 037 patent issued from U.S. Patent Application Serial No. 09/199,121, filed on November 24, 1998. The 037 patent expires on December 11, 2015.

44. Openwave owns by assignment the entire right, title, and interest in and to the 037 patent.

45. A copy of the 037 patent is attached as Exhibit 3.

46. A copy of the assignment for the 037 patent is attached as Exhibit 8.

47. A copy of the prosecution history of the 037 patent and copies of each reference cited in the 037 patent and its prosecution history are included in Appendices E and F, respectively.

48. The 037 patent has 28 claims, 4 of which are independent claims. Openwave currently asserts claims 1-14 and 27.

49. Consumers want more than cell phones. They want smartphones and other smart devices. They expect mobile devices to do much more than simply make telephone calls. To succeed in the market place, mobile devices must be able to support a wide variety of applications that perform a wide variety of functions, from games to travel-related applications to financial applications, and just about everything in between. And in the fast-paced world of ever-changing applications, mobile-device users need to be able to access newer versions or updates to their applications as easily as possible.

50. Prior to the technology of the 037 patent, devices typically could only run the applications that were burned into their ROMs at the factory. Updates to these applications often required that the ROM be re-burned or that a new memory card be inserted into the device. The inventor of the 037 patent eliminated this need. The 037 patent presents the ability to have access to updated applications without the need for these costly and time-consuming steps. Consumers can now be informed of the availability of updated applications via a server, and then gain access to such updates wirelessly over the data network merely by selecting the updates on their devices without the need for conventional distribution of software updates on disks, cards, or the like.

D. The 409 Patent

51. The 409 patent, entitled "Method and Architecture for an Interactive Two-Way Data Communication Network," issued on August 6, 2002 to inventor Alain Rossmann. The 409

patent issued from U.S. Patent Application Serial No. 08/978,701, filed on November 26, 1997.

The 409 patent expires on December 11, 2015.

52. Openwave owns by assignment the entire right, title, and interest in and to the 409 patent.

53. A copy of the 409 patent is attached as Exhibit 4.

54. A copy of the assignment for the 409 patent is attached as Exhibit 9.

55. A copy of the prosecution history of the 409 patent and copies of each reference cited in the 409 patent and its prosecution history are included in Appendices G and H, respectively.

56. The 409 patent has 93 claims, 7 of which are independent claims. Openwave currently asserts claims 12-44 and 63-84.

57. While a mobile telephone can perform various functions and can store a limited amount of information, its options are limited when the phone is operated in isolation from the world around it. If a user wants access to up-to-date information concerning, for example, weather or stock prices, a phone in isolation will not be able to provide such basic information.

58. The 409 patent allows a mobile phone and a server to work together to provide an enhanced user experience. In order to perform all of the functionality necessary to meet the demands of today's consumers, a mobile phone needs to leverage the capabilities of traditional servers with the ability to store and/or have access to much more information than is in the phone itself. The technology of the 409 patent allows for software on the phone to interact with corresponding software on a server so as to provide content to the user.

E. The 447 Patent

59. The 447 patent, entitled “Method and Architecture for an Interactive Two-Way Data Communication Network,” issued on September 23, 2003 to inventor Alain Rossmann.

The 447 patent issued from U.S. Patent Application Serial No. 09/200,359, filed on November 24, 1998. The 447 patent expires on December 11, 2015.

60. Openwave owns by assignment the entire right, title, and interest in and to the 447 patent.

61. A copy of the 447 patent is attached as Exhibit 5.

62. A copy of the assignment for the 447 patent is attached as Exhibit 10.

63. A copy of the prosecution history of the 447 patent and copies of each reference cited in the 447 patent and its prosecution history are included in Appendices I and J, respectively.

64. The 447 patent has 30 claims, 3 of which are independent claims. Openwave currently asserts claims 1-7, 9-19, and 21-29.

