

**Exhibit A**

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The **Washington Post**July 17, 2008 Thursday  
Suburban Edition**SECTION:** FINANCIAL; Pg. D03**DISTRIBUTION:** Maryland**LENGTH:** 857 words**HEADLINE:** The iPhone, Rehashed**BYLINE:** Rob Pegoraro**BODY:**

A year ago, Apple's iPhone made most competing cellphones look like stone tablets with antennas. But the new iPhone 3G, introduced last week, doesn't make quite the same leap forward.

It's not that the iPhone 3G isn't an exceptional smartphone. It's just that this new model doesn't constitute a mandatory upgrade from its predecessor.

The iPhone 3G shares its single best feature, the ability to run add-on programs, with the older model. Its faster Internet connection, however, suffers from AT&T Wireless's limited coverage and exacts a price on battery life.

And while the iPhone 3G costs much less upfront -- new customers pay \$199 for a model with 8 gigabytes of storage or \$299 for a 16-gigabyte model -- it costs about \$15 more a month to use. So if you've been pondering trading in your old iPhone, wait.

If you've been using some other smartphone, though, the iPhone 3G is harder to resist.

The 3G refers to AT&T's mobile-broadband network. In time trials, the 3G delivered download speeds two or three times as fast as AT&T's older EDGE data service on the original iPhone.

Like the first model, the iPhone 3G can connect to WiFi wireless networks for even faster downloads. You will need that WiFi option, considering the limits of AT&T's 3G coverage. Many not-so-distant suburbs fall outside of it, including most of Southern Maryland and large chunks of Loudoun and Prince William counties.

The 3G eats away at battery life, too. Instead of the 10 hours of talk time the first iPhone allowed, this one only lasted for about 4 1/2 in one test. When set to keep reloading a couple of Web pages on a 3G connection, its battery -- sealed inside its case -- lasted just under five hours.

AT&T's voice and data bundles start at \$69.99 for unlimited Internet use and 450 weekday calling minutes but do not include any text messages, making the service cost \$74.99 with 200 monthly messages. That beats Verizon's rates but exceeds those of Sprint and T-Mobile.

The 3G also includes a Global Positioning System receiver, allowing more precise navigation than the older model. But it still only offers driving directions, not ones for walking.

Apple's software **sets the iPhone apart** from the look-alikes those other carriers have rushed to sell. Its smart, simple, **"multi-touch"** interface lets you run most of the phone's features with one- or two-finger swipes, while its on-screen

keyboard does an amazing job of correcting most mistakes.

Its Web browser makes full-sized pages even pleasant to read. But it can't play Flash multimedia besides YouTube videos, which open in a separate program.

The iPhone also brings along most of your computer's information and entertainment.

Its calendar and contacts programs link to a Mac's iCal and Address Book applications or to a PC's Outlook, Outlook Express or Windows Mail (or the address books of Google and Yahoo's Webmail services). You can let iTunes keep things coordinated or use Apple's new, \$99-a-year MobileMe service to synchronize over the air -- though MobileMe's initial buggy performance argues for holding off on that.

And the iPhone plays your digital music, photos and videos just like the iPod that it is.

Now the iPhone's capabilities transcend the efforts of Apple's programmers, thanks to the App Store, available in iTunes and on the iPhone's home screen. This archive of third-party programs makes the software-loading routines of Palm OS or Windows Mobile phones look painfully primitive: Select a title you like, and after a couple of taps and a short download, it's ready to use.

The store carries about 800 applications, some free but most costing 99 cents to \$10 (paid through an iTunes account). The selection already covers a broad range -- games, to-do lists, databases, e-books, Web-radio jukeboxes -- although it still needs an Internet calling program.

The iPhone 3G's system software throws in some small but notable usability fixes -- for instance, you can now search your contacts and delete multiple e-mails at once. But the same software, App Store included, is a free upgrade for first-generation iPhones.

How could a new iPhone make the old version obsolete? Apple would do well to address the other complaints iPhone users have raised: the inability to copy and paste text between applications, its laughably inadequate support for picture messages (to view them you must visit a special Web page and type in a cryptic username and password), its woefully limited Bluetooth support, and a camera that can't record video.

More storage would help, too.

But the most useful upgrade for the iPhone would be to stop locking it so tightly to AT&T. If you want to use another compatible network -- say, when traveling internationally to avoid AT&T's steep roaming rates -- you still must take your chances with unauthorized, risky unlocking utilities.

In many other aspects, the iPhone is the device that changes everything. But in this aspect -- even as other carriers move toward more open networks -- the iPhone alters nothing at all.

Living with technology, or trying to? E-mail Rob Pegoraro at [robp@washpost.com](mailto:robp@washpost.com) Read more at <http://blog.washingtonpost.com/fasterforward/>.

**GRAPHIC:** IMAGE; By Alan Diaz -- Associated Press; The new iPhone can surf the Web faster than its predecessor, but it doesn't offer a lot you can't get on the old phone.

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*First Impressions of the Apple iPhone PC Magazine.com July 2, 2007 Monday 11:08 AM EST*

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July 2, 2007 Monday 11:08 AM EST

**SECTION:** TIM BAJARIN

**LENGTH:** 1363 words

**HEADLINE:** First Impressions of the [Apple iPhone](#) ↗

**BYLINE:** Tim Bjarin

**HIGHLIGHT:**

Steve Jobs made some heady claims about the iPhone back in January. Does the actual device live up to what he told us to expect?

**BODY:**

When Steve Jobs introduced the iPhone in January, he said that Apple was "re-inventing" the cell phone. He also promised that when it came to the market it would be three things; a great cell phone, a great music and movie player, and a great Web browsing device. With the original Mac, Jobs introduced the world to a new windowing interface and the mouse; with the iPhone he introduces the concept of finger navigation and multi-touch as the way to interact with a small handheld device.

After hands-on experience with the iPhone, I believe that Jobs and Apple have delivered exactly what they originally promised. Note that I said "what *they* promised"--so much of the media hype around the phone is about making it much more than Apple promised it would be. In fact, some even call it the Jesus phone, suggesting it will save the cellular industry from itself. But when judging any first-generation technology device, the fair critic needs to focus on what the company says it is and not what consumers imagine it will be.

The first thing you notice when holding the iPhone is how slim it is and how cool it feels in comparison to other smartphones, which are boxy and often thick. This first impression will definitely be shared by BlackBerry, Treo, or Motorola Q users holding an iPhone for the first time. The other thing you notice is that the front of the iPhone is all screen. It sports a 3.5-inch color display and has no buttons on the front. All interaction with the iPhone is done via this screen and your finger, which acts as a mouse.

Apple uses what the company calls multi-touch technology on the phone, which means you can touch various areas on the phone simultaneously to initiate an action. For example, if you have a picture displayed on the phone, put one finger at the top of the picture and one at the bottom and use a "pinch" movement to make the picture larger or smaller.

Multi-touch, as Apple has deployed it here, is a revolutionary user interface and, as with using a mouse for the first time, takes some getting used to. I found that it was very responsive, but I have fat fingers, and in some instances that caused my navigation to be less precise and initiated actions that I did not want. But once you get the hang of it, it works flawlessly. This is especially true of the virtual keyboard. I had to get used to the way any text key is activated, but it was not difficult to learn to make it work well. Also, it uses predictive text software, so many times when you type in a word or even a name from your contacts list, it fetches what it thinks you want. I found that most of the time it was smart enough to know the word or name I was actually trying to type.

The second thing you notice immediately is that the interface itself is extremely intuitive. It has 16 icons representing 16

specific applications such as phone, calendar, contacts, etc., and tapping an application icon instantly launches it. Once in an application, the UI is so easy to follow that only novices would need help from a manual. Apple is able to create these great apps because they use a full version of OS X. This gives the phone a lot of power now and as a platform for new apps in the future.

It also has one feature that I find really important. At the bottom of the screen is a sliding bar that needs to be slid from the left to the right to turn the phone on. That keeps it from activating while in your pocket and making an unwanted call (which seems to happen daily with my Motorola Q). This is the best implementation of a device lock I have seen on any smartphone to date.

So, does Apple deliver on the three things Jobs said the company had with its new iPhone?

My answer is a qualified yes. Read on...

**As a Phone:** Clearly, this is one cool phone. I found that it functioned well as a phone, though in my initial test I had weak signals from cell sites that made the calls waver. But that is not Apple's fault. When in a strong cell site, the voices were loud and clear. One odd thing, though, is that Apple only has 25 ringtones in the phone, and it does not allow you to use your purchased music or any MP3s you might have as a ring tone. Apple reps say they will surprise and delight first-generation users with software upgrades, and I would not be surprised if adding custom ringtones was not too far in the future.

