18 USC Sec. 1519

-EXPCITE-
TITLE 18 - CRIMES AND CRIMINAL PROCEDURE
PART I - CRIMES
CHAPTER 73 - OBSTRUCTION OF JUSTICE

-HEAD-
Sec. 1519. Destruction, alteration, or falsification of records in Federal investigations and bankruptcy

-STATUTE-
Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

-SOURCE-
(Added Pub. L. 107-204, title VIII, Sec. 802(a), July 30, 2002, 116 Stat. 800.)

-End-

Apple did not invent the iPhone. Steve Jobs was shown its design in 2003-2004 along with a large body of supporting inventions that included the concept of an "app store". What ensued was a chain reaction of deception, fraud, and snowballing criminality which has now found its way to the US ITC .

Apple unveiled the iPhone on January 9th 2007, and began selling it in the U.S.A. on June 29th 2007. For almost 3 years, and running contrary to its historical tendency, Apple had not taken legal action against a single company that copied the iPhone – until this week with "HTC". With Nokia, Apple did not initiate any action, but merely responded in kind to the law suits brought against it first by its rival. On Tuesday March 2nd the Washington Post ran a story with the title
"Apple finally gets around to suing somebody over its iPhone patents".
(Here :
http://voices.washingtonpost.com/fasterforward/2010/03/apple_finally_gets_around_to_s.html) The news story goes on to say:

> "More than three years ago, **Apple** introduced a new gadget called the iPhone. Chief executive **Steve Jobs** showed off its elegant "multi-touch" interface and took a moment to crow over its legally sanctioned uniqueness: "And, boy, have we patented it!"
>
> Over the next three years, a succession of other devices with multi-touch interfaces shipped from competing vendors"

In contrast, and consistent with its past practice, Apple sued the Florida Macintosh clone company Psystar within 3 months of the start of sales of its offending product. And Psystar was put out of business by Apple just before Christmas 2009.

January 9th 2007

From the day of its unveiling, Apple promoted the iPhone to the public and to Wall Street as being protected by hundreds of patents which they would "vigorously defend". But for nearly 3 years until the Nokia & HTC dispute, Apple took NO steps to halt cloning of the iPhone. Why might that be?

From US ITC filings by Apple

Apple Asserts these Patents against Nokia

Patent Number	Asserted Claims
5,379,431	1-2, 4-5, 11-15, 27-31
5,455,599	1-3, 6, 7, 8-10, 12, 14
5,519,867	1-3, 7, 12, 32, 48
5,915,131	1, 3, 4, 6-7, 9-10, 15, 17
5,920,726	1
5,969,705	1
6,343,263	1-6, 24-25, 29-30
6,424,354	1-4, 7-8, 41-42
RE 39,486	1-2, 6, 8-10, 12-15, 20

__

In its 2 ITC complaints, Apple has NOT cited any of the patents most associate with the iPhone's unique attributes; instead opting to cite old patents relating to its generic technical plumbing. Why?

Apple Asserts these patents against “HTC”

Patent Number	Asserted Claims
5,481,721	1-6, 19-22
5,519,867	1-3, 7, 12, 32
5,566,337	1, 3, 8-10, 12, 18-19, 23-24
5,929,852	1-3, 7-13
5,946,647	1, 3, 6, 8, 10, 13-16, 19-20, 22
5,969,705	1
6,275,983	1, 3, 7, 8, 22
6,343,263	1-6, 24-25, 29-30
5,915,131	1, 3, 4, 6, 7, 9, 10, 15, 17
RE39,486	1-3, 6, 8-9, 12, 14-17

This page from here =>

http://www.engadgetmobile.com/2008/05/30/the-iphone-patent-steven-p-jobs-inventor/

Why did Apple exclude this "landmark" patent from the ITC investigation? (...then include it ONLY in its Delaware suit against HTC?)

The iPhone patent: Steven P. Jobs, inventor

by **Chris Ziegler**, posted May 30th 2008 at 3:33AM

(19) **United States**
(12) **Patent Application Publication**
Jobs et al.
(10) **Pub. No.: US 2008/0122796 A1**
(43) **Pub. Date: May 29, 2008**

(54) **TOUCH SCREEN DEVICE, METHOD, AND GRAPHICAL USER INTERFACE FOR DETERMINING COMMANDS BY APPLYING HEURISTICS**

Correspondence Address:
MORGAN LEWIS & BOCKIUS LLP/ APPLE COMPUTER INC.
2 PALO ALTO SQUARE, 3000 EL CAMINO REAL
PALO ALTO, CA 94306