65. While it is important for a mobile device to leverage the power of a remote server, the interaction between the mobile device and the server requires that data be sent back and forth over a wireless network, which necessarily takes a certain amount of time. While a user of such a device likely expects and understands that some delay in accessing information is normal, sometimes data is better presented together without having to reach back across the network.

66. Recognizing this, the technology of the 447 patent allows the mobile device to receive several pages of data or information together, such that the user can navigate the pages of information without the need for the mobile device to reach back across the network for

additional pages of data or information. The user can then interact with the pages and access the information without delays.

F. Foreign Counterparts to the Asserted Patents

67. A list of each foreign patent, each foreign patent application (not already issued as a patent), and each foreign patent application that has been denied, abandoned, or withdrawn corresponding to the Asserted Patents, with an indication of the prosecution status of each such foreign patent application, is attached as Exhibit 13. No other foreign patents or patent applications corresponding to any of the Asserted Patents have been filed, abandoned, withdrawn, or rejected.

G. Licensees to the Asserted Patents

68. Licensees to one or more of the Asserted Patents are identified in Confidential Exhibit 38.

VI. UNLAWFUL AND UNFAIR ACTS OF THE PROPOSED RESPONDENTS

69. As detailed herein, Respondents' Accused Products are manufactured abroad by or for Respondents and imported into the United States, sold for importation into the United States, and/or sold within the United States after importation. Respondents' Accused Products infringe the 608, 212, 037, 409, and 447 patents. Information regarding representative Accused Products discussed below may be found in Exhibits 14-15. The identification of a specific model or type of device is not intended to limit the scope of the Investigation, and any remedy should extend to all infringing devices for mobile data communication. Discovery may reveal that additional products by the proposed Respondents infringe the asserted patent claims and/or that additional claims are infringed.

A. Apple's Infringement of the Asserted Patents

70. Apple directly infringes, contributes to infringement, and induces infringement with respect to at least claims 33-36 and 47-50 of the 608 patent, claims 1-11, 14-24, 28-33, and 35-38 of the 212 patent, claims 1-14 and 27 of the 037 patent, claims 12-44 and 63-84 of the 409 patent, and claims 1-7, 9-19, and 21-29 of the 447 patent, with at least some of the iPhone 3G, 3GS, and 4, iPod Touch, and iPad 1 and 2 models of devices for mobile data communication (collectively, the "Apple Accused Products"). The Apple iPhone 4 is representative of all of the Apple Accused Products.

71. An exemplary claim chart showing infringement of independent claims 33 and 47 of the 608 patent by the Apple iPhone 4 is attached as Exhibit 16.

72. An exemplary claim chart showing infringement of independent claims 1, 14, 28, 37, and 38 of the 212 patent by the Apple iPhone 4 is attached as Exhibit 18.

73. An exemplary claim chart showing infringement of independent claims 1 and 27 of the 037 patent by the Apple iPhone 4 is attached as Exhibit 20.

74. An exemplary claim chart showing infringement of independent claims 12, 34, and 63 of the 409 patent by the Apple iPhone 4 is attached as Exhibit 22.

75. An exemplary claim chart showing infringement of independent claims 1, 13, and 24 of the 447 patent by the Apple iPhone 4 is attached as Exhibit 24.

1. Direct Infringement

76. Apple, directly and through authorized agents, sells and offers for sale the Apple Accused Products within the United States. As shown in Exhibit 26, the Apple Accused Products have been purchased in the United States directly from Apple.

77. Upon information and belief, Apple sells and offers for sale the Apple Accused Products to consumers, wireless carriers, distributors, and independent retailers in the United States.

78. On information and belief, Apple imports into the United States at least the Apple Accused Products.

79. On information and belief, Apple tests or operates the Apple Accused Products in the United States, thereby performing the claimed methods and directly infringing any asserted claims of the Asserted Patents requiring such operation.

80. Therefore, Apple directly infringes the Asserted Patents through its importation for sale, sale after importation, and/or use after importation of certain devices for mobile data communication.

