



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1380]

Certain Video Capable Electronic Devices, Including Computers, Streaming Devices, Televisions, and components and Modules Thereof; Notice of Commission Determination to Ratify the Prior Commission Actions in This Investigation and Review a Final Initial Determination of Violation of Section 337; Schedule for Filing Written Submissions on Certain Issues Under Review and Remedy, the Public Interest, and Bonding; Extension of the Target Date

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to ratify the prior Commission actions in this investigation and to review in its entirety a final initial determination (“Final ID”) issued by the presiding administrative law judge (“ALJ”) finding a violation of section 337 of the Tariff Act of 1930. The Commission requests briefing from the parties on certain issues under review and from the parties, interested government agencies, and interested persons on remedy, the public interest, and bonding based on the schedule set forth below. The Commission has also determined to extend the target date for the completion of the investigation to May 14, 2025.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 708-5468. 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 on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the above-captioned investigation on December 6, 2023, based on a complaint filed by complainants Nokia Technologies Oy and Nokia Corporation, both of Espoo, Finland ("Nokia"). 88 FR 84830-31 (Dec. 6, 2023). The complaint, as supplemented, alleges a violation of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain video capable electronic devices, including computers, streaming devices, televisions, and components and modules thereof by reason of the infringement of claims 6-9, 11, 15, 21, and 23 of U.S. Patent No. 7,724,818 ("the '818 patent"); claims 1-30 of U.S. Patent Nos. 10,536,714 ("the '714 patent"); claims 1-36 of U.S. Patent No. 11,805,267 ("the '267 patent"); claims 1, 5, 6, 8-13, 17, 18, 20-24, 26, 29-33, 35, and 38 of U.S. Patent No. 8,077,991 ("the '991 patent"); and claims 8-11 of U.S. Patent No. 8,050,321 ("the '321 patent"). *Id.* at 84830. The complaint further alleges that an industry in the United States exists. *Id.* The notice of investigation names as respondents HP, Inc. of Palo Alto, California ("HP"), and Amazon.com, Inc. and Amazon.com Services LLC, both of Seattle, Washington ("Amazon"). *Id.* The Office of Unfair Import Investigations ("OUII") is participating in the investigation for the purposes of the public interest only. *Id.* at 84831.

The Commission terminated the investigation based on a partial withdrawal of the complaint with respect to claims 7, 11, 21, and 23 of the '818 patent; claims 1-22, and 24-30 of the '714 patent; claims 1-24, and 28-36 of the '267 patent; claims 1, 5-6, 8-9, 10-13, 17, 18, 20-21, 23-24, 26, 30, 32, 33, and 35 of the '991 patent; and claims 9 and 11 of the '321 patent. Order No. 19 (Feb. 14, 2024), *unreviewed by* Comm'n Notice (Mar. 8, 2024) (terminating the investigation with respect to claim 23 of the '818 patent); Order No. 42 (Sept. 3, 2024), *unreviewed by* Comm'n Notice (Sept. 17, 2024) (terminating the investigation with respect to claims 11 and 21 of the '818 patent; claims 1-14, 16-22, and 24-30 of the '714 patent; claims 1-

6, 10-24, and 28-36 of the '267 patent; claims 1, 5-6, 8-9, 10-13, 17, 18, 20-21, 23-24, 26, 30, 32, 33, and 35 of the '991 patent and claims 9 and 11 of the '321 patent); Order No. 46 (Sept. 17, 2024), *unreviewed by* Comm'n Notice (Oct. 1, 2024) (terminating the investigation with respect to claim 7 of the '818 patent); Order No. 48 (Nov. 25, 2024), *unreviewed by* Comm'n Notice (Dec. 10, 2024) (terminating the investigation with respect to claim 15 of the '714 patent and claims 7-9 of the '267 patent). Accordingly, at the time of the Final ID, the asserted claims consisted of: claims 6, 8, 9 and 15 of the '818 patent; claims 8 and 10 of the '321 patent; claims 22, 29, 31, and 38 of the '991 patent; claims 15 and 23 of the '714 patent; and claims 7-9 and 25-27 of the '267 patent. Final ID at 6.

