

**THE UNITED STATES INTERNATIONAL TRADE COMMISSION**  
**Washington, D.C.**  
**Before The Honorable Robert K. Rogers, Jr.**  
**Administrative Law Judge**

**In the Matter of**

**CERTAIN WIRELESS DEVICES WITH  
3G AND/OR 4G CAPABILITIES AND  
COMPONENTS THEREOF**

**Investigation No. 337-TA-868**

**NOKIA CORPORATION AND NOKIA INC.'S PUBLIC INTEREST STATEMENT  
PURSUANT TO 19 C.F.R. § 210.14(f)**

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Pursuant to 19 C.F.R. § 210.14(f), Respondents Nokia Corporation and Nokia Inc.

(collectively "Nokia") hereby submit the following Public Interest Statement:

**I. INTERDIGITAL'S ASSERTION OF DECLARED ESSENTIAL PATENTS BEFORE THE ITC THREATENS TO HARM THE PUBLIC INTEREST**

In considering whether to levy an exclusion order, the Commission should take into account the harm to competition and to consumers that will result from allowing a holder of declared-essential patents to obtain an exclusion order against a willing licensee. As made clear by the U.S. DOJ and the U.S. PTO, "the public interest may preclude the issuance of an exclusion order in cases where the infringer is acting within the scope of the patent holder's F/RAND commitment and is able, and has not refused, to license on F/RAND terms." *See* DOJ & PTO Policy Statement on Remedies for Standards-Essential Patents Subject to Voluntary F/RAND Commitments, available at [http://www.uspto.gov/about/offices/ogc/Final\\_DOJ-PTO\\_Policy\\_Statement\\_on\\_FRAND\\_SEPs\\_1-8-13.pdf](http://www.uspto.gov/about/offices/ogc/Final_DOJ-PTO_Policy_Statement_on_FRAND_SEPs_1-8-13.pdf). Allowing InterDigital to obtain an exclusion order against a willing licensee such as Nokia would not only contravene InterDigital's binding contractual obligations to grant licenses to willing licensees on terms that are fair, reasonable, and non-discriminatory ("FRAND"), it would also threaten to eliminate the benefits that society has reaped from standardization and the collaboration of erstwhile competitors.

InterDigital's asserted patents are "declared essential," and are subject to binding and enforceable commitments made by InterDigital to standards-setting organizations ("SSOs") to grant licenses on FRAND terms to willing licensees. It is well-established that standardization serves the public interest in a variety of ways, "from protecting public health and safety to promoting efficient resource allocation and production by facilitating interoperability among complementary products." *Id.* at 3. Intellectual property rights policies of SSOs are intended to preserve the balance between the rights of patent holders and those of parties seeking to

implement standards by giving essential patent holders the right to adequate and fair compensation for their IP, but also by ensuring that standard-essential patents are available to potential users. Allowing InterDigital to obtain an exclusion order against a willing licensee such as Nokia for infringement of InterDigital's asserted declared-essential patents would upset this delicate balance and would threaten to undermine the very purpose of standardization.

**II. INTERDIGITAL'S ATTEMPT TO LEVERAGE ITS DECLARED ESSENTIAL U.S. PATENTS INTO A WORLD-WIDE LICENSE THREATENS TO HARM THE PUBLIC INTEREST**

Permitting InterDigital to obtain an exclusion order would further harm the public interest by condoning the misuse of InterDigital's declared-essential U.S. patent portfolio. As an initial matter, InterDigital is seeking to use its declared-essential U.S. patents, through a proceeding before a U.S. administrative agency, to pressure Nokia into signing a global patent license agreement under which Nokia would need to pay royalties to InterDigital for Nokia's global sales, including Nokia's sales in countries where InterDigital has no essential patents, and perhaps no patents at all.

making clear that it is not interested in collecting royalties for its declared-essential U.S. patents, but is attempting to use those patents and the threat of an exclusion or cessation order to extend its reach beyond what was granted by

the US PTO. InterDigital seeks to collect royalties on Nokia's worldwide sales, including sales in countries where InterDigital has no declared-essential patents, and perhaps even no patents at all, as well as to force Nokia to take a license and pay royalties to InterDigital for patents that are invalid or not practiced by Nokia. Such conduct harms competition and consumers, and is not in the public interest.