2. Contributory Infringement

81. Apple also contributes to infringement of, and thereby infringes, the Asserted Patents in violation of 35 U.S.C. § 271 by selling within the United States, offering for sale within the United States, and/or importing components, including the Apple Accused Products, and the non-staple constituent parts of those devices that embody a material part of the inventions described in the Asserted Patents. These devices are known by Apple to be especially made or especially adapted for use in infringement of the Apple Accused Products and are not staple articles or commodities suitable for substantial, non-infringing use.

82. Specifically, Apple sells the Apple Accused Products with knowledge that the devices infringe, through wholesale channels to resellers and directly to consumers. Consumers of those devices for mobile data communication directly infringe the Asserted Patents.

83. Openwave put Apple on notice of the Asserted Patents and Apple's infringement thereof at least as early as August 28, 2011.

3. Inducement of Infringement

84. Apple has also induced and continues to induce others to infringe the Asserted Patents in violation of 35 U.S.C. § 271 by encouraging and facilitating others to perform actions known by Apple to be acts of infringement of the Asserted Patents with intent that those performing the acts infringe the Asserted Patents. Upon information and belief, Apple did these acts with knowledge of the Asserted Patents and with the knowledge or willful blindness that such induced acts would constitute infringement. Upon information and belief, Apple, *inter alia*, advertises regarding the Apple Accused Products, publishes datasheets and promotional literature describing the operation of those devices, creates and/or distributes user manuals for the Apple Accused Products, and offers support and technical assistance to its customers. Consumers of these devices for mobile data communication then directly infringe the Asserted Patents.

B. RIM's Infringement of the Asserted Patents

85. RIM directly infringes, contributes to infringement, and induces infringement with respect to at least claims 1, 3, 5-9, 33-36, and 47-50 of the 608 patent, claims 1-11, 14-24, 28-33, and 35-38 of the 212 patent, claims 1-14 and 27 of the 037 patent, claims 12-44 and 63-84 of the 409 patent, and claims 1-7, 9-19, and 21-29 of the 447 patent, with at least some of the RIM Blackberry Curve 9330 and PlayBook models of devices for mobile data communication (collectively, the "RIM Accused Products"). The RIM Blackberry Curve 9330 and RIM Blackberry PlayBook are individually representative of all of the RIM Accused Products.

86. An exemplary claim chart showing infringement of independent claims 1, 33, and 47 of the 608 patent by the RIM Blackberry Curve 9330 is attached as Exhibit 17.

87. An exemplary claim chart showing infringement of independent claims 1, 14, 28, 37, and 38 of the 212 patent by the RIM Blackberry Curve 9330 is attached as Exhibit 19.

88. An exemplary claim chart showing infringement of independent claims 1 and 27 of the 037 patent by the RIM Blackberry Curve 9330 is attached as Exhibit 21.

89. An exemplary claim chart showing infringement of independent claims 12, 34, and 63 of the 409 patent by the RIM Blackberry Curve 9330 is attached as Exhibit 23.

90. An exemplary claim chart showing infringement of independent claims 1, 13, and 24 of the 447 patent by the RIM Blackberry PlayBook Tablet is attached as Exhibit 25.

1. Direct Infringement

91. RIM, directly and through authorized agents, sells and offers for sale the RIM Accused Products within the United States. As shown in Exhibit 26, the RIM Accused Products have been purchased in the United States from Verizon.

92. Upon information and belief, RIM sells and offers for sale the RIM Accused Products to consumers, wireless carriers, distributors, and independent retailers in the United States.

93. On information and belief, RIM imports into the United States at least the RIM Accused Products.

94. On information and belief, RIM tests or operates the RIM Accused Products in the United States, thereby performing the claimed methods and directly infringing any asserted claims of the Asserted Patents requiring such operation.

95. Therefore, RIM directly infringes the Asserted Patents through its importation for sale, sale after importation, and/or use after importation of certain devices for mobile data communication.

