

UNITED STATES INTERNATIONAL TRADE COMMISSION  
WASHINGTON, D.C.

Before the Honorable Thomas J. Pender  
Administrative Law Judge

**In the Matter of**

**CERTAIN WIRELESS  
COMMUNICATION DEVICES,  
PORTABLE MUSIC AND DATA  
PROCESSING DATA DEVICES,  
COMPUTERS AND COMPONENTS  
THEREOF**

Investigation No. 337-TA-745

**RESPONDENT APPLE'S STATEMENT ON THE PUBLIC INTEREST**

***Served on behalf of Respondent:***

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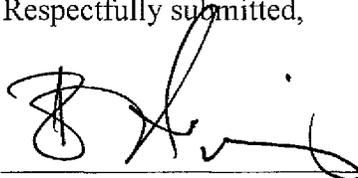
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In response to the Commission's Notice of Request for Statements on the Public Interest, Apple directs the Commission to and incorporates herein by reference the attached declaration of Dr. Jerry Hausman, professor of economics at Massachusetts Institute of Technology. Dr. Hausman is the author of numerous scholarly works, and his recent research has included economic and financial analysis in the telecommunications field, including regulation and competition for cellular and broadband technologies. As Dr. Hausman explains in his declaration, an exclusion order directed against Apple's products would adversely and significantly impact the U.S. economy and consumers. Dr. Hausman also explains why an exclusion order is not an appropriate remedy where the complainant is obligated to license its patents to the respondent on fair, reasonable, and non-discriminatory ("FRAND") terms. Additionally, any exclusion order should exempt replacement parts and units so that consumers who have paid for insurance and warranties can continue to obtain the appropriate repair services. Finally, the effective date of any exclusion order should be delayed to minimize the harm on the U.S. economy and consumers.

Dated: June 6, 2012

Respectfully submitted,



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***Counsel for Respondent Apple Inc.***

# **EXHIBIT 1**

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Investigation No. 337-TA-745

DECLARATION OF JERRY A. HAUSMAN, Ph.D.  
IN SUPPORT OF APPLE'S STATEMENT ON THE PUBLIC INTEREST

1. I am an expert in economics, financial analysis, and intellectual property licensing in high-technology industries. My CV is online at <http://economics.mit.edu/faculty/hausman/cv>.

2. I have been asked by Apple's counsel to evaluate the impact on the public interest if a limited exclusion order and cease-and-desist order are issued in this Investigation. I have formed my opinions based upon my review of relevant documents and discussions with persons at Apple knowledgeable about these issues, and if called to testify, I could testify competently to the opinions in this declaration. If provided the opportunity to do so, I could submit a more comprehensive analysis of the information summarized below.

3. Based on my analysis, as described more fully below, I have reached the following conclusions:

- The accused products have significant economic value to Apple and third parties, including U.S. consumers.
- Any remedy issued in this Investigation would have a significant adverse impact on Apple, consumers, and other third parties.
- An exclusion order would circumvent Motorola's FRAND obligations.
- Misuse of the FRAND obligation will lead to significant harm to the U.S. telecommunications industry and lead to significant harm to consumers.
- Any remedy should be delayed to minimize this harm.
- Any remedy should exempt replacement parts and units to allow Apple's customers to continue receiving warranty services.

**A. How the Subject Articles Are Used in the United States**

4. I understand that the Apple accused products are the iPhone 3GS, iPhone 4, iPod touch (4th Generation), iPad, iPad 2, Apple TV, MacBook, MacBook Air, MacBook Pro, iMac, Mac mini, and Mac Pro. These products comprise the large majority of Apple's business and are used everyday in the United States by tens of millions of people to perform a countless number of essential tasks, including: (i) placing and receiving phone calls; (ii) sending and receiving text

messages and e-mails; (iii) navigation; (iv) managing contact information; (v) managing calendars and schedules; (vi) banking and e-commerce; (vii) monitoring weather and managing investments; (viii) accessing the internet, and (ix) drafting and managing documents, among many others tasks. *See, e.g.,* [www.apple.com/iphone](http://www.apple.com/iphone) and [www.apple.com/macbook](http://www.apple.com/macbook).

**B. Impact of an Exclusion Order on the U.S. Economy**

5. Apple is the number one supplier of smartphones in the United States, with an estimated market share for the iPhone of 42.2%.<sup>1</sup> Apple is also the number one supplier of tablet products, with the iPad accounting for more than 55% of U.S. sales.<sup>2</sup> In total, Apple sold worldwide over 164 million units of its desktop and portable computers, iPods, iPhones, and iPads in fiscal year 2011, approximately 39% of the net sales for which took place in the United States. (Apple 2011 10-K, pp. 30, 74). Apple's net sales in the United States in fiscal year 2011 were \$41.8 billion. (Apple 2011 10-K, p. 74). The majority of these sales were for the products accused in this Investigation. I have seen no indication that Motorola, its licensees, or others have the capacity to replace this volume of articles potentially subject to a remedy within a commercially reasonable time.

