

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

**In the Matter of**

**CERTAIN PORTABLE ELECTRONIC  
DEVICES AND RELATED SOFTWARE**

**Investigation No. 337-TA-721**

**COMMISSION OPINION**

This investigation is before the Commission for a final determination with respect to U.S. Patent No. 6,999,800 (“the ’800 patent”). The Commission has decided to affirm the presiding administrative law judge’s (“ALJ”) determination that there is no violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in connection with claims 1-2, 4, 6, 10, 11, 14 and 15 of the ’800 patent.<sup>1</sup> Specifically, the Commission reverses the ALJ’s finding that the “switching the mobile phone system from standby mode to sleep mode when the mobile phone system has been idle for a first period of time” limitation of claim 1 of the ’800 patent is not met by the Accused iPhones<sup>2</sup> but affirms the ALJ’s determination that the “implementing a power detection” steps are not met by the Accused iPhones. The Commission also affirms the ALJ’s determination of no domestic industry.

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<sup>1</sup> The Commission adopted the ALJ’s findings that the respondent did not violate section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in connection with the asserted claims of United States Patent Nos. 5,541,988 (“the ’988 patent”); 6,320,957 (“the ’957 patent”); and 7,716,505 (“the ’505 patent”) in its Notice issued on December 16, 2011 to review the final ID in part. 76 Fed. Reg. 79,708-09 (Dec. 22, 2011). The Commission determined not to take a position on one limitation for the ’957 and ’988 patents. *Id.*

<sup>2</sup> HTC accused the original iPhone, iPhone 3G, iPhone 3GS, iPhone 4, and CDMA iPhone of infringing the asserted claims of the ’800 patent.

The Commission adopts the ALJ's findings to the extent they are consistent with the findings herein.

## **I. BACKGROUND**

### **A. Procedural History**

The Commission instituted this investigation on June 17, 2010, based on a complaint filed by HTC Corporation ("HTC") of Taoyuan City, Taiwan. 75 Fed. Reg. 34,484-85 (June 17, 2010). The complaint alleged violations of section 337 in the importation into the United States, the sale for importation, and sale within the United States after importation of certain portable electronic devices and related software by reason of infringement of claims 1-2, 4, 6, 10, 11, 14 and 15 of the '800 patent; claims 1 and 10 of the '988 patent; claims 20-21 and 30 of United States Patent No. 6,058,183 ("the '183 patent"); claims 1, 2, 8, 9, 39 and 42-44 of the '957 patent; and claims 1-3 of the '505 patent. The complaint named Apple, Inc. (a/k/a Apple Computer, Inc.) ("Apple") of Cupertino, California as the proposed respondent. The ALJ held a *Markman* hearing on October 25-26, 2010 and issued Order No. 29, construing the terms of the asserted claims of the patents in the investigation. *See* Order No. 29 ("*Markman* Order").

During the investigation, the ALJ granted HTC's motion to partially terminate the investigation as to claim 3 of the '505 patent, claims 1, 2, 39 and 42-44 of the '957 patent, and all asserted claims of the '183 patent. Order Nos. 10, 37. The Commission determined not to review the IDs. *See* Notice of Comm'n Determination Not to Review an Initial Determination Granting Complainant's Unopposed Motion to Terminate the Investigation as to Claim 3 of U.S. Patent No. 7,716,505; Claims 1 and 2 of U.S. Patent No. 6,320,957, and All Asserted Claims of U.S. Patent No. 6,058,183 (Nov. 29, 2010); Notice of Comm'n

Determination Not to Review an Initial Determination Granting Complainant's Unopposed Motion to Terminate the Investigation as to Claims 39 and 42-44 of U.S. Patent No. 6,320,957 (Mar. 17, 2011). On March 15, 2011, the ALJ issued an ID granting HTC's motion for summary determination that it satisfies the economic prong of the domestic industry requirement. *See* Order No. 40. The Commission decided not to review this determination. *See* Notice of Comm'n Determination Not to Review an Initial Determination Granting Complainant's Motion For Summary Determination that it has Met the Economic Prong of the Domestic Industry (Apr. 5, 2011).

