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Apple Gains Ground in U.S. Ruling Banning Some HTC Phones (2)  
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(Updates with HTC closing price in ninth paragraph.)

By Susan Decker

Dec. 20 (Bloomberg) -- Apple Inc. won a patent-infringement ruling that bans some HTC Corp. smartphones from the U.S.

starting next year, bolstering efforts to prove that devices running Google Inc.'s Android operating system copy the iPhone.

The U.S. International Trade Commission, in a review of a judge's findings in July, said yesterday that HTC is violating one Apple patent related to data-detection technology and issued a limited import exclusion order that takes effect April 19.

"HTC will completely remove it from all of our phones soon," Grace Lei, general counsel for Taoyuan, Taiwan-based HTC, said in an e-mail. The six-member commission determined that three other patents in the case weren't infringed.

While less than what Apple sought, the ruling gives the company its first victory in patent cases designed to slow the growth of Android, which former Chief Executive Officer Steve Jobs claimed "ripped off the iPhone." Apple has one other case against HTC, as well as complaints against Samsung Electronics Co. and Motorola Mobility Holdings Inc., and is involved in more than a dozen other cases before the trade commission.

"The battle between Apple and Android is going to continue," said Peter Toren, a patent lawyer with Shulman Rogers in Potomac, Maryland, who has been watching the cases. "I'm not sure this decision, the way it is, is enough to push the parties to settlement. Apple doesn't have the leverage of a total exclusionary order."

#### Nexus One

The list of affected products and a full reason for the commission's decision, which is subject to appeal and a presidential review, wasn't immediately made public. Apple's original complaint named HTC's Nexus One, Touch Pro, Diamond, Tilt II, Dream, myTouch, Hero and Droid Eris.

Kristin Huguet, a spokeswoman for Cupertino, California-based Apple, declined to discuss the possibility of a settlement. She repeated the company's position that "competition is healthy, but competitors should create their own original technology."

Representatives from Google had no immediate comment.

HTC shares rose by the 7 percent daily limit to NT\$476 in Taipei after the company said it will buy back 10 million of its own shares, equal to 1.16 percent of those outstanding.

The ruling is the first definitive decision in the dozens of patent cases that began to proliferate in 2010 as smartphone makers battle over a market that Strategy Analytics Inc. said increased 44 percent last quarter from a year earlier to 117 million phones worldwide. HTC, the second-largest

maker of Android phones, used its partnership with Google to help transform itself from a contract manufacturer founded in 1997 to the biggest U.S. smartphone seller in the third quarter.

### HTC Sales

HTC generated about \$5 billion in U.S. sales last year, according to a separate patent complaint it filed at the trade agency against Apple. That's more than half of HTC's \$9 billion (NT\$275 billion) in global sales last year.

The commission's order applies to new phone imports and doesn't force HTC to pull existing devices off U.S. store shelves. The company can import refurbished phones to fulfill warranties or insurance contracts through Dec. 19, 2013.

"This exemption does not permit HTC to call new devices 'refurbished' and to import them as replacements," the commission said.

Apple's so-called '647 patent covered a feature in which the phone recognizes a telephone number so it can be stored in directories or called without dialing.

"The '647 patent is a small user interface experience," Lei said. The company is pleased with the commission's overall decision, and "we respect it."

### iPhone 4s, Galaxy

HTC phones accounted for 24 percent of the U.S. smartphone market in the third quarter, based on shipments, Palo Alto, California-based researcher Canalsys reported Oct. 31. Samsung held 21 percent of the market, and Apple 20 percent. The market is volatile, and the Apple iPhone 4s that went on sale in October and Samsung's newest Galaxy phone are likely to change the rankings for the fourth quarter.

Apple contended in its complaint that the HTC phones infringed four patents. Administrative Law Judge Carl Charneski in July sided with Apple for two of the patents: the data-detection one and the other covering the transmission of multiple types of data. The commission overturned the judge's findings on that patent, and affirmed his determination that the remaining two patents weren't infringed, which covered ways software programs are written and executed.

The commission, a quasi-judicial arbiter of trade disputes with the power to block products that infringe U.S. patents, chose in September to review Charneski's findings.

### 'Destroy Android'

Apple has a second complaint pending before the commission that claims other HTC smartphones and Flyer tablet computers infringe five patents related to software architecture and user interfaces. Apple also has cases before the trade commission and in district courts against Samsung and Motorola Mobility, which Google agreed to acquire in August.

The fight can be traced back to a decision by Jobs in March 2010 to file the HTC case, the first patent complaint by a device maker targeting Google's Android operating system. Jobs, who died Oct. 5, made it his mission "to destroy Android," which he said "ripped off the iPhone, wholesale," according to Walter Isaacson's biography of the Apple founder.

HTC has retaliated with two trade commission cases against Apple, one submitted last year and one in August. HTC lost a preliminary ruling by a judge in the case filed last year, a decision that the commission is now reviewing. The other case has yet to be decided. S3 Graphics Co., a company HTC agreed to buy in July, also has two commission cases against Apple, one of which Apple won last month.

### Mobile Advertising

Google, which hasn't been named in any of the Apple cases, denies copying the iPhone and said in a filing that Apple is trying to control the U.S. smartphone market through litigation.

HTC's Android devices "are helping prevent Apple's iOS from becoming the sole viable mobile platform and thus 'locking in' consumers and software developers to that platform," Google said in the Oct. 6 filing.

Google's Android accounts for about 70 percent of the smartphone operating systems used in the U.S., according to Canalsys. Mountain View, California-based Google licenses Android to handset makers for free as a way to further its business of selling display and search advertising on mobile devices.

Google's share of this year's estimated \$2.1 billion U.S. mobile-ad market will expand to 24 percent from 19 percent in 2010, Framingham, Massachusetts-based researcher IDC said Dec.

13. Millennial Media Inc.'s slice may climb to 17 percent from 15 percent, and Apple's will decline to 15 percent from 19 percent.

The case is In the Matter of Certain Personal Data and Mobile Communications Devices and Related Software, 337-710, U.S. International Trade Commission (Washington).

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--With assistance from Adam Satariano, Brian Womack and Peter Burrows in San Francisco, Tim Culpan in Taipei and Romaine Bostick in Washington. Editors: Romaine Bostick, Stephen West.

To contact the reporter on this story:

Susan Decker in Washington at +1-202-624-1941 or [sdecker1@bloomberg.net](mailto:sdecker1@bloomberg.net)

To contact the editor responsible for this story:

Michael Shepard at +1-202-654-7347 or [mshepard7@bloomberg.net](mailto:mshepard7@bloomberg.net)