

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

In the Matter of

**CERTAIN PERSONAL DATA AND
MOBILE COMMUNICATIONS DEVICES
AND RELATED SOFTWARE**

Investigation No. 337-TA-710

**NOTICE OF COMMISSION DECISION RESCINDING THE EXCLUSION ORDER;
TERMINATION OF THE ENFORCEMENT PROCEEDING**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to rescind the exclusion order issued in the above-captioned investigation. The Commission has also determined not to review the presiding Administrative Law Judge's ("ALJ") initial determination ("ID") (Order No. 130) granting a motion to terminate the enforcement proceeding in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2532. 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 the underlying investigation on April 6, 2010, based on a complaint filed by Apple Inc. ("Apple"), and its subsidiary NeXT Software, Inc., both of Cupertino, California, alleging a violation of section 337. 75 *Fed. Reg.* 17434 (Apr. 6, 2010). The complaint named as proposed respondents High Tech Computer Corp. of Taiwan ("HTC") and its United States subsidiaries HTC America Inc. of Bellevue, Washington ("HTC America"), and Exedea, Inc. of Houston, Texas ("Exedea"). Exedea no longer exists. The complaint alleged the infringement of numerous patents, including

certain claims in U.S. Patent No. 5,946,647 (“the ’647 patent”). The ALJ found a violation of section 337. Following Commission review, on December 19, 2011, the Commission found a violation of section 337 as to claims 1 and 3 of the ’647 patent, and no violation of section 337 as to any other asserted claims. 76 *Fed. Reg.* 80402 (Dec. 23, 2011). An opinion accompanied the notice, and the Commission issued a limited exclusion order. On June 4, 2012, Apple filed a complaint requesting that the Commission institute a formal enforcement proceeding under Commission Rule 210.75 to investigate a violation of the limited exclusion order, and seeking temporary emergency action under Commission Rule 210.77. The complaint named as proposed respondents HTC and HTC America. The Commission denied the request for temporary emergency action, but instituted the enforcement proceeding. 77 *Fed. Reg.* 40083 (July 6, 2012).

On November 11, 2012, Apple and HTC entered into a Patent License and Settlement Agreement. On November 19, 2012, Apple and HTC moved, pursuant to Commission Rule 210.76, to rescind the exclusion order. That same day, they moved the ALJ to terminate the enforcement proceeding. For both motions, they provided a heavily redacted public version and a lightly redacted confidential version of the settlement agreement. In the enforcement proceeding, the Commission investigative attorney (“IA”), opposed the termination motion on the basis of the redaction of the public and confidential versions. On December 7, 2012, Apple and HTC filed “renewed” motions to terminate the enforcement proceeding and to rescind the exclusion order. Appended to the renewed motions was an unredacted confidential version of the settlement agreement, and a lightly redacted public version.

On December 12, 2012, the IA filed a response in support of the renewed motion to terminate the enforcement proceeding. On December 13, 2012, the ALJ granted the motion as an ID. Order No. 130. The ALJ determined that termination was in the public interest. *Id.* at 2; *see* 19 C.F.R. § 210.50(b)(2). No petitions for review were filed.

The Commission has determined to rescind the exclusion order. The Commission has also determined not to review the ALJ’s ID terminating the enforcement proceeding.

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 210.21, 210.42-46 and 210.75-76 of the Commission’s Rules of Practice and Procedure (19 C.F.R. §§ 210.21, 210.42-46 and 210.75-76).

By order of the Commission.



Lisa R. Barton
Acting Secretary to the Commission

Issued: January 14, 2013