The ALJ held an evidentiary hearing from May 9, 2011 to May 16, 2011, and thereafter received post-hearing briefing from the parties. On October 17, 2011, the ALJ issued his final ID, finding no violation of section 337 by Apple's Accused Products.<sup>3</sup> Specifically, the ALJ found that the Commission has subject matter jurisdiction and that Apple did not contest that the Commission has *in rem* and *in personam* jurisdiction. ID at 5-6. The ALJ also found that there has been an importation into the United States, sale for importation, or sale within the United States after importation of the accused portable electronic devices and related software. *Id.* at 5. Regarding infringement, the ALJ found no infringement of claims 1 and 10 of the '988 patent; claims 8 and 9 of the '957 patent; claims 1, 2, 4, 6, 10, 11, 14, and 15 of the '800 patent; and claims 1 and 2 of the '505 patent. *Id.* at 10. The ALJ found that none of the patents were invalid. Finally, the ALJ concluded that an industry exists within the United States that practices the '988 patent and the '957 patent, but not the '800 patent or the '505 patent. *Id.* As a result, the ALJ concluded that there was no violation of section 337. *Id.* at 106.

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<sup>3</sup> The accused products in this investigation are Apple products that include various models of the iPhone, iPod Touch, and iPad (collectively "Accused Products").

The ID included the ALJ's recommended determination ("RD") on remedy and bonding. The ALJ recommended that in the event the Commission finds a violation of section 337, the Commission should issue a limited exclusion order prohibiting the importation of Apple's infringing portable electronic devices and related software. *Id.* at 108-09. The ALJ also recommended issuing a cease and desist order in addition to the limited exclusion order because there is already a "commercially significant" amount of the Accused Products within the United States that could be sold. *Id.* at 109-10.

On October 31, 2011, HTC filed a petition for review of the ID. *See* Complainant HTC Corp.'s Petition for Review of the Final Initial Determination ("HTC Pet."). With respect to the '800 patent, HTC challenged the ALJ's infringement findings and claim constructions or application thereof related to the "switching the PDA system from normal mode to sleep mode when the PDA system has been idle for a second period of time" limitation and the "implementing a power detection method" steps of independent claim 1, and the ALJ's finding that the technical prong of domestic industry was not met for the "implementing a power detection method" steps of independent claim 1. HTC Pet. at 12-30.

Also, on October 31, 2011, Apple filed a contingent petition for review.<sup>4</sup> *See* Respondent Apple Inc.'s Contingent Petition for Review of Initial Determination ("Apple Pet."). Relevant to the Commission's review, Apple argued that the Accused iPhones and HTC's domestic industry products ("HTC DI Products") do not meet the requirement of "switching the mobile phone system from standby mode to sleep mode when the mobile phone system has been idle for a first period of time" of the '800 patent or alternatively that the claims are invalid. *Id.* at 12-17. Apple also argued, for the '800 patent, that the HTC DI

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<sup>4</sup> Under the Commission's Rules, contingent petitions for review are treated as petitions for review. 19 C.F.R. § 210.42(b)(3).



Products do not compare the same “detected amount” to the first and second thresholds of claim 1. *Id.* at 17-18. Further, Apple argued that HTC failed to prove that Apple directly infringed the ’800 patent. *Id.* at 18-20.

