

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

In the Matter of

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

Investigation No. 337-TA-868

**NOTICE OF COMMISSION DETERMINATION TO REVIEW IN PART
A FINAL INITIAL DETERMINATION FINDING NO VIOLATION
OF SECTION 337; TERMINATION OF THE INVESTIGATION
WITH A FINDING OF NO VIOLATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the final initial determination (“final ID”) issued by the presiding administrative law judge (“ALJ”) on June 13, 2014, finding no violation of section 337 of the Tariff Act of 1930 as amended, 19 U.S.C. § 1337 (“section 337”), in this investigation. On review, the Commission has determined to reverse certain findings, to take no position on others, and to terminate the investigation with a finding of no violation.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2532. 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 February 5, 2013, based on a complaint filed by InterDigital Communications, Inc. of King of Prussia, Pennsylvania, as well as InterDigital Technology Corporation, IPR Licensing, Inc., and InterDigital Holdings, Inc., each of Wilmington, Delaware (collectively, “InterDigital”). 78 *Fed. Reg.* 8191 (Feb. 5, 2013). The complaint alleged violations of section 337 by reason of the infringement of certain claims from seven United States Patents. The notice of investigation named ten respondents including Nokia, Inc. of White Plains, New York; and Nokia Corp. of

Espoo, Finland; as well as ZTE Corporation of Shenzhen, China; and ZTE (USA) Inc. of Richardson, Texas (collectively, “ZTE”). On July 14, 2014, the Commission determined not to review an initial determination (Order No. 116) that added as a respondent Microsoft Mobility OY (collectively with the two Nokia respondents, “Nokia”). The accused ZTE products are certain ZTE wireless devices with WCDMA or LTE functionality. The accused Nokia products are certain Nokia wireless devices with 4G functionality.

Three asserted patents remain in the investigation: U.S. Patent Nos. 7,190,966 (“the ’966 patent”) and 7,286,847 (“the ’847 patent”) (collectively, the “Power Ramp-Up Patents”), and U.S. Patent No. 7,941,151 (“the ’151 patent”). InterDigital asserted claims 1, 3, 6, 8, and 9 of the ’966 patent and claims 3 and 5 of the ’847 patent against ZTE. Independent claims 1 and 16 and dependent claims 2-6, 8-9, 17-21 and 23-24 of the ’151 patent are asserted against Nokia and ZTE.

On June 13, 2014, the ALJ issued the final ID, which finds no violation of section 337 as to the remaining asserted patent claims. On June 30, 2014, the parties filed petitions for review. In particular, InterDigital and the Commission investigative attorney (“IA”) each filed a petition for review of certain issues. The respondents filed two contingent petitions for review. One contingent petition was based upon alternative grounds for finding no violation of section 337. The second contingent petition concerned the respondents’ affirmative defenses based upon InterDigital’s alleged obligations regarding fair, reasonable, and non-discriminatory licensing (“FRAND”). On July 8, 2014, the parties filed responses to each other’s petitions. The Commission received public interest submissions from the parties and from United States Senators Robert P. Casey, Jr., Kirsten Gillibrand, and Patrick Toomey; Microsoft Corp.; the Innovation Alliance; and Ericsson Inc.

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 review the final ID in part.

The Commission’s review and determinations on review are as follows:

1. The Power Ramp-Up Patents

The Commission has determined not to review the final ID’s construction of “successively transmitted signals”/“successively transmits signals” and not to review the final ID’s findings that, based upon that construction, the accused products do not infringe, and the domestic industry products do not practice, the asserted patent claims of the Power Ramp-Up Patents. Final ID at 37-48, 62-65, 134-35; *see* InterDigital Pet. 9-22. Accordingly, the Commission finds no violation of section 337 as to the asserted claims of the Power Ramp-Up Patents.

The Commission has also determined not to review the final ID’s finding that claim 3 of the ’847 patent is not invalid for lack of adequate written description. Final ID at 101-03; *see* IA Pet. 12-15; Resp’ts’ Pet. 44-45.

2. The ’151 Patent

The Commission has determined not to review the final ID's findings that the accused products do not infringe, and the domestic industry products do not practice, the "same physical downlink control channel" limitation in independent claims 1 and 16. Final ID at 54-58, 134; *see* InterDigital Pet. 33-38. Accordingly, the Commission finds no violation of section 337 as to the asserted claims of the '151 patent, namely independent claims 1 and 16, and asserted claims dependent upon them.

The Commission has determined not to review the final ID's determination that claim 16 of the '151 patent is invalid for indefiniteness. Final ID at 29-31; *see* IA Pet. 6-12; InterDigital Pet. 24-29; *see also Rembrandt Data Techs., LP v. AOL, LLC*, 641 F.3d 1331, 1339-40 (Fed. Cir. 2011). Accordingly, there can be no violation of section 337 as to claim 16 and its asserted dependent claims.

The Commission has determined to review the final ID's construction of "and to" in claim 16 of the '151 patent, Final ID at 31-34; *see* InterDigital Pet. at 29-33, and on review finds that the term is to be afforded its plain and ordinary meaning. In view of the Commission's claim construction, the final ID's finding of noninfringement of asserted claims 16-21 and 23-24 based upon the final ID's construction, Final ID at 58-60, is reversed. The Commission has also determined to review the final ID's infringement analysis of "and if so" for claim 1, Final ID at 58-60; *see* InterDigital Pet. at 38-43, and on review takes no position whether the accused products practice the determining steps in sequence as required for asserted claims 1-6 and 8-9.

3. Domestic Industry, FRAND, and Other Issues

Except as recited above concerning the Commission's finding that the domestic industry products do not practice the asserted patent claims, the Commission reviews and takes no position on the remaining domestic industry issues raised in the parties' petitions. Similarly, the Commission reviews and takes no position on the FRAND issues raised by the respondents concerning their affirmative defenses. The Commission finds that it is in the interest of the efficient use of administrative, judicial, and private resources for the domestic industry and FRAND issues to be decided, if at all, subsequent to final disposition of the pending appeal in *InterDigital Communications LLC v. ITC*, No. 2014-1176 (Fed. Cir.), which involves many of the same parties and issues with regard to related patents.

The Commission does not review any other issues raised in the parties' petitions except as otherwise recited above. The reasoning in support of the Commission's decision will be set forth in fuller detail in a forthcoming opinion.

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.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', with a large, stylized initial 'L' and 'B'.

Lisa R. Barton
Secretary to the Commission

Issued: August 14, 2014