

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

**In the Matter of**

**CERTAIN DIGITAL SET-TOP BOXES  
AND COMPONENTS THEREOF**

**Investigation No. 337-TA-712**

**NOTICE OF COMMISSION DETERMINATION NOT TO REVIEW A FINAL INITIAL  
DETERMINATION; AFFIRMING-IN-PART ALJ ORDER NO. 33 GRANTING  
SUMMARY DETERMINATION THAT COMPLAINANT SATISFIED THE  
ECONOMIC PRONG OF THE DOMESTIC INDUSTRY REQUIREMENT UNDER 19  
U.S.C. § 1337(a)(3); SCHEDULE FOR FILING WRITTEN SUBMISSIONS ON  
REMEDY, THE PUBLIC INTEREST, AND BONDING**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission (“the Commission”) has determined not to review the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on May 20, 2011, in the above-captioned investigation; the Commission has also determined to affirm-in-part ALJ Order No. 33 granting summary determination that complainant satisfies 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, SW, Washington, D.C. 20436, telephone (202) 205-3116. 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, SW, 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:** This investigation was instituted on April 21, 2010, based on a complaint filed by Verizon Communications Inc. and Verizon Services Corp. (collectively, “Verizon”), alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain digital set-top boxes

and components thereof, that infringe one or more of claim 14 of U.S. Patent No. 5,635,979; claim 38 of U.S. Patent No. 5,666,293; claim 13 of U.S. Patent No. 6,381,748 (“the ‘748 patent”); claim 14 of U.S. Patent No. 6,367,078; and claim 5 of U.S. Patent No. 7,561,214. 75 *Fed. Reg.* 20861 (2010). Complainant named Cablevision Systems Corp. of Bethpage, New York (“Cablevision”) as the only respondent. *Id.*

On September 7, 2010, Verizon moved for summary determination that its activities in the United States concerning its FiOS TV services satisfy the economic prong of the domestic industry requirement under 19 U.S.C. § 1337(a)(3). On September 24, 2010, Cablevision filed an opposition to Verizon’s motion. Also on September 24, 2010, the Commission investigative attorney (“the IA”) filed a response in support of Verizon’s motion. On January 11, 2010, the ALJ issued an ID (Order No. 33) granting Verizon’s motion. On January 20, 2011, respondent Cablevision filed a petition for review of the Summary ID. On January 27, 2011, Verizon and the IA each filed a response to the petition for review. On February 11, 2011, the Commission determined to review the Summary ID and requested written submissions from the parties on the issues under review. All of the parties timely submitted their respective initial and reply submissions.

The evidentiary hearing on violation of Section 337 was held from January 24, 2011 through February 1, 2011. On May 20, 2011, the ALJ issued his final ID finding a violation of section 337 as to the ‘748 patent only. The ID included the ALJ’s recommended determination on remedy and bonding. All the parties to the investigation filed timely petitions for review of various portions of the final ID, as well as timely responses to the petitions. On July 1, 2011, Cablevision filed an unopposed motion for leave to file a supplemental submission regarding a district court proceeding. *ActiveVideo Networks, Inc. v. Verizon Commc’ns, Inc.*, Civil Action No. 2:10cv248. The motion is hereby granted.

Having examined the record in this investigation, including the ALJ’s final ID, the petitions for review, and the responses thereto, the Commission has determined not to review the final ID. The Commission has also determined to affirm-in-part the ALJ’s Order No. 33, granting Verizon’s motion for summary determination that it has satisfied the economic prong of the domestic industry requirement under 19 U.S.C. § 1337(a)(3)(C). In particular, the Commission affirms that Verizon has satisfied the economic prong of the domestic industry requirement based on its investment in the software development and testing, installation, and support associated with the set-top boxes that were alleged to practice the asserted claims of the patents-in-suit because Verizon’s investments in those activities are “substantial” within the meaning of Section 337(a)(3)(C). The Commission takes no position on the remainder of the summary determination ID. Specifically, the Commission takes no position on whether Verizon’s investments in the FiOS network satisfy the economic prong.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. 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 are 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 (Dec. 1994) (Commission Opinion).

If 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.

If 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. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

**WRITTEN SUBMISSIONS:** 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. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to provide the expiration date of the '748 patent and state the HTSUS numbers under which the accused articles are imported. The written submissions and proposed remedial orders must be filed no later than the close of business on August 4, 2011. Reply submissions must be filed no later than the close of business on August 12, 2011. 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 (or portion thereof) 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 section 201.6 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 201.6. 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 this action is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in sections 210.42-.46 and .50 of the Commission's Rules of

Practice and Procedure (19 C.F.R. §§ 210.42-.46,.50).

By order of the Commission.

/s/  
James R. Holbein  
Secretary to the Commission

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