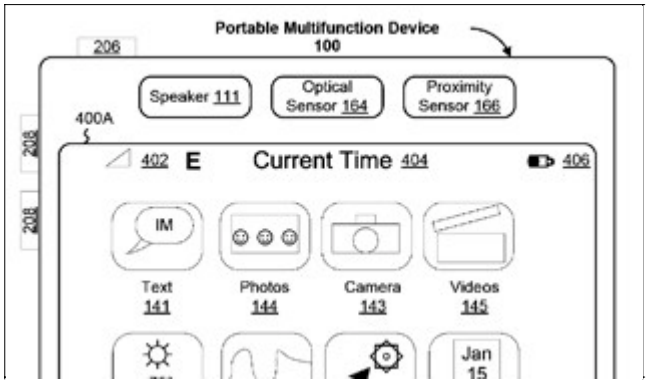
(76) Inventors: **Steven P. Jobs**, Palo Alto, CA (US); **Scott Forstall**, Mountain View, CA (US); **Greg Christie**, San Jose, CA (US); **Stephen O. Lemay**, San Francisco, CA (US); **Scott Herz**,

(21) Appl. No.: **11/850,635**
(22) Filed: **Sep. 5, 2007**
Related U.S. Application Data

Also, ALL patent filings by Apple on the iPhone "coincidentally" date to 2004+ -- Steve Jobs saw its design 2003-2004.

The US Patent and Trademark Office has revealed a mammoth document that can only be described as *The iPhone Patent*, a 371-page spectacular that covers Apple's handheld multi-touch UI paradigm in excruciating detail. Many of the mocked-up screen shots depicted in the paperwork are dead ringers for screens that we're well acquainted with in the production phone, while others represent ideas that either haven't finished cooking or eventually found their way into the Cupertino circular file (follow the break for a picture of a home screen with dedicated "Blog" and dictionary apps, for instance). The application also mentions "modules" for video conferencing, GPS, and other currently non-existent (though **widely expected**) functionality. And in case there's any doubt over who was responsible for this compendium of legalese, industrial design, and technical diagrams, one only need look at the header of page 1: "Jobs et al." Yep, Steve himself wasn't the least bit shy about taking credit atop an entire column of company A-listers for inventing the iPhone's trademark user interface, which we're guessing came about from a mix of equal parts truth, ego, and ass-kissing from the legal department down the hall. Seriously though, if you're Scott Forstall down there at number two on the Inventors list, what are you going to do -- go boardroom showdown all John Sculley-style?

[Via **Cellpassion**]



Also, Steve Jobs admitted before an audience right after the Memorial Day weekend that the iPhone, though unveiled and put on sale 3 yrs ahead of the iPad, originated from a Tablet. That is consistent with my story. The link to the video of Jobs saying that is here:

http://www.youtube.com/watch?v=jdbvAdINPPA

Still further, Wall Street Journal analyst Brett Arends published an article on May 18th about "the dumbest stock trade ever" by Steve Jobs in March 2003. What Arends didn't realize was that it wasn't a "dumb stock trade" - it was a stock trade based on the fact that Steve Jobs didn't know in March 2003 that the iPhone & iPad would be a part of Apple's future. That is because Steve Jobs saw the designs for the iPhone & iPad a few months later towards the end of 2003. Thus Arends has unknowingly helped to corroborate the time line of what I have been saying. The Arends news story can be found here:

http://www.marketwatch.com/story/story/print?guid=E3B995B9-137B-4010-AFC2-44BDF2DE8EF2

This one has issued

US007479949B2

(12) **United States Patent**
Jobs et al.

(10) **Patent No.: US 7,479,949 B2**
(45) **Date of Patent: *Jan. 20, 2009**

(54) **TOUCH SCREEN DEVICE, METHOD, AND GRAPHICAL USER INTERFACE FOR DETERMINING COMMANDS BY APPLYING HEURISTICS**

(75) Inventors: **Steven P. Jobs**, Palo Alto, CA (US); **Scott Forstall**, Mountain View, CA (US); **Greg Christie**, San Jose, CA (US); **Stephen O. Lemay**, San Francisco, CA (US); **Scott Herz**, San Jose, CA (US); **Marcel van Os**, San Francisco, CA (US); **Bas Ording**, San Francisco, CA (US); **Gregory Novick**, Santa Clara, CA (US); **Wayne C. Westerman**, San Francisco, CA (US); **Imran Chaudhri**, San Francisco, CA (US); **Patrick Lee Coffman**, Menlo Park, CA (US); **Kenneth Kocienda**, Sunnyvale, CA (US); **Nitin K. Ganatra**, San Jose, CA (US); **Freddy Allen Anzures**, San Francisco, CA (US); **Jeremy A. Wyld**, San Jose, CA (US); **Jeffrey Bush**, San Jose, CA (US); **Michael Matas**, San Francisco, CA (US); **Paul D. Marcos**, Los Altos, CA (US); **Charles J. Pisula**, San Jose, CA (US); **Virgil Scott King**, Mountain View, CA (US); **Chris Blumenberg**, San Francisco, CA (US); **Francisco Ryan Tolmasky**, Cupertino, CA (US); **Richard Williamson**, Los Gatos, CA (US); **Andre M. J. Boule**, Sunnyvale, CA (US); **Henri C. Lamiraux**, San Carlos, CA (US)

(73) Assignee: **Apple Inc.**, Cupertino, CA (US)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

This patent is subject to a terminal disclaimer.