On November 8, 2011, Apple filed a reply to HTC’s petition for review. *See* Respondent Apple Inc.’s Response to HTC’s Petition for Review of Initial Determination (“Apple Rep.”). Also on November 8, 2011, the Commission Investigative Attorney (“IA”) in the Office of Unfair Import Investigations (“OUII”) filed a consolidated response to HTC’s petition and Apple’s contingent petition. *See* Office of Unfair Import Investigation’s Consolidated Response to Complainant’s Petition for Review and Respondent’s Contingent Petition for Review (“OUII Rep.”). That same day, HTC filed a response to Apple’s contingent petition for review. *See* Complainant HTC Corp.’s Response to Respondent Apple’s Contingent Petition for Review of the Initial Determination (“HTC Rep.”).

On December 16, 2011, the Commission determined to review the final ID with respect to the ’800 patent and requested briefing on several issues and on remedy, the public interest and bonding. 76 Fed. Reg. 79,708-09 (Dec. 22, 2011). In its notice of partial review, the Commission asked the parties the following questions:

1. In the Accused iPhones, is the applications processor power management unit (AP PMU) a part of the personal digital assistant (PDA), the mobile phone system, or both?
2. In the Accused iPhones, when the  
[[  
]] does the PDA, the mobile phone system, or both, switch between modes? In the Accused iPhones, when the [[  
]] does the PDA, the mobile phone system, or both, switch between modes?

3. Do the claims, specification, or prosecution history require that only one of the systems (*i.e.*, either the mobile phone system or PDA) power off when each of the thresholds is met?
4. Are there separate thresholds in HTC's domestic industry products that result in the mobile phone system turning off separately from the PDA? If the mobile phone and PDA systems turn off simultaneously, is there record evidence proving that the thresholds are separately set to the same limits?
5. Is claim 1 of the '800 patent anticipated by the Qualcomm pdQ device? Please explain where each element is present in the pdQ device.
6. Do the Accused iPhones meet the "switching the mobile phone system from standby mode to sleep mode when the mobile phone system has been idle for a first period of time" limitation of claim 1 of the '800 patent?
7. Do the HTC domestic industry products meet the "switching the mobile phone system from standby mode to sleep mode when the mobile phone system has been idle for a first period of time" limitation of claim 1 of the '800 patent?
8. Do the Accused iPhones meet the "switching the PDA system from normal mode to sleep mode when the PDA system has been idle for a second period of time" limitation of claim 1 of the '800 patent?
9. Although the Commission has determined to review the '800 patent in its entirety, can the parties respond to Apple's argument that, because HTC did not petition for review of the limitations of claim 1 of the '800 patent on which the ALJ made no findings concerning infringement, "HTC has therefore waived any argument on review that these claim limitations are present in the accused iPhones?" Respondent Apple Inc.'s Response to HTC's Petition for Review of Initial Determination at 3. In your response, please reference any relevant Section 337 or Federal Circuit precedent.

On January 4, 2012, the parties filed submissions on the issues under review, remedy, the public interest, and bonding. On January 11, 2012, the parties filed reply submissions.<sup>5</sup>

### **B. Patents and Technology at Issue**

The technology at issue for the '800 patent is directed to wireless telephones. Specifically, the '800 patent relates to power management of smartphones. The '800 patent is entitled "Method for Power Management of a Smart Phone" and was filed on July 1, 2003. JX-1, '800 patent. The '800 patent issued on February 14, 2006 to named inventors Yu-Chung Peng, Ching-Hsiang Chang, Tzu-Hsun Tung and Hsi-Cheng Yeh. *Id.* The '800 patent describes a method of power management for a smartphone in which the mobile phone system is switched from standby mode "to sleep mode when the mobile phone system has been idle for a first time period." *Id.* at 1:51-53. In addition, the '800 patent describes "switching the PDA system from normal mode to sleep mode when the PDA system has been idle for a second period of time." *Id.* at 1:53-55. The Abstract notes that the power detection switches "the mobile phone and PDA system to off mode when the power is lower than a first and second threshold respectively." *Id.* at Abstract. HTC has asserted independent claim 1 and dependent claims 2, 4, 6, 10, 11, 14 and 15 in this investigation. *ID* at 106; HTC RBr. at 1.

