

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

In the Matter of

**CERTAIN ELECTRONIC DEVICES,
INCLUDING MOBILE PHONES,
PORTABLE MUSIC PLAYERS, AND
COMPUTERS**

Investigation No. 337-TA-701

**NOTICE OF COMMISSION DETERMINATION TO REVIEW IN PART A FINAL
INITIAL DETERMINATION FINDING NO VIOLATION OF SECTION 337;
SCHEDULE FOR FILING WRITTEN SUBMISSIONS ON THE ISSUES UNDER
REVIEW AND ON REMEDY, THE PUBLIC INTEREST AND BONDING**

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 (“ID”) issued by the presiding administrative law judge (“ALJ”) on March 25, 2011, finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in this investigation.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Esq., 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 January 28, 2010, based on a complaint filed by Nokia Corporation of Finland and Nokia Inc. of White Plains, New York (collectively, “Nokia”). 75 *Fed. Reg.* 4583-4 (Jan. 28, 2010). The complaint 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 electronic devices, including mobile phones, portable music players, and computers by reason of infringement of various claims of United States Patent Nos. 6,895,256 (“the ’256 patent”); 6,518,957 (“the ’957 patent”); 6,714,091 (“the ’091 patent”);

6,834,181 (“the ’181 patent”); 6,924,789 (“the ’789 patent”); 6,073,036 (subsequently terminated from the investigation); and 6,262,735 (subsequently terminated from the investigation). The complaint named Apple Inc. of Cupertino, California as respondent.

On March 25, 2011, the ALJ issued his final ID, finding no violation of section 337 by Respondents with respect to any of the asserted claims of the asserted patents. Specifically, the ALJ found that the accused products do not infringe the asserted claims of the ’091 patent. The ALJ also found that none of the cited references rendered the asserted claims obvious and that the claims were not invalid under 35 U.S.C. § 112 for failure to disclose the best mode. Regarding the ’181 patent, the ALJ found that the accused products do not infringe its asserted claims. The ALJ also found that none of the cited references anticipated or rendered obvious the asserted claims. With respect to the ’256 patent, the ALJ found that the accused products failed to literally infringe the asserted claims and failed to infringe under the doctrine of equivalents. The ALJ also found that the asserted claims were not invalid for obviousness and were not rendered unenforceable due to inequitable conduct. Concerning the ’789 patent, the ALJ found that the accused products met all the limitations of asserted claim 5 under the doctrine of equivalents. The ALJ, however, found that the prior art anticipated and rendered asserted claim 5 invalid. The ALJ concluded that an industry exists within the United States that practices the ’789 patent but that a domestic industry does not exist with respect to the ’091 patent, the ’181 patent and the ’256 patent as required by 19 U.S.C. § 1337(a)(2) and (3).

On April 11, 2011, Nokia and the Commission investigative attorney (“IA”) filed petitions for review of the ID. That same day, Apple filed a contingent petition for review of the ID. On April 19, 2011, Nokia and Apple filed responses to the various petitions and contingent petition for review. The IA filed a combined response to Nokia’s petition for review and Apple’s contingent petition for review on April 22, 2011.

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. Specifically, the Commission has determined to review the findings related to the ’181 patent and the ’256 patent. The Commission has determined not to review any issues related to the ’957 patent, the ’091 patent, and the ’789 patent, and terminates those patents from the investigation.

The parties are requested to brief their positions on the issues under review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in responses to the following questions:

1. Does the claim term “multiple acoustic cavities each having an acoustic volume” recited in asserted claim 1 of the ’181 patent require each “acoustic cavity” to possess any particular acoustic property?
2. Assuming that the ’181 patent does not require each “acoustic cavity” to possess any particular acoustic properties, does Marqvardsen

(International Publication No. WO 00/38475) anticipate asserted claim 1?
See ID at 117.

3. Do the accused products satisfy the “Integrated Mobile Terminal Processor” limitation recited in asserted claim 1 of the ’256 patent under the ALJ’s construction of that limitation? *See Markman Order (Order No. 53) at 41-43.*

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) 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 In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or 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 or disapprove the Commission’s action. *See Presidential Memorandum of July 21, 2005, 70 Fed. Reg. 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. 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 parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged 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 with respect to the ’256 patent and the ’181 patent. Complainants and the IA are also requested to submit proposed remedial orders for the Commission’s consideration. Complainants are also requested to state the date that the patent expires and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on Thursday, June 9, 2011. Reply submissions must be filed no later than the close of

business on Thursday, June 16, 2011. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

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.

/s/
James R. Holbein
Secretary to the Commission

Issued: May 26, 2011