

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

In the Matter of

**CERTAIN HANDHELD ELECTRONIC
COMPUTING DEVICES, RELATED
SOFTWARE, AND COMPONENTS
THEREOF**

Investigation No. 337-TA-769

**NOTICE OF COMMISSION DECISION NOT TO REVIEW AN
INITIAL DETERMINATION GRANTING COMPLAINANT'S MOTION FOR
SUMMARY DETERMINATION AS TO RESPONDENTS' FIRST AFFIRMATIVE
DEFENSE OF PATENT MISUSE; GRANT OF RESPONDENTS' MOTION TO
CONSIDER LATE FILED EXHIBITS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 32) of the presiding administrative law judge ("ALJ") granting complainant Microsoft Corporation's ("Microsoft") motion for summary determination as to respondents Barnes & Noble, Inc.'s and barnesandnoble.com, LLC's (collectively, "Barnes & Noble") first affirmative defense of patent misuse. The Commission has also granted Barnes & Noble's motion for leave for the Commission to consider respondents' late filed exhibits to their petition for review of the ALJ's ID.

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 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 this investigation on April 25, 2011, based on a complaint filed by Microsoft of Redmond, Washington. *76 Fed. Reg.* 22918. The complaint, as amended, alleges a violation of section 337 of the Tariff Act of 1930,

as amended, 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 handheld electronic computing devices, related software, and components thereof by reason of infringement of certain claims of the U.S. Patent Nos. 5,778,372; 5,889,522; 6,339,780 (“the ’780 patent”); 6,891,551; and 6,957,233. The ’780 patent has been terminated from the investigation based on complainant’s partial withdrawal of the complaint. The complaint further alleges the existence of a domestic industry. The Commission’s notice of investigation named several respondents including Barnes & Noble of New York, New York.

On December 7, 2011, complainant Microsoft moved for summary determination as to respondents Barnes & Noble’s first affirmative defense of patent misuse. The Commission investigative attorney filed a response in support of the motion and Barnes and Noble opposed the motion. No other party responded to the motion.

On January 31, 2012, the ALJ issued the subject ID granting complainant’s motion. On February 8, 2012, Barnes & Noble petitioned for review of the ID, and on February 15, 2012, the Commission investigative attorney and Microsoft filed briefs in opposition to respondents’ petition for review. Also, on February 10, 2012, respondents filed an unopposed motion for leave for the Commission to consider the exhibits to their petition which were filed late. The Commission has determined to grant the motion.

The Commission has determined not to review the ID.

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 section 210.42(h) of the Commission’s Rules of Practice and Procedure, 19 C.F.R. § 210.21, 210.42(h).

By order of the Commission.

/s/
James R. Holbein
Secretary to the Commission

Issued: March 2, 2012