(21) Appl. No.: **12/101,832**

(22) Filed: **Apr. 11, 2008**

(65) **Prior Publication Data**

US 2008/0174570 A1 Jul. 24, 2008

Related U.S. Application Data

(63) Continuation of application No. 11/850,635, filed on Sep. 5, 2007.

(60) Provisional application No. 60/937,993, filed on Jun. 29, 2007, provisional application No. 60/937,991, filed on Jun. 29, 2007, provisional application No. 60/879,469, filed on Jan. 8, 2007, provisional application No. 60/879,253, filed on Jan. 7, 2007, provisional application No. 60/824,769, filed on Sep. 6, 2006.

(51) **Int. Cl.**
G09G 5/00 (2006.01)
G06F 3/048 (2006.01)

(52) **U.S. Cl.** **345/173**; 345/169; 715/786; 715/784

(58) **Field of Classification Search** 345/156, 345/157, 173–181
See application file for complete search history.

(56) **References Cited**

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6,278,443	B1	8/2001	Amro et al.	345/173
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6,559,869	B1 *	5/2003	Lui et al.	715/785
6,597,345	B2 *	7/2003	Hirshberg	345/168
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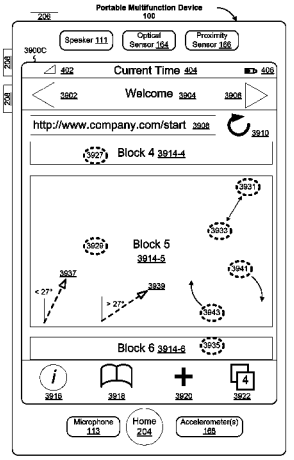
2005/0012723	A1	1/2005	Pallakoff	345/173
2005/0193351	A1	9/2005	Huoviala	715/840



Deliberately omitted from ITC complaint by Apple.

US00D504889S

(12) United States Design Patent

Andre et al.

(10) Patent No.: US D504,889 S
(45) Date of Patent: ** May 10, 2005

(54) **ELECTRONIC DEVICE**

(75) Inventors: **Bartley K. Andre**, Menlo Park, CA (US); **Daniel J. Coster**, San Francisco, CA (US); **Daniele De Iuliis**, San Francisco, CA (US); **Richard P. Howarth**, San Francisco, CA (US); **Jonathan P. Ive**, San Francisco, CA (US); **Steve Jobs**, Palo Alto, CA (US); **Shin Nishibori**, San Francisco, CA (US); **Duncan Robert Kerr**, San Francisco, CA (US); **Matthew Dean Rohrbach**, San Francisco, CA (US); **Douglas B. Satzger**, Menlo Park, CA (US); **Calvin Q. Seid**, Palo Alto, CA (US); **Christopher J. Stringer**, Portola Valley, CA (US); **Eugene Anthony Whang**, San Francisco, CA (US); **Rico Zörkendörfer**, San Francisco, CA (US)

Steve Jobs is a listed inventor

(73) Assignee: **Apple Computer, Inc.**, Cupertino, CA (US)

(**) Term: **14 Years**

(21) Appl. No.: **29/201,636**

(22) Filed: **Mar. 17, 2004**

(51) **LOC (7) Cl.** **14-02**
(52) **U.S. Cl.** **D14/341**
(58) **Field of Search** ..... D14/341–346, D14/374, 424; D19/26, 59, 60; 345/104, 156, 168, 173; 434/307 R, 308, 309, 317; 178/18.03; 349/12

(56) **References Cited**

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D451,505 S * 12/2001 Iseki et al. D14/341
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D458,252 S * 6/2002 Palm et al. D14/343

OTHER PUBLICATIONS

Andre et al., U.S. Appl. No. 29/180,558 entitled "Electronic Device", filed Mar. 17, 2004.
"HP Compaq Tablet PC tc1100", downloaded Aug. 27, 2004.
"Tablet PC V1100", downloaded Aug. 27, 2004.
"ViewPad 1000", downloaded Aug. 27, 2004.

* cited by examiner

Primary Examiner—Freda S. Nunn
(74) *Attorney, Agent, or Firm*—Beyer Weaver & Thomas, LLP

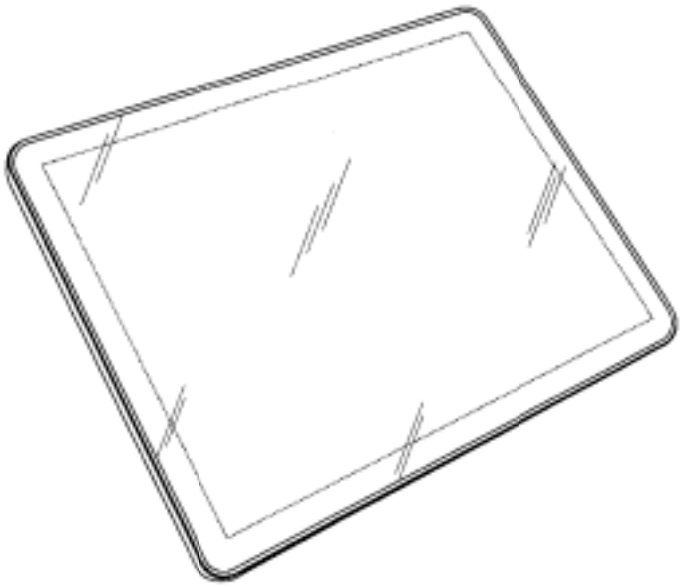
(57) **CLAIM**

We claim the ornamental design for an electronic device, substantially as shown and described.

