

## Will Apple's Patents Banish HTC Phones?

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Weighing the potential outcomes of [Apple's patent infringement lawsuit](#) against HTC, several IP and patent lawyers say HTC's phones could be barred from the United States, but both sides will probably look for a licensing agreement before getting to that point.

To recap, Apple sued HTC for allegedly infringing 20 patents in its mobile phones. The lawsuit calls out popular Android phones such as the [Google Nexus One](#) and the [Droid Eris](#), but also mentions the Windows Mobile-powered Imagio. What makes this lawsuit particularly interesting is that Apple filed with the U.S. International Trade Commission, which has the power to stop infringing products from being imported stateside, as well as the U.S. District Court in Delaware.

Of course, it's impossible to say whether Apple can win without having an attorney spend days or weeks looking through the individual claims, but Jason Webb, patent attorney for Webb IP Law Group, thinks Apple has reason to be confident. "It makes a huge difference that it is twenty patents instead of just one," he wrote in a e-mail. Michael Downs, a partner in the patent law firm Fincham Downs LLC, agreed, noting that Apple has used some of the same patents in [a counter-lawsuit against Nokia](#).

So let's just assume that Apple's lawsuit has merit. Experts say an injunction is possible, but not guaranteed.

Alex Poltorak, chairman of the [General Patent Corporation](#), which represents independent inventors against large companies, lays out a juicy scenario: If the trade commission rules in favor of Apple, HTC would have little choice but to license Apple's patents. Apple would then have the option to crush HTC in the United States by refusing to license, resulting in an injunction.

There is a chance HTC could modify its phones to the point that they no longer infringe Apple's patents, but the attorneys I contacted wonder whether this is even possible. With a such a large number of patents, some of them quite broad, it'll really depend on the trade commission's ruling. In any case, HTC would have to work with Google to banish any infringing features, said Webb.

Alan Tenenbaum, a patent litigation attorney with Cohen, Pontani, Lieberman & Pavane LLP, offers a different take: HTC and Google aren't foolish, and they're surely prepared to make their own claims against Apple. As [HTC noted](#) in response to the lawsuit, it has its own stable of patents. Tenenbaum says the case could either be settled quickly out of court, or escalated with both sides making counterclaims against each other and eventually negotiating a settlement. In both cases, the likely result would be a cross-licensing deal -- a boring outcome, perhaps, but one that seems reasonable.

That jives with a the opinion of Mark A. Goldstein of SoCal IP Law Group. He's surprised Apple filed so many claims, because doing so makes litigation "unworkable." A license or cross-license of patents seems like the most likely outcome to him.

Several attorneys said this case won't take long to resolve, at least on the injunction side. Downs said the trade commission usually rules on cases in 15 months, compared to two or three years for District Courts. Peter Toren, lead IP partner with Kasowitz, Benson, Torres & Friedman LLP and formerly with the Department of Justice's Computer Crime & IP unit, thinks a resolution is just six months away.

Given the response from these attorneys, I wouldn't go stockpiling Nexus Ones just yet.

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