On August 12, 2024, the ALJ granted summary determination that Nokia failed to establish the economic prong of the domestic industry requirement under subsection 337(a)(3)(C) by failing to present evidence of a nexus between its investments and the domestic industry articles. Order No. 41 (Aug. 12, 2024). The Commission declined to review that ID. Comm'n Notice (Sept. 10, 2024).

The ALJ held an evidentiary hearing from September 9-13, 2024. Subsequently, the Commission terminated the investigation with respect to HP based on a settlement agreement. Order No. 49 (Nov. 27, 2024), *unreviewed by* Comm'n Notice (Dec. 10, 2024). Accordingly, at the time of the Final ID, only Amazon remained in the investigation as a respondent.

On December 20, 2024, the ALJ issued the Final ID finding a violation of section 337 by Amazon with respect to four patents—the '818, '321, '714, and '267 patents—and no violation with respect to the '991 patent. Final ID at 175. The Final ID found, *inter alia*, that (1) Nokia showed infringement and satisfaction of the technical prong of the domestic industry requirement for claims 6, 8, 9, and 15 of the '818 patent, and that Amazon did not show any of those claims invalid; (2) Nokia showed infringement and satisfaction of the technical prong of the domestic industry requirement for claims 8 and 10 of the '321 patent, and that Amazon did not show any of those claims invalid; (3) Nokia did not show infringement or satisfaction of the technical

prong of the domestic industry requirement for claims 22, 29, 31, and 38 of the '991 patent, and that Amazon showed that claims 22 and 31 are invalid; (4) Nokia showed infringement and satisfaction of the technical prong of the domestic industry requirement for claim 23 of the '714 patent but not for claim 15 of the '714 patent, and that Amazon did not show any of those claims invalid; and (5) Nokia showed infringement and satisfaction of the technical prong of the domestic industry requirement for claims 7-9 and 25-27 of the '267 patent, and that Amazon did show that claims 7, 25, and 26 were invalid. Final ID at 25-139; 174-75. The Final ID also found that Nokia satisfied the economic prong of the domestic industry requirement and rejected Amazon's defenses that Nokia breached its reasonable and non-discriminatory ("RAND") licensing obligations, as well as Amazon's defenses of implied waiver, waiver, equitable estoppel, patent misuse, and unclean hands. *Id.* at 140-54.

The ALJ also issued a recommended determination ("RD") on the public interest, remedy, and bond. The ALJ advised that the issuance of a remedial order against the infringing articles: (1) would not adversely affect public health and welfare because, while the accused products are used in health applications, they are not themselves medical devices; (2) would not adversely affect competitive conditions because Amazon does not have a large market share and suitable replacements exist; (3) would not negatively impact the production of like or directly competitive articles because no such competitive articles are produced in the United States; and (4) would not negatively impact U.S. consumers because suitable replacements exist and there is no evidence that Nokia breached its RAND obligations. *Id.* at 177-82. The ALJ then recommended that, if the Commission were to find a violation, it should issue a limited exclusion order ("LEO") with a certification provision and an exemption for service, repair, and replacement and cease and desist orders ("CDO") against Amazon based on their significant U.S. inventory and significant U.S. operations. *Id.* at 182-83. The ALJ recommended that the Commission issue a bond of zero percent based on Nokia's failure to justify a bond. *Id.* at 183.

On December 31, 2024, the Commission requested comments from the public and

interested government agencies regarding any public interest issues raised by the ALJ's RD. *See* 90 FR 670 (Jan. 6, 2025). The Commission received comments from Michael A. Carrier, a Rutgers Law Professor; four other law professors; the Fair Standards Alliance; the Computer and Communications Alliance Industry Association and Alliance for Automotive Innovation; ACT the App Association; and the ITC Modernization Alliance and High Tech Innovators Alliance. The Commission also received comments from Nokia pursuant to Commission Rule 210.50(a)(4). 19 CFR 210.50(a)(4).

On January 3, 2025, Amazon filed a petition for review challenging quorum and the Final ID's findings on the economic prong of the domestic industry requirement, various infringement, invalidity, and technical prong issues for the four patents for which violation was found, and implied waiver and breach of the obligation to provide a license on RAND terms.

That same day, Nokia filed a petition challenging the Final ID's finding of no violation for the '991 patent and finding that claims 25 and 26 of the '267 patent are invalid as obvious, and a contingent petition regarding aspects of the Final ID's findings on the '818, '321, and '714 patents, the economic prong, and the RAND defense. On January 13, 2025, Amazon and Nokia opposed each other's petitions.

