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CBI 11-093

December 23, 2010

VIA HAND DELIVERY

The Honorable Marilyn Abbott
Secretary
United States International Trade Commission
500 E Street S.W., Room 112
Washington, D.C. 20436

DOCKET NUMBER
2776
Office of the Secretary Int'l Trade Commission

Re: *Certain Game Devices, Components Thereof, and Products Containing the Same*,
ITC Investigation No. 337-TA-_____

Dear Secretary Abbott:

Enclosed for filing on behalf of Complainant Microsoft Corporation ("Microsoft") are the following documents in support of Microsoft's request that the Commission commence an investigation pursuant to Section 337 of the Tariff Act of 1930, as amended:

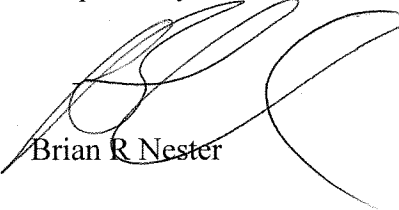
1. An original and twelve (12) copies of Microsoft's verified Complaint, pursuant to Commission Rule 210.8(a)(1)(i).
2. Six (6) electronic copies of the exhibits to the Complaint with Confidential Exhibits segregated from the other material submitted pursuant to Commission Rule 210.8(a)(1)(iii) (on CD-ROM).
3. Five (5) additional copies of the Complaint and Public Exhibits for service upon proposed Respondents Datel Design and Development Inc., Datel Design and Development Ltd., Datel Direct Ltd., Datel Holdings Ltd., and Datel Electronics Ltd. pursuant to Commission Rule 210.8(a)(iii)
4. Five (5) additional copies of the Confidential Exhibits for service upon proposed Respondents Datel Design and Development Inc., Datel Design and Development Ltd., Datel Direct Ltd., Datel Holdings Ltd., and Datel Electronics Ltd. pursuant to Commission Rule 210.8(a)(iii).

The Honorable Marilyn Abbott
December 23, 2010
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5. One (1) additional copy of the Complaint for service on the United Kingdom Embassy pursuant to Commission Rule 210.8(a)(iv).
6. Original certified copy of (i) U.S. Patent Nos. 7,787,411 (“the Asserted Patent”); (ii) assignment for the Asserted Patent; and (iii) prosecution history for the Asserted Patent.
7. Four (4) electronic copies of the certified prosecution history and each technical reference cited therein for the Asserted Patent, included as Appendices A-B pursuant to Commission Rule 210.12(c)(1) (on CD-ROM).
8. A letter and request for confidential treatment of Confidential Exhibits 12, 13, 14A, 15, 20, 21, 22, 23, 24, and 25, pursuant to Commission Rule 201.6(b) and 210.5(d).

If you have any questions, please do not hesitate to call me at (202) 736-8017.

Respectfully submitted,



Brian R Nester

BRN:jljg



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VIA HAND DELIVERY

The Honorable Marilyn Abbott
Secretary
United States International Trade Commission
500 E Street S.W., Room 112
Washington, D.C. 20436

Re: *Certain Game Devices, Components Thereof, and Products Containing the Same,*
Investigation No. 337-TA-_____

Dear Secretary Abbott:

In accordance with Commission Rules 201.6 and 210.5, Complainant Microsoft Corporation ("Microsoft") requests confidential treatment of the business information contained in Confidential Exhibits 12, 13, 14A, 15, 20, 21, 22, 23, 24 and 25.

The information for which confidential treatment is sought is proprietary commercial information not otherwise publicly available. Specifically, these exhibits contain proprietary commercial information concerning Microsoft's licensing of the asserted patents and investments in the domestic industry.