### **C. Products At Issue**

The Accused Products in this investigation are Apple models of the iPhone, iPod Touch, and iPad. *ID* at 4. Specifically, with respect to the '800 patent, HTC asserts that the

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<sup>5</sup> The parties' responses to the Commission's questions are cited as "HTC Br.," "Apple Br." and "OUII Br."; and the parties' replies to the initial responses to the Commission's questions are cited as "HTC RBr.," "Apple RBr." and "OUII RBr."

original iPhone, iPhone 3G, iPhone 3GS, iPhone 4, and CDMA iPhone (collectively “Accused iPhones”) infringe the asserted claims of that patent. *Id.* at 4.

Relevant to this opinion, independent claim 1 teaches that the PDA system can be operated in normal, sleep, or off modes. ’800 patent at 6:32-34. HTC alleges that the [[ ]] of the Accused iPhones is the claimed “normal mode,” the [[ ]] of the PDA system is the claimed “sleep” mode, and that the [[ ]] is the claimed “off mode.” HTC Pet. at 6-7; *see also* CX-1405.2C at 170-171. The Accused iPhones’[[ ]]

]] *See e.g.*, JX-39C; HTC Pet. at 6-7.

## **II. VIOLATION AND THE ’800 PATENT UNDER REVIEW**

As discussed above, the Commission determined to review the ID’s findings with respect to ’800 patent in its entirety. Asserted independent claim 1 recites (the elements have been labeled for discussion purposes):

1. A method for power management of a smart phone having a power system, a mobile phone system operated in standby, sleep, connection or off mode, and a PDA system operated in a normal, sleep or off mode, the method comprising the steps of:

resetting the smart phone; [element 1a]

searching for network service for the mobile phone system; [element 1b]

operating the mobile phone system in standby mode and the PDA system in normal mode when the network is located and connected to; [element 1c]

switching the mobile phone system from standby mode to connection mode when establishing communication with a remote terminal of the network; [element 1d]

switching the mobile phone system from standby mode to sleep mode when the mobile phone system has been idle for a first period of time; [element 1e]

switching the PDA system from normal mode to sleep mode when the PDA system has been idle for a second period of time; and [element 1f]

implementing a power detection method comprising steps of:  
[element 1g]

detecting an amount of power of a source in the power system; [element 1g1]

switching the mobile phone system to off mode when the detected amount is less than a first threshold; and  
[element 1g2]

switching the PDA system to off mode when the detected amount is less than a second threshold.  
[element 1g3].

JX-1, '800 patent at 6:30-59.

The ALJ's final ID only addressed whether complainant had established that the Accused Devices met the limitations in element 1f and the power detection elements of 1g (1g1 to 1g3) of claim 1 above; having found that these elements were not shown, the ID did not address the other elements of claim 1. Our discussion below addresses these elements of claim 1; the Commission finds that, while element 1f is met, the power detection elements of 1g are not, and thus the Commission affirms the ALJ's conclusion that complainant has not established infringement of claim 1 of the '800 patent. The Commission declines to take a position on the remaining elements of claim 1.

**A. Whether Element 1f of Claim 1 of the '800 Patent is Met By the Accused iPhones**

Our determination of whether or not element 1f is met rests on the determination of what constitutes a “sleep mode” and what constitutes an “off mode.” The ALJ construed “sleep mode” in element 1f to mean “an operational mode in which the amount of power supplied to the subsystem is less than any mode except for off mode” and “off mode” to mean “an operational mode in which the least amount of power is supplied to the subsystem compared to any other operational mode (e.g., normal, sleep, connection, or standby).” *Id.* at 22, 26. HTC did not challenge the ALJ’s claim constructions of “sleep mode” or “off mode” but rather the application of these terms. In finding that the Accused iPhones do not meet this limitation, the ALJ found that [[

]] ID at 58-59. Thus the ALJ found that [[

]] as advocated by HTC, is the mode in which “the amount of power supplied to the subsystem is less than any mode except for off mode.”

