



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-800]

Certain Wireless Devices with 3G Capabilities and Components Thereof

Commission Determination to Review the Final Initial Determination Finding No

Violation of Section 337 in Its Entirety

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in its entirety, the final initial determination issued by the presiding administrative law judge (“ALJ”) finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, (“section 337”) in the above identified investigation.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 31, 2011, based on a complaint filed by InterDigital Communications, LLC of King of Prussia, Pennsylvania; InterDigital Technology Corporation of Wilmington, Delaware; and IPR Licensing, Inc. of Wilmington, Delaware (collectively, “InterDigital”). 76 FR 54252 (Aug. 31, 2011). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wireless devices with 3G capabilities and components thereof by reason of infringement of certain claims of United States Patent Nos. 7,349,540 (terminated from the investigation); 7,502,406; 7,536,013; 7,616,970; 7,706,332; 7,706,830; and 7,970,127. The notice of investigation named the following entities as respondents: Huawei Technologies Co., Ltd. of Shenzhen, China; FutureWei Technologies, Inc. d/b/a Huawei, Technologies (USA) of Plano, Texas; Nokia Corporation of Espoo, Finland; Nokia Inc. of White Plains, New York; ZTE Corporation of Shenzhen, China; and ZTE (USA) Inc. of Richardson, Texas (collectively, “Respondents”). The complaint and notice of investigation were subsequently amended to allege infringement of certain claims of United States Patent No. 8,009,636 (the ’636 patent) and to add the following entities as respondents: LG Electronics, Inc. of Seoul Korea; LG Electronics U.S.A., Inc. of Englewood Cliffs, New Jersey; and LG Electronics Mobilecomm U.S.A., Inc. of San Diego, California (collectively, “LG”). 76 FR 81527 (Dec. 28, 2011). The complaint and notice of investigation were further amended to include Huawei Device USA of Plano, Texas as a respondent. 77 FR 26788 (May 7, 2012).

InterDigital Communications, LLC subsequently moved for leave to amend the Complaint and Notice of Investigation to reflect the fact that it converted from a Pennsylvania limited liability company to a Delaware corporation, and changed its name to InterDigital Communications, Inc. The ALJ issued an ID granting the motion and the Commission determined not to review. *See* Order No. 91 (Jan. 17, 2013); Notice of Commission Determination Not to Review an Initial Determination Granting Complainants' Motion for Leave to Amend the Complaint and Notice of Investigation (Feb. 4, 2013).

On June 4, 2012, the ALJ granted a motion by LG under 19 CFR 210.21(a)(2) to terminate the investigation as to LG based on an arbitration agreement. *See* Order No. 30 (June 4, 2012). The Commission determined not to review. *See* Notice of Commission Determination Not to Review an Initial Determination Terminating Certain Respondents From the Investigation (July 6, 2012). InterDigital appealed LG's termination from this investigation, and the Federal Circuit reversed the Commission's determination.

InterDigital Commc'ns, LLC v Int'l Trade Comm'n, No. 2012-1628 (Fed. Cir. June 7, 2013).

On June 28, 2013, the ALJ issued his final ID, finding no violation of section 337 by Respondents. Specifically, the ALJ found that the Commission has subject matter jurisdiction, *in rem jurisdiction* over the accused products, and *in personam* jurisdiction over the respondents. The ALJ also found that the importation requirement of section 337 (19 U.S.C. 1337(a)(1)(B)) has been satisfied. The ALJ, however, found that the accused products do not infringe asserted claims 1-3 and 5 of the '830 patent; asserted claims 1, 2, 4, and 6-8 of the '636 patent; asserted claims 6, 13, 20, 26, and 29 of the '406

patent; asserted claims 2-4, 7 - 11, 14, 22 - 24, and 27 of the '332 patent; asserted claims 1-7 of the '127 patent; asserted claims 16-19 of the '013 patent; or asserted claims 10-18 of the '970 patent. The ALJ found that the accused products meet each limitation of claims 1-9 of the '970 patent but found that all the asserted claims, claims 1-18, of the '970 patent are invalid in view of the prior art. The ALJ also found that asserted claims 1-7 of the '127 patent and asserted claims 16-19 of the '013 patent are invalid in view of the prior art. The ALJ, however, found that Respondents failed to establish by clear and convincing evidence that the asserted claims of the '830, '636, '406 or '332 patents were invalid in light of the cited prior art references. The ALJ also found that the Respondents failed to prove that they hold licenses under the asserted patents and failed to prevail on their equitable/FRAND defenses. The ALJ further found that InterDigital established the existence of a domestic industry.

On July 15, 2013, InterDigital filed a petition for review of the ID. That same day, the Commission Investigative Attorney and Respondents filed separate petitions for review. Respondents also filed a contingent petition for review. On July 23, 2013, the parties filed responses to the petitions and contingent petition for review.

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in its entirety.

In connection with its review, the Commission is particularly interested in responses to the following question:

Please discuss, in light of the statutory language, legislative history, the Commission's prior decisions, and relevant

court decisions, including *InterDigital Commc'ns, LLC v. Int'l Trade Comm'n*, 690 F.3d 1318 (Fed. Cir. 2012), and 707 F.3d 1295 (Fed. Cir. 2013), whether establishing a domestic industry based on licensing under 19 U.S.C. 1337 (a)(3)(C) requires proof of “articles protected by the patent” (*i.e.*, a technical prong). If so, please identify and describe the evidence in the record that establishes articles protected by the asserted patents.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. The Commission, however, is not interested in receiving written submissions that address the form of remedy and bonding, if any, or the public interest at this time.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issue identified in this notice. The written submissions must be filed no later than close of business on September 27, 2013. Initial submissions are limited to 15 pages. Reply submissions must be filed no later than the close of business on October 4, 2013. Reply submissions are limited to 10 pages. No further submissions on this issue will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the

Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (“Inv. No. 337-TA-800”) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42-46 and 210.50 of the Commission’s Rules of Practice and Procedure (19 CFR 210.42-46 and 210.50).

By order of the Commission.

Issued: September 4, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

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