2. Contributory Infringement

96. RIM also contributes to infringement of, and thereby infringes, the Asserted Patents in violation of 35 U.S.C. § 271 by selling within the United States, offering for sale within the United States, and/or importing components, including the RIM Accused Products, and the non-staple constituent parts of those devices, that embody a material part of the inventions described in the Asserted Patents. These devices are known by RIM to be especially made or especially adapted for use in infringement of the RIM Accused Products and are not staple articles or commodities suitable for substantial, non-infringing use.

97. Specifically, RIM sells the RIM Accused Products with knowledge that the devices infringe, through wholesale channels to resellers and directly to consumers. Consumers of those devices for mobile data communication directly infringe the Asserted Patents.

98. Openwave put RIM on notice of the Asserted Patents and RIM's infringement thereof at least as early as August 28, 2011.

3. Inducement of Infringement

99. RIM has also induced and continues to induce others to infringe the Asserted Patents in violation of 35 U.S.C. § 271 by encouraging and facilitating others to perform actions known by RIM to be acts of infringement of the Asserted Patents with intent that those performing the acts infringe the Asserted Patents. Upon information and belief, RIM committed these acts with knowledge of the Asserted Patents and with the knowledge or willful blindness that such induced acts would constitute infringement. Upon information and belief, RIM, *inter alia*, advertises regarding the RIM Accused Products, publishes datasheets and promotional literature describing the operation of those devices, creates and/or distributes user manuals for the RIM Accused Products, and offers support and technical assistance to its customers.

Consumers of these devices for mobile data communication then directly infringe the Asserted Patents.

VII. SPECIFIC INSTANCES OF UNFAIR IMPORTATION AND SALE

100. Upon information and belief, Respondents import into the United States, sell for importation into the United States, and/or sell within the United States after importation their infringing devices for mobile data communication. For example, exemplary Accused Products for each Respondent were purchased at retail locations in the United States. *See* Exhibit 26.

101. Upon information and belief, Apple's Accused Products are manufactured abroad, sold for importation, and imported and sold after importation in the United States by Apple or their authorized agents. For example, Exhibit 11 contains Apple's 10-K for the fiscal year ending September 25, 2010. The 10-K indicates that third party vendors in China perform final assembly of substantially all of Apple's iPhones and iPads. *See* Exhibit 11 at 9. The 10-K also indicates that 44% of Apple's sales in 2010 were in the United States. *Id.*

102. Upon information and belief, RIM's Accused Products are manufactured abroad, sold for importation, imported and sold after importation in the United States by RIM or their authorized agents. For example, Exhibit 12 contains RIM's 40-F for the fiscal year ending February 26, 2011. The 40-F indicates that RIM operates a manufacturing facility in Waterloo, Ontario. *Id.* at 28. RIM also outsources manufacturing operations to specialized electronic manufacturing services companies in various countries, such as Mexico. *See id.* at 28; Exhibit 28 at 2. The 40-F also indicates that 39.3% of RIM's sales in 2010 were in the United States. *See* Exhibit 12 at 24.

103. Exhibit 27 contains photographs of an Apple iPhone 4 mobile phone purchased from Apple in the United States showing that its packaging indicates that it was assembled in China.

104. Exhibit 28 contains photographs of a Blackberry Curve 9330 mobile phone purchased from Verizon in the United States showing that its packaging indicates that it was assembled in Mexico, and a Blackberry PlayBook purchased from BestBuy in the United States showing that its packaging indicates that it was assembled in Taiwan.

VIII. TARIFF NUMBERS APPLICABLE TO THE ACCUSED PRODUCTS

105. On information and belief, the Accused Products have been imported into the United States under at least Harmonized Tariff Schedule of the United States item numbers 8517.12.00 (mobile phones); 8519.81.40, 8521.90.00, or 8528.59.15 (portable music players); and 8471.30.01, 8471.49.00, or 8471.50.01 (mobile tablets and computers). These Tariff numbers are not intended to, and should not, limit the scope of the Accused Products.

