

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

In the Matter of

**CERTAIN MOBILE TELEPHONES AND
WIRELESS COMMUNICATION
DEVICES FEATURING DIGITAL
CAMERAS, AND COMPONENTS
THEREOF**

Investigation No. 337-TA-703

**NOTICE OF COMMISSION DETERMINATION THAT
JUNE 22, 2010, INITIAL DETERMINATION IS AN ORDER
RATHER THAN AN INITIAL DETERMINATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that the June 22, 2010, initial determination on claim construction (“ID”) issued by the presiding administrative law judge (“ALJ”) in the above-captioned investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“section 337”) is properly issued in the form of an order rather than an initial determination.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3065. 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 (<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: This investigation was instituted on February 23, 2010, based upon a complaint filed on behalf of Eastman Kodak Company of Rochester, New York (“Kodak”) on January 14, 2010, and supplemented on February 4, 2010. *75 Fed. Reg.* 8112. 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 mobile telephones and wireless communication devices featuring digital cameras, and components thereof, that infringe certain claims of U.S. Patent No.

6,292,218. The complaint named as respondents Apple, Inc., of Cupertino, Calif. (“Apple”); Research in Motion, Ltd., of Ontario, Canada; and Research in Motion Corp., of Irving, Texas (collectively, “RIM”).

On June 22, 2010, the ALJ issued the subject *Markman* hearing initial determination (“ID”), finding that a *Markman* ruling was appropriate in this case and that summary determination was an appropriate vehicle for that ruling. He then proceeded to construe certain terms of the asserted patent claims. ID 8-92.

On June 30, 2010, the parties filed four petitions and contingent petitions for review. On September 1, 2009, each of the parties filed responses thereto.

On July 22, 2010, the Commission issued notice of its determination to review the subject ID and requested briefing on the issues on review, including the following proposed analysis:

As used in rule 210.18(a), the term “issues to be determined in the investigation” can be viewed as limited to claims and affirmative defenses; a “part” of such an issue includes an element (or subpart thereof) of a claim or affirmative defense. Thus, the following could be a non-exhaustive list of examples of issues or parts thereof that are covered by rule 210.18(a): violation, importation, infringement, domestic industry (technical or economic prong), invalidity on any basis (such as anticipation or obviousness), unenforceability. Claim construction may be a necessary underpinning to the resolution of certain issues or elements, and may be part of a summary determination that addresses an issue or element. On its own, however, claim construction might not be viewed as constituting such an issue or element.

75 *Fed. Reg.* 44282 (July 28, 2010).

On August 5, 2010, each of the parties filed a submission in response to the notice of review. On August 16, 2010, each of the parties filed a reply thereto.

Upon review of Commission rules 210.18 and 210.42, 19 C.F.R. §§ 210.18, 210.42, and the parties’ submissions, the Commission has determined that the June 22, 2010, initial determination on claim construction issued by the presiding administrative law judge is an order rather than an initial determination. Commission rule 210.42 does not include claim construction in the list of issues that must be decided in the form of an initial determination. Nor is claim construction properly the subject of a motion for summary determination under Commission rule 210.18 since claim construction, standing alone, is not an “issue” or “any part of an issue” within the meaning of that rule. While the Commission finds that the rules are unambiguous, to the extent interpretation is required, the Commission determines in its discretion and in the interest of the expeditious conclusion of section 337 investigations that a ruling on claim construction is properly issued in the form of an order.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and under sections 210.18 and 210.42 - .46 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.18, 210.42 - .46).

By order of the Commission.

/s/

Marilyn R. Abbott
Secretary to the Commission

Issued: October 20, 2010