In contrast to the ALJ’s finding, the parties agree, and the Commission finds, that the evidence shows that the [[

]] *See e.g.,*

HTC Br. at 7-8; Apple Br. at 5-11; Alpert Tr. at 1453:10-1454:3, 1455:7-1456:24; Williams Tr. at 440:21-441:5; RX-806C at Q. 55; RX-807.1C at Q. 280; CX-1405.2C at Q. 157. For

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<sup>6</sup> The Commission notes that the parties dispute whether or not the AP PMU is part of the PDA system. *Compare* HTC Br. at 4, 7 *with* Apple Br. at 3-4. The Commission finds that this issue is not dispositive of the amount of power “*supplied to*” the PDA.



example, Dr. Alpert, Apple's expert, who qualified his testimony for when the AP PMU is not part of the PDA system, testified as follows:

[[

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Alpert, Tr. at 1456:11-21; *see also* RX-807.1C at Q. 280. Dr. Williams, HTC's expert, testified as follows:

[[

]]

CX-1405.2C at Q. 157; *see also* Williams, Tr. 415:-430:5, 429:5-430:5, 434:22-435:2.

Therefore, the evidence supports a finding that the [[

]] Because the [[

]] are the operational modes in which the least amount of power is supplied to the PDA system, [[

]] meet the ALJ's construction of "off

mode." The [[

]] is the next lowest power mode that is

supplied power and therefore satisfies the ALJ's construction for "sleep mode," which is "an

operational mode in which the amount of power *supplied* to the subsystem is less than any mode except for off mode.” *Markman* Order at 26 (emphasis added); *see e.g.*, *Alpert*, Tr. 1450:12-16; 1453:10-1454:3, 1455:7-1456:24; *Williams*, Tr. 415:-430:5, 429:5-430:5, 434:22-435:2, 440:21-441:5; CX-1405.2C at Q. 157, 254, 536, 539, 548-49, 959, 962, 971-72, 1383, 1386, 1395-96, 1811, 1814, 1823-24, 2250, 2253, 2262; RX-807.1C at Q. 233, 280; RX-806C at Q.55, 76, 99; *Conner*, Tr. 1318:16-1319:21; *see also* *HTC Br.* at 7-8; *Apple Br.* at 5-11. Thus, a preponderance of the evidence supports the finding that the [[ ] of the Accused iPhones meets the “sleep mode” limitation of element 1f. Accordingly, the Commission reverses the ALJ’s finding that the Accused iPhones do not meet this element.

**B. Whether the “Implementing a Power Detection Method Comprising Steps of” (Element 1g) “Detecting an Amount of Power of a Source in a Power System” (Element 1g1); “Switching the Mobile Phone System to Off Mode When the Detected Amount is Less Than a First Threshold” (Element 1g2); and “Switching the PDA System to Off Mode When the Detected Amount is Less Than a Second Threshold” (Element 1g3) Limitations Are Met by the Accused iPhones and Practiced by the HTC DI Products**

**1. Infringement**

The ALJ correctly found that HTC has not proven by a preponderance of the evidence that the Accused iPhones meet the steps of the “implementing a power detection method” limitation (element 1g). The Commission finds that the Accused iPhones have [[ ] and therefore, the Accused iPhones do not meet this limitation. In addition, the Commission finds that the [[ ] and therefore, the Accused iPhones do not have

separately set thresholds. Accordingly, the Commission affirms the ALJ's determination of no infringement for these claim elements.

