



7020-02

INTERNATIONAL TRADE COMMISSION

Investigation No. 337-TA-994

Certain Portable Electronic Devices and Components Thereof

Commission Determination not to Review the 100-Day Initial Determination Finding the Asserted Claims of U.S. Patent No. 6,928,433 Invalid Under 35 U.S.C. § 101; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the 100-day initial determination (“ID”) of the presiding administrative law judge (“ALJ”) finding the asserted claims of U.S. Patent No. 6,928,433 invalid under 35 U.S.C. § 101. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-4716. 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 <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://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 Investigation No. 337-TA-994 on May 11, 2016, based on a complaint filed by Creative Technology Ltd. of Singapore

and Creative Labs, Inc. of Milpitas, California (collectively, “Creative”). *See* 81 Fed. Reg. 29307 (May 11, 2016). The complaint alleges 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 portable electronic devices and components thereof by reason of infringement of certain claims of U.S. Patent No. 6,928,433 (“the ’433 patent”). The notice of investigation named the following respondents: ZTE Corporation of Guangdong, China; ZTE (USA) Inc. of Richardson, Texas; Sony Corporation of Tokyo, Japan; Sony Mobile Communications, Inc. of Tokyo, Japan; Sony Mobile Communications AB of Lund, Sweden; Sony Mobile Communications (USA), Inc. of Atlanta, Georgia; Samsung Electronics Co., Ltd. of Seoul, Republic of Korea; Samsung Electronics America, Inc. of Ridgefield Park, New Jersey; LG Electronics, Inc. of Seoul, Republic of Korea; LG Electronics U.S.A., Inc. of Englewood Cliffs, New Jersey; LG Electronics Mobilecomm U.S.A., Inc. of San Diego, California; Lenovo Group Ltd. of Beijing, China; Lenovo (United States) Inc. of Morrisville, North Carolina; Motorola Mobility LLC of Chicago, Illinois; HTC Corporation of Taoyuan, Taiwan; HTC America, Inc. of Bellevue, Washington; Blackberry Ltd. of Waterloo, Ontario, Canada; and Blackberry Corporation of Irving, Texas (collectively, “Respondents”). In addition, on May 19, 2016, the ALJ issued an initial determination granting Google Inc.’s (“Intervenor”) motion to intervene as a party in the investigation. *See* Order No. 5, *unreviewed*, Comm’n Notice (U.S.I.T.C. June 21, 2016). The Office of Unfair Import Investigations (OUII) is also a party to the investigation.

The notice of investigation also directed the ALJ to “hold an early evidentiary hearing, find facts, and issue an early decision, as to whether the asserted claims of the ’433 patent recite

patent-eligible subject matter under 35 U.S.C. § 101” (*i.e.*, the 100-day pilot program). *See* 81 Fed. Reg. 29307 (May 11, 2016).

Accordingly, the ALJ conducted an evidentiary hearing on July 6-7, 2016, and on August 19, 2016, within 100 days of institution, the ALJ issued his ID finding that the asserted claims are directed to ineligible subject matter (*i.e.*, invalid) under 35 U.S.C. § 101. In addition, although the ID noted that construction of the disputed term “portable media player” was not necessary to decide patent-eligibility under 35 U.S.C. § 101, the ALJ construed the term to mean “portable media playback device, as distinguished from a general-purpose device such as a handheld computer or a personal digital assistant.”

On August 29, 2016, Creative filed a petition for review and on September 1, 2016, Respondents, Intervenor, and OUII filed replies in opposition to Creative’s petition.

The Commission has determined not to review the ID. The investigation is terminated.

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 Part 210 of the Commission’s Rules of Practice and Procedure (19 C.F.R. Part 210).

By order of the Commission.

Issued September 21, 2016

Lisa R. Barton
Secretary to the Commission

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