

**UNITED STATES INTERNATIONAL TRADE COMMISSION**  
**Washington, D.C.**

**In the Matter of**

**CERTAIN WIRELESS DEVICES WITH 3G  
CAPABILITIES AND COMPONENTS  
THEREOF**

**Investigation No. 337-TA-800**

**NOTICE OF COMMISSION DETERMINATION TO AFFIRM IN PART, AND MODIFY  
IN PART A FINAL INITIAL DETERMINATION FINDING NO VIOLATION OF  
SECTION 337 BY CERTAIN RESPONDENTS; TERMINATION OF THE  
INVESTIGATION AS TO CERTAIN RESPONDENTS; EXTENSION OF THE TARGET  
DATE FOR COMPLETION OF THE INVESTIGATION**

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

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to affirm in part and modify in part the final initial determination issued by the presiding administrative law judge (“ALJ”) finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, (“section 337”) in the above identified investigation as to respondents Huawei Technologies Co., Ltd. of Shenzhen, China; Huawei Device USA of Plano, Texas (“Huawei Device”); FutureWei Technologies, Inc. d/b/a Huawei, Technologies (USA) of Plano, Texas (collectively, “Huawei”); Nokia Corporation of Espoo, Finland; Nokia Inc. of White Plains, New York (collectively, “Nokia”); ZTE Corporation of Shenzhen, China; and ZTE (USA) Inc. of Richardson, Texas (collectively, “ZTE”). The Commission has extended the target date for completion date of this investigation until February 17, 2014, to accommodate remand proceedings concerning other respondents.

**FOR FURTHER INFORMATION CONTACT:** Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3042. 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 31, 2011, based on a complaint filed by InterDigital Communications, LLC of King of

Prussia, Pennsylvania; InterDigital Technology Corporation of Wilmington, Delaware; and IPR Licensing, Inc. of Wilmington, Delaware (collectively, "InterDigital"). 76 Fed. Reg. 54252 (Aug. 31, 2011). The complaint alleged 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 wireless devices with 3G capabilities and components thereof by reason of infringement of certain claims of United States Patent Nos. 7,349,540 (terminated from the investigation); 7,502,406 (the '406 patent); 7,536,013 (the '013 patent); 7,616,970 (the '970 patent); 7,706,332 (the '332 patent); 7,706,830 (the '830 patent); and 7,970,127 (the '127 patent). The notice of investigation named the following entities as respondents: Huawei (except Huawei Device), Nokia, and ZTE. The complaint and notice of investigation were subsequently amended to allege infringement of certain claims of United States Patent No. 8,009,636 (the '636 patent) and to add the following entities as respondents: LG Electronics, Inc. of Seoul, Republic of Korea; LG Electronics U.S.A., Inc. of Englewood Cliffs, New Jersey; and LG Electronics Mobilecomm U.S.A., Inc. of San Diego, California (collectively, "LG"). 76 Fed. Reg. 81527 (Dec. 28, 2011). The complaint and notice of investigation were further amended to include Huawei Device as a respondent. 77 Fed. Reg. 26788 (May 7, 2012).

InterDigital Communications, LLC subsequently moved for leave to amend the Complaint and Notice of Investigation to reflect the fact that it converted from a Pennsylvania limited liability company to a Delaware corporation, and changed its name to InterDigital Communications, Inc. The ALJ issued an ID granting the motion and the Commission determined not to review. See Order No. 91 (Jan. 17, 2013); Notice of Commission Determination Not to Review an Initial Determination Granting Complainants' Motion for Leave to Amend the Complaint and Notice of Investigation (Feb. 4, 2013).

On June 4, 2012, the ALJ granted a motion by LG under 19 C.F.R § 210.21(a)(2) to terminate the investigation as to LG based on an arbitration agreement. See Order No. 30 (June 4, 2012). The Commission determined not to review. See Notice of Commission Determination Not to Review an Initial Determination Terminating Certain Respondents From the Investigation (July 6, 2012). InterDigital appealed LG's termination from this investigation, and the Federal Circuit reversed the Commission's determination. *InterDigital Commc'ns, LLC v Int'l Trade Comm'n*, 718 F.3d 1336 (Fed. Cir. 2013). The remand is currently pending before the Commission.