The iPhone uses "visual voicemail," which allows you to see who called if you have them in your contact file; if their picture is there, it pops up as well. Getting voicemail is very easy on the iPhone and visual voicemail is a great application. It also allows for texting or instant messaging, and while it does not support AOL, Yahoo, or Google IM, the actual visual look of the texting is very similar to what you see on a Mac's AOL IM screen.

I also found that the Bluetooth hands-free radio worked well with three Bluetooth headsets I tested it with. All in all, in the short time I have had with it, I've found that it is a solid cell phone, and the UI, screens, and apps are both very innovative and impressive.

**As a Music and Video Player:** The iPhone is the best iPod Apple has delivered, period. While the current iPods are great, having a 3.5-inch screen for movies, music videos, TV, and video podcasts makes the viewing experience far superior to any you would have on the current crop of iPods. And the iPhone delivers everything you would expect in an iPod. The music is crystal clear, the videos are sharp, and all are accessed through Apple's new multi-touch UI on its brilliant screen. No question that Apple has made the music and video feature the best experience one can have on any smartphone.

**As a Web Browser:** By using the popular Safari Web browser and a full OS, the iPhone provides an exceptional Web-browsing experience. I have browsed the Web on phones from Palm, Motorola, Nokia, HTC, and many others, and there is no comparison. In fact, this is the first smartphone that can truly lay claim to delivering the Web in your pocket. However, it does not support Flash and some other Web video formats, so not all of the Web sites you access will work perfectly.

On the other hand, almost all of the Web pages that include text and images and support H.264 video worked perfectly. That is especially true for the YouTube feature. In fact, this is one of the 16 apps on the main screen, and when you tap the YouTube icon, it takes you to the 10,000 videos formatted in H.264 that have resulted in the Google/YouTube-Apple partnership.

However, unless you are browsing in the iPhone's Wi-Fi mode, downloading Web pages can be sluggish. Apple chose to use AT&T's older EDGE network--if you're lucky and in a powerful cell site, you might get 400Kbps. But browsing in EDGE GPRS mode, while OK, is not one of the iPhone's strong suits. I checked browsing speeds in three areas of San Jose and the best I could get was 220Kpbs, and the average was around 150Kpbs.

The iPhone is not perfect; no first generation smartphone ever is. Connecting to a 3G wireless network would have made the WWAN access faster. A removable battery would have given it more flexibility. And a MiniSD card slot would have made it possible to carry more of your content with you.

That said, it is my initial take that on the three key issues--phone, media player, and Web-browsing device--Apple has indeed delivered a device that matches the company's claims. With the iPhone's new UI and multi-touch navigation system, the iPhone will become the gold standard in smartphones, and likely give Apple at least a two-year edge over the competition.

Discuss this article in the forums.

Tim Bajarin is one of the leading analysts working in the technology industry today. He is president of Creative Strategies ([www.creativestrategies.com](http://www.creativestrategies.com)), a research company that produces strategy research reports for 50 to 60 companies annually--a roster that includes semiconductor and PC companies, as well as those in telecommunications, consumer electronics, and media. Customers have included AMD, Apple, Dell, HP, Intel, and Microsoft, among many others. You can e-mail him directly at [tim@bajarin.com](mailto:tim@bajarin.com).

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# Why you'll love iPhone.

## It's three devices in one.

iPhone is more than just a phone. It combines three devices in one: a revolutionary mobile phone, a widescreen iPod, and a breakthrough Internet device. All that and more makes it the best phone you'll ever use.



### Revolutionary Phone

With the Multi-Touch interface on iPhone, you can make a call simply by tapping a name or number in your contacts or favorites list, your call log, or just about anywhere. Visual Voicemail lets you select and listen to messages in whatever order you want — just like email.



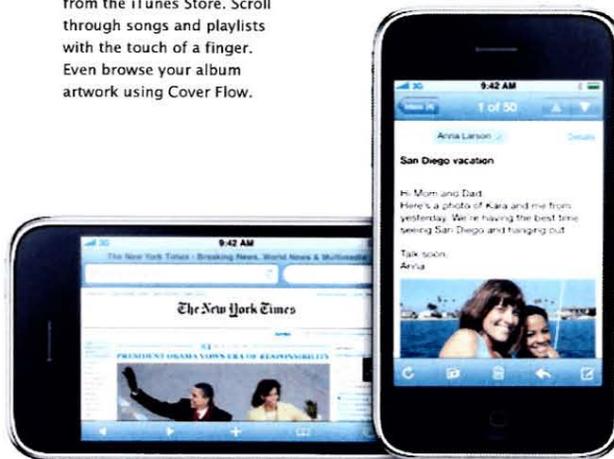
### Widescreen iPod

iPhone shows off your content — music, movies, TV shows, and more — on a beautiful 3.5-inch display. Add to your collection by downloading music and video wirelessly from the iTunes Store. Scroll through songs and playlists with the touch of a finger. Even browse your album artwork using Cover Flow.



### Breakthrough Internet Device

iPhone uses fast 3G and Wi-Fi wireless connections to deliver rich HTML email, Maps with GPS, and Safari — the most advanced web browser on a mobile device. It has Google and Yahoo! search built in. And since iPhone multitasks, you can make a phone call while emailing a photo or surfing the web over a Wi-Fi or 3G connection.



## It opens a whole new world of applications.

iPhone comes with some amazing



applications. And you can choose from thousands more on the App Store and download them with a tap. Your iPhone gets even better with every new app. Play games. Be more productive. Keep yourself entertained. No matter what you want to do on iPhone, there's an app for that.

See more apps for iPhone



**Stay connected from anywhere.**

Apps like Facebook let you use iPhone to share photos, status updates, and more with a few taps.



**Play games a whole new way.**

With iPhone, you can tilt and tap your way through groundbreaking games like Rolando.



**Find out what's for dinner.**

Discover new restaurants on Urbanspoon by shaking your iPhone. What other phone does that?



**It works like no other phone.**

With iPhone, Apple combined innovative hardware features with the world's most advanced mobile operating system to redefine what a mobile phone can do. Applications work together seamlessly and they sync with your computer — whether you're on a Mac or a PC. From its revolutionary Multi-Touch display to its intelligent keyboard to its smart sensors, iPhone is years ahead of any other mobile phone.



**Intelligent Keyboard**

The iPhone keyboard is software based, so it's smarter and more adaptable than the physical keyboards on other phones. Learn more about the keyboard

**Multi-Touch**

Control everything on iPhone with a tap, a flick, or a pinch of your fingers.

**Accelerometer**

Turn, tilt, and rotate iPhone: It responds to motion for gaming and more.

**Maps and GPS**

The GPS-powered Maps app helps you find locations and get directions.

Compare iPhones.

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**iPhone 3G S**

The fastest, most powerful iPhone yet.

**\$199<sup>1</sup>** 16GB **\$299<sup>1</sup>** 32GB

- Improved performance
- 3-megapixel autofocus camera
- Video recording
- Voice Control
- Digital compass



**iPhone 3G**

New features. New price.

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- Cut, Copy & Paste
- MMS<sup>2</sup>
- Spotlight Search
- Landscape keyboard

MMS<sup>2</sup>  
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Voice Memos  
Learn more about iPhone 3GS

Cut, Copy & Paste

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**iPhone 3GS. A Guided Tour.**  
Watch the video.



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1. Qualified customers only. Requires new two-year AT&T rate plan, sold separately.
2. MMS support from AT&T coming in late summer. Sending video via MMS is not supported on iPhone 3G.

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Some features, applications, and services are not available in all areas. See your carrier for details.  
Some applications are not available in all areas. Application availability and pricing are subject to change.

iPhone 3GS

-  Phone
-  iPod
-  Safari
-  Mail
-  Video Recording
-  Photos
-  Voice Control
-  Messages
-  Maps + Compass
-  Keyboard
-  Cut, Copy & Paste
-  Search
-  Voice Memos
-  Accessibility
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-  App Store
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# High Technology

iPhone redefines what a mobile phone can do. That's because it integrates pioneering hardware technology with the world's most advanced mobile operating system.

## Multi-Touch

With its large Multi-Touch display and innovative software, iPhone lets you control everything using only your fingers. How does it work? A panel underneath the display's glass cover senses your touch using electrical fields. It then transmits that information to an LCD screen below it. The display also features an oil-resistant coating that keeps the iPhone screen clean.



## Accelerometer

iPhone responds to motion using a built-in accelerometer. When you rotate iPhone from portrait to landscape, the accelerometer detects the movement and changes the display accordingly. The accelerometer also gives you amazing game control.

