



## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-853]

### CERTAIN WIRELESS CONSUMER ELECTRONICS DEVICES AND COMPONENTS THEREOF

#### NOTICE OF COMMISSION DETERMINATION FINDING NO VIOLATION OF SECTION 337; TERMINATION OF INVESTIGATION

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has found no violation of Section 337 in the above-referenced investigation. The investigation is terminated.

**FOR FURTHER INFORMATION CONTACT:** Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2301. 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 24, 2012, based on a complaint filed by Technology Properties Limited LLC and Phoenix Digital Solutions LLC, both of Cupertino, California; and Patriot Scientific Corporation

of Carlsbad, California (collectively “Complainants”). *77 Fed. Reg.* 51572-573 (August 24, 2012). 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, and the sale within the United States after importation of certain wireless consumer electronics devices and components thereof by reason of infringement of certain claims of U.S. Patent No. 5,809,336 (“the ’336 patent”). The Commission’s notice of investigation named the following as respondents: Acer, Inc. of Taipei, Taiwan and Acer America Corporation of San Jose, California (collectively “Acer”); Amazon.com, Inc. of Seattle, Washington (“Amazon”); Barnes and Noble, Inc. of New York, New York (“B&N”); Garmin Ltd of Schaffhausen, Switzerland, Garmin International, Inc. of Olathe, Kansas, and Garmin USA, Inc. of Olathe, Kansas (collectively “Garmin”); HTC Corporation of Taoyuan, Taiwan and HTC America of Bellevue, Washington (collectively “HTC”); Huawei Technologies Co, Ltd. of Shenzhen, China (“Huawei Tech.”); Huawei North America of Plano, Texas (“Huawei NA”); Kyocera Corporation of Kyoto, Japan and Kyocera Communications, Inc. of San Diego, California (collectively “Kyocera”); LG Electronics, Inc. of Seoul, Republic of Korea and LG Electronics U.S.A., Inc. of Englewood Cliffs, New Jersey (collectively “LG”); Nintendo Co. Ltd. of Kyoto, Japan and Nintendo of America, Inc. of Redmond, Washington (collectively “Nintendo”); Novatel Wireless, Inc. of San Diego, California (“Novatel”); Samsung Electronics Co., Ltd., of Seoul, Republic of Korea and Samsung Electronics America, Inc. of Ridgefield Park, New Jersey (collectively “Samsung”); Sierra Wireless, Inc. of British Columbia, Canada and Sierra Wireless America, Inc. of Carlsbad, California (collectively “Sierra”); and ZTE Corporation of Shenzhen, China and ZTE (USA) Inc. of Richardson, Texas (collectively “ZTE”). The Office of Unfair Import Investigations was named as a participating party.

The Commission later amended the Notice of Investigation to remove Huawei NA as a respondent and to add Huawei Device Co., Ltd. of Shenzhen, China; Huawei Device USA Inc. of Plano, Texas; and Futurewei Technologies, Inc. d/b/a Huawei Technologies (USA) of Plano, Texas (“new Huawei respondents”) as respondents. *78 Fed. Reg.* 12354 (Feb. 22, 2013). The Commission later terminated respondents Sierra and Kyocera from the investigation. Notice (Feb. 4, 2013); Notice (Sept. 20, 2013). The Commission also terminated respondents Acer and Amazon from the investigation. *78 Fed. Reg.* 71643, 71644 (Nov. 29, 2013).

The active respondents in the investigation include: B&N, Garmin, HTC, Huawei Tech., the new Huawei respondents, LG, Nintendo, Novatel, Samsung, and ZTE. Nintendo was accused of infringing only claims 1 and 11, for which the Commission determined not to review the ALJ’s findings of no infringement. *Id.*