On June 28, 2013, the ALJ issued his final ID, finding no violation of section 337 by respondents Huawei, Nokia, and ZTE. Specifically, the ALJ found that the Commission has subject matter jurisdiction, *in rem jurisdiction* over the accused products, and *in personam* jurisdiction over the respondents. The ALJ also found that the importation requirement of section 337 (19 U.S.C. § 1337(a)(1)(B)) has been satisfied. The ALJ, however, found that the accused products do not infringe asserted claims 1-3 and 5 of the '830 patent; asserted claims 1, 2, 4, and 6-8 of the '636 patent; asserted claims 6, 13, 20, 26, and 29 of the '406 patent; asserted claims 2-4, 7 - 11, 14, 22 - 24, and 27 of the '332 patent; asserted claims 1-7 of the '127 patent; asserted claims 16-19 of the '013 patent; or asserted claims 10-18 of the '970 patent. The ALJ found that the accused products meet each limitation of claims 1-9 of the '970 patent but found that all the asserted claims, claims 1-18, of the '970 patent are invalid in view of the prior art. The ALJ also found that asserted claims 1-7 of the '127 patent and asserted claims 16-19 of the '013 patent are

invalid in view of the prior art. The ALJ, however, found that the respondents failed to establish by clear and convincing evidence that the asserted claims of the '830, '636, '406 or '332 patents were invalid in light of the cited prior art references. The ALJ also found that the respondents failed to prove that they hold licenses under the asserted patents and failed to prevail on their equitable/FRAND defenses. The ALJ further found that InterDigital established the existence of a domestic industry that practices the asserted patents under 19 U.S.C. § 1337(a)(2).

On July 15, 2013, InterDigital filed a petition for review of the ID. That same day, the Commission investigative attorney and the respondents filed separate petitions for review. Respondents also filed a contingent petition for review. On July 23, 2013, the parties filed responses to the petitions and contingent petition for review.

On September 4, 2013, the Commission determined to review the final ID in its entirety and requested briefing on a single issue. 78 *Fed. Reg.* 55294 (Sept. 10, 2013). On September 27, 2013, the parties filed written submissions on the single issue. On October 21, 2013, the parties filed reply submissions (the delay in filing replies was due to the government shutdown).

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to affirm the ALJ's finding of no violation of section 337 as to Nokia, Huawei, and ZTE with the modifications set forth in the Commission opinion, viz., with respect to the Power Ramp Up patents (the '830 and '636 patents), the Commission has determined to (1) affirm the ALJ's finding that the accused products do not satisfy the "successively sends transmissions" limitation construed to mean "transmits to the base station, one after the other, codes that are shorter than a regular length code" to the extent that the "successively sends transmissions" refer to the short codes and (2) for the '636 patent, the Commission has determined to vacate the ALJ's findings regarding the "subsequent transmission" limitation. With respect to the Power Control patents (the '406 and '332 patents), the Commission has determined to modify the ALJ's construction of the claim term "power control bit" to mean "single-bit power control information transmitted at an APC data rate equivalent to the APC update rate," and construes the limitation to encompass only the "single-bit power control information" portion. The Commission adopts the ALJ's findings pertaining to the '970, '013, and '127 patents. Due to the LG remand, all other issues, including domestic industry, continue to remain under review. A Commission opinion will follow issuance 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 sections 210.42-46 and 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42-46 and 210.50).

By order of the Commission.



Lisa R. Barton  
Acting Secretary to the Commission

Issued: December 19, 2013

**PUBLIC CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached NOTICE has been served by hand upon the Commission Investigative Attorney, Brian Koo, Esq., and the following parties as indicated on December 19, 2013.



Lisa R. Barton, Acting Secretary  
U.S. International Trade Commission  
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