



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1138]

Certain LTE- and 3G-Compliant Cellular Communications Devices; Commission Determination to Review in Part a Final Initial Determination Finding No Violation of Section 337 and, on Review, to Affirm the Final Initial Determination's Finding of No Violation; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that, on February 18, 2020, the presiding administrative law judge (“ALJ”) issued a final initial determination (“ID”) finding no violation of section 337 in the above-captioned investigation. The Commission has determined to review the ID in part and, on review, has determined to affirm the final ID’s finding of no violation. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3179. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on October 19, 2018, based on a complaint filed by INVT SPE LLC (“INVT”) of San Francisco, California. 83 *Fed. Reg.* 53105 (Oct. 19, 2018). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) (“Section 337”), in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain LTE- and 3G-compliant cellular communications devices by reason of infringement of certain claims of U.S. Patent Nos. 7,339,949 (“the ’949 patent”); 7,848,439 (“the ’439 patent”); 6,760,590 (“the ’590 patent”); 7,206,587 (“the ’587 patent”); and 7,764,711 (“the ’711 patent”). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The notice of investigation named as respondents Apple Inc. (“Apple”) of Cupertino, California; HTC Corporation of Taoyuan City, Taiwan; HTC America, Inc. of Seattle, Washington; ZTE Corporation of Guangdong, China; and ZTE (USA) Inc. of Richardson, Texas (collectively, the “Respondents”). *Id.* at 53106. The Office of Unfair Import Investigations (“OUII”) is also named as a party. *Id.*

The Commission later terminated the investigation as to: (1) the ’711 patent, Order No. 20 (Mar. 11, 2019), *unreviewed by* Comm’n Notice (Mar. 25, 2019); and (2) the ’949 patent and claim 3 of the ’439 patent, Order No. 46 (July 31, 2019), *unreviewed by* Comm’n Notice (Aug. 20, 2019). Remaining in the investigation are claims 3 and 4 of the ’590 patent, claim 4 of the ’587 patent, and claims 1 and 2 of the ’439 patent.

On February 18, 2020, the ALJ issued the final ID finding no violation of Section 337. *See ID.* On March 2, 2020, INVT and OUII each filed petitions for review of certain findings in the ID and Respondents filed a contingent petition for review. On March 17, 2020, the parties filed responses to each other’s petitions.

On April 3, 2020, the ALJ issued a Recommended Determination on the Public Interest, Remedy, and Bond (“RD”) recommending that, should the Commission reverse her findings in the ID and find a violation of Section 337, then the Commission should issue a limited exclusion order, with a delayed implementation, and cease and desist orders against each Respondent. RD at 3. The RD also recommends imposing no bond during the period of Presidential review. *Id.*

On April 8, 2020, Apple filed a motion for sanctions against INVT (“Apple Motion”). On April 20, 2020, INVT filed an opposition to the motion. On April 29, 2020, Apple filed a motion for leave to file a reply in support of its motion.

On May 4, 2020, the Commission received a submission on the public interest from INVT. On May 5, 2020, the Commission received submissions on the public interest from the following non-parties: (1) ACT / The App Association; (2) Cisco Systems, Inc., Dell Technologies, Inc., Hewlett Packard Enterprise Company, HP Inc., and the High Tech Inventors Alliance; and (3) Computer & Communications Industry Association. On May 6, 2020, the Commission also received a submission on the public interest from non-party Fair Standards Alliance.

Having reviewed the record in this investigation, including the ALJ’s orders and ID, as well as the parties’ petitions and responses thereto, the Commission has determined to review the ID in part, as follows:

The Commission has determined to review and, on review, take no position on the ID’s findings regarding the following issues: (1) whether INVT has standing before the Commission to assert the ’590, ’587, and ’439 patents; (2) whether INVT satisfied the economic prong of the

domestic industry requirement; and (3) whether Respondents' affirmative defenses of (i) patent exhaustion, (ii) equitable estoppel and waiver, and (iii) unclean hands bar the requested relief.

The Commission has determined not to review the remaining findings in the final ID.

Accordingly, the Commission has determined to affirm the final ID's finding of no violation of section 337. The investigation is terminated.

The Commission has also determined to deny Apple's motion for sanctions because the information at issue was not disclosed to unauthorized persons nor was it placed on the public record. *See* Apple Motion, Exh. 13.

The Commission vote for these determinations took place on June 1, 2020.

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 CFR Part 210.

By order of the Commission.

Issued: June 1, 2020.

Lisa Barton,

Secretary to the Commission.

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