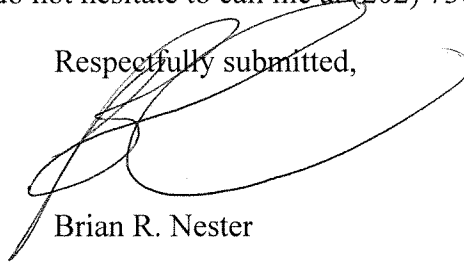
The information described above qualifies as confidential business information pursuant to Commission Rule 201.6(a) because:

1. it is not available to the public;
2. unauthorized disclosure of such information could cause substantial harm to the competitive position of Microsoft and/or a third party; and
3. its disclosure could impair the Commission's ability to obtain information necessary to perform its statutory function.

The Honorable Marilyn Abbott
December 23, 2010
Page 2

If you have any questions, please to do not hesitate to call me at (202) 736-8017.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brian R. Nester", written over the typed name.

Brian R. Nester

BRN:jljg

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

In the Matter of

**CERTAIN GAME DEVICES,
COMPONENTS THEREOF, AND
PRODUCTS CONTAINING THE SAME**

Investigation No. 337-TA-____

**VERIFIED COMPLAINT OF MICROSOFT CORPORATION
UNDER SECTION 337 OF THE TARIFF ACT OF 1930, AS AMENDED**

Complainant

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Proposed Respondents

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EXHIBIT LIST

- Exhibit 1. Microsoft Annual 10-K Report for FY 2010 (relevant pages only)
- Exhibit 2. Microsoft Annual 10-K Report for FY 2007 (relevant pages only)
- Exhibit 3. Datel Limited Information
- Exhibit 4. "About Datel" from www.datel.co.uk
- Exhibit 5. "Distribution" from www.datel.co.uk
- Exhibit 6. Incorporation Record from Florida Secretary of State
- Exhibit 7. *Datel Holdings Ltd. and Datel Design & Development, Inc. v. Microsoft Corporation*, 3:09-cv-5535-EDL (N.D. CA)
- Exhibit 8. Panjiva Report
- Exhibit 9. <http://us.codejunkies.com>
- Exhibit 10. Certified Copy of U.S. Patent No. 7,787,411
- Exhibit 11. Certified Copy of Patent Assignment for U.S. Patent No. 7,787,411
- Exhibit 12. List of Foreign Patents and Patent Applications for U.S. Patent No. 7,787,411
- Exhibit 13. Licensees Under U.S. Patent No. 7,787,411 (**Confidential**)
- Exhibit 14. Claim Chart Demonstrating Practice of U.S. Patent No. 7,787,411 by Xbox 360 Gamepad
- Exhibit 14A. Xenon Wireless Protocol Specification (**Confidential**)
- Exhibit 15. Declaration Concerning Microsoft's Domestic Activities in Connection with Microsoft Xbox 360 Controllers (**Confidential**)
- Exhibit 16. Sales Receipts for Exemplary Datel Devices
- Exhibit 17. Photographs of Exemplary Datel Devices and Datel's Website
- Exhibit 18. Claim Chart Demonstrating Infringement of U.S. Patent No. 7,787,411 by Exemplary Datel Devices
- Exhibit 19. User Guide for Exemplary Datel Devices
- Exhibit 20. License Agreement (**Confidential**)

EXHIBIT LIST

- Exhibit 21. License Agreement (**Confidential**)
- Exhibit 22. License Agreement (**Confidential**)
- Exhibit 23. License Agreement (**Confidential**)
- Exhibit 24. License Agreement (**Confidential**)
- Exhibit 25. License Agreement (**Confidential**)
- Exhibit 26. "TurboFire 2 Wireless Controller for Xbox 360" on us.codejunkies.com
- Physical Exhibit 1 Xbox 360 Console
- Physical Exhibit 2 Xbox 360 Wireless Controller and Headset
- Physical Exhibit 3 Datel TurboFire 2 Controller

APPENDICES

- A. CERTIFIED COPY OF PROSECUTION HISTORY OF U.S. PATENT NO. 7,787,411
- B. TECHNICAL REFERENCES CITED IN U.S. PATENT NO. 7,787,411

I. INTRODUCTION

1. Complainant Microsoft Corporation (“Microsoft” or “Complainant”) requests that the United States International Trade Commission (“the Commission”) institute an investigation into violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, by Datel Design and Development Inc., Datel Design and Development Ltd., Datel Direct Ltd., Datel Holdings Ltd., and Datel Electronics Ltd. (collectively, “Datel” or “Proposed Respondents”).