DESCRIPTION

FIG. **1** is a top perspective view of an electronic device in accordance with the present design;
FIG. **2** is a bottom perspective view thereof;
FIG. **3** is a top view thereof;
FIG. **4** is a bottom view thereof;
FIG. **5** is a left side view thereof;
FIG. **6** is a right side view thereof;
FIG. **7** is an upper side view thereof;
FIG. **8** is a lower side view thereof; and,
FIG. **9** is an exemplary diagram of the use of the electronic device thereof the broken lines being shown for illustrative puposes only and form no part of the claimed design.

1 Claim, 4 Drawing Sheets



Deliberately omitted from ITC complaint by Apple.

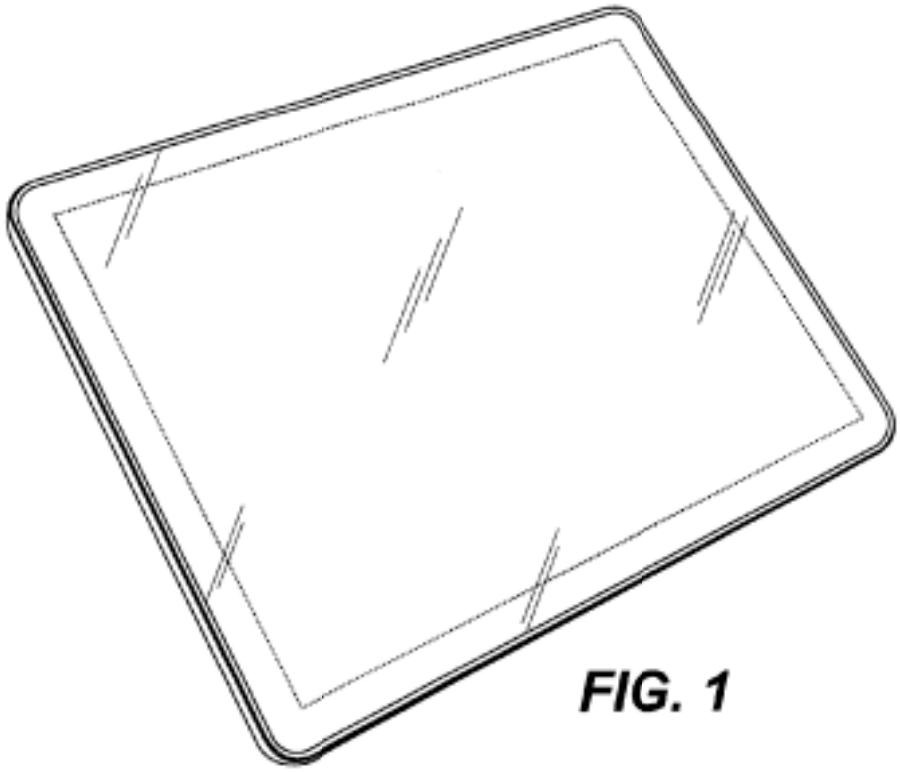


FIG. 1

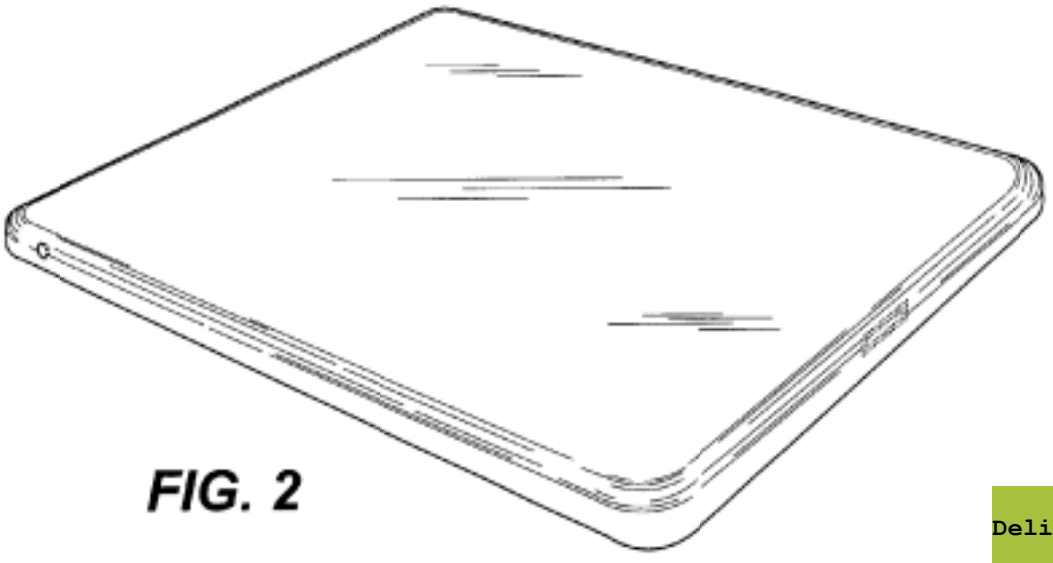
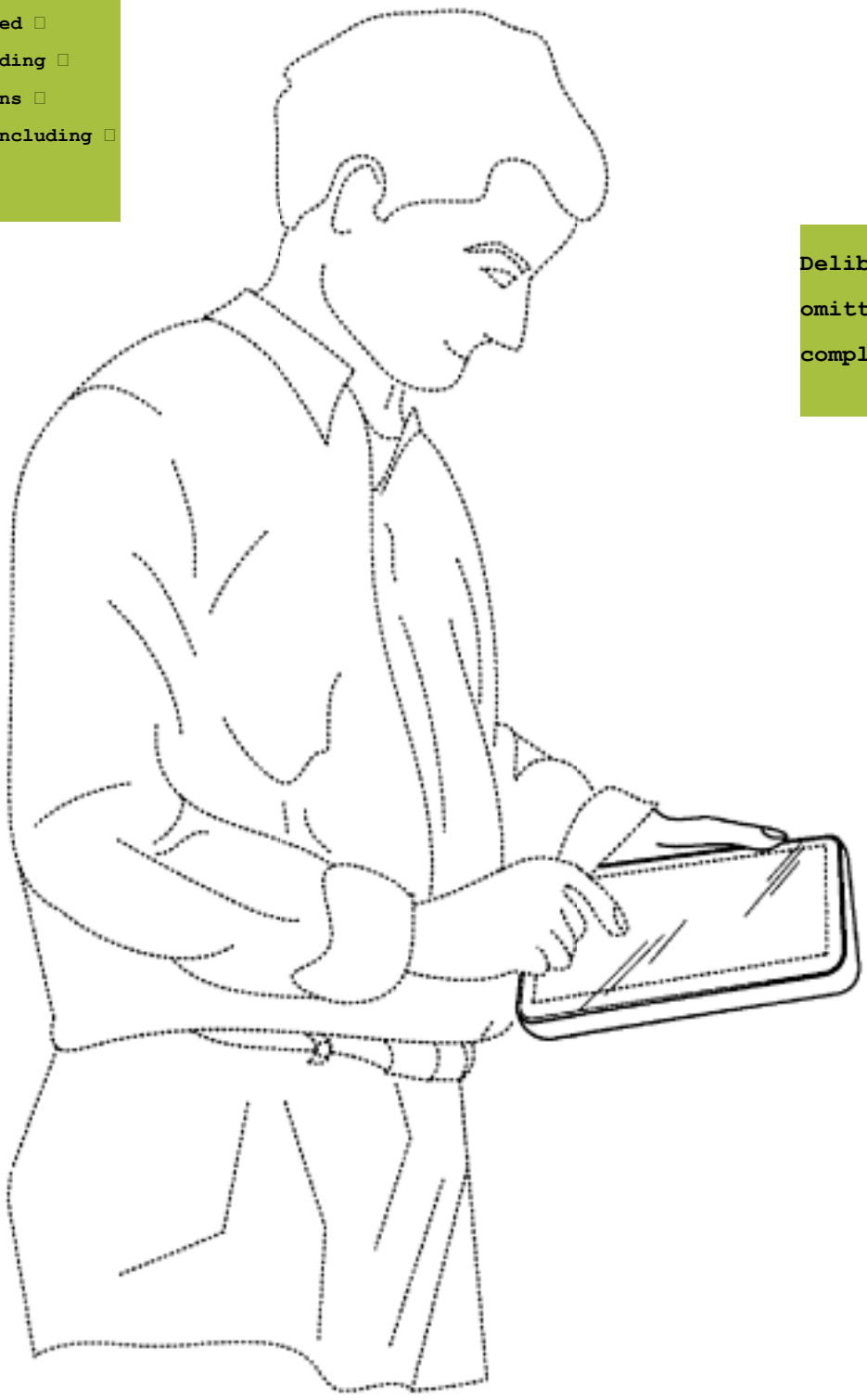


FIG. 2

Deliberately excluded from ITC complaint by Apple.

Page 2, Paragraph 3 of Apple's ITC Complaint 337-TA-704 "Accused Products" of Nokia : "including other handheld communications devices, computer devices including netbooks..."



Deliberately omitted from ITC complaint by Apple.