## Sensors

When you lift iPhone to your ear, the proximity sensor immediately turns off the display to save power and prevent accidental dialing. The ambient light sensor in iPhone automatically brightens the display when you're in sunlight or a bright room and dims it in darker places.



## Location Services

GPS (Global Positioning System) technology uses information from earth-orbiting satellites to find locations. A-GPS (Assisted GPS) on iPhone 3GS goes a step further,

finding the closest satellites to more quickly identify your position. If you're not within a clear line of sight to a GPS satellite, iPhone finds you via Wi-Fi. If you're not in range of a Wi-Fi hotspot, iPhone finds you using cellular towers. The size of a location circle tells you how accurately iPhone is able to calculate that location: The smaller the circle, the more accurate the location. iPhone also offers a built-in digital compass that automatically repositions maps to match the direction you're facing.<sup>1</sup>

### 3G

3G technology gives iPhone fast access to the Internet and email over cellular networks around the world. With support for 7.2Mbps HSDPA, iPhone 3GS also makes it possible to do more in more places: Surf the web, download email, get directions, and watch video — even while you're on a call. Since iPhone seamlessly switches between EDGE, faster 3G, and even faster Wi-Fi, you always get the fastest connection available. You can even share your Internet connection with your laptop via Internet tethering.<sup>2</sup>



#### iPhone 3GS. A Guided Tour.

Watch the video.



#### iPhone 3.0 Software Update

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#### Intelligent Keyboard

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**SECTION:** BUSINESS NEWS**LENGTH:** 605 words**BODY:**

bc-CA-Apple-new-iPod 02-05

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1/8SU 3/8 PDT

TO BUSINESS AND TECHNOLOGY EDITORS:

Apple Adds New **iPhone** & iPod touch Models

CUPERTINO, Calif., Feb. 5 /PRNewswire-FirstCall/ -- Apple(R) today added new models of the **iPhone**(TM) and iPod(R) touch which have double the memory, doubling the amount of music, photos and videos that customers can carry with them wherever they go. The revolutionary **iPhone** now comes in a new 16GB model for \$499, joining the 8GB model for \$399. iPod touch now comes in a 32GB model for \$499, joining the 16GB model for \$399 and the 8GB model for \$299.

"For some users, there's never enough memory," said Greg Joswiak, Apple's vice president of Worldwide iPod and **iPhone** Product Marketing. "Now people can enjoy even more of their music, photos and videos on the most revolutionary mobile phone and best Wi-Fi mobile device in the world."

**Both iPhone and iPod touch feature Apple's revolutionary Multi-Touch(TM)**

**user interface and pioneering software that allows users to find and enjoy all**

**their music, videos, photos and more with just a touch of their finger.** All

**iPhone** and iPod touch models include the latest software enhancements announced last month including the ability to automatically find your location using the new Maps application; create Web Clips for your favorite websites;

customize your home screen and watch movies from the new iTunes(R) Movie Rentals. Both **iPhone** and iPod touch feature the world's most advanced mobile web browser in the world with Safari(TM) and great mobile applications including Mail, Maps, Stocks, Weather and Notes.

#### Pricing & Availability

The new 16GB **iPhone** is available immediately for a suggested retail price of \$499 (US) through the Apple Store(R) (<http://www.apple.com>), Apple's retail stores and AT&T retail and online stores. The 32GB iPod touch is available worldwide immediately for a suggested retail price of \$499 (US) through the Apple Store (<http://www.apple.com>), Apple's retail stores and Apple Authorized Resellers. iTunes Movie Rentals are available in the US only. **iPhone** and iPod touch require a Mac(R) with a USB 2.0 port, Mac OS(R) X 10.4.10 or later and iTunes 7.6; or a Windows PC with a USB 2.0 port and Windows Vista or Windows XP Home or Professional (Service Pack 2) or later and iTunes 7.6.

Apple ignited the personal computer revolution in the 1970s with the Apple II and reinvented the personal computer in the 1980s with the Macintosh. Today, Apple continues to lead the industry in innovation with its award-winning computers, OS X operating system and iLife and professional applications. Apple is also spearheading the digital media revolution with its iPod portable music and video players and iTunes online store, and has entered the mobile phone market with its revolutionary **iPhone**.

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*APPLE: Apple Announces iPhone 2.0 Software Beta Computer Technology Journal March 17, 2008*

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March 17, 2008

**SECTION:** EXPANDED REPORTING; Pg. 516

**LENGTH:** 996 words

**HEADLINE:** APPLE;  
Apple Announces **iPhone** 2.0 Software Beta

**BODY:**

Apple(R) today previewed its **iPhone**(TM) 2.0 software, scheduled for release this June, and announced the immediate availability of a beta release of the software to selected developers and enterprise customers. The **iPhone** 2.0 beta release includes both the **iPhone** Software Development Kit (SDK) as well as new enterprise features such as support for Microsoft Exchange ActiveSync to provide secure, over-the-air push email, contacts and calendars as well as remote wipe, and the addition of Cisco IPsec VPN for encrypted access to private corporate networks.

"We're excited about creating a vibrant third party developer community with potentially thousands of native applications for **iPhone** and iPod touch," said Steve Jobs, Apple's CEO. "**iPhone's** enterprise features combined with its revolutionary Multi-Touch user interface and advanced software architecture provide the best user experience and the most advanced software platform ever for a mobile device."

The **iPhone** SDK provides developers with a rich set of Application Programming Interfaces (APIs) and tools to create innovative applications for **iPhone** and iPod(R) touch. Starting today, anyone can download the beta **iPhone** SDK for free and run the **iPhone** Simulator on their Mac(R). Apple today also introduced its new **iPhone** Developer Program, giving developers everything they need to create native applications, and the new App Store, a breakthrough way for developers to wirelessly deliver their applications to **iPhone** and iPod touch users.

With the **iPhone** SDK, third party developers will be able to build native applications for the **iPhone** with a rich set of APIs, including programming interfaces for Core OS, Core Services, Media and Cocoa Touch technologies. **The iPhone SDK will allow developers to create amazing applications that leverage the iPhone's groundbreaking Multi-Touch(TM) user interface, animation technology, large storage, built-in three-axis accelerometer and geographical location technology to deliver truly innovative mobile applications.**

Apple has licensed Exchange ActiveSync from Microsoft and is building it right into the **iPhone**, so that **iPhone** will connect out-of-the-box to Microsoft Exchange Servers 2003 and 2007 for secure over-the-air push email, contacts, calendars and global address lists. Built-in Exchange ActiveSync support also enables security features such as remote wipe, password policies and auto-discovery. The **iPhone** 2.0 software supports Cisco IPsec VPN to ensure the highest level of IP-based encryption available for transmission of sensitive corporate data, as well as the ability to authenticate using digital certificates or password-based, multi-factor authentication. The addition of WPA2 Enterprise with 802.1x authentication enables enterprise customers to deploy **iPhone** and iPod touch with the latest standards for protection of Wi-Fi networks.

The **iPhone** 2.0 software provides a configuration utility that allows IT administrators to easily and quickly set up many  **iPhones**, including password policies, VPN setting, installing certificates, email server settings and more. Once the configuration is defined it can be easily and securely delivered via web link or email to the user. To install, all the user has to do is authenticate with a user ID or password, download the configuration and tap install. Once installed, the user will have access to all their corporate IT services.

The **iPhone** 2.0 software release will contain the App Store, a new application that lets users browse, search, purchase and wirelessly download third party applications directly onto their **iPhone** or iPod touch. The App Store enables developers to reach every **iPhone** and iPod touch user. Developers set the price for their applications -- including free -- and retain 70 percent of all sales revenues. Users can download free applications at no charge to either the user or

developer, or purchase priced applications with just one click. Enterprise customers will be able to create a secure, private page on the App Store accessible only by their employees. Apple will cover all credit card, web hosting, infrastructure and DRM costs associated with offering applications on the App Store. Third party **iPhone** and iPod touch applications must be approved by Apple and will be available exclusively through the App Store.

The **iPhone** SDK provides a reliable, fast and secure way to create innovative applications for the **iPhone** and iPod touch. In addition to the rich set of **iPhone** OS APIs, the **iPhone** SDK also provides advanced tools for creating native **iPhone** and iPod touch applications including: Xcode(R) for source code editing, project management and graphical debugging; Interface Builder with drag and drop interface creation and live preview; Instruments to monitor and optimize **iPhone** application performance in real time; and the **iPhone** Simulator to run and debug applications.