2. This Complaint is based on Proposed Respondents’ unlawful and unauthorized importation into the United States, sale for importation, and/or sale within the United States after importation of certain game devices, components thereof, and products containing the same. Datel’s products infringe at least one or more claims of U.S. Patent No. 7,787,411 (“the ’411 patent” or “the Microsoft Patent”). The Microsoft Patent is a valid and enforceable United States Patent, the entire right, title, and interest in and to which Microsoft owns by assignment. The Microsoft Patent discloses methods of wireless communication between a gaming console and a wireless accessory. The Proposed Respondents infringe at least claims 1 and 7 of the Microsoft Patent.

3. Proposed Respondents’ activities with respect to the importation into the United States, the sale for importation into the United States, and/or the sale within the United States after importation of certain devices, components thereof, and products containing the same, described more fully, *infra*, are unlawful under 19 U.S.C. § 1337(a)(1)(B)(i), in that they constitute infringement of the valid and enforceable Microsoft Patent.

4. Microsoft seeks relief from the Commission in the form of an order permanently excluding from entry into the United States Proposed Respondents’ infringing game devices, components thereof, and products containing the same. Microsoft further seeks a cease and desist order halting the importation, sale, offer for sale, marketing, advertising, or soliciting of

game devices, components thereof, and products containing the same by Proposed Respondents and their related companies that infringe Microsoft's valid and enforceable United States patent.

II. **THE PARTIES**

A. **Complainant**

5. Complainant Microsoft Corporation is a Washington corporation having its principal place of business at One Microsoft Way, Redmond, Washington 98052.

6. Founded in 1975, Microsoft is a global technology company that designs, develops, manufactures, and supports a wide range of software and hardware products for a variety of different applications. Microsoft does business throughout the world and has offices in more than 100 countries. Additional information concerning Microsoft can be obtained from Microsoft's most recent annual report, which portions of are attached as Exhibit 1.

7. Microsoft introduced the Xbox video game system in late 2001. In late 2005, Microsoft launched the Xbox 360 game system, which has since become one of the leading game systems available with over 41.8 million systems sold worldwide including over 10.3 million systems sold in FY 2010 ending in June 2010. *See* FY 2010 Annual Report at Exhibit 1.

8. The launch of the Xbox 360 game system was the culmination of a two-year project beginning in October 2003 to revolutionize the design of game systems including the design of the Xbox 360 game consoles themselves as well as accessories associated with the Xbox 360 system. Accessories designed and sold by Microsoft for the Xbox 360 system include game controllers (such as the Xbox 360 Gamepad), headsets, and other devices that provide input to the Xbox 360 game console. Microsoft regularly engages in projects directed to continuous improvement of the Xbox 360, accessories and associated communications between accessories and the Xbox 360.

9. In fiscal year 2010, Microsoft sold or licensed more than US \$5.45 billion worth of entertainment products and services related to the Xbox 360 video game system, including accessories and Xbox 360 game consoles that use or embody the Microsoft Patent. A portion of this revenue related to sales and licensing of products that use and/or embody the invention claimed in the Microsoft Patent. *See Confidential Exhibit 15.*

10. Over the last six fiscal years, Microsoft has invested an average of US \$7.6 billion per year in research and development, which consistently represents approximately 14.5% of its yearly revenue. *See FY 2010 and FY 2007 10-K reports at Exhibits 1 and 2.* As of the end of fiscal year 2010, Microsoft's company-wide research and development efforts had resulted in a patent portfolio of more than 56,000 issued and pending patents worldwide (over 26,000 issued U.S. patents and pending applications). A portion of these research and development efforts resulted in the Microsoft Patent. *See Confidential Exhibit 15.*

11. Microsoft's continued success depends in substantial part on its ability to establish, maintain, and protect its proprietary technology through, *inter alia*, enforcement of its patent rights.