FIG. 9

http://www.nytimes.com/2010/03/03/technology/03patent.html?hpw

The NY Times wrote in a story entitled:

“Apple Sues Nexus One Maker HTC “

By BRAD STONE
Published: March 2, 2010

<Excerpts follow:>

“On Tuesday, Apple sued HTC, the Taiwanese company that is the largest maker of smartphones running Google’s Android operating system, including the Nexus One, designed and sold by Google. “

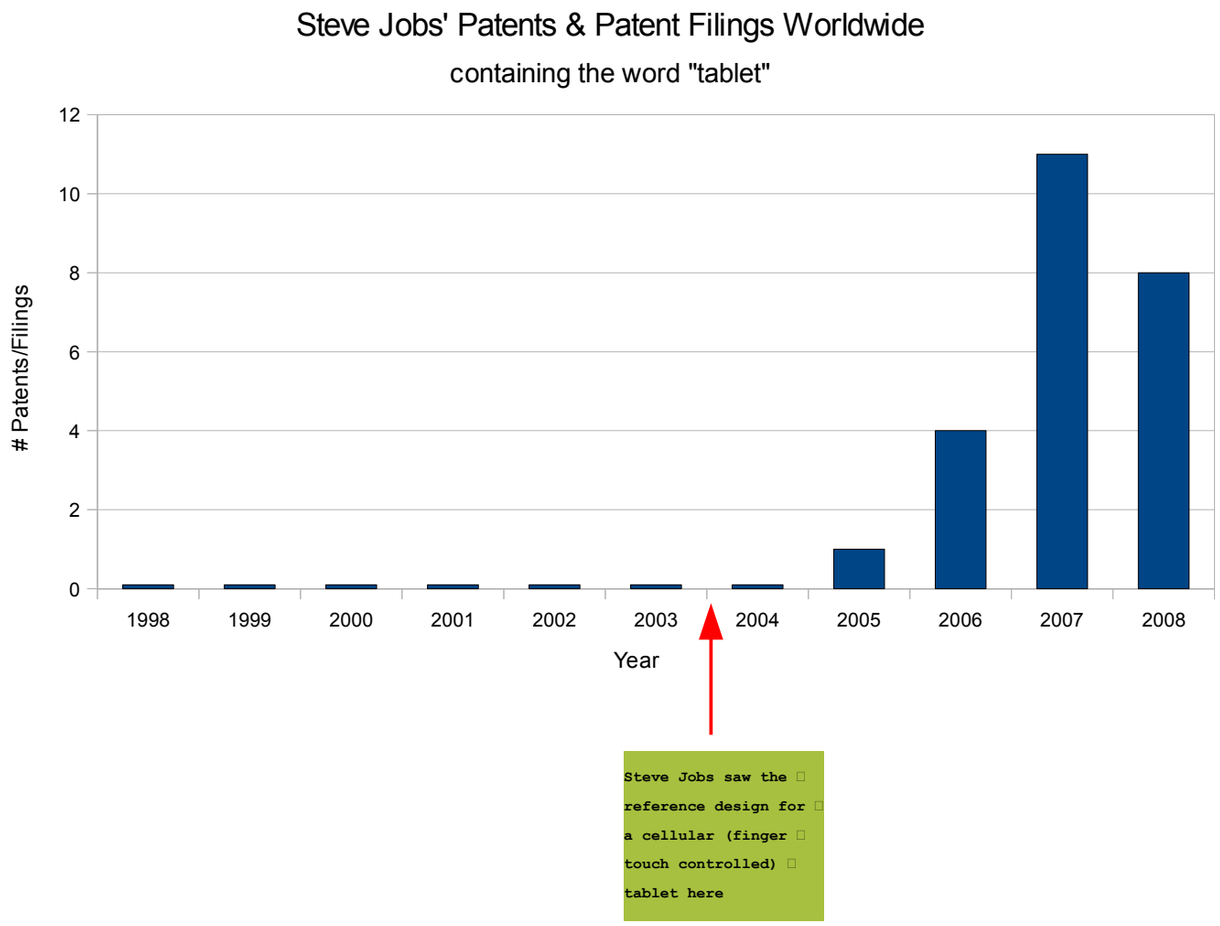
“Though the lawsuit singles out HTC, many patent lawyers and analysts say they believe Apple’s target is Google and the Android operating system, which the company gives away to cellphone manufacturers.”

“We can sit by and watch competitors steal our patented inventions, or we can do something about it. We’ve decided to do something about it,” said Steven P. Jobs, Apple’s chief executive, in a statement. “We think competition is healthy, but competitors should create their own original technology, not steal ours.”

“The iPhone, introduced in 2007, was the first cellphone that largely did away with physical controls, turning the entire device into a finger-activated screen.”

Now the iPhone looks less special. Other companies have sought to duplicate the technology, and similar touch-screen phones are available from Samsung, the BlackBerry maker Research In Motion and Google’s various partners, including HTC.

Apple has literally accused its competitors of stealing its inventions, yet it has steered clear of enforcing the patents most closely describing the features they say are being stolen. Why is that?


