

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

**In the Matter of**

**CERTAIN PERSONAL DATA AND  
MOBILE COMMUNICATIONS DEVICES  
AND RELATED SOFTWARE**

**Inv. No. 337-TA-710**

**Order 105**

Respondents HTC Corp. (f/k/a High Tech Computer Corp.), HTC America, Inc., and Exedea, Inc. (collectively, “HTC”), pursuant to Commission Rule 210.18, move for summary determination that complainants Apple Inc. and NeXT Software, Inc. (collectively, “Apple”) have failed to establish that the accused HTC products infringe claims 5, 6 and 21 of U.S. Patent No. 5,481,721 (“the ‘721 patent”). (Motion No. 710-110). Apple and the Commission Investigative Staff (“Staff”) oppose the motion. HTC’s motion for summary determination is denied.

HTC asserts that Apple has failed to show that the accused HTC products infringe dependent claims 5, 6 and 21 of the ‘721 patent<sup>1</sup> inasmuch as “Apple has not identified any one object that performs the required claim limitations” of those claims. Mot. at 2.

In response, Apple contends that HTC’s motion should be denied because it relies exclusively on a new theory that HTC never disclosed during discovery and it raises numerous issues of fact which preclude summary determination. Opp. at 1-2, 6-14.


The Staff, in agreement with Apple, submits that genuine issues of material fact exist, and therefore, HTC’s motion should be denied. Staff Opp. at 8-11.

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<sup>1</sup> Claim 5 depends from claim 1, and claim 6 depends from claim 5. Claim 21 depends from claim 19. See Mot., Ex. 1 (the ‘721 patent).

It is found that HTC has not carried its burden of proving that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. Accordingly, Motion No. 710-110 is denied.

So Ordered.

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Carl C. Charneski  
Administrative Law Judge

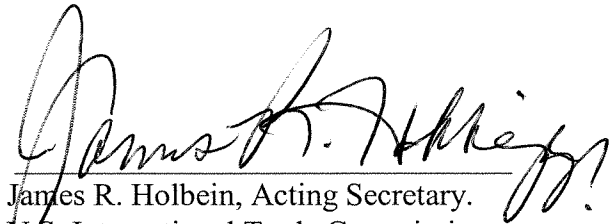
Issued: April 7, 2011

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**PUBLIC CERTIFICATE OF SERVICE**

I, James R. Holbein, hereby certify that the attached **ORDER 105** has been served by hand upon the Commission Investigative Attorney Erin D. E. Joffe, Esq, and the following parties as indicated, on April 7, 2011.

  
James R. Holbein, Acting Secretary.  
U.S. International Trade Commission  
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