

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

**In the Matter of**

**CERTAIN UNIFIED  
COMMUNICATIONS SYSTEMS,  
PRODUCTS USED WITH SUCH  
SYSTEMS, AND COMPONENTS  
THEREOF**

**Investigation No. 337-TA-598**

**NOTICE OF COMMISSION DECISION TO REVIEW-IN-PART A FINAL INITIAL  
DETERMINATION FINDING A VIOLATION OF SECTION 337**

**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 a final initial determination (“ID”) of the presiding administrative law judge (“ALJ”) finding a violation of section 337 in the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:** Clint Gardine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5468. 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 March 26, 2007, based on a complaint filed by Microsoft Corporation (“Microsoft”) of Redmond, Washington. 72 *Fed. Reg.* 14138-9. The complaint, as amended and supplemented, alleges 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 unified communications systems, products used with such systems, and components thereof by reason of infringement of certain claims of U.S. Patent Nos.

6,421,439 (“the ‘439 patent”); 6,430,289; 6,263,064 (“the ‘064 patent”); and 6,728,357. The complaint further alleges the existence of a domestic industry. The Commission’s notice of investigation named Alcatel-Lucent (“ALE”) of Paris, France as the only respondent.

On April 20, 2007, Microsoft moved to amend the complaint to: 1) substitute Alcatel Business Systems for Alcatel-Lucent as respondent in this investigation, and 2) add allegations of infringement of claims 8, 28, 38, and 48 of the ‘439 patent, and claim 20 of the ‘064 patent. Respondent and the Commission investigative attorney (“IA”) did not oppose the motion.

On May 17 and September 20, 2007, respectively, the Commission determined not to review IDs, issued by the presiding ALJ, granting Microsoft’s motions to amend the complaint and to terminate the investigation in part based on Microsoft’s withdrawal of certain claims. On October 23 and October 26, 2007, respectively, the Commission determined not to review IDs, issued by the presiding ALJ, granting Microsoft’s motion to terminate the investigation in part based on Microsoft’s withdrawal of certain claims and granting ALE’s motion to amend the complaint.

On January 28, 2008, the ALJ issued his final ID and recommended determinations on remedy and bonding. The ALJ found a violation of section 337 based on his findings that the respondent’s accused products infringe one or more of the asserted claims of the patents at issue. On February 11, 2008, all parties, including the IA, filed petitions for review of the final ID. On February 19, 2008, all parties filed responses to the petitions for review.

Upon considering the parties’ filings, the Commission has determined to review-in-part the ID. Specifically, with respect to the ‘439 patent, the Commission has determined to review: 1) the ALJ’s construction of the claim term “current activity of subscribers on the computer network;” 2) the ALJ’s determination that ALE’s OXE system directly and indirectly infringes the ‘439 patent; 3) the ALJ’s determination that ALE’s OXO system does not infringe the ‘439 patent; 4) the ALJ’s determination that claims 1 and 28 of the ‘439 patent are not invalid in view of U.S. Patent No. 6,041,114 (“the ‘114 patent”) or U.S. Patent No. 5,652,789 (“the ‘789 patent”); 5) the ALJ’s determination that claim 38 of the ‘439 patent is invalid in view of the ‘114 patent; and 6) the ALJ’s determination that claim 38 is not invalid in view of the ‘789 patent. The Commission has determined not to review the remainder of the ID, or ALJ Order No. 14 for which review was also sought.

On review, with respect to violation, the parties are requested to submit briefing limited to the following issues:

1) the ALJ’s finding that the “current activity of the user on the computer network” as found in the ‘439 patent “can consist of both user-selected indicators based on user activity (e.g., ‘conditional processing’ as per the ‘439 specification) and the transfer of data between the computer and telephone networks while the user is engaged in a VoIP phone call” (ID at 47), and the implications of this finding for the infringement and invalidity analyses;

2) what is the exact demarcation between the '439 patent claim terms "telephone network" and "computer network" as it relates to claim construction, invalidity using the '114 and '789 patents, and the infringement analysis for a Voice-over-IP (VoIP) communication system;

3) whether the PBX and telecommute server of the '114 patent, functioning together, can be considered to disclose the "network access port" and "controller" limitations of claim 1 of the '439 patent to anticipate this claim;

4) to what extent, if any, does anticipation of claims 1 and 28 of the '439 patent depend on a finding that the claim limitations are inherently disclosed by the '114 and '789 patents; and

5) please comment on Microsoft's argument that the ALJ, when construing the term "current activity" to mean "either the status of the user or subscriber at the present time or the most recent status of a user or subscriber," did so in a manner inconsistent with Federal Circuit precedent. Complainant Microsoft's Contingent Petition for Review at 9. In addressing this argument, please address Free Motion Fitness, Inc. v. Cybex Int'l, Inc., 423 F.3d 1343 (Fed. Cir. 2005) (“[u]nder Phillips, the rule that ‘a court will give a claim term the full range of its ordinary meaning,’ . . . does not mean that the term will presumptively receive its broadest dictionary definition or the aggregate of multiple dictionary definitions . . .”) and Impax Labs, Inc. v. Aventis Pharms, Inc. 468 F.3d 1368, 1374 (Fed. Cir. 2006) (“claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term its broadest reasonable construction consistent with the specification”).

In addressing these issues, the parties are requested to make specific reference to the evidentiary record and to cite relevant authority.

In connection with the final disposition of this investigation, the Commission may issue an order that results in the exclusion of the subject articles from entry into the United States. 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).

When 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.

When 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 and prescribed by the Secretary of the Treasury. 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 written submissions mentioned above should be concise and thoroughly referenced to the record in this investigation. Also, 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, and such submissions should address the recommended determination by the ALJ on remedy and bonding. The complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the dates that the patents at issue expire and the HTSUS numbers under which the accused products are imported. All of the written submissions and proposed remedial orders must be filed no later than close of business on March 24, 2008. Reply submissions must be filed no later than the close of business on March 31. 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 of the Commission's Rules of Practice and Procedure, 19 C.F.R. §§ 210.42-46.

By order of the Commission.

/s/  
Marilyn R. Abbott  
Secretary to the Commission

Issued: March 14, 2008