Also on January 3, 2025, Amazon filed a motion to extend the target date for the completion of the investigation based on quorum issues. On January 15, 2025, Nokia opposed Amazon's motion. On January 24, 2025, Amazon acknowledged that the potential quorum issues no longer existed, but requested that the Commission extend the target date for the completion of the investigation based on a pending United Kingdom Court of Appeal proceeding concerning an interim license and RAND issues. The motion remains pending before the Commission.

On January 17, 2025, Nokia and Amazon filed a joint motion to reopen the record to correct mislabeling in two admitted exhibits and to submit three exhibits (which were admitted by the ALJ but inadvertently not submitted by Amazon) into the record. The motion indicates

that OUII takes no position on the motion due to its limited participation. The Commission has determined to grant the motion.

Before reaching the merits of whether to review the Final ID and in an abundance of caution, the Commission, after having fully reviewed the underlying facts and decisions, has determined to ratify all prior Commission actions taken in this investigation, including but not limited to its determination to institute this investigation, the delegation of this investigation to the ALJ for appropriate proceedings, initial determinations, and findings on the public interest, the naming of OUII as a party to this investigation, and the Commission's prior determinations declining to review the initial determinations of the presiding ALJ regarding termination of claims, the termination of HP as a respondent, and the grant in part of a motion for summary determination that Nokia failed to establish the economic prong of the domestic industry requirement under 19 U.S.C. 1337(a)(3)(C). 88 FR 84830-31; Comm'n Notice (Feb. 20, 2025); Comm'n Notice (Mar. 8, 2024); Comm'n Notice (Sept. 10, 2024); Comm'n Notice (Sept. 17, 2024); Comm'n Notice (Oct. 1, 2024); Comm'n Notice (Dec. 10, 2024); *Advanced Disposal Services East, Inc. v. N.L.R.B.*, 820 F.3d 592, 602-06 (3d Cir. 2016). Amazon does not dispute that the Commission currently has quorum under its statute, 19 U.S.C. 1330(c)(6).

Having examined the record of this investigation, including the Final ID, the petitions for review, and the responses thereto, the Commission has determined to review the Final ID in its entirety. The Commission has also determined to extend the target date for the competition of the investigation to May 14, 2025.

In connection with its review, the Commission is interested in responses to the following questions. The parties are requested to brief their positions with reference to the applicable law, the existing evidentiary record, and the parties' submissions during the investigation.

1. Citing the evidentiary record, please describe the extent to which the Microsoft Xbox chipsets are customized and the extent to which Microsoft is involved in such customization. Please explain how such customization impacts the analysis under the *Magnetic Tapes* factors—"whether the patented technology is sold as a separate entity or article of commerce; whether it is an essential component of the

downstream product; and whether the domestic industry activities have a direct relationship to exploitation of the patented technology.” See *Certain Magnetic Tape Cartridges*, Inv. No. 337-TA-1058, Comm’n Op. at 48-50 (Apr. 9, 2019).

2. What is the evidence that Nokia’s licensees’ R&D activities and investments in their downstream products “have a direct relationship to the exploitation of the patented technology” of each asserted patent? Please explain what that direct relationship is. Under the rationale of *Magnetic Tapes*, at what point would domestic industry activities no longer have a direct relationship to exploitation of the patented technology such that the activities should not be considered “with respect to the article protected by the patent”? How is the consideration of the relationship of domestic activities asserted under subsection (A) or (B) to exploitation of the patented technology under the rationale of *Magnetic Tapes* different than the consideration of the relationship of the asserted activities to exploitation of the patented technology under subsection (C)?
3. In determining whether domestic research and development (R&D) investments are significant under subsection 337(a)(3)(A), should the Commission consider all worldwide plant and equipment investments related to the article protected by each patent or only worldwide R&D-related plant and equipment expenses? Likewise, in determining whether domestic R&D investments are significant under subsection 337(a)(3)(B), should the Commission consider all worldwide labor and capital investments related to the article protected by each patent or only worldwide R&D-related labor and capital expenses? Please discuss the evidence of record as to these contextual analyses.
4. Please address whether the Commission should continue allowing investments related to engineering, research and development to qualify for a domestic industry under subsections 337(a)(3)(A) and (B). See *Certain Solid State Storage Drives, Stacked Electronic Components, and Products Containing Same*, Inv. No. 337-TA-1097, Comm’n Op. (June 29, 2018). If engineering, research and development investments can still be considered under subsections (A) and (B), should the Commission consider a different basis for determining significance of those investments under subsections (A) and (B) than what should be considered in determining whether those investments are substantial under subsection (C)?
5. When the complainant alleges that an asserted patent is a standard essential patent, subject to reasonable, and non-discriminatory (RAND) licensing terms, is the complainant precluded from seeking an exclusion order and/or cease and desist order based on infringement of that patent? Should the Commission consider RAND licensing obligations as a legal or equitable defense (*i.e.*, as part of its violation determination) under section 337(c), 19 U.S.C. 1337(c) or as part of its consideration of the public interest factors under section 337(d)(1) and (f)(1)? Please discuss theories in law, equity, and the public interest, and identify which (if any) of the public interest factors of 337(d)(1) and (f)(1) preclude issuance of such an order.
6. In the event a violation is found, does the information regarding the parties’ RAND obligations and licensing attempts inform any particular public interest factor that the Commission should consider under section 337(d)(1) and (f)(1)? If