Steve Jobs' Patents & Patent Filings Worldwide
containing the word "tablet"
Patents/Filings
0
2
4
6
8
10
12
1998
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008
Year
Steve Jobs saw the reference design for a cellular (finger touch controlled) tablet here
*Utility patent filings (1st design pat filed in 2004 because a design is easier to copy)

(http://www.macworld.co.uk/mac/news/index.cfm?newsid=26391&pagtype=allchandate)

Tue, 23 Jun 2009

Apple's patent frenzy

The annual rate at which Apple has been filing patents has doubled each year since 2003

Karen Haslam

"Apple is filing more patents than ever before..."

"....reveals that the annual rate at which Apple has been filing patent applications has doubled each year since 2003. "

"In 2004 there were just 64 patents filed by Apple.
In 2007 Apple filed 405 patents. "

2000.01 Introduction [R-2]

This Chapter deals with the duties owed toward the U.S. Patent and Trademark Office by the inventor and every other individual who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor or the inventor's assignee. These duties, of candor and good faith and disclosure, have been codified in 37 CFR 1.56, as promulgated pursuant to carrying out the duties of the *>Director< under Sections 2, 3, 131, and 132 of Title 35 of the United States Code.

2001 Duty of Disclosure, Candor, and Good Faith

37 CFR 1.56. Duty to disclose information material to patentability.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

(1) Prior art cited in search reports of a foreign patent office in a counterpart application, and

(2) The closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b)Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

(1) It establishes, by itself or in combination with other information, a *prima facie* case of unpatentability of a claim; or

(2) It refutes, or is inconsistent with, a position the applicant takes in:

(i) Opposing an argument of unpatentability relied on by the Office, or

(ii) Asserting an argument of patentability.

A *prima facie* case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

(1) Each inventor named in the application;

(2) Each attorney or agent who prepares or prosecutes the application; and

(3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

"...no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct."

without further comment. See MPEP § 2258 >for *ex parte* reexamination proceedings and MPEP § 2658 for *inter partes* reexamination proceedings<.

For the patent owner's duty to disclose prior or concurrent proceedings in which the patent is or was involved, see MPEP § 2282 >(for *ex parte* reexamination), § 2686 (for *inter partes* reexamination),< and § 2001.06(c).

2016 Fraud, Inequitable Conduct, or Violation of Duty of Disclosure Affects All Claims

A finding of "fraud," "inequitable conduct," or violation of duty of disclosure with respect to any claim in an application or patent, renders all the claims thereof unpatentable or invalid. See *Chromalloy American Corp. v. Alloy Surfaces Co.*, 339 F. Supp. 859, 173 USPQ 295 (D.Del. 1972) and *Strong v. General Electric Co.*, 305 F. Supp. 1084, 162 USPQ 141 (N.D. Ga. 1969), *aff'd*, 434 F.2d 1042, 168 USPQ 8 (5th Cir. 1970), *cert. denied*, 403 U.S. 906 (1971). In *J. P. Stevens & Co. v. Lex Tex Ltd.*, 747 F.2d 1553, 1561, 223 USPQ 1089, 1093-94 (Fed. Cir. 1984), the court stated:

> Once a court concludes that inequitable conduct occurred, all the claims — not just the particular claims in which the inequitable conduct is directly connected — are unenforceable. See *generally*, cases collected in 4 Chisum, PATENTS, paragraph 19.03[6] at 19-85 n. 10 (1984). Inequitable conduct "goes to the patent right as a whole, independently of particular claims." *In re Clark* 522 F.2d 623, 626, 187 USPQ 209, 212 (CCPA).

The court noted in footnote 8 of *Stevens*:

> In *In re Multiple Litigation Involving Frost Patent*, 540 F.2d 601, 611, 191 USPQ 241, 249 (3rd. Cir. 1976), some claims were upheld despite nondisclosure with respect to others. The case is not precedent in this court.

As stated in *Gemveto Jewelry Co. v. Lambert Bros., Inc.*, 542 F. Supp. 933, 943, 216 USPQ 976, 984 (S. D. N. Y. 1984) (quoting Patent Law Perspectives, 1977 Developments, § G.1 [1]-189):

> The gravamen of the fraud defense is that the patentee has failed to discharge his duty of dealing with the examiner in a manner free from the taint of "fraud or other inequitable conduct." If such conduct is established in connection with the prosecution of a patent, the fact that the lack of candor did not directly affect *all* the claims in the patent has never been the governing principle. It is the inequitable conduct that generates the unenforceability of the patent and we cannot think of cases where a patentee partially escaped the consequences of his wrongful acts by arguing that he only committed acts of omission or commission with respect to a limited number of claims. It is an all or nothing proposition. [Emphasis in original.]

2022.05 Determination of "Error Without Any Deceptive Intention" [R-2]

If the application is a reissue application, the action by the examiner may extend to a determination as to whether at least one "error" required by 35 U.S.C. 251 has been alleged, i.e., identified. Further, the examiner should determine whether applicant has *averred* in the reissue oath or declaration, as required by 37 CFR 1.175(a)(2), (b)(1), and (b)(2), that all "errors" arose "without any deceptive intention." However, the examiner should not normally comment or question as to whether ** the averred statement as to lack of deceptive intention appears correct or true. See MPEP § 1414.