During the beta **iPhone** SDK program, a limited number of developers will be accepted into Apple's new **iPhone** Developer Program and offered the ability to get code onto **iphones** for testing. The Standard Program costs \$99 (US) per year and gives members an **iPhone** SDK and development tools; access to pre-release **iPhone** software; technical support; the ability to get code onto **iphones** for testing; and distribution of applications via the new App Store. The Enterprise Program costs \$299 (US) per year.

In addition to these new **iPhone** network and security features, the beta **iPhone 2.0** software provides several new Mail features such as the ability to view PowerPoint attachments, in addition to Word and Excel, as well as the ability to mass delete and move email messages.

Keywords: [Apple Computers](#), Data Management, Encryption, Information Encryption, Information Technology, Programming Interface, Software, Technology.

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January 14, 2008

**SECTION:** EXPANDED REPORTING; Pg. 420**LENGTH:** 271 words**HEADLINE:** APPLE;Apple Adds New **iPhone** & iPod touch Models**BODY:**

Apple(R) today added new models of the **iPhone**(TM) and iPod(R) touch which have double the memory, doubling the amount of music, photos and videos that customers can carry with them wherever they go. The revolutionary **iPhone** now comes in a new 16GB model for \$499, joining the 8GB model for \$399. iPod touch now comes in a 32GB model for \$499, joining the 16GB model for \$399 and the 8GB model for \$299.

"For some users, there's never enough memory," said Greg Joswiak, Apple's vice president of Worldwide iPod and **iPhone** Product Marketing. "Now people can enjoy even more of their music, photos and videos on the most revolutionary mobile phone and best Wi-Fi mobile device in the world."

Both **iPhone** and iPod touch feature Apple's **revolutionary Multi-Touch**(TM) user interface and pioneering software that allows users to find and enjoy all their music, videos, photos and more with just a touch of their finger. All **iPhone** and iPod touch models include the latest software enhancements announced including the ability to automatically find your location using the new Maps application\*; create Web Clips for your favorite websites; customize your home screen and watch movies from the new iTunes(R) Movie Rentals. Both **iPhone** and iPod touch feature the world's most advanced mobile web browser in the world with Safari(TM) and great mobile applications including Mail, Maps, Stocks, Weather and Notes.

Keywords: Advertising, Apple, Entertainment, Marketing, Movies, Software.

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**SECTION:** Pg. 68 Vol. 138 No. 2774 ISSN: 0161-7389**ACC-NO:** 28602**LENGTH:** 15684 words**HEADLINE:** WHAT'S NEW?: Holiday Gift Guide**BODY:****ABSTRACT**

[...] ProFlowers guarantees that your flowers will stay fresh for seven days or they'll refund your money. The 13" tall felt stocking is the perfect size for stuffing with holiday treats, and the kit also comes with a mini felt stocking to decorate and use for your pet or a favorite stuffed animal or doll. From the Creativity for Little Kids line, youngsters can make a precious keepsake with The Pop-Up Book of Me. This creative 3-D book includes places for photos and fill-in pages where the child can record info about him/herself such as name, birthday, and address, the number of people in the family, and the names and illustrations of friends.

**FULL TEXT****TOMTOM NAVIGATES YOU TO THOSE HOLIDAY EVENTS**

Maybe we were a little slow to jump on the GPS bandwagon. We really never get lost, we reasoned, and, when we have to get somewhere unfamiliar, we turn to the Internet, which is loaded with websites that give directions. All it took, however, was one test drive with a navigation system from TomTom, Inc., Concord, Mass., and we can't imagine how we ever got around without one.

Right out of the box, the TomTom systems are operational. We just enter the address of the location we're trying to find and we're given clear voice commands to tell us exactly what roads to take and where to turn. The menus are easy to navigate and we're able to save our home address and other favorite places, so no matter where we are, we can get home, or to the office, etc., with just a few taps on the interactive screen.

The TomTom GO 930 (S399.95) has a Voice Input feature that allows you to speak the name and address of where you want to go, without touching the screen or typing in the location. The 4.3" widescreen LCD makes it easy to see the map, and the information bar at the bottom shows exactly how far to drive on the current road before you make a turn, estimated miles and time remaining to get to your destination, time of day and expected time of arrival, as well as your current speed and the speed limit. The unit offers IQ Routes technology to provide the smartest course of travel based on real average speed, not posted speed limits. It is Bluetooth compatible, allowing you to use hands-free calling through the TomTom, and a built-in FM transmitter lets you play your music through your car stereo. An optional TomTom Traffic Receiver or a subscription to TomTom Traffic, affords easy access to real-time traffic information. It alerts you to traffic ahead, estimates the length of the delay, and offers to reroute your trip to avoid the problem.

The XL 340S (\$299.95) also provides exceptional navigation and clear voice instructions along your route. The 4.3" wide touchscreen gives a clear view of the road ahead, and it has an EasyPort mount that folds neatly into the back of your unit, so when it's not mounted on your windshield, it will store compactly in your bag or glove compartment. A Help Me! menu finds emergency service information, including hospitals and roadside service. This device comes with maps of the U.S. (including Puerto Rico), Canada, and Mexico, and more than 7,000,000 points of interest including restaurants, gas stations, shopping malls, and golf courses. An alternate version of this model, the XL 340S Live, has an incorporated

## CREATIVITY FOR KIDS MAKING MEMORIES

With the holidays upon us, the urge to decorate kicks into high gear. A holiday crafting kit from Creativity for Kids, Faber-Castell USA, Inc., Cleveland, Ohio, lets children add their special touch to the décor as well. The Holiday Memories Festive Felt Stocking uses easy-to-use peel and stick felt appliques - including a tree, snowflakes, holly, and candy cane - and sparkly rhinestones. The 13" tall felt stocking is the perfect size for stuffing with holiday treats, and the kit also comes with a mini felt stocking to decorate and use for your pet or a favorite stuffed animal or doll.

Kids will be able to showcase their favorite memories when they put together a Pop-Up Scrapbook. With 14 fun pages that slide, spin, pull-up, and pop-out, all you have to do is add photos to set your memories in motion. The kit includes an 11" x 8.5" scrapbook, cardboard pop-up punchouts, 12 sheets of printed and textured papers, stickers, eight fine point markers, and self-adhesive rhinestones, foam squares, and dots.

From the Creativity for Little Kids line, youngsters can make a precious keepsake with The Pop-Up Book of Me. This creative 3-D book includes places for photos and fill-in pages where the child can record info about him/herself such as name, birthday, and address, the number of people in the family, and the names and illustrations of friends. The package contains 12 washable markers, color-in sticker sheets and cut-outs, and adhesive squares.

Also for Little Kids is Big Fun Stamp Art, which includes a 30-page sketch pad; three washable ink pads: red, yellow, and blue; 12 stamps in varying sizes; eight washable markers; and two self-adhesive frames with hangtabs. Your youngest ones will be thrilled to turn ordinary shapes in extraordinary works of art.

Visit [www.creativityforkids.com](http://www.creativityforkids.com) for more information on their extensive line of affordable crafting kits.

## DUAL DOCKING STATION FOR YOUR PERSONAL iWorld

Between our cell phones, personal music players, and the various other electronic equipment, gadgets, and gizmos we use each day, we have an abundance of battery chargers. They're plugged in everywhere, from our nightstands and desks to our cars and countertops. Even just finding enough outlets for everything is a hassle, so we're always glad to come across a multi-use product to help keep us organized, and that's why we love the iHome iP88 Dual Docking Station for iPhone/iPod from SDI Technologies, Rahway, N.J.

With two universal docks to play and charge iPhones and docking iPod models, we have two less chargers to keep track of. Equipped with Resonance stereo speakers, EQ and 3D sound, the iP88 offers a rich listening experience of clarity and depth, with controls for bass, treble, and balance. The full function remote allows us to navigate easily the functions of the iPod and iPhone.

The clock has three independent alarms to wake to: iPhone/iPod playlist radio, or buzzer, and it can be set to wake you at different times or only on certain days of the week. The unit can be synced to the iPhone time, and the AM/FM radio has 16 presets.

The iHome iP88 (\$149.99) is available at major retail outlets. For more information on this great-sounding alarm clock radio that offers a charging solution, visit [www.ihomeaudio.com](http://www.ihomeaudio.com).

## SIDEBAR

### IPOD WITH THAT "TOUCH" OF CLASS

We used to think the most amazing thing about the way technology has evolved over the years is how small devices have gotten. Now what we find most remarkable is how much these slim and tiny machines actually can do. The **iPod touch** is just one-third of an inch thick and weighs a mere four ounces, yet delivers a large 3.5" screen and is a great iPod, pocket computer, and portable game player all in one.