B. **Proposed Respondents**

12. The success of Microsoft's Xbox 360 system has not gone unnoticed by others who seek to gain from Microsoft's investment, creativity, and goodwill. On information and belief, Respondent Datel Design and Development Ltd. is a British corporation organized and existing under the laws of the United Kingdom, having a principal place of business at Stafford Road, Stone, Staffordshire, ST15 ODG, United Kingdom. *See Exhibit 3.*

13. Datel Design and Development Ltd., advertises itself as creator of the "world's best-selling video game cheat products" and a source for game accessories for all major video game console platforms, including the Xbox 360. *See "About Datel", available at*

http://www.datel.co.uk/pages/about_us.aspx (attached as Exhibit 4). Consistent with its touted business model, Datel Development and Design Ltd. is a vendor and supplier of game controllers. Datel Development and Design Ltd. markets and sells these products worldwide through their channel business partners and various retail companies, including at retail stores, through the websites of retail companies, and on its own website. *Id.* (see, e.g., “Distribution,” available at <http://www.datel.co.uk/pages/Distribution.aspx> (attached as Exhibit 5)).

14. On information and belief, Respondent Datel Direct Ltd. is a British corporation organized and existing under the laws of the United Kingdom, having a principal place of business at Stafford Road, Stone, Staffordshire, ST15 ODG, United Kingdom. *See* Exhibit 8. On information and belief, Datel Direct Ltd. is involved in the manufacture and/or importation of infringing products. *Id.*

15. On information and belief, Respondent Datel Design and Development Inc., is a corporation organized and existing under the laws of Florida and is a wholly owned subsidiary of Datel Design and Development Ltd. Datel Design and Development Inc.’s place of business is located at 33 N. Garden Avenue, Clearwater, Florida 33755. Datel Design and Development Inc.’s certification of incorporation and records from the Florida Secretary of State are attached as Exhibit 6. On information and belief, Datel Design and Development Inc. is the only Datel entity in the United States, and is involved in the importation, sale for importation, and/or sale within the United States after importation of infringing products.

16. On information and belief, Respondent Datel Holdings Ltd. is a British corporation organized and existing under the laws of the United Kingdom, having a principal place of business at Stafford Road, Stone, Staffordshire, ST15 ODG, United Kingdom. *See*

Exhibit 7. Datel Holdings Ltd. describes itself as a developer and manufacturer of aftermarket products for use with the Xbox 360 game system. *Id.*

17. On information and belief, Respondent Datel Electronics Ltd. is a British corporation organized and existing under the laws of the United Kingdom, having a principal place of business at Stafford Road, Stone, Staffordshire, ST15 ODG, United Kingdom. *See* Exhibit 8. On information and belief, Datel Electronics Ltd. is involved in the manufacture and/or importation of infringing products. *Id.*

18. On information and belief, certain game devices, components thereof, and products containing the same that infringe the Microsoft Patent are manufactured by Datel Holdings Ltd., Datel Electronics Ltd., Datel Direct Ltd., or for Respondents in Asia. *See* Exhibits 7, 8, and 17. On information and belief, these infringing products are imported by Respondents and/or offered for sale for importation into the United States, and/or sold after importation at retail stores, through the websites of retail companies, and on Respondents' own website, <http://us.codejunkies.com>. *See* Exhibit 9.

III. **THE PRODUCTS AT ISSUE**

19. Datel's infringing products include game devices, components thereof, and products containing the same, including hardware and software designed for use in, and loaded onto, such devices. Upon information and belief, these products are imported into and sold within the United States by or on behalf of Respondents. These products include, but are not limited to, the Datel TurboFire 2, and the associated components included in this game controller.

IV. **THE PATENT AT ISSUE**

A. **Identification of the Patent and Ownership by Microsoft**

20. Microsoft owns by assignment the right, title, and interest in the '411 patent entitled "Gaming Console Wireless Protocol for Peripheral Devices," which issued on August 31, 2010. A certified copy of the '411 patent is attached as Exhibit 10. A certified copy of the recorded assignment is attached as Exhibit 11. Pursuant to Commission Rule 210.12(c), a certified copy and three additional copies of the prosecution history of the '411 patent are attached in Appendix A. In addition, four copies of each patent and the applicable pages from each reference cited in the prosecution history, are attached in Appendix B.

