

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN ELECTRONIC DEVICES,
INCLUDING MOBILE PHONES AND
TABLET COMPUTERS, AND
COMPONENTS THEREOF**

Investigation No. 337-TA-847

**NOTICE OF A COMMISSION DETERMINATION TO REVIEW AN INITIAL
DETERMINATION GRANTING SUMMARY DETERMINATION THAT A PATENT
EXHAUSTION DEFENSE CANNOT BE ESTABLISHED**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review an initial determination (“ID”) (Order No. 13) of the presiding administrative law judge (“ALJ”) granting complainants’ motion for summary determination that a patent exhaustion defense cannot be established.

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 June 8, 2012, based on a complaint filed on behalf of Nokia Inc. and Intellisync Corporation, both of Sunnyvale, California, and Nokia Corporation of Espoo, Finland (collectively, “Nokia”). *77 Fed. Reg.* 34063-64. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, based upon the importation in the United States, the sale for importation, and the sale within the United States after importation of certain electronic devices, including mobile phones and tablet computers, and components thereof by reason of infringement of certain claims of U.S. Patent Nos.: 7,106,293 (“the ’293 patent”); 6,141,664 (“the ’664 patent”); 7,209,911 (“the ’911 patent”); 7,366,529 (“the ’529 patent”); 5,570,369 (“the ’369

patent”); 5,884,190 (“the ’190 patent”); 6,393,260 (“the ’260 patent”); 7,415,247 (“the ’247 patent”); and 6,728,530 (“the ’530 patent”). The complaint further alleges the existence of a domestic industry. The Commission’s notice of investigation named HTC Corporation of Taoyuan City, Taiwan; HTC America, Inc. of Bellevue, Washington; and Exedea, Inc. (collectively, “HTC”) of Houston, Texas as respondents. Google, Inc. (“Google”) of Mountain View, California has been added to the investigation as an intervenor. The Office of Unfair Import Investigations is not participating in this investigation. The ’529, ’293, ’664, and ’911 patents have been terminated from the investigation, and the ’530 patent is no longer asserted by Nokia.

On March 29, 2013, Nokia moved for summary determination that HTC and Google cannot establish their patent exhaustion defense with respect to the remaining ’190, ’247, ’260, and ’369 patents asserted by Nokia. On the same date, HTC cross-moved for summary determination that their patent exhaustion defense was meritorious as a matter of law. Both sides timely opposed each other’s motion.

On May 2, 2013, the ALJ issued the subject ID (Order No. 13) granting Nokia’s motion for summary determination as to the patent exhaustion defense. Order No. 13 also denied HTC’s cross-motion. The ID found there was no genuine issue of material fact in dispute regarding non-establishment of the patent exhaustion defense. Specifically, the ALJ found that no first sale had occurred in the United States. The ALJ went on to opine, *inter alia*, that the original sale was authorized. Nokia petitioned for review of the ID on May 9, 2013, and HTC filed a petition for review on May 10, 2013. On May 16, 2013, Nokia and HTC each filed a response in opposition to the other’s petition.

Having examined the record of this investigation, including the subject ID and the submissions of the parties, the Commission has determined to review the ID in its entirety. The Commission notes that the hearing in this investigation began on May 31, 2013. Accordingly, the Commission has determined that it will render its final disposition with respect to the subject ID (Order No. 13) in conjunction with its final disposition as to the ALJ’s final 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 210.45 of the Commission’s Rules of Practice and Procedure, 19 C.F.R. § 210.45.

By order of the Commission.



Lisa R. Barton
Acting Secretary to the Commission

Issued: June 4, 2013