Through the use of the **revolutionary Multi-Touch interface**, everything you want to do is at your fingertips. Instead of just having a list of your albums, with the flick of your finger, flip through the album covers, tap the cover to turn it over to view the track list, and tap it again to start the music. The Genius feature scans your music library to find songs that go well together and creates multiple mixes. Shake the **iPod touch** to shuffle your songs or use Bluetooth headphones to listen to your tunes while your iPod is on the charger or elsewhere in the room.

There are thousands of movies, TV shows, and podcasts to choose from at the iTunes Store to view on the crisp display. Tap the screen to bring up the controls to play, pause, adjust volume, or switch between widescreen and full screen.

Using the advanced browser Safari, the Internet can be accessed through a wi-fi connection where users can visit favorite websites, use the Google or Yahoo! search engines, or send or receive e-mails in the same way as on a computer. You can shop at the iTunes Store, which holds more than 75,000 apps ready to be downloaded for immediate use.

Voice Control on the 32GB and 64GB models gives the ability to control music playback with spoken commands. Just say what artist you want to play or ask what's playing and the **iPod touch** will answer you.

Store your favorite photos, flick through them, and pinch to zoom in or out. You even can play slideshows, complete with music, and share by e-mail or in a MobileMe Gallery. Rotate the iPod 90 degrees and the screen will change from portrait

# iPod touch

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## Multi-Touch

iPod touch features the same revolutionary interface as iPhone.



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-  YouTube
-  Photos
-  Calendar
-  Contacts
-  Stocks, Weather, Notes
-  Calculator
-  Nike + iPod

iPod touch features the same revolutionary interface as iPhone.



## High Technology

- Multi-Touch
- Accelerometer
- Wireless

### Glide, flick, pinch.

Built to take full advantage of the large 3.5-inch display, the Multi-Touch touchscreen interface lets you control everything using only your fingers. So you can glide through albums with Cover Flow, flick through photos and enlarge them with a pinch, zoom in and out on a section of a web page, and control game elements precisely.

### Type with the touchscreen keyboard.

iPod touch features an intelligent touchscreen keyboard perfect for browsing the web in Safari, getting directions on a map, searching for videos on YouTube, finding music on the iTunes Store, or adding new contacts. It analyzes keystrokes to suggest words as you type and correct spelling errors automatically. And because it's software based, it changes its keys to support typing in multiple languages.

### How it works.

The Multi-Touch display layers a protective shield over a capacitive panel that senses your touch using electrical fields. It then transmits that information to the LCD screen below it. iPod touch software enables the flick, tap, and pinch.

Wi-Fi Internet access is required for some features; broadband recommended; fees may apply. Some features or services are not available in all areas.

Nike + iPod

Accelerometer

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## Apple iPod Touch is a multi-touch screen

Thursday, February 4th, 2010 at 5:20 am

Apple continues its triumph in the electronic market with the introduction of the **ipod touch**. Whatever the most recent product, which manages the home of Apple's good will. It 'was in 1997 with the introduction of **ipod**, Apple is a revolution for the first time in the world of electronics. **ipod** has managed to sweep the whole world of music devices used in the creation of a world record in sales in the continents of America and Europe for a series continues decade. To repeat the triumph, is back with the Apple **iPod touch**, the latest version of the iPod.

The most interesting feature of the **iPod touch** is the ability to download music directly from iTunes. E 'possible, too easy with the help of Wi-Fi. **The iPod touch** with a brilliant 3.5-inch **widescreen** display offers help in films and television shows. The brilliant display of high image quality brings to life with bright, vivid colors on the display 320 x 480 pixels.

Another important feature is the revolutionary **multi-touch interface**. **The iPod touch is the same multi touch screen**, which was followed by the iPhone. E 'possible to enlarge a photo. Furthermore, the user can scroll through songs and videos with a flick.

The next question that arises automatically, it is about the content of the **iPod touch**. Implementation window> iPod **touch** is with **headphones**, **usb** 2.0 cable, dock adapter, polishing cloth and stand. We also need a stand and a quick start guide that makes it very useful for the user.

What everyone can apply to the operation of an **iPod touch**. Like the old Apple's iPod, which also requires a **usb** 2.0 port, iTunes 7.4, and Internet access. It would be better if the broadband connection. Now, what are you waiting for? Just **the iPod Touch** as soon as the very best technology available.

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**Basic Info**

Name: IPod Touch  
Category: Internet & Technology - Gadgets  
Description: Touch comes to iPod. Music, Videos, Photos, Mail, Maps, Stocks, Weather, Notes, Youtube, iTunes Wi-Fi Music Store, and websites in 8GB and 16GB and 32GB models starting at \$199.

Only 8 mm thin.

**Revolutionary Multi-touch interface.**  
The revolutionary technology that made iPhone a hit is now on one amazing iPod.

Gorgeous 3.5-inch widescreen display.  
Touch your music in Cover Flow and watch video on a stunning, widescreen display. Built in speakers.

Wi-Fi web browsing.  
Browse the web with Safari. (read more)

**Information**

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Keywords: Advertising, Apple, Entertainment, Marketing, Movies, Software.

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### iPod Touch

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## iPod Touch Review

The iPod touch features Apple's revolutionary multi-touch user interface that enables you to find and enjoy all of your music, videos, and more on its gorgeous widescreen display with just the touch of a finger. First introduced on iPhone, the multi-touch interface uses pioneering new software to present the perfect user interface for each application. The iPod touch also includes Wi-Fi wireless networking, the first on any iPod, and three amazing applications that use it: Safari, the most advanced browser on any mobile device, lets you wirelessly view web pages just as they look on your computer, and features Google Search or Yahoo! oneSearch; Apple's YouTube application lets users wirelessly watch over 10 million free videos from the Internet's most popular video website; and the new iTunes Wi-Fi Music Store lets you wirelessly browse, preview and buy songs and albums from the most popular online music store in the world. And to top it all off, the iPod touch is an unbelievable eight millimeters thin.

### Music

If a picture says a thousand words, think of what all the album art in your collection might say. With Cover Flow on iPod touch, you can flick through your music to find the album you want to hear. And when you do, a quick tap of the cover flips it over to display a track list. Another tap starts the music.

### Video

The 3.5-inch display gives you video like nothing you've seen before on a portable device. Watch your favorite movie. Catch up on television shows, anywhere. Enjoy video podcasts. Play music videos. All using multi-touch technology that lets you bring up onscreen controls and go widescreen (or back to full screen) with a tap.

### Photos

iPod touch holds up to 20,000 photos you sync via iTunes. Flick to scroll through thumbnails. Tap to view full screen. Rotate for landscape format. Or perform some sleight of hand by opening two fingers to zoom in. You can even play slideshows, complete with music and transitions. Set any photo as your wallpaper to personalize your iPod touch...with a touch.

### Safari

With Apple's Safari browser built in, iPod touch is the only iPod that gives you wireless access to the web, everywhere you go. See websites the way they were designed to be seen. Sync your bookmarks or add a few as you go. Search the web using the touchscreen keyboard. Zoom in and out by tapping the multi-touch display.

### YouTube

Got a bit of a YouTube addiction? iPod touch feeds it from anywhere with a special YouTube player built right in. Watch featured videos, check out the most viewed, search for something specific, then bookmark your favorites for future reference. It's all the fun of YouTube--pocket-size.

### iTunes Wi-Fi Music Store

With iPod touch, you can discover new music anywhere. Built-in wireless capability gives you access to the iTunes Wi-Fi Music Store, where you can buy songs with a tap. Browse New Releases, What's Hot, and Just Added lists. Or find exactly what you're looking for with a quick search. Tap a song to preview it or tap Buy to purchase it. From anywhere.

### Starbucks Music

You walk into a Starbucks. Order your latte. While you wait, you hear a song wafting from the loudspeakers. You love it. So you get out your iPod touch and buy it over Wi-Fi. Just like that. The iTunes Wi-Fi Music Store on iPod touch tells you what's playing in select Starbucks and lets you buy it along with other featured Starbucks content. So you can sip, shop, and listen.

### Multi-touch

iPod touch features the same revolutionary interface as iPhone. Built to take full advantage of the large 3.5-inch display, the multi-touch interface lets you control everything using only your




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fingers. So you can glide through albums with Cover Flow, flick through photos and enlarge them with a pinch, or zoom in and out on a section of a web page. And iPod touch features a touchscreen QWERTY keyboard perfect for browsing the web in Safari, searching for videos on YouTube, finding music on the iTunes Wi-Fi Music Store, entering calendar events, or adding new contacts.

### Ambient Light Sensor

The iPod touch display has an ambient light sensor that automatically adjusts brightness to suit the ambient light in your surroundings. The result? A better experience for you and battery-saving efficiency for iPod touch.

