

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN 3G MOBILE HANDSETS
AND COMPONENTS THEREOF**

**Investigation No. 337-TA-613
(REMAND)**

**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 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“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 Inv. No. 337-TA-613 on September 11, 2007, based on a complaint filed by InterDigital Communications Corp. of King of Prussia, Pennsylvania and InterDigital Technology Corp. of Wilmington, Delaware (collectively, “InterDigital”) on August 7, 2007. 72 *Fed. Reg.* 51838 (Sept. 11, 2007). The complaint, as amended, alleged violations of section 337 of the Tariff Act of 1930 (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 3G mobile handsets and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 7,117,004 (“the ‘004 patent”); 7,190,966 (“the ‘966 patent”); 7,286,847 (“the ‘847 patent”); and 6,693,579 (“the ‘579 patent”). The Notice of Investigation named Nokia Corporation of Espoo, Finland (“Nokia”) and Nokia Inc. of Irving, Texas (“Nokia Inc.”) as respondents. The Office of Unfair Import Investigations (“OUII”) was named as a participating party. The Commission later amended the Notice of Investigation to substitute complainant InterDigital Communications, Inc. for InterDigital Communications Corp. Notice (Feb. 15, 2015); Order No. 53 (Jan. 14, 2015). The Commission also later amended the Notice of Investigation to add Microsoft Mobile OY (“MMO”) as a party. 79 *Fed. Reg.* 43068-69

(July 24, 2014).

On February 13, 2009, InterDigital moved for summary determination that a domestic industry exists because its licensing activities in the United States satisfy the domestic industry requirement under 19 U.S.C. § 1337(a)(3)(C). On March 10, 2009, the presiding Administrative Law Judge (“ALJ”) issued an initial determination (“ID”) (Order No. 42) granting the motion. On April 9, 2009, the Commission determined not to review the ID. Notice (Apr. 9, 2009).

On August 14, 2009, the ALJ issued his final ID, finding no violation of section 337. In particular, he found that the asserted claims of the patents-in-suit are not infringed and that they are not invalid. The ALJ further found no prosecution laches relating to the ‘004, ‘966, and ‘847 patents and that the ‘579 patent is not unenforceable.

On October 16, 2009, the Commission determined to review the final ID in part. *74 Fed. Reg. 55068-69* (Oct. 26, 2009) (“Notice of Review”). In particular, although the Commission affirmed the ID’s determination of no violation of section 337 and terminated the investigation, the Commission reviewed and modified the ID’s claim construction of the term “access signal” found in the asserted claims of the ‘847 patent. The Commission also reviewed, but took no position on, the ID’s construction of the term “synchronize” found in the asserted claims of the ‘847 patent. The Commission further reviewed, but took no position on, validity with respect to all of the asserted patents. The Commission did not review the ID’s construction of the claim limitations “code” and “increased power level” in the asserted claims of the ‘966 and ‘847 patents.

InterDigital timely appealed the Commission’s final determination of no violation of section 337 as to claims 1, 3, 8, 9, and 11 of the ‘966 patent and claim 5 of the ‘847 patent to the Federal Circuit. Specifically, InterDigital appealed the final ID’s unreviewed constructions of the claim limitations “code” and “increased power level” in the ‘966 and ‘847 patents. Respondent Nokia, the intervenor on appeal, raised as an alternate ground of affirmance the issue of whether the Commission correctly determined that InterDigital has a license-based domestic industry.

On August 1, 2012, the Federal Circuit reversed the Commission’s construction of the claim limitations “code” and “increased power level” in the ‘966 and ‘847 patents, reversed the Commission’s determination of non-infringement as to the asserted claims of those patents, and remanded to the Commission for further proceedings. *InterDigital Commc’ns, LLC v. Int’l Trade Comm’n.*, 690 F.3d 1318 (Fed. Cir. 2012). In particular, the Court rejected the final ID’s construction of the “code” limitation as being limited to “a spreading code or a portion of a spreading code” and, instead, construed “code” as “a sequence of chips” and as “broad enough to cover both a spreading code and a non-spreading code.” *Id.* at 1323-27. The Court affirmed the Commission’s determination that InterDigital has a domestic industry. *Id.* at 1329-30. Nokia subsequently filed a combined petition for panel rehearing and rehearing en banc on the issue of domestic industry. On January 10, 2013, the Court denied the petition and issued an additional opinion addressing several issues raised in Nokia’s petition for rehearing. *InterDigital Commc’ns, LLC v. Int’l Trade Comm’n.*, 707 F.3d 1295 (Fed. Cir. 2013). The Court’s mandate issued on January 17, 2013, returning jurisdiction to the Commission.

On February 4, 2013, the Commission issued an Order directing the parties to submit

comments regarding what further proceedings must be conducted to comply with the Federal Circuit's remand. Commission Order (Feb. 4, 2013). On February 12, 2014, the Commission issued an Order and Opinion deciding certain aspects of the investigation and remanding other aspects to the Chief ALJ. 79 Fed. Reg. 9277-79 (Feb. 18, 2014); *see also* Comm'n Op. Remanding Investigation (Feb. 12, 2014); Comm'n Order Remanding Investigation (Feb. 12, 2014). On February 24, 2014, Nokia petitioned for reconsideration of the Commission's remand Order and Opinion. On March 24, 2014, the Commission granted in part the petition for reconsideration and issued a revised remand notice, order, and opinion, correcting the identification of the claims of the asserted patents at issue on remand. 79 Fed. Reg. 17571-73 (Mar. 28, 2014).