so, please identify which factor it informs and explain why, including the relevant evidence of record. As part of its public interest analysis, should the Commission determine whether any prior license offer made by the patent holder covering the accused products is reasonable and non-discriminatory? If so, what evidence should the Commission consider in determining whether offers are reasonable and non-discriminatory based on the record of this investigation?

7. Should the Commission determine whether Amazon is a willing putative licensee? What is Amazon's obligation to fairly compensate the patent holder? What is the evidence of record, which party has the burden of proof, and was that burden met?
8. In this investigation, what evidence is there in the record regarding whether Nokia complied with its patent disclosure obligations regarding the setting of the H.264 and H.265 standards with respect to the patents asserted in this investigation? Please cite the relevant agreement and evidence of Nokia's compliance or noncompliance with regard to any obligations concerning the disclosure of the asserted patents.
9. What is the evidence of record of hold-up or hold-out by the parties, if any?
10. To what extent would the resolution of the Amazon-Nokia dispute in the UK court resolve issues in this investigation, including without limitation the violation issues, the remedy issues, and the public interest issues? If the UK court determines that a license should be granted on RAND terms, would that license cover the accused products in this investigation? What is the expected timing of any such resolution in the UK proceedings? Should the Commission extend its target date pending resolution of this dispute by the UK court?
11. Should the Commission provide an exemption to its remedial orders to allow for service, repair, and/or replacement of the accused products? Should such an exemption apply to only accused products under warranty? If an exemption should be granted to allow accused products to be used for service, repair, and/or replacement, please propose specific language that should be included in the Commission's remedial orders for any such exemption.
12. What are the warranty terms, if any, for the accused products? Is there any evidence of record showing that the warranty terms can be satisfied using non-infringing products?
13. Please provide data and information in the record identifying all reasonable substitutes for the accused products and their availability to U.S. consumers.

The parties are invited to brief only the discrete issues requested above. The parties are not to brief other issues on review, which are adequately presented in the parties' existing filings.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia*, (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States; and/or (2) cease and desist orders that could result in

the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (Dec. 1994).

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and cease and desist orders would have on: (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no position on the Commission's action. See Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The Commission requests that the parties to the investigation file written submissions on the issues identified in this notice. The Commission encourages parties to the investigation, interested government agencies, and any other interested parties to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should

address the recommended determination by the ALJ on remedy and bonding, which issued on December 20, 2024.

The Commission further requests that Complainants and OUII submit proposed remedial orders, state the date when the asserted patents expire, provide the HTSUS subheadings under which the subject articles are imported, and supply a list of known importers of the subject article. The written submissions, exclusive of any exhibits, must not exceed 75 pages, and must be filed no later than close of business on March 13, 2025. Reply submissions must not exceed 50 pages and must be filed no later than the close of business on March 20, 2025. No further submissions on these issues 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 pursuant to 19 CFR 210.4(f). Submissions should refer to the investigation number (Inv. No. 337-TA-1380) in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.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 by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). 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 any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the

programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. Government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on February 27, 2025.

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: February 27, 2025.

Lisa Barton,

Secretary to the Commission.

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