On September 6, 2013, the ALJ issued his final initial determination (“ID”), finding no violation of Section 337 with respect to all of the named respondents. Specifically, the ALJ found that the importation requirement of Section 337 is satisfied. The ALJ also found that none of the accused products directly or indirectly infringe the asserted claims of the ’336 patent. The ALJ further found that the asserted claims of the ’336 patent have not been found to be invalid. The ALJ also found that respondents have not shown that the accused LG product is covered by a license to the ’336 patent. The ALJ further found that Complainants have satisfied the domestic industry requirement pursuant to 19 U.S.C. § 1337(a)(3)(C) for the ’336 patent because Complainants’ licensing activities have a nexus to the ’336 patent and because Complainants’ licensing investments with respect to the ’336 patent are substantial. The ALJ also found that there are no public interest issues that would preclude issuance of a remedy were the Commission to find a violation of section 337. The ALJ also issued a recommended

determination, recommending that the appropriate remedy is a limited exclusion order barring entry of infringing wireless consumer electronics devices and components thereof against the active respondents. The ALJ did not recommend issuance of a cease and desist order against any respondent. The ALJ also did not recommend the imposition of a bond during the period of Presidential review. On September 12, 2013, the ALJ issued a Notice of Clarification supplementing the Final ID. Notice of Clarification Regarding Final Initial Determination (Sept. 12, 2013).

On September 23, 2013, Complainants filed a petition for review of certain aspects of the final ID concerning asserted claims 6 and 13 of the '336 patent. In particular, Complainants requested that the Commission review the ID's construction of the "entire oscillator" terms recited in claims 6 and 13 and the ID's infringement findings based on those limitations. Complainants also requested that the Commission review the ID's infringement findings concerning the limitations "varying," "independent," and "asynchronous" recited in claims 6 and 13. Also on September 23, 2013, the respondents who had not settled with Complainants filed a contingent petition for review of certain aspects of the final ID. In particular, the respondents requested review of the ID's finding that Complainants have satisfied the domestic industry requirement based on licensing activities. On October 17, 2013, the respondents filed a response to Complainants' petition for review. Also on October 17, 2013, Complainants filed a response to the respondents' contingent petition for review. Further on October 17, 2013, the IA filed a joint response to the private parties' petitions.

On October 17, 2013, Complainants filed a post-RD statement on the public interest pursuant to Commission Rule 210.50(a)(4). On October 23, 2013, the respondents also filed a submission pursuant to the rule. No responses from the public were received in response to the

post-RD Commission Notice issued on September 9, 2013. See Notice of Request for Statements on the Public Interest (Sept. 9, 2013).

On November 25, 2013, the Commission determined to review the final ID in part with respect to the ID's findings concerning claim construction and infringement of claims 6 and 13 of the '336 patent and domestic industry. 78 Fed. Reg. at 71644-45. The Notice of Review included briefing questions regarding the certain issues under review. Id. The Commission determined not to review the remaining issues decided in the final ID. Id. at 71644. The Commission also extended the target date for completion of the investigation to January 29, 2014. Id. at 71645.

On December 19, 2013, in response to a request from the parties, the Commission granted the parties an extension to file their reply submissions in response to the Commission's request for briefing to January 6, 2014, and further extended the target date for completion of the investigation to February 19, 2014. Notice (Dec. 19, 2013).

On December 23, 2013, the parties filed initial submissions responding to the Commission's request for briefing on review and concerning remedy, the public interest, and bonding. On January 6, 2014, the parties filed reply submissions. Several third parties filed submissions concerning the public interest, including: Sprint Spectrum, L.P.; CTIA—The Wireless Association®; and United States Cellular Corporation.

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review and the responses thereto, and the parties' submissions on review, the Commission has determined to find no violation of section 337 with respect to the '336 patent.

Specifically, the Commission affirms the ID's claim constructions as to claims 6 and 13 of the '336 patent.

Regarding infringement, the Commission affirms with modification the ALJ's finding that the accused products do not satisfy the "entire oscillator," "varying," and "external clock" limitations of claims 6 and 13. Moreover, the Commission affirms the ALJ's finding that Complainants failed to prove indirect infringement because they failed to prove direct infringement.

With respect to the domestic industry requirement, the Commission finds that Complainants have satisfied the economic prong of the domestic industry requirement based on modified reasoning.

The investigation is terminated.

The Commission will issue an opinion reflecting its decision within seven days of this notice.

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.

Lisa R. Barton  
Acting Secretary to the Commission

Issued: February 19, 2014

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