6. An exclusion order would negatively impact: (i) Apple's approximately 60,400 full-time equivalent employees, (ii) Apple's over 357 stores worldwide, including over 245 stores in the United States, and (iii) Apple's billions of dollars of investment in research and development, substantially all of which takes place in the United States. (Apple FY 2011 Form 10-K p. 9, p. 34).<sup>3</sup>

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<sup>1</sup> IDC, "Mobile Phone Tracker", data for 2012Q1.

<sup>2</sup> *See* <http://mashable.com/2012/03/14/ipad-kindle-fire-market-share/>

<sup>3</sup> Apple invested approximately \$5.5 billion in FY 2009-2012, substantially all of which was incurred in the United States. (Apple 2011 10-K, p. 7).

7. Also at risk are more than 500,000 applications that can be installed and run on Apple's iPhones and iPads. See <http://www.apple.com/iphone/apps-for-iphone/>. These applications produce billions of dollars of royalties for content providers, substantially contribute to U.S. economic welfare and efficiency, and employ thousands of people.

**C. Implications of FRAND on an Exclusion Order**

8. I understand that one of the four asserted patents relate to telecommunications standards. Standardization is a critical process by which industry participants contribute "essential" technical ideas and agree upon the specifications for how products should operate and communicate with each other. This allows for investments in industries without the risk of products being incapable of interoperability, eliminates wasteful investments, and reduces the costs of products to both sellers and buyers.

9. But standardization creates a potential "hold-up" problem in which the owner of a patent essential to the standard can extract supra-competitive royalties from users of the standard. A patent owner "holds up" the users of a standard by asserting that, without an unduly large payment, the users cannot use the standard. This problem is particularly significant in the telecommunications industry, in which many different companies hold thousands of declared-essential patents. In order to mitigate this problem and ensure industry access to the standard, standard setting organizations have encouraged participants to license the patented technology included in the standard on fair, reasonable and non-discriminatory ("FRAND") terms. Here, Motorola made a commitment to license the patented technology at issue on FRAND terms to any practitioner of the telecommunication standards.

10. Companies such as Apple rely on the FRAND obligation to protect their billions of dollars in investments in products designed to operate on standardized networks that practice

patents subject to the FRAND commitment. For this reason, it would be severely detrimental to the U.S. economy to allow an essential patent holder to obtain an injunction against an industry participant instead of licensing their patent on FRAND terms.

11. Indeed, permitting an essential patent holder such as Motorola to use the ITC to exclude competitors amounts to a circumvention of the FRAND requirement and would reinstate the very hold-up problem that FRAND is designed to solve. This practice could devastate the U.S. telecommunications industry because the technology underlying virtually all telecommunications equipment is subject to the FRAND commitment, yet almost all of this equipment is imported and is thus potentially subject to an exclusion order. Enabling hold-up of the industry will undercut the development of industry standards and reverse the gains in productivity that standardization produces, thereby damaging not only companies like Apple, but also U.S. consumers and the public in general.

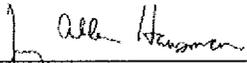
**D. Replacement Parts and Units Should Be Exempted From Any Remedy**

12. The millions of users of Apple products would be greatly harmed by an exclusion order that prevented importation of replacement parts and devices. These users have already paid for device replacement, as all Apple products are sold with a one-year warranty that includes replacement. See [www.apple.com/support/products](http://www.apple.com/support/products). Thus, any exclusion order should exempt the importation of replacement parts and refurbished devices to be provided to consumers as replacements under warranty or an insurance contract (whether the warranty is provided by Apple, a carrier, or any other third party) because such devices are essential to the fulfillment of these warranty obligations. I understand that the Commission included such an exemption in the 710 Investigation. (See Dec. 29, 2011 Commission Opinion at p. 73).

**E. Any Remedy Should Be Delayed to Minimize Harm to the U.S. Economy**

13. Should the Commission find that the public interest factors stated herein do not justify not issuing an exclusion order, the Commission should delay enforcement to provide Apple a reasonable amount of time to develop alternative solutions and products. I understand that the Commission afforded HTC such relief in the 710 Investigation. (See Dec. 29, 2011 Commission Opinion at p. 83).

I swear under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Signed this 6th day of June, 2012, at Cambridge, MA.

  
Jerry Allen Hausman

Jerry A  
Hausman

Digitally signed by Jerry A Hausman  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served on June 6, 2012 as indicated, on the following:

<p><b><u>Via EDIS</u></b> Lisa Barton Acting Secretary U.S. International Trade Commission 500 E Street SW, Room 112 Washington, D.C. 20436</p>	<p><b><u>Via Hand Delivery (2 copies)</u></b> The Honorable Thomas J. Pender Office of the Administrative Law Judge U.S. International Trade Commission 500 E Street SW, Room 317-H Washington, D.C. 20436</p>
<p><b><u>Via Email</u></b> Kevin Baer, Esq. Office of Unfair Import Investigations U.S. International Trade Commission 500 E Street, S.W., Room 401-A Washington, D.C. 20436 kevin.baer@usitc.gov</p>	<p><b><u>Via Email</u></b> Charles F. Schill Steptoe &amp; Johnson LLP 1330 Connecticut Avenue, N.W. Washington, DC 20036 S&amp;JMotorola745@steptoe.com</p>
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