On April 27, 2015, the ALJ issued his final initial determination on remand ("RID"). The ALJ found that the accused Nokia handsets meet the limitations "generated using a same code" and "the message being transmitted only subsequent to the subscriber unit receiving the indication" recited in the asserted claims of the '966 and '847 patents. The ALJ also found that the pilot signal (P-CPICH) in the 3GPP standard practiced by the accused Nokia handsets satisfies the limitation "synchronize to the pilot signal" recited in the asserted claim of the '847 patent. The ALJ further found that the currently imported Nokia handsets, which contain chips that were not previously adjudicated, infringe the asserted claims of the '966 and '847 patents. The ALJ also found that there is no evidence of patent hold-up by InterDigital, but that there is evidence of reverse hold-up by the respondents. The ALJ found that the public interest does not preclude issuance of an exclusion order. The ALJ did not issue a Recommended Determination on remedy or bonding.

On May 11, 2015, MMO and Nokia Inc. (collectively, "MMO") filed a petition for review of certain aspects of the RID, including infringement, domestic industry, and the public interest. Also on May 11, 2015, Nokia filed a petition for review of the RID with respect to infringement, domestic industry, and whether the Commission has jurisdiction over Nokia following the sale of its handset business to MMO. Further on May 11, 2015, the Commission investigative attorney ("IA") filed a petition for review of the RID's finding of infringement.

On May 19, 2015, InterDigital filed a response to MMO's and the IA's petitions for review. Also on May 19, 2015, MMO filed a response to the IA's petition for review. Further on May 19, 2015, the IA filed a response to MMO's and Nokia's petitions for review.

On June 3, 2015, InterDigital filed a statement on the public interest pursuant to Commission Rule 210.50(a)(4). Also on June 3, 2015, several non-parties filed responses to the Commission Notice issued on May 4, 2015, including: United States Senator Robert Casey, Jr. of Pennsylvania; Microsoft Corporation; Intel Corporation, Cisco Systems, Inc., Dell Inc., and Hewlett-Packard Company; Innovation Alliance; and Ericsson Inc. *See* 80 Fed. Reg. 26295-96 (May 7, 2015). On June 24, 2015, United States Senator Patrick J. Toomey of Pennsylvania also filed a response to the Commission's May 4, 2015, notice.

On June 25, 2015, the Commission determined to review the RID in part. 80 Fed. Reg. 37656-658 (July 1, 2015). Specifically, the Commission determined to review the RID's findings concerning the application of the Commission's prior construction of the claim limitation "successively [transmits/transmitted] signals" in *Certain Wireless Devices with 3G Capabilities*

and Components Thereof, Inv. No. 337-TA-800 (“the 800 investigation”) and *Certain Wireless Devices with 3G and/or 4G Capabilities and Components Thereof*, Inv. No. 337-TA-868 (“the 868 investigation”). The Commission also determined to review the RID with respect to whether the accused products satisfy the claim limitation “successively [transmits/transmitted] signals” as construed by the Commission in the 800 and 868 investigations. The Commission further determined to review the RID’s public interest findings. 80 *Fed. Reg.* at 37657-658.

On July 10, 2015, InterDigital, Respondents, and the IA submitted initial briefs in response to the Commission’s notice of review concerning issues of violation, remedy, bonding, and the public interest. On July 20, 2015, the parties submitted response briefs.

In response to the Commission’s request for briefing on remedy, bonding, and the public interest, the following submitted briefing on July 10, 2015: Edith Ramirez, Federal Trade Commission Chairwoman; Ericsson Inc.; and Intel Corporation, Dell Inc., and Hewlett-Packard Company. On July 20, 2015, the following submitted responsive briefing: Maureen K. Ohlhausen and Joshua D. Wright, Commissioners of the Federal Trade Commission; and J. Gregory Sidak, Chairman of Criterion Economics.

On July 20, 2015, Respondents filed a motion to strike the declaration of Dr. Jackson that InterDigital submitted as an attachment to its response to the Commission’s notice. On July 23, 2015, the IA filed a response in support of the motion to strike. On July 30, 2015, InterDigital filed a response opposing the motion to strike.

Having examined the record of this investigation, including the RID, the petitions for review, the responses thereto, and the parties’ submissions on review, the Commission has determined to find no violation of section 337 with respect to the ’966 and ’847 patents.

Specifically, the Commission finds that issue preclusion applies with respect to the proper construction of the claim limitation “successively [transmits/transmitted] signals” based on the Commission’s determination in *Certain Wireless Devices with 3G and/or 4G Capabilities and Components Thereof*, Inv. No. 337-TA-868, which relies substantively on the Commission’s determination in *Certain Wireless Devices with 3G Capabilities and Components Thereof*, Inv. No. 337-TA-800, as affirmed by the United States Court of Appeals for the Federal Circuit (*InterDigital Commc’ns, Inc. v. Int’l Trade Comm’n*, 2015 WL 669305 (Fed. Cir. Feb. 18, 2015)). The Commission further finds its prior constructions of the claim limitation “successively [transmits/transmitted] signals” in the 868 and 800 investigations are persuasive authority which the Commission should apply uniformly to the asserted patents.

The Commission also finds that issue preclusion requires a finding of non-infringement with respect to the asserted claims of the ’966 and ’847 patents, and that the evidence in the record independently supports a finding of non-infringement with respect to the claim limitation “successively [transmits/transmitted] signals as previously construed by the Commission in the 868 investigation.

The Commission denies as moot Respondents motion to strike the declaration of Dr. Jackson.

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.

A handwritten signature in black ink, appearing to read "Lisa R. Barton". The signature is fluid and cursive, with the first name "Lisa" and the last name "Barton" clearly distinguishable.

Lisa R. Barton
Secretary to the Commission

Issued: August 28, 2015