

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN DIGITAL VIDEO
RECEIVERS, BROADBAND
GATEWAYS, AND RELATED
HARDWARE AND SOFTWARE
COMPONENTS**

Investigation No. 337-TA-1158

**NOTICE OF A COMMISSION DETERMINATION TO GRANT A JOINT MOTION TO
TERMINATE THE INVESTIGATION IN ITS ENTIRETY BASED ON A
SETTLEMENT AGREEMENT; TERMINATION 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 grant a joint motion terminating the investigation as to Comcast Corporation, Comcast Cable Communications, LLC, Comcast Cable Communications Management, LLC, and Comcast Holdings Corporation (collectively, “Comcast”), all of Philadelphia, Pennsylvania, based on a settlement agreement. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2310. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone 202-205-1810.

SUPPLEMENTARY INFORMATION: On May 29, 2019, the Commission instituted this investigation based on a complaint filed by Rovi Corporation and Rovi Guides, Inc. (collectively, “Rovi”), both of San Jose, California. 84 FR 24814-15 (May 29, 2019). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale

within the United States after importation of certain digital video receivers, broadband gateways, and related hardware and software components by reason of infringement of certain claims of U.S. Patent Nos. 7,779,445 (“the ’445 patent”); 7,200,855 (“the ’855 patent”); 8,156,528 (“the ’528 patent”); 8,001,564 (“the ’564 patent”); 7,301,900 (“the ’900 patent”); and 7,386,871 (“the ’871 patent”). The complaint further alleged the existence of a domestic industry. The Commission’s notice of investigation named Comcast as respondents. The Office of Unfair Import Investigations (“OUII”) is partially participating in the investigation. The ’528, ’855, and ’445 patents remain in the investigation and the ’564, ’900, and ’871 patents have been terminated from the investigation. Order No. 18 (Sept. 30, 2019), *unreviewed by Comm’n Notice* (Oct. 15, 2019).

On July 14, 2020, the ALJ issued a written *Markman* Order. See Order No. 41 (Jul. 14, 2020).

On July 28, 2020, the ALJ issued the final ID finding a violation of section 337 as to the ’528 and ’855 patents based on infringement of the asserted claims by Comcast’s accused products. Specifically, the ID found that: (1) Comcast’s accused products infringe claims 13, 27, and 30 of the ’528 patent and claims 60 and 63 of the ’855 patent; (2) Comcast’s accused products do not infringe asserted claim 5 of the ’445 patent; (3) the asserted claims of the ’528 and ’855 patents are not invalid; (4) claims 5 and 15 of the ’445 patent are invalid as anticipated under 35 U.S.C. 102(g)(2) by Comcast’s VOD Vision System; and (5) Rovi has satisfied both prongs of the domestic industry requirement. The ALJ’s recommended determination recommended the issuance of a limited exclusion order directed to Comcast’s infringing products and cease and desist orders directed to Comcast.

On August 10, 2020, Rovi petitioned, and Comcast petitioned and contingently petitioned, for review of the final ID. On August 18, 2020, Rovi and Comcast each filed a response in opposition to the other party’s petition for review.

On October 9, 2020, the Commission determined to review the final ID in part. Specifically, the Commission determined to review: (1) Order No. 41’s and the ID’s construction of the claim limitations: “same functions,” “personal video recorder device,” “personal video recorder-compliant device,” “personal video recorder functionality,” and “first interactive television program guide ... are implemented” (“where the first interactive television program guide and the second interactive program guide ... are distinctly implemented”) of asserted claims 13, 27, and 30 of the ’528 patent; (2) the ID’s finding that Comcast’s Accused Products infringe the asserted claims of the ’528 patent and that the asserted claims are not invalid; (3) the ID’s finding that Rovi has satisfied the technical prong of the domestic industry requirement with respect to the ’528 patent; (4) the ID’s identification of Comcast’s products that infringe the asserted claims of the ’855 patent; (5) the ID’s finding that Comcast’s redesigns for the ’855 patent are not sufficiently fixed in design to warrant adjudication; (6) the ID’s finding that the Accused Products are not “articles that infringe” claim 5 of the ’445 patent; (7) the ID’s finding that claims 5 and 15 of the ’445 patent are invalid as anticipated under 35 U.S.C.

102(g)(2) by Comcast's VOD Vision System; (8) the ID's finding that Comcast has engaged in sales within the United States after importation of accused products in accordance with section 337(a)(1)(B); and (9) the ID's finding that Rovi satisfied the economic prong of the domestic industry requirement. 85 FR 66357-58 (Oct. 19, 2020). The Commission determined not to review the remainder of the final ID. *Id.* The Commission also requested the parties to respond to certain questions concerning the issues under review with respect to Order No. 41 and the final ID, and requested written submissions on the issues of remedy, the public interest, and bonding from the parties and interested non-parties. *Id.*

On October 23 and 30, 2020, Rovi and Comcast each filed a brief and a reply brief, respectively, on all issues for which the Commission requested written submissions. On the same dates, OUII filed a brief and a reply brief on remedy, the public interest, and bonding.

On November 13, 2020, Rovi and Comcast filed a joint motion, including a memorandum in support thereof, to terminate the investigation based on a settlement agreement. There is no opposition to the motion from any party. Commission Rule 210.21(a)(2) states in relevant part that "[a]ny party may move at any time for an order to terminate an investigation in whole or in part as to any or all respondents on the basis of a settlement, a licensing or other agreement" 19 C.F.R. 210.21(a)(2). Commission Rule 210.21(b) governs termination by settlement, and subsection (b)(1) provides that in order for an investigation to be terminated on the basis of a licensing or other settlement agreement, the motion for termination must include: (1) copies of the "licensing or other settlement agreement," including both a public and a confidential version if necessary; (2) any supplemental agreements; and (3) "a statement that there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation." 19 C.F.R. 210.21(b)(1).

Consistent with Commission Rule 210.21(b)(1), redacted versions of a patent license agreement and a settlement agreement between Rovi and Comcast were attached to the motion as Exhibits 1 and 2 and the unredacted agreements were filed separately under a confidential header. The moving parties submit that the agreements resolve the allegations of infringement against Comcast in the investigation. Motion at 1. In further compliance with Commission Rule 210.21(b)(1), the motion contains a statement that there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation. *Id.* at 2. The movants submit that termination is in the interest of the public and administrative economy. *Id.* at 3.

Pursuant to Commission Rule 210.50(b)(2), the Commission finds no evidence that terminating this investigation will adversely affect the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, or U.S. customers. 19 C.F.R. 210.50(b)(2). Moreover, the public interest generally favors settlement to avoid needless litigation and to conserve public resources. *See, e.g., Certain Semiconductor Devices, Products Containing the Same, and Components Thereof (II)*, Inv. No. 337-TA-1177, Order No. 5 at 2 (Nov. 25, 2019), *unreviewed by Comm'n Notice* (Dec. 20, 2019).

Accordingly, the Commission finds that the joint motion for termination satisfies Commission Rules 210.21(a)(2) and (b)(1) (19 CFR 210.21(a)(2), (b)(1)) and that termination of the investigation is not contrary to the public interest.

Accordingly, the Commission grants the joint motion to terminate the investigation in its entirety based on settlement. The investigation is terminated.

The Commission vote for this determination took place on November 30, 2020.

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 CFR part 210.

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', enclosed within a large, loopy circular flourish.

Lisa R. Barton
Secretary to the Commission

Issued: November 30, 2020