The ALJ found that: "[t]he claim construction requires that the MPS<sup>7</sup> be switched to off mode when 'the detected amount of power in the power source is less than a first value' and the PDA system be switched to off mode when 'the detected amount of power in the power source is less than a second value,' provided that 'the values of the first and second thresholds may be the same or different, and must be separately set.'"<sup>8</sup> ID at 61. The ALJ also determined that "while the first and second thresholds can be the same or different, the 'detected amount' that is compared to the first threshold is the same as the 'detected amount' that is compared to the second threshold." *Id.* The ALJ concluded that the "detected amount" limitation is not met in the Accused iPhones because [[

]] *Id.* The Commission agrees with his claim construction and this analysis of the Accused iPhones.

The claims recite four elements that relate to the detection of power (*i.e.*, 1g, 1g1, 1g2, and 1g3). The "power detection method" of "detecting an amount of power of a source" provides the antecedent basis for "the detected amount" recited in claim elements 1g2 and 1g3 and indicates that one detected amount is compared to both the first and second thresholds. Further, Figure 10 of the specification illustrates a detection and comparison method of the invention that shows that during any iteration of the method of Figure 10, the amount detected in step 101 is compared to both thresholds. JX-1, '800 patent at Fig. 10.

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<sup>7</sup> The parties and the ALJ often refer to the mobile phone system as the "MPS."

<sup>8</sup> HTC did not challenge the ALJ's construction but instead argues that the ID did not apply the "separately set" limitation consistent with the construction. HTC Pet. at 23.

Thus, the plain language of the claim and the specification support the ALJ's finding that one detected amount of power is compared to the first and second thresholds.

In determining whether or not there was more than one power detection amount compared to the thresholds in the Accused iPhones, the ALJ relied upon testimony from Apple's expert witness, Dr. Alpert, who testified as follows:

[[

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RX-807.1C at Q. 250, 275.<sup>9</sup> Dr. Williams testified that the PDA system and mobile phone systems [[

]] See e.g., CX-1405.2C Q. 567-93, 990-1016, 1413-46, 1842-76, 2280-2313. This evidence supports the ALJ's conclusion that the [[

]]

Accordingly, the Commission finds that the ALJ properly determined that the Accused iPhones do not compare one detected amount to both the first and second thresholds, as required by these claim limitations.

As noted above, the Commission also finds that the ALJ properly determined that the Accused iPhones do not have "separately set" first and second thresholds because [[

]] One of the parties' significant disagreements for the 1g limitations rests on whether or not the '800 patent allows for the mobile phone and PDA systems to both turn off based on a single threshold. In reviewing the claims, specification, and the parties' arguments, the Commission finds that the ALJ correctly determined that both the PDA and mobile phone systems cannot be turned off when a single threshold is met and still meet the limitations of claim 1.<sup>10</sup> The Commission adopts his reasoning and adds the following analysis.

First, the plain reading of the claim language requires that there be a one-to-one correspondence between the specified system and the specified threshold. Specifically, the

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<sup>9</sup> The Commission notes that the evidence relied upon by the ALJ does not support the further conclusion that the Accused iPhones [[

]] ID at 61. Specifically, this evidence does not support independently switching the [[ ]] Therefore, the Commission does not adopt this finding of the ALJ.

<sup>10</sup> Claim 1 is independent and the remaining asserted claims are dependent claims.

claim language requires that the mobile phone system turn to “off mode” when the amount detected is less than a first threshold; and that the PDA turn to “off mode” when the amount detected is less than a second threshold. The ALJ’s claim construction requires that the two thresholds be separately set for the PDA and mobile phone systems. *Markman* Order at 27. The plain reading of the claim is consistent with the ALJ’s construction.

The Background of the Invention teaches that the advantage of the invention is the ability to use one system (*e.g.*, PDA system) while conserving power in the other system (*e.g.*, mobile phone system) by separately managing the power operations. JX-1, ’800 patent at 1:22-32. The Abstract is also consistent with the plain meaning of the claim. The Abstract recites “implementing power detection to switch the mobile phone and PDA systems to off mode when the detected power is lower than a first and second threshold *respectively*.” *Id.* at Abstract (emphasis added). The plain meaning of the word “respectively” is that the PDA and mobile phone systems have separate thresholds that are separately used to power off the mobile phone and PDA systems.