Moreover, InterDigital is not seeking an exclusion order to protect its own U.S. sales – it is seeking an exclusion order to extort unreasonably high royalties in the form of *hold-up value*. InterDigital derives over 97% of its revenue from patent licensing, and is primarily a patent asserting entity (“PAE”). See 2011 InterDigital Form 10-K, available at <http://www.sec.gov/Archives/edgar/data/1405495/000140549512000009/idcc-20111231xk.htm>. Since InterDigital's revenue comes primarily from patent licensing, exclusionary relief does not grant it any direct benefits; it has no products which suffer due to competition from allegedly infringing products. It is well-established that injunctions seeking to extract exorbitant royalties are inherently harmful and should not be permitted. See *eBay v. MercExchange, LLC*, 547 U.S. 388, 396-97 (2006) (“an injunction . . . can be employed as a bargaining tool to charge exorbitant fees to companies that seek to buy licenses to practice the patent.”). Permitting InterDigital to extort unreasonable royalties from declared-essential patents based upon threats of exclusion orders against existing product manufacturers undermines the public interest.

It is telling that InterDigital attempts to enforce its patent rights against a willing licensee such as Nokia before this Commission. InterDigital could have pursued other avenues, such as a district court action, to attempt to establish the value of some or all of its declared essential U.S. patents in order to assist with negotiations over the remainder of its declared-essential patents.<sup>1</sup>

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<sup>1</sup> Nokia notes that this is the third ITC Complaint brought by InterDigital against Nokia in recent years. The Commission is currently investigating whether InterDigital violated the

### **III. AN EXCLUSION ORDER WOULD HAVE A NEGATIVE IMPACT ON CONSUMERS OF MORE AFFORDABLE MOBILE PHONES**

The threat of InterDigital's demanded exclusion order could also impose a heavy burden on consumers by restricting importation of a large segment of mobile phones. The respondents together supply roughly 42% of the handsets in the United States and an even larger percentage of the more affordable mobile phones. *See, e.g.*, "Low-End Smartphones Creating Popular New Segment in Market," AllVoices (Jan. 13, 2013) available at <http://www.allvoices.com/contributed-news/13796902-lowend-smartphones-creating-popular-new-segment-in-market> (noting "Nokia seems to be experiencing a resurgence in its business . . . thanks in large part to cheaper, lower-end smartphones"). At least some of the major unaccused suppliers of smartphones, such as Apple, manufacture predominantly high-end, expensive smartphones, and could not replace the supply of more affordable mobile phones provided by the respondents. Thus, an exclusion order would substantially harm U.S. consumers and the public interest by potentially shutting many consumers out of the market entirely and restricting their choice of products in the smartphone market.

### **IV. THE ACCUSED NOKIA HANDSETS ARE CRITICAL TO THE VIABILITY OF MICROSOFT WINDOWS PHONES AS A THIRD ECOSYSTEM IN THE U.S. SMARTPHONE MARKET**

Nokia's mobile handsets comprise a major segment of the smartphone industry. Since 2011, the principal smartphone operating systems are iOS, Windows Phone Operating System ("WPOS"), Android, and RIM. Nokia's newest smartphones utilize WPOS, and these smartphones are expected to significantly increase Nokia's market share in the Windows ecosystem. More particularly, under a 2011 partnership, Nokia and Microsoft have combined their assets and expertise to build a new global mobile ecosystem for smartphones. The Nokia

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protective order in at least one of those investigations.

handsets at issue in this investigation are a significant part of this third ecosystem of mobile telecommunications. Nokia has adopted and licensed from Microsoft the WPOS as its primary smartphone platform. The first Nokia smartphones powered by WPOS were launched in October 2011 under the Lumia brand. According to Nokia's CEO, the smartphone market "is now a three-way horse race" between WPOS and the Apple iOS and Android operating systems.<sup>2</sup> The recent introduction of the WPOS smartphones into the marketplace increases competition and enhances consumer choice, and Nokia smartphones are critical to the viability of the fledgling WPOS as a third ecosystem of mobile telecommunications. By contrast, Apple's iOS is completely closed to non-Apple phones, which leaves Android as the only alternative platform open to multiple manufacturers. Exclusion of these WPOS Nokia mobile handsets therefore would pose a significant detriment to the U.S. mobile phone market.

DATED: February 21, 2013

Respectfully submitted,

/s/ Marsha E. Mullin

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<sup>2</sup> NY Times Feb. 11, 2011, available at <http://www.nytimes.com/2011/02/12/technology/12nokia.html>.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this day, a true and correct copy of the foregoing document was served by the indicated means to the persons at the addresses below:

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