Fraud, Inequitable Conduct, or Violation of Duty of Disclosure Affects All Claims

A finding of "fraud," "inequitable conduct," or violation of duty of disclosure with respect to any claim in an application or patent, renders all the claims thereof unpatentable or invalid.

Chapter 2000 Duty of Disclosure

2000.01 Introduction [R-2]

This Chapter deals with the duties owed toward the U.S. Patent and Trademark Office by the inventor and every other individual who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor or the inventor's assignee. These duties, of candor and good faith and disclosure, have been codified in 37 CFR 1.56, as promulgated pursuant to carrying out the duties of the *>Director< under Sections 2, 3, 131, and 132 of Title 35 of the United States Code.

2001 Duty of Disclosure, Candor, and Good Faith

37 CFR 1.56. Duty to disclose information material to patentability.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

(1) Prior art cited in search reports of a foreign patent office in a counterpart application, and

(2) The closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

(1) It establishes, by itself or in combination with other information, a *prima facie* case of unpatentability of a claim; or

(2) It refutes, or is inconsistent with, a position the applicant takes in:

(i) Opposing an argument of unpatentability relied on by the Office, or

(ii) Asserting an argument of patentability.

A *prima facie* case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

(1) Each inventor named in the application;

(2) Each attorney or agent who prepares or prosecutes the application; and

(3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

without further comment. See MPEP § 2258 >for *ex parte* reexamination proceedings and MPEP § 2658 for *inter partes* reexamination proceedings<.

For the patent owner's duty to disclose prior or concurrent proceedings in which the patent is or was involved, see MPEP § 2282 >(for *ex parte* reexamination), § 2686 (for *inter partes* reexamination),< and § 2001.06(c).

2016 Fraud, Inequitable Conduct, or Violation of Duty of Disclosure Affects All Claims

A finding of "fraud," "inequitable conduct," or violation of duty of disclosure with respect to any claim in an application or patent, renders all the claims thereof unpatentable or invalid. See *Chromalloy American Corp. v. Alloy Surfaces Co.*, 339 F. Supp. 859, 173 USPQ 295 (D.Del. 1972) and *Strong v. General Electric Co.*, 305 F. Supp. 1084, 162 USPQ 141 (N.D. Ga. 1969), *aff'd*, 434 F.2d 1042, 168 USPQ 8 (5th Cir. 1970), *cert. denied,* 403 U.S. 906 (1971). In *J. P. Stevens & Co. v. Lex Tex Ltd.,* 747 F.2d 1553, 1561, 223 USPQ 1089, 1093-94 (Fed. Cir. 1984), the court stated:

> Once a court concludes that inequitable conduct occurred, all the claims — not just the particular claims in which the inequitable conduct is directly connected — are unenforceable. See *generally*, cases collected in 4 Chisum, PATENTS, paragraph 19.03[6] at 19-85 n. 10 (1984). Inequitable conduct "goes to the patent right as a whole, independently of particular claims." *In re Clark* 522 F.2d 623, 626, 187 USPQ 209, 212 (CCPA).

The court noted in footnote 8 of *Stevens:*

> In *In re Multiple Litigation Involving Frost Patent*, 540 F.2d 601, 611, 191 USPQ 241, 249 (3rd. Cir. 1976), some claims were upheld despite nondisclosure with respect to others. The case is not precedent in this court.

As stated in *Gemveto Jewelry Co. v. Lambert Bros., Inc.*, 542 F. Supp. 933, 943, 216 USPQ 976, 984 (S. D. N. Y. 1984) (quoting Patent Law Perspectives, 1977 Developments, § G.1 [1]-189):

> The gravamen of the fraud defense is that the patentee has failed to discharge his duty of dealing with the examiner in a manner free from the taint of "fraud or other inequitable conduct." If such conduct is established in connection with the prosecution of a patent, the fact that the lack of candor did not directly affect *all* the claims in the patent has never been the governing principle. It is the inequitable conduct that generates the unenforceability of the patent and we cannot think of cases where a patentee partially escaped the consequences of his wrongful acts by arguing that he only committed acts of omission or commission with respect to a limited number of claims. It is an all or nothing proposition. [Emphasis in original.]

2022.05 Determination of "Error Without Any Deceptive Intention" [R-2]

If the application is a reissue application, the action by the examiner may extend to a determination as to whether at least one "error" required by 35 U.S.C. 251 has been alleged, i.e., identified. Further, the examiner should determine whether applicant has *averred* in the reissue oath or declaration, as required by 37 CFR 1.175(a)(2), (b)(1), and (b)(2), that all "errors" arose "without any deceptive intention." However, the examiner should not normally comment or question as to whether ** the averred statement as to lack of deceptive intention appears correct or true. See MPEP § 1414.

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