Contrary to HTC’s contention, the specification does not teach that the flowchart of Figure 10 results in turning off both the PDA and mobile phone system when the detected amount is less than one of the two specified thresholds. Instead, Figure 10 shows a detected amount is compared to the second threshold and if that threshold is not met, the detected amount is compared to the first threshold. There is no evidence from Figure 10 or the specification that supports HTC’s position both systems turn off as a result of either threshold being met. For these reasons, the Commission agrees with the ALJ’s determination that both systems cannot be turned off when one threshold is met.



In light of this claim construction, the ALJ found that “[t]he values of the first and second thresholds, identified by HTC as [[

]] ID at 62. The ALJ determined that because [[

]]

The parties generally agree on the operation of the Accused iPhones. Both Apple and HTC agree that the thresholds for [[ ]] are different.

Apple Rep. at 18; HTC Br. at 17. The parties also agree that when the [[

]]

Apple Br. at 11; HTC Br. at 20. They further agree that when the Accused iPhones’ PDA system is in [[

]]

The parties’ main disagreement is about whether the PDA is in “off mode” when it is [[ ]] Apple RBr. at 5; HTC Br. at 20-21. HTC argues that because the Accused iPhones [[

]] HTC Br. 18-21. More specifically, HTC asserts that when [[

]]

*Id.* Apple and the IA, on the other hand, argue that because [[

]] Apple Br. at 11-12; OUII Br. at 4-5. Apple argues that the [[ ]]  
operation is therefore immaterial because when the [[ ]]

]] Apple Br. at 15-16.

As discussed above for element 1f, the [[ ]]  
]] modes both satisfy the  
ALJ's construction of "off mode," in as much as they both constitute an operational mode  
where the least amount of power is supplied to the PDA system. Therefore, when the  
[[ ]]

]] The fact that the PDA system [[ ]]

]] does not change the fact that when the [[ ]]

]] Nothing in the claims precludes one or both of the systems  
from later being turned back on. Accordingly, elements 1g2 and 1g3 are not met by the  
Accused iPhones because the first and second thresholds are not separately set.<sup>11</sup>

## **2. Domestic Industry**

The Commission finds that the ALJ correctly determined that the HTC DI Products  
do not practice claim 1 of the '800 patent. The Commission agrees with the ALJ that when  
each threshold is met, the entire device turns off and adopts his reasoning.

The ALJ determined that when the first threshold is met, [[ ]]

]], both the mobile phone system and the PDA system shut  
down. ID at 77. The ALJ further determined that when the second threshold is met, [[ ]]

]], both the mobile phone system and PDA shut

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<sup>11</sup> The Commission takes no position on whether or not the PDA system switches to "off  
mode" when the [[ ]]  
]] is met for element 1g3.

down. *Id.* The ALJ concluded that the first and second thresholds are not “separately set” because each threshold is set for the entire device and, therefore, the HTC DI products do not practice claim 1 of the ’800 patent and no domestic industry exists. *Id.* at 78.

[[  
]] HTC Br. at 14. Therefore, both the mobile phone system and the PDA system do not switch to “off mode” without also switching the other respective system to “off mode.” Accordingly, the Commission affirms the ALJ’s determination.

Apple also requested that the Commission determine whether the HTC DI Products also do not have two separately set thresholds because two different detected amounts are used to determine if the first and second thresholds are met. The Commission declines to take a position on this issue.

