

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

**In the Matter of**

**CERTAIN MOBILE PHONES AND  
TABLET COMPUTERS, ALL WITH  
SWITCHABLE CONNECTIVITY**

**Investigation No. 337-TA-1301**

**NOTICE OF A COMMISSION DETERMINATION TO REVIEW IN PART AN  
INITIAL DETERMINATION GRANTING IN PART COMPLAINANTS'  
UNOPPOSED MOTION FOR SUMMARY DETERMINATION THAT IT HAS  
SATISFIED THE ECONOMIC PRONG OF THE DOMESTIC INDUSTRY  
REQUIREMENT**

**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 an initial determination (“ID”) (Order No. 25) of the presiding Administrative Law Judge (“ALJ”) granting in part Complainants’ unopposed motion for summary determination that they have satisfied the economic prong of the domestic industry requirement.

**FOR FURTHER INFORMATION CONTACT:** Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2392. 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](mailto: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 on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** On February 24, 2022, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based on a complaint filed by Ericsson Inc. of Plano, Texas and Telefonaktiebolaget LM Ericsson of Stockholm, Sweden (collectively, “Ericsson” or “Complainants”). 87 FR 10386-87 (Feb. 24, 2022). The complaint alleged a violation of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain mobile phones and tablet computers, all with switchable connectivity, and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 8,792,454 (“the

'454 patent"); 10,880,794 ("the '794 patent"); and 8,472,999 ("the '999 patent"). *Id.* at 10386. The complaint also alleged the existence of a domestic industry.

The notice of investigation named as a respondent Apple Inc. of Cupertino, California ("Apple"). *Id.* The Commission's Office of Unfair Import Investigations ("OUII") is also named as a party in this investigation. *Id.* at 10386-87.

Subsequently, Complainants moved to terminate all asserted claims of the '794 patent and claims 11-17 of the '999 patent from this investigation by reason of withdrawal of their complaint allegations under 19 CFR 210.21(a). The motion was granted. Order No. 23 (Aug. 3, 2022), *unreviewed by* Notice (Sept. 1, 2022). The '794 patent is no longer part of this investigation.

On May 6, 2022, the private parties filed a stipulation to the effect that respondent Apple does not dispute that Complainants satisfy the economic prong of the domestic industry ("DI") requirement. On June 3, 2022, Ericsson filed a motion with an accompanying memorandum seeking a summary determination that it satisfies the economic prong. Apple agreed in the stipulation not to oppose the motion. Ericsson represents that OUII takes no position on it.

On June 28, 2022, the ALJ issued Order No. 15 denying without prejudice Ericsson's motion because the motion suffered from several defects related to allocation, selection of qualifying activities, and support for significance. Order No. 15, at 2–7. On July 13, 2022, in response to Order No. 15, Ericsson filed a renewed motion ("Motion") with an accompanying memorandum ("Memo") seeking a summary determination that it satisfies the economic prong.

On July 25, 2022, Apple filed its response to Ericsson's renewed motion ("Response"). Apple states that it "does not dispute Ericsson's satisfaction of the economic prong of the domestic industry requirement." Response at 1. Apple thereby does not dispute a finding that Ericsson has satisfied the economic prong of the domestic industry requirement under 19 U.S.C. 1337(a)(3)(A) and (B).

On August 8, 2022, the ALJ issued the subject ID (Order No. 25) granting in part Ericsson's Motion. The ID noted that Ericsson asserts that its DI products practice all three asserted patents. ID at 7 (citing Memo at 1). The ID noted that Ericsson further contends that the economic prong of the DI requirement is met under 19 U.S.C. 1337(a)(3)(A) and (B). *Id.* (citing Memo at 1). The ID observed that, according to Ericsson, its domestic industry arises from qualifying activities undertaken by Ericsson and its licensees Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (collectively, "Samsung"). *Id.* (citing Memo at 1). The ID noted that in support of the Motion, Ericsson submitted the expert report of Mr. W. Todd Schoettelkotte. *Id.* (citing Motion, Ex. 3).

The ID further noted that the products that allegedly practice Ericsson's domestic industry differ between the three patents. *Id.* (citing Memo at 9–11). The ID found that for the '794 patent, which covers the handover of a cell phone connection from one band to

another, the DI products consist of Ericsson’s “Base Station” products. *Id.* (citing Memo at 9–10). The ID further found that for the ’454 patent, which covers cell phone roaming, the DI products consist of Samsung Galaxy S10, S20, and S21 phones. *Id.* (citing Memo at 10). The ID found that for the ’999 patent, which covers cell phone use involving two different phone numbers and networks, the DI products consist of “Samsung mobile phones with dual-SIM [and] dual-standby capability.” *Id.* (citing Memo at 11).

Having considered the evidentiary record, *see id.* at 8-37, the ID found that (1) Ericsson has satisfied the economic prong of the domestic industry requirement of 19 U.S.C. 1337(a)(3) under either of subparagraphs (A) or (B) with respect to the ’794 patent, *id.* at 24, and (2) Ericsson has satisfied the economic prong of the domestic industry requirement of 19 U.S.C. 1337(a)(3) under subparagraph (A) with respect to the ’999 patent and the ’454 patent, *id.* at 37.

Order No. 25 also denied Ericsson’s motion under subparagraph (B) with respect to the ’999 patent and the ’454 patent. Those aspects of Order No. 25 do not constitute an initial determination that is subject to review at this time and are therefore not currently before the Commission. 19 CFR 210.42(c)(1). Order No. 25 explained that whether a domestic industry exists under subparagraph (B) as to the ’999 patent and the ’454 patent will need to be resolved after the evidentiary hearing.

No party petitioned for review of the ID.

The Commission has determined to review the subject ID in part. Specifically, the Commission has determined to review the ID’s finding that Ericsson has met the economic prong of the domestic industry requirement as to the ’794 patent under 19 U.S.C. 1337(a)(3) subparagraphs (A) and (B). Because the ’794 patent has been withdrawn from the investigation, the Commission has determined to vacate as moot the ID’s finding that Ericsson has met the economic prong of the domestic industry requirement as to the ’794 patent under 19 U.S.C. 1337(a)(3) subparagraphs (A) and (B). The Commission has determined not to review the ID’s finding that Ericsson has met the economic prong of the domestic industry requirement as to the ’454 and ’999 patents under 19 U.S.C. 1337(a)(3) subparagraph (A). *Id.* at 37-38.

The Commission vote for this determination took place on September 8, 2022.

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 "Katherine M. Hiner". The signature is written in a cursive style with a large initial 'K'.

Katherine M. Hiner  
Acting Secretary to the Commission

Issued: September 9, 2022