B. **Non-Technical Description of the Patented Invention**¹

21. The '411 patent relates to gaming and multimedia devices, and more particularly, to wirelessly communicating data and voice information between a gaming device and wireless peripheral accessories.

22. In gaming systems conventional wireless controllers do not always provide a robust connection to the gaming device because of interference. Latency is another critical concern to gamers, as it is desirable that the wireless controller respond like a wired controller.

23. To solve the aforementioned problem, the '411 patent discloses and claims methods for communicating voice and data between a gaming console and a wireless accessory.

C. **Foreign Counterparts to the Microsoft Patent**

24. Pursuant to Commission Rule 210.12(a)(9)(v), a list of all foreign patents and patent applications corresponding to the Microsoft Patent, including an indication of status, is

¹ The text in this section does not, and is not intended to, construe either the specification or the claims of the patent.

attached as Exhibit 12. Other than as set forth in Exhibit 12, there are no other patents or patent applications that have been filed, issued, abandoned, or withdrawn.

D. Licensees Under the Microsoft Patent

25. Pursuant to 19 C.F.R. § 210.12(a)(9)(iii), a list identifying each licensee specifically licensed under the '411 patent is attached as Exhibit 13 (Confidential).

V. THE DOMESTIC INDUSTRY

26. Microsoft's investment with the Microsoft Patent in the United States constitutes a domestic industry under 19 U.S.C. §§ 1337(a)(2)–(3).

27. At the forefront of innovation, Microsoft also invests heavily in technology relating to the Microsoft Patent, including investing in plant, equipment, labor, capital, engineering, research and development. Microsoft's domestic activities in connection with Xbox 360 game controllers include significant investment in plant and equipment, significant employment of labor and capital, and substantial investment in engineering, research and development, and licensing related to products employing the '411 patent. These investments are set forth in Exhibit 15 (Confidential). A claim chart showing that the Xbox 360 Gamepad, an example Xbox 360 game controller, practices representative claim 1 of the '411 patent is attached as Exhibit 14.

VI. SPECIFIC INSTANCES OF IMPORTATION AND SALE

28. On information and belief, Proposed Respondents import, sell for importation, and/or sell within the United States after importation infringing products. The specific instances of importation of infringing products set forth below are representative examples of Proposed Respondents' unlawful importation of infringing products.

29. On information and belief, at least the Datel TurboFire 2 Controller for the Xbox 360 is imported into the United States by or for Proposed Respondents. The sales receipt for the

exemplary Datel infringing product, purchased from www.Amazon.com and delivered within the United States, is attached as Exhibit 16.

30. The exemplary Datel infringing product is marked as “Made in China.” On information and belief, the infringing Datel products are made by, or on behalf of, the Proposed Respondents in China. Photographs of the exemplary infringing product and its packaging are attached as Exhibit 17.

31. Microsoft believes that Datel’s infringing products fall under at least the following classification of the Harmonized Tariff Schedule (“HTS”) of the United States: Heading No. 9504.100.000. This HTS identification is illustrative and not exhaustive and is not intended to limit the scope of the Investigation, nor is it intended to restrict the scope of any exclusion order or other remedy ordered by the Commission.

VII. **UNLAWFUL AND UNFAIR ACTS COMMITTED BY PROPOSED RESPONDENTS – PATENT INFRINGEMENT**

32. On information and belief, Proposed Respondents unlawfully sell for importation, import, and/or sell after importation into the United States certain game devices, components thereof, and products containing the same that infringe the Microsoft Patent. Based on information discovered through investigation, the infringing products infringe at least: claims 1 and 7 of the Microsoft Patent. Attached as Exhibit 18 is a claim chart that provides an example of how the asserted independent claim of the Microsoft Patent reads on the Exemplary Datel product.