### Accelerometer

An accelerometer detects when you rotate iPod touch from portrait to landscape, then automatically changes the contents of the display, so you immediately see the entire width of a web page, your music in Cover Flow, or a photo in its proper aspect ratio.

### Product Description

With the Apple iPod touch, Apple has married the iPhone's revolutionary multi-touch interface to their popular digital media player. So instead of a Click Wheel, you just use your fingers to flick through your music, photos, and video. Two fingers can be used in a pinching or spreading motion as well, which zooms in and out of photos and web pages. That's right, the iPod touch is the first iPod to offer web access. It does this via built-in Wi-Fi support. There's even a special iTunes Wi-Fi Store, so you can browse and purchase new music and video while you're on the road. Connects to a PC or Mac through USB (using the dock connector) 802.11b/g Wi-Fi Charge Time - about 3 hours (1.5 hours fast charge to 80% capacity) Audio Support - AAC (16 to 320 Kbps), Protected AAC (from iTunes Store), MP3 (16 to 320 Kbps), MP3 VBR, Audible (formats 2, 3, & 4), Apple Lossless, WAV, & AIFF Photo Support - Syncs iPod-viewable photos in JPEG, BMP, GIF, TIFF, PSD (Mac only), and PNG formats Video Support - H.264 video, up to 1.5 Mbps, 640 by 480 pixels, 30 frames per second, Low-Complexity version of the H.264 Baseline Profile with AAC-LC audio up to 160 Kbps, 48kHz, stereo audio in. m4v, . mp4, and. mov file formats; H.264 video, up to 2.5 Mbps, 640 by 480 pixels, 30 frames per second, Baseline Profile up to Level 3.0 with AAC-LC audio up to 160 Kbps, 48kHz, stereo audio in. m4v, . mp4, and. mov file formats; MPEG-4 video, up to 2.5 Mbps, 640 by 480 pixels, 30 frames per second, Simple Profile with AAC-LC audio up to 160 Kbps, 48kHz, stereo audio in. m4v, . mp4, and. mov file formats Unit Dimensions - 4.3 x 2.4 x 0.31 Unit Weight - 4.2 oz.

### Product Features

- The revolutionary technology that made iPhone a hit is now on one amazing iPod.
- Touch your music in Cover Flow and watch video on a stunning, widescreen display.
- Browse the web with Safari and watch YouTube videos on the first-ever Wi-Fi iPod.
- Gorgeous 3.5-inch widescreen display.
- Watch your movies, and photos come alive with bright, vivid color on the 320-by-480-pixel display
- Up to 20 hours of music playback and up to 4.5 hours of video playback.
- Up to 1750 of songs, up to 10000 of photos and up to 10 hours of video.
- Works with Mac and PC
- Stores data via USB flash drive

### Videos



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**Exhibit B**

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Thursday 4:30 PM EST*

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Terms: **(multitouch or "multi-touch") and (apple or iphone) and date(geq (01/01/2007) and leq (12/31/2009))**  
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**Exhibit C**

**To:** APPLE INC. ([jjohnstonocelecom@gmail.com](mailto:jjohnstonocelecom@gmail.com))  
**Subject:** TRADEMARK APPLICATION NO. 77078496 - IPHONE - N/A  
**Sent:** 11/5/2007 1:57:25 PM  
**Sent As:** ECOM104@USPTO.GOV  
**Attachments:** [Attachment - 1](#)  
[Attachment - 2](#)  
[Attachment - 3](#)  
[Attachment - 4](#)

## UNITED STATES PATENT AND TRADEMARK OFFICE

**SERIAL NO:** 77/078496

**MARK:** IPHONE

**\*77078496\***

**CORRESPONDENT ADDRESS:**

JAMES JOHNSTON  
OCEAN TELECOM SERVICES LLC  
1208 ORANGE STREET  
CORPORATION TRUST CENTER, ROOM  
123  
WILMINGTON, DE 19801

**RESPOND TO THIS ACTION:**

<http://www.uspto.gov/teas/eTEASpageD.htm>

**GENERAL TRADEMARK INFORMATION:**

<http://www.uspto.gov/main/trademarks.htm>

**APPLICANT:** APPLE INC.

**CORRESPONDENT'S**

**REFERENCE/DOCKET NO:**

N/A

**CORRESPONDENT E-MAIL ADDRESS:**

[jjohnstonocelecom@gmail.com](mailto:jjohnstonocelecom@gmail.com)

### OFFICE ACTION

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

**ISSUE/MAILING DATE: 11/5/2007**

The assigned examining attorney acknowledges receipt of applicant's response. Through the response, applicant submits the required signed verification of the application. Applicant's response raises the following issues.

### **REFUSAL-LIKELIHOOD OF CONFUSION**

Registration of the proposed mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 2293011. Trademark Act Section 2(d), 15 U.S.C. §1052(d); TMEP §§1207.01 *et seq.* A copy of this registration was previously provided. Applicant has indicated in the response that applicant and registrant have entered into a consent agreement in regards to the use of the marks. However, the consent agreement has not yet been made of record. Thus, the refusal of the mark is continued.

### **PRIOR PENDING APPLICATION**

The examining attorney continues the advisory concerning US Application No. 78581563. The filing date of the referenced application precedes applicant's filing date. There may be a likelihood of confusion between the two marks under Trademark Act Section 2(d), 15 U.S.C. §1052(d). If the referenced application registers, registration may be refused in this case under Section 2(d). 37 C.F.R. §2.83; TMEP §§1208 *et seq.* Therefore, upon entry of a response to this Office action, action on this case may be suspended pending final disposition of the earlier-filed application.

If applicant believes there is no potential conflict between this application and the earlier-filed application, then applicant may present arguments relevant to the issue in a response to this Office action. The election not to submit arguments at this time in no way limits applicant's right to address this issue at a later point.

### **REFUSAL-MARK IS MERELY DESCRIPTIVE**

The refusal of the mark is continued. Registration is refused because the proposed mark merely describes a characteristic or feature of applicant's services. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); TMEP §§1209 *et seq.* A mark is merely descriptive under Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1), if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the relevant goods and/or services. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); *In re Bed & Breakfast Registry*, 791 F.2d 157, 229 USPQ 818 (Fed. Cir. 1986); *In re MetPath Inc.*, 223 USPQ 88 (TTAB 1984); *In re Bright?Crest, Ltd.*, 204 USPQ 591 (TTAB 1979); TMEP §1209.01(b). A mark that describes an intended user of a product or service is also merely descriptive within the meaning of Section 2(e)(1). *Hunter Publishing Co. v. Caulfield Publishing Ltd.*, 1 USPQ2d 1996 (TTAB 1986); *In re Camel Mfg. Co., Inc.*, 222 USPQ 1031 (TTAB 1984); *In re Gentex Corp.*, 151 USPQ 435 (TTAB 1966).

The examining attorney has determined that the proposed mark is merely descriptive of a feature and purpose of the services. The examining attorney has provided dictionary evidence for the wording "I" and phone. The recitation of services indicates that the services are provided through mobile phone devices that connect to the Internet.

### **CLAIM OF ACQUIRED DISTINCTIVENESS**

In response to the refusal of the mark under Section 2(e)(1), applicant has claimed acquired distinctiveness under Section 2(f) in the alternative. The claim is based upon evidence submitted by applicant.

The examining attorney has considered the evidence but has determined that applicant has not met the burden of establishing acquired distinctiveness. It is noted that the instant application is based upon an

intent to use the mark in commerce. As indicated in the response, an intent-to-use applicant who has used **the mark on related goods and/or services** may file a claim of acquired distinctiveness under Trademark Act Section 2(f) before filing an allegation of use **if applicant can establish that, as a result of applicant's use of the mark on other goods and/or services, the mark has become distinctive of the goods and/or services in the intent-to-use application, and that this previously created distinctiveness will transfer to the goods and/or services in the intent-to-use application when use in commerce begins.** *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 1347, 57 USPQ2d 1807, 1812 (Fed. Cir. 2001); TMEP §1212.09(a).

The Trademark Trial and Appeal Board has set forth the requirements for showing that a mark in an intent-to-use application has acquired distinctiveness:

- (1) Applicant must establish that the same mark has acquired distinctiveness as to the other goods and/or services, by submitting evidence such as ownership of a prior registration for the same mark for related goods and/or services, a *prima facie* showing of acquired distinctiveness based on five years' use of the same mark with related goods and/or services, or actual evidence of acquired distinctiveness for the same mark with respect to the other goods and/or services; *and*
- (2) Applicant must show the extent to which the goods and/or services recited in the intent-to-use application are related to the goods and/or services in connection with which the mark has acquired distinctiveness to warrant the conclusion that the previously created distinctiveness will transfer to the goods and/or services in the application upon use. The showing necessary to establish relatedness will be decided on a case by case basis and will depend upon the nature of the goods and/or services involved and the language used to identify them in the application.