**C. Whether the Accused iPhones and the HTC DI Products Practice Claim Element 1e, or Whether the Asserted Claims Are Invalid**

On review, Apple contingently petitioned that the ID did not address element 1e and that if the ID is read to find that the “switching the mobile phone system from standby mode to sleep mode when the mobile phone system has been idle for a first period of time” limitation is met, that this finding is “inconsistent with the finding that the prior art Qualcomm pdQ smartphone does not practice Element 1e.” Apple Pet. at 12. Apple argued that the finding is inconsistent because the Accused iPhones, the HTC DI Products and the Qualcomm pdQ [[  
]] when disconnected from a network.” *Id.* The Commission declines to take a position on whether the “switching the mobile phone system from standby mode to sleep mode when the mobile phone system has been idle for a first period of time” limitation is met by the Accused iPhones and/or the HTC

DI Products. The Commission also declines to take a position on whether the Qualcomm pdQ smartphone invalidates claim 1.

**D. Whether HTC's Petition Should Be Dismissed Based on Waiver**

The Commission finds that Apple's waiver argument is moot. In response to HTC's petition for review, Apple argued that HTC's petition must fail because HTC did not petition for review of the limitations not addressed by the ALJ, but only asserted that three claim limitations are at issue with respect to the Accused iPhones. Apple Rep. at 1-5. Apple argues that HTC waived its arguments as to those limitations and cannot prove that they are met. *Id.* HTC responds that because the Commission determined to review the '800 patent in its entirety, "the question of whether the right to petition for review has been preserved is moot." HTC Br. at 49. The Commission agrees with HTC. The Commission determined to review the '800 patent in its entirety, and whether or not HTC has waived its right to petition the limitations not addressed by the ALJ is now immaterial. The Commission takes no position on these limitations.

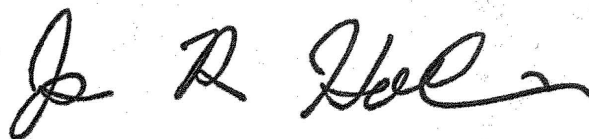
**E. Whether HTC Can Prevail In Light of the Commission's Opinion in Inv. No. 337-TA-724**

The Commission has determined to take no position on whether or not HTC can prevail in light of the Commission's recent decision in *Certain Electronic Devices with Image Processing Systems, Components Thereof, and Associated Software*, Inv. No. 337-TA-724, Comm'n Op. (Public Version) (Dec. 21, 2011).

**III. CONCLUSION**

For the reasons set forth above, the Commission finds no violation of section 337 by Apple with respect to the '800 patent.

By order of the Commission.

A handwritten signature in black ink, appearing to read "J R Holbein". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

James R. Holbein  
Secretary to the Commission

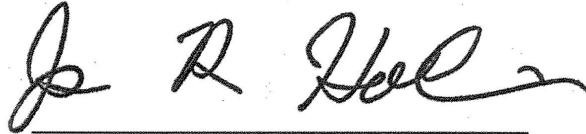
Issued: April 19, 2012

**CERTAIN PORTABLE ELECTRONIC DEVICES AND  
RELATED SOFTWARE**

**337-TA-721**

**CERTIFICATE OF SERVICE**

I, James R. Holbein, hereby certify that the attached **OPINION** has been served by hand upon the Commission Investigative Attorney, **Jeffrey T. Hsu, Esq.**, and the following parties as indicated, on **April 19, 2012**.



James R. Holbein, Secretary  
U.S. International Trade Commission  
500 E Street, SW  
Washington, DC 20436

**On Behalf of Complainant HTC Corp.:**

Thomas L. Jarvis, Esq.  
**FINNEGAN, HENDERSON, FARABOW, GARRETT  
& DUNNER, LLP**  
901 New York Avenue, NW  
Washington, DC 20001

( ) Via Hand Delivery  
☒ Via Overnight Mail  
( ) Via First Class Mail  
( ) Other: \_\_\_\_\_

**On Behalf of Respondent Apple Inc.:**

V. James Adduci, II, Esq.  
**ADDUCI, MASTRIANI & SCHAUMBERG, L.L.P.**  
1133 Connecticut Avenue, NW 12<sup>th</sup> Floor  
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