IX. RELATED LITIGATION

106. On July 31, 2009, Openwave filed a complaint for patent infringement against 724 Solutions (US) Inc. and 724 Solutions Software Inc. in Civil Action No. 09-CV-3511 in the United States District Court for the Northern District of California, asserting infringement of the 409 patent, among others. The parties later entered into a settlement and license agreement that included a royalty bearing license to Openwave. The district court dismissed all claims with prejudice on October 18, 2010.

107. Concurrently with the filing of this Complaint, Openwave also filed a complaint in the District of Delaware alleging infringement of the 608, 212, 037, 409, and 447 patents by Apple Inc., Research In Motion Ltd., and Research In Motion Corp. Otherwise, no foreign or domestic court or agency litigation relating to the unfair acts alleged herein exists or has taken place.

X. THE DOMESTIC INDUSTRY

108. An industry as required by Section 337(a)(2) and as defined by Section 337(a)(3) exists or is in the process of being established in the United States relating to Openwave's Richmail 4.0 and Amplicity products, which are protected by the Asserted Patents.

109. An industry as required by Section 337(a)(2) and as defined by Section 337(a)(3)(C) also exists or is in the process of being established in the United States relating to Openwave's efforts to license the technology disclosed in the Asserted Patents.

A. Openwave's Articles Protected by the Asserted Patents

110. Throughout Openwave's history, Openwave has developed products that connect consumers of mobile devices. Openwave's products provide information, communication services and other data processing applications that make today's mobile communication versatile and cutting-edge. Multiple Openwave products practice or have practiced the Asserted Patents. For purposes of outlining Openwave's satisfaction of the domestic-industry requirement, Openwave has selected two products: Richmail 4.0 and Amplicity. Amplicity is currently under development in the United States.

111. Openwave's Richmail 4.0 product is a fully-functional messaging product that connects mobile customers to the rest of the online community. It enables communication service providers and the mobile customers they service a centralized hub for every type of communication – email, voice, "tweets," IMs, and social networking. Customers can even customize their Richmail 4.0 experience with widgets that make the features they want to use easily accessible and customizable.

112. The Richmail 4.0 product practices and/or induces the practice of the 409, 447, 212, and 608 patents. Richmail 4.0 provides a centralized system so that customers can access their email and other data no matter where they are – be it their home, their office, or the grocery

store. It allows them to work offline and catch up on e-mail when they cannot access a network of any kind – for example, on an airplane. And, it provides an interactive user interface experience as a customer browses the web and interacts with the online community remotely.

113. Openwave's Amplicity product is an ecosystem monetization solution that helps operators leverage the value of its network. Amplicity provides a framework for operators to manage, provide, and monetize applications for use on a wireless-device platform. Mobile device consumers benefit from Amplicity because it provides a way for them to access countless applications to expand the use of their devices.

114. The Amplicity product practices and/or induces the practice of the 037 patent. Amplicity provides a way for consumers to access and download applications of their choice to their wireless devices. It provides a way for them to know when new applications are available and also provides an intuitive user interface that makes accessing information easy.

115. Photographs of the Openwave Richmail 4.0 product are included in Exhibit 29 and Confidential Exhibit 31. Photographs of the Openwave Amplicity product are included in Exhibit 30 and Confidential Exhibit 32.

116. Exhibit 29 and Confidential Exhibit 31 contain technical information regarding the Openwave Richmail 4.0 product. Confidential Exhibits 33, 34, 36, and 37 contain claim charts showing that the Openwave Richmail 4.0 representative domestic article practices at least claim 37 of the 608 patent, claim 1 of the 212 patent, claim 63 of the 409 patent, and claim 1 of the 447 patent, respectively.

117. Exhibit 30 and Confidential Exhibit 32 contain technical information regarding the Openwave Amplicity product. Confidential Exhibit 35 contains claim charts showing that

the Openwave Amplicity representative domestic article practices at least claim 27 of the 037 patent.