*Kellogg Co. v. Gen. Mills Inc.*, 82 USPQ2d 1766, 1771 (TTAB 2007); *In re Rogers*, 53 USPQ2d 1741, 1744-45 (TTAB 1999); TMEP §1212.09(a).

In connection with the factors above, it is noted that applicant is not the owner of a prior registration for the wording IPHONE. In addition, applicant has not made a *prima facie* showing of acquired distinctiveness based on five years' use of the same mark with related goods and/or services. Applicant argues that IPHONE has acquired distinctiveness based upon evidence that 1) applicant is the owner of other registrations beginning with the letter "I" in the consumer electronics field; 2) that applicant's January 2007 announcement of product launching received nationwide attention, which reinforced secondary meaning for the proposed mark IPHONE; and 3) IPHONE is widely recognized by consumers as a trademark identifying Apple's mobile devices; 4) IPHONE will be perceived as distinctive when used in connection with related services covered by this application; 5) IPHONE is unique to Apple in relation to the identified services.

With respect to applicant's ownership of other "I" marks, the examining attorney has determined that ownership of those registrations does not establish that the proposed mark IPHONE has acquired distinctiveness because the marks, which are the subject of prior registrations, are different than the proposed mark IPHONE.

With respect to applicant's argument that IPHONE is unique in the International Classes of services identified in this application, the examining attorney submits that applicant has not established via evidence that the mark IPHONE has acquired distinctiveness in the minds of consumers as a source

indicator for the identified services.

Applicant has also provided sales and advertising evidence. That applicant has high sales of the goods or services at issue, and has significant advertising expenditures, does not mean that the proposed mark has achieved distinctiveness. Standing alone, the sales figures and advertising expenditures demonstrate the success of applicant's goods and/or services, but not that relevant consumers have come to view the proposed mark as applicant's mark for such goods and/or services. These statements and exhibits merely tend to show that applicant has undertaken extensive promotions and has achieved commercial success. *See In re Busch Entertainment Corp.*, 60 USPQ2d 1130 (TTAB 2000); *In re Leatherman Tool Group Inc.*, 32 USPQ2d 1443 (TTAB 1994); *In re Franklin Mint Corporation*, 209 USPQ 172, 174 (TTAB 1980); *In re Behre Industries Inc.*, 203 USPQ 1030 (TTAB 1979).

Similarly, applicant's advertising expenditures are merely indicative of its efforts to develop distinctiveness, not evidence that the mark has acquired distinctiveness. *See In re Pennzoil Products Co.*, 20 USPQ2d 1753 (TTAB 1991).

Finally, applicant argues that its intended use of IPHONE with the identified services is related to use of the proposed mark with the mobile phone devices. Therefore, applicant argues, acquired distinctiveness of the mark in connection with the mobile phone devices transfers to the services in this application. The examining attorney respectfully disagrees.

It is noted that applicant has also claimed acquired distinctiveness for Class 9 goods in US Application No. 77078484. The claim was considered and has been rejected because applicant has not met the burden to establish that IPHONE has acquired distinctiveness as a source indicator for mobile phone devices in general. **This is because the proposed mark IPHONE is highly descriptive of mobile phone devices and related parts.** Please see the enclosed evidence from applicant's website describing the mobile phone devices as providing Internet access.

The burden of proving that a mark has acquired distinctiveness is on applicant. *See In re Meyer & Wenthe, Inc.*, 267 F.2d 945, 122 USPQ 372 (C.C.P.A. 1959). Applicant must establish that the purchasing public has come to view the proposed mark as an indicator of origin. Allegations of sales and advertising expenditures cannot per se establish that a term has acquired significance as a mark. It is necessary to examine the advertising material to determine how the term is used, the commercial impression created by such use, and the significance the term would have to prospective purchasers. The ultimate test in determining acquisition of distinctiveness under Trademark Act Section 2(f) is not applicant's efforts, but applicant's success in educating the public to associate the claimed mark with a single source. *In re Packaging Specialists, Inc.*, 221 USPQ 917 (TTAB 1984); *Congoleum Corp. v. Armstrong Cork Co.*, 218 USPQ 528 (TTAB 1983); *Bliss & Laughlin Industries Inc. v. Brookstone Co.*, 209 USPQ 688 (TTAB 1981). Based upon the current of evidence of record, applicant has not met the burden to establish acquired distinctiveness of IPHONE in connection with the identified services.

### **Informalities**

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration. If the applicant chooses to respond to the refusal to register, the applicant must also respond to the following issues.

### Recitation of Services-Classes 41 and Class 42

It is noted that applicant has properly amended the recitation of services in Class 38. The examining attorney notes additional requirements in connection with the recitation of services for Classes 41 and 42.

Applicant must clarify the identification of services by clarifying the wording “providing databases and directories via communications networks in the fields of music, video, film, books, television, games and sports; and providing consultation services relating to all the aforesaid” currently identified in Class 41 because the wording is indefinite and could include services in other Classes. The same is the case with the wording “providing indexes of information, sites and other resources available on global computer networks for others” currently in Class 42. Applicant should note that “creating indexes” is a service properly classified in Class 42 but providing indexes may be classified in other classes related to the subject matter of the indexes.

In addition, the wording “information relating to computer hardware or software provided on-line from a global computer network or the Internet” requires clarification. TMEP §1402.01. This is because information services are classified in accordance with the subject matter of the information. In this case, the subject matter and relation to computer hardware and software is unclear.

For assistance with identifying and classifying goods and/or services in trademark applications, please see the online searchable *Manual of Acceptable Identifications of Goods and Services* at <http://tess2.uspto.gov/netahtml/tidm.html>.

Applicant may adopt the following, if accurate:

- Entertainment services, namely, providing on-line computer databases and directories featuring information in the field of music, video, film, book reviews, television entertainment, games and sports; and providing consultation services relating to all the aforesaid. (Class 41).
- Design and development of computer hardware and software; computer hardware and software consulting services; multimedia and audio-visual software consulting services; computer programming; providing technical troubleshooting support for computer systems, databases and applications; providing consultation services for developing computer systems, databases and applications; providing computer programming information {must indicate type of information provided} relating to computer hardware or software provided on-line from a global computer network or the Internet; creating and maintaining web-sites; providing search engines for obtaining data via communications networks; providing temporary use of on-line non-downloadable software to enable users to program audio, video, text and other multimedia content, including music, concerts, videos, radio, television, news, sports, games, cultural events and entertainment-related programs; computer services, namely, hosting on-line facilities, via global computer network, to enable users to program the scheduling of audio, video, text and other multimedia content, including music, concerts, videos, radio, television, news, sports, games, cultural events, and entertainment-related programs as they will be aired; providing search engines for obtaining data on a global computer network; customized searching at the specific request of end users, allowing the end user to browse and retrieve information, sites, and other resources available on global computer networks; acting as an application service provider in the field of knowledge management to host computer application software for searching and retrieving information from databases and computer networks; computer services, namely,

creating indexes and databases that organize the content of information provided over a global computer network according to user preference; and consultation services relating to all the aforesaid. (Class 42).

TMEP §1402.01.

Please note that, while the identification of services may be amended to clarify or limit the services, adding to the services or broadening the scope of the services is not permitted. 37 C.F.R. §2.71(a); TMEP §1402.06. Therefore, applicant may not amend the identification to include services that are not within the scope of the services set forth in the present identification.

### **Conclusion**

If applicant has questions about its application or needs assistance in responding to this Office action, please telephone the assigned trademark examining attorney directly at the number below.

/Linda M. Estrada/  
Trademark Attorney, Law Office 104  
U.S. Patent & Trademark Office  
(571) 272-9298  
(571) 273-9104 Fax

**RESPOND TO THIS ACTION:** If there are any questions about the Office action, please contact the assigned examining attorney. A response to this Office action should be filed using the form available at <http://www.uspto.gov/teas/eTEASpageD.htm>. If notification of this Office action was received via e-mail, no response using this form may be filed for 72 hours after receipt of the notification. **Do not attempt to respond by e-mail as the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

**STATUS CHECK:** Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

Applicant argues that its intended use of IPHONE with the identified Class 9 goods and Class 41 services is related to use of the proposed mark with the mobile phone devices in Class 9. Therefore, applicant argues, acquired distinctiveness of the mark in connection with the mobile phone devices in Class 9 transfers to the goods and services in this application. The examining attorney respectfully disagrees.