33. The infringement allegations contained in this Complaint include direct and indirect infringement. Proposed Respondents have been given actual notice of their infringement of the Microsoft Patent by Microsoft’s service of this Complaint, which is being served on Proposed Respondents at the time of filing with the Commission. On information and belief,

Proposed Respondents directly infringe the Microsoft Patent through the operation, development, demonstration, and testing of the its products in the United States. Datel demonstrates and operates their TurboFire II on its website, http://us.codejunkies.com/Products/Turbo-Fire-2-Wireless-Controller-for-Xbox-360__EF000924.aspx. Exhibit 26 contains a printout of this site.

34. Users making routine use of the Datel products also infringe the Microsoft Patent. On information and belief, Proposed Respondents knowingly induce others in the United States to use products in a manner covered by the Microsoft Patent and perform methods covered by certain claims of the Microsoft Patent. Proposed Respondents' inducement of infringement includes, but is not limited to: (i) its knowledge of the asserted patent; (ii) its intent to induce direct infringement of the asserted patent; (iii) its knowingly aiding and abetting infringement, by providing instruction manuals and other directions that instruct the purchaser of an accused device to use the device in a manner that infringes certain claims of the Microsoft Patent; and (iv) its actual or constructive knowledge that their actions induce infringement. *See* Exhibit 19, 26.

VIII. **RELATED LITIGATION**

35. There has been no other foreign or domestic court or agency litigation involving the '411 patent.

36. Contemporaneously with the filing of this Complaint, Microsoft filed suit in the U.S. District Court for the Western District of Washington asserting that Datel infringes the patent asserted here, namely the '411 patent.

IX. **RELIEF REQUESTED**

37. WHEREFORE, by reason of the foregoing, Complainant Microsoft respectfully requests that the United States International Trade Commission:

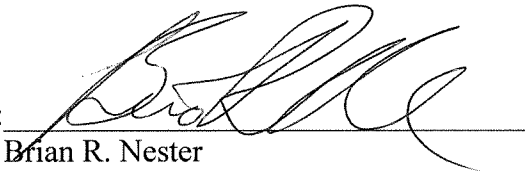
- (i) institute an immediate investigation pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, with respect to the Proposed Respondents' violations of that section based on the importation into the United States, sale for importation, and/or the sale within the United States after importation of Proposed Respondents' infringing products;
- (ii) schedule and conduct a hearing on permanent relief pursuant to Section 337(c) for the purposes of receiving evidence and hearing argument concerning whether there has been a violation of Section 337, and following the hearing, to determine that there has been a violation of Section 337;
- (iii) issue a permanent exclusion order, pursuant to 19 U.S.C. § 1337(d), forbidding entry into the United States of Proposed Respondents' products that infringe one or more claims of U.S. Patent No. 7,787,411;
- (iv) issue a permanent cease and desist order, pursuant to 19 U.S.C. § 1337(f), prohibiting the Proposed Respondents and related companies from engaging in the importation, sale for importation, marketing, distribution, offering for sale, the sale after importation of, or otherwise transferring within the United States products that infringe U.S. Patent No. 7,787,411; and
- (v) issue such other and further relief as the Commission deems just and proper under the law, based upon the facts determined by the investigation and the authority of the Commission.

Executed: December 23, 2010

Respectfully submitted,

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*Counsel for Complainant Microsoft
Corporation*

VERIFICATION

I, Jill Anstett, declare, in accordance with 19 C.F.R. §§ 210.4 and 210.12(a), under penalty of perjury, that the following statements are true:

1. I, Jill Anstett, am the Business Manager for Microsoft Corporation, and am duly authorized to sign this Complaint on behalf of Microsoft Corporation:
2. I have read the foregoing Complaint;
3. To the best of my knowledge, information, and belief, based upon reasonable inquiry, the foregoing Complaint is well-founded in fact and is warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
4. The allegations or other factual contentions have either evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery, and;
5. The foregoing Complaint is not being filed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation .

Executed this 21 day of December, 2010



Jill Anstett