B. Substantial Investments in the United States with respect to the Articles Protected by the Asserted Patents

118. Openwave has made and continues to make substantial investments in the United States in the exploitation of the Asserted Patents. These investments include at least domestic engineering and research and development relating to articles protected by the Asserted Patents, as well as substantial licensing activities relating to the Asserted Patents. As detailed in Confidential Exhibit 39, Openwave expends a considerable amount of time, money and manpower to engineer, research and develop, and maintain its products, including Richmail 4.0 and Amplicity, in the United States. Openwave also expends significant resources on its domestic licensing program, as outlined in Confidential Exhibit 40.

1. Investments Relating to Engineering and Research and Development

119. Openwave employees in the United States conduct engineering, research, and development relating to Openwave products protected by the Asserted Patents.

120. Building upon the work done by one of its predecessors, Software.com, Openwave released the Richmail product in 2006 as a PC-based mail solution. To date, Openwave has devoted significant resources updating, enhancing, and supporting its Richmail product. Openwave's domestic investments relating to this development work are described in Confidential Exhibit 39.

121. In July 2010, Openwave began developing the Amplicity product, which is scheduled to be released this fall. Openwave's investments in the United States to support this development are described in Confidential Exhibit 39.

2. Investments Relating to Licensing

122. Licensing plays an important role in Openwave's business strategy and accounts for significant revenue to the company. Openwave has made substantial investments in its licensing program and licensing activities related to its patent portfolio, including the 608, 212, 037, 409, and 447 patents. These investments are described in Confidential Exhibit 40.

XI. RELIEF REQUESTED

123. Complainant Openwave Systems Inc. respectfully requests that the United States International Trade Commission:

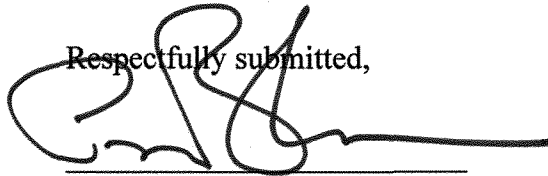
- (a) Institute an immediate investigation, pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, with respect to violations of Section 337 based upon the importation into the United States, the sale for importation, and/or the sale within the United States after importation of Respondents' devices for mobile data communication that infringe one or more claims of the Asserted Patents;
- (b) Determine that there has been a violation of Section 337 by each of the Respondents;
- (c) Issue a permanent exclusion order, pursuant to 19 U.S.C. § 1337(d)(1), prohibiting entry into the United States or admission into Foreign Trade Zones in the United States of all of Respondents' devices for mobile data communication that infringe one or more claims of the Asserted Patents;
- (d) Issue permanent cease-and-desist orders, pursuant to 19 U.S.C. § 1337(f), prohibiting Respondents, their affiliates, and others acting on Respondents' behalf, from importing, admitting, or withdrawing from a foreign trade zone, marketing, advertising, demonstrating, warehousing inventory for distribution,

distributing, offering for sale, selling, licensing, repairing, maintaining, programming, updating, using, or transferring outside the United States for sale in the United States any of Respondents' devices for mobile data communication that infringe one or more claims of the Asserted Patents; and

- (e) Issue 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.

Dated: August 31, 2011

Respectfully submitted,



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Openwave Systems Inc.*

VERIFICATION OF COMPLAINT

I, Anne Brennan, declare under penalty of perjury under the laws of the United States of America, and in accordance with 19 C.F.R. §§ 210.4 and 210.12(a) the following is true and correct:

1. I am Chief Financial Officer of Openwave Systems Inc., and am duly authorized to verify this complaint on behalf of complainant;
2. I have read the complaint and am aware of its contents;
3. The complaint is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needlessly 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 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, the allegations and other factual contentions in the complaint have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

Executed this 30th day of August, 2011


Anne Brennan