The examining attorney submits that applicant has not established via evidence that the mark IPHONE has acquired distinctiveness in the minds of consumers in connection with the identified services in Class 41. Further, it is noted that applicant has also claimed acquired distinctiveness for Class 9 goods in US Application No. 77078484. The claim was considered and has been rejected because applicant has not met the burden to establish that IPHONE has acquired distinctiveness as a source indicator for the goods in Class 9 including mobile phone devices. This is because the proposed mark IPHONE is highly descriptive of mobile phone devices and related parts.

The burden of proving that a mark has acquired distinctiveness is on applicant. *See In re Meyer & Wenthe, Inc.*, 267 F.2d 945, 122 USPQ 372 (C.C.P.A. 1959). Applicant must establish that the purchasing public has come to view the proposed mark as an indicator of origin. Allegations of sales and advertising expenditures cannot per se establish that a term has acquired significance as a mark. It is necessary to examine the advertising material to determine how the term is used, the commercial impression created by such use, and the significance the term would have to prospective purchasers. The ultimate test in determining acquisition of distinctiveness under Trademark Act Section 2(f) is not applicant's efforts, but applicant's success in educating the public to associate the claimed mark with a single source. *In re Packaging Specialists, Inc.*, 221 USPQ 917 (TTAB 1984); *Congoleum Corp. v. Armstrong Cork Co.*, 218 USPQ 528 (TTAB 1983); *Bliss & Laughlin Industries Inc. v. Brookstone Co.*, 209 USPQ 688 (TTAB 1981). Based upon the current of evidence of record, applicant has not met the burden to establish acquired distinctiveness of IPHONE in connection with the identified services.

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**SERIAL NO:** 77/078496

**MARK:** IPHONE

**\*77078496\***

**CORRESPONDENT ADDRESS:**

Thomas R. La Perle  
Apple Inc.  
MS: 3TM  
1 Infinite Loop  
Cupertino CA 95014

**GENERAL TRADEMARK INFORMATION:**

<http://www.uspto.gov/main/trademarks.htm>

**APPLICANT:** APPLE INC.

**CORRESPONDENT'S  
REFERENCE/DOCKET NO:** N/A

**CORRESPONDENT E-MAIL ADDRESS:**

**EXAMINER'S AMENDMENT**

**ISSUE/MAILING DATE:**

**OFFICE SEARCH:** The examining attorney has searched the Office's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). 15 U.S.C. §1052(d); TMEP §704.02. The refusal of the mark under Section 2(d) of the Trademark Act is withdrawn as a result of the consent agreement submitted by applicant.

**AMENDMENT:** In accordance with the authorization granted by Thomas R. LaPerle, Esquire on August 31, 2009, the application has been AMENDED as indicated below. Please advise the undersigned examining attorney immediately if there is an objection to the amendment. Otherwise, no response is necessary. TMEP §707.

If the identification of goods and/or services has been amended, please note that any future amendments must be in accordance with 37 C.F.R. §2.71(a) and TMEP §1402.07(e).

**Claim of Acquired Distinctiveness**

The following claim of acquired distinctiveness has been entered into the application record.

**The mark has become distinctive of the services as evidenced by ownership of U.S. Registration No(s). 3669402 on the Principal Register for the same mark for related goods.**

TMEP §1212.04(e); *see* 37 C.F.R. §2.41(b).

**Claim of Ownership of a Prior Registration**

The following claim of ownership of a prior registration is included in this application:

- **Applicant is the owner of U.S. Registration No. 3669402.**

/Linda M. Estrada/  
Trademark Attorney, Law Office 104  
U.S. Patent & Trademark Office  
(571) 272-9298  
(571) 273-9104 Fax

**STATUS CHECK:** Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

**Exhibit D**

**Compaq Mini netbook<sup>†</sup>****Get It To**

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## Gartner: Apple's iPhone was No. 3 worldwide smartphone in 2009

By [Slash Lane](#)

Published: 09:05 AM EST

**After more than doubling its total sales from a year prior, the iPhone platform was catapulted into third place in global smartphone sales in 2009, with Apple shipping 24.9 million handsets.**

Apple took an estimated 14.4 percent of the total mobile operating system market, according to Gartner, which put it behind only Nokia's Symbian platform, which had 46.9 percent on 80.9 million sales, and Research in Motion, which carried 19.9 percent with 34.3 million units sold.

The big gainers in 2009 were Apple, Google and RIM, which all saw significant increases in their market share. In 2008, Apple commanded just 8.2 percent of the market with 11.4 million units sold. But the company's share grew 6.2 percent in 2009, giving it the largest increase of any handset maker and helping it to displace Windows Mobile.

Apple was helped by a [strong finish](#) in 2009. In the last quarter alone, the company sold a [record 8.7 million](#) iPhones, representing 100 percent growth over the year-ago quarter.

Android jumped from under a percent share in 2008 to 3.9 percent in 2009, and RIM added more than

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10 million unit sales in 2009.

"Android's success experienced in the fourth quarter of 2009 should continue into 2010 as more manufacturers launch Android products, but some (communication service providers) and manufacturers have expressed growing concern about Google's intentions in the mobile market," said Roberta Cozza, principal research analyst with Gartner. "If such concerns cause manufacturers to change their product strategies or CSPs to change which devices they stock, this might hinder Android's growth in 2010."

Android's growth put it in sixth place, behind Microsoft's Windows Mobile and Linux in fourth and fifth, respectively. Coming in seventh was Palm's Web OS, which took just 0.7 percent of the global market based on 1.2 million units sold. All other mobile operating systems accounted for 0.6 percent of the smartphone share worldwide.

Platform	2009 Unit Share	2009 Market Share	2008 Unit Share	2008 Market Share
Symbian	80,878.6	46.9%	72,933.5	54.2%
RIM	34,346.6	19.9%	23,149.0	16.6%
iPhone OS	24,889.8	14.4%	11,417.5	8.2%
Windows Mobile	15,027.6	8.7%	16,498.1	11.8%
Linux	8,126.5	4.7%	10,622.4	7.6%
Android	6,798.4	3.9%	640.5	0.5%
WebOS	1,193.2	0.7%	NA	NA
Other OSes	1,112.4	0.6%	4,026.9	2.9%
<b>Total</b>	<b>172,373.1</b>	<b>100.0%</b>	<b>139,287.9</b>	<b>100.0%</b>

Worldwide Smartphone Sales to End Users by Operating System in 2009 (Thousands of Units). Source: Gartner.

Losing ground in 2009 was Nokia, which saw its Symbian platform drop from 52.4 percent a year prior to 46.9 percent. Nokia, however, remains the dominant smartphone market leader, with more unit sales than Apple, RIM and Microsoft combined.

"Symbian had become uncompetitive in recent years, but its market share, particularly on Nokia devices, is still strong," Cozza said. "If Symbian can use this momentum, it could return to positive growth."

In all, 172.3 million smartphones were sold in 2009, well up from the 139.3 million shipped in the 2008 calendar year.

Total cell phone sales were 1.2 billion in 2009, down 0.9 percent from 2008. Again the top company was Nokia, which represented 36.4 percent of overall sales. The Finnish brand sold 441 million

handsets in the calendar year, losing 2.2 percent of its share from 2008.

In second was Samsung with 19.6 percent of the market and 236 million units sold, followed in order by LG, Motorola and Sony Ericsson. All other brands accounted for 24.7 percent of sales, or 299 million units.

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# Apple's App Store Downloads Top Three Billion

CUPERTINO, California—January 5, 2010—Apple® today announced that more than three billion apps have been downloaded from its revolutionary App Store by iPhone® and iPod touch® users worldwide.

“Three billion applications downloaded in less than 18 months—this is like nothing we’ve ever seen before,” said Steve Jobs, Apple’s CEO. “The revolutionary App Store offers iPhone and iPod touch users an experience unlike anything else available on other mobile devices, and we see no signs of the competition catching up anytime soon.”

iPhone and iPod touch customers in 77 countries worldwide can choose from an incredible range of apps in 20 categories, including games, business, news, sports, health, reference and travel.

Apple ignited the personal computer revolution in the 1970s with the Apple II and reinvented the personal computer in the 1980s with the Macintosh. Today, Apple continues to lead the industry in innovation with its award-winning computers, OS X operating system and iLife and professional applications. Apple is also spearheading the digital media revolution with its iPod portable music and video players and iTunes online store, and has entered the mobile phone market with its revolutionary iPhone.

**Press Contacts:**

Trudy Muller  
Apple  
tmuller@apple.com  
(408) 862-7426

Natalie Kerris  
Apple  
nat@apple.com  
(408) 974-6877

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