

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

In the Matter of

CERTAIN ELECTRONIC DEVICES,  
INCLUDING WIRELESS  
COMMUNICATION DEVICES,  
PORTABLE MUSIC AND DATA  
PROCESSING DEVICES, AND TABLET  
COMPUTERS

Investigation No. 337-TA-794

**RESPONDENT APPLE INC.'S NOTICE OF NEW AUTHORITY  
RELEVANT TO ISSUES ON REVIEW**

Apple submits this notice to inform the Commission of two new decisions relevant to the issues under review:

***Microsoft v. Motorola***

1. On April 25<sup>th</sup>, Judge Robart in the United States District Court for the District of Washington issued *Microsoft Corp. v. Motorola, Inc.*, Case No. C10-1823, 2013 U.S. Dist. LEXIS 60233 (D. Wash. April 25, 2013). In that 207-page decision, the court articulated a detailed methodology for valuing FRAND patents, and made specific findings as to proper FRAND rates for Motorola’s declared-essential patent portfolios for the H.264 and 802.11 standards. Both the rates themselves—.555 cents/unit for the entire H.264 patent portfolio, and 3.471 cents/unit for the entire 802.11 patent portfolio—and the court’s analytical framework are entirely consistent with the positions that Apple has presented to the Commission, and entirely inconsistent with Samsung’s arguments.

2. The decision also illustrates that, as Apple has respectfully submitted to the Commission, the district courts are the proper forum for adjudicating FRAND rate issues given the courts’ institutional experience in such matters. *See, e.g., Microsoft*, 2013 U.S. Dist. LEXIS 60233 ¶ 87 (“Courts have long experience in conducting hypothetical bilateral negotiations to frame the reasonable royalty inquiry in patent infringement cases under the *Georgia-Pacific* framework.”).

***European Commission Preliminary Determination Against Motorola Mobility***

3. On May 6<sup>th</sup>, the European Commission issued a press release stating: “The European Commission has informed Motorola Mobility of its preliminary view that the company’s seeking and enforcing of an injunction against Apple in Germany on the basis of its mobile phone standard-essential patents (“SEPs”) amounts to an abuse of a dominant position

prohibited by EU antitrust rules.” (May 6, 2013 press release titled “Antitrust: Commission sends Statement of Objections to Motorola Mobility on potential misuse of mobile phone standard-essential patents,” available at [http://europa.eu/rapid/press-release\\_IP-13-406\\_en.htm](http://europa.eu/rapid/press-release_IP-13-406_en.htm).) Joaquín Almunia, the Commission Vice President and head of competition policy, stated: “The protection of intellectual property is a cornerstone of innovation and growth. But so is competition. I think that companies should spend their time innovating and competing on the merits of the products they offer – not misusing their intellectual property rights to hold up competitors to the detriment of innovation and consumer choice.” (*Id.*)

4. This preliminary determination followed the European Commission’s earlier preliminary determination that Samsung likewise violated European antitrust law by seeking injunctions against Apple based upon declared-essential patents. (*See* Document ID No. 499892.) The latest preliminary determination is also in line with the Tokyo District Court’s dismissal of Samsung’s complaint against Apple for alleged infringement of a Samsung patent declared essential to the UMTS wireless standard, where the court concluded that Samsung had committed multiple acts constituting an abuse of rights—including by seeking injunctive relief on a FRAND-committed patent. (*See* Document ID No. 505260.)

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The *Microsoft* decision and new European Commission preliminary determination further underscore that it would be against the public interest to issue an exclusionary remedy to Samsung on declared-essential patents.

Dated: May 14, 2013

Respectfully submitted,  
*Apple Inc.*

By its counsel,

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*In the Matter of* CERTAIN MOBILE ELECTRONIC DEVICES, INCLUDING WIRELESS COMMUNICATION DEVICES, PORTABLE MUSIC AND DATA PROCESSING DEVICES, AND TABLET COMPUTERS

Inv. No. 337-TA-794

U.S. International Trade Commission; Before the Honorable E. James Gildea

**CERTIFICATE OF SERVICE**

I, Lanta M. Chase, hereby certify that copies of the foregoing document, **RESPONDENT APPLE INC.'S NOTICE OF NEW AUTHORITY RELEVANT TO ISSUES ON REVIEW**, were served upon the following parties as indicated below on this 14th day of May, 2013.

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/s/ Lanta M. Chase  
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