

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

**In the Matter of**

**CERTAIN ELECTRONIC IMAGING  
DEVICES**

**Investigation No. 337-TA-850**

**NOTICE OF COMMISSION DETERMINATION TO REVERSE THE FINDING OF  
VIOLATION OF SECTION 337; TERMINATION OF THE INVESTIGATION**

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

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to reverse the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on September 30, 2013, finding a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“Section 337”) in the above-captioned investigation. The Commission finds no violation of Section 337. The investigation is terminated.

**FOR FURTHER INFORMATION CONTACT:** Jia Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-4737. 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 29, 2012, based on a complaint filed by Flashpoint Technology, Inc. (“Flashpoint”) of Peterborough, New Hampshire, alleging violation of Section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic imaging devices by reason of infringement of certain claims of U.S. Patent Nos. 6,504,575 (“the ‘575 patent”), 6,222,538 (“the ‘538 patent”), 6,400,471 (“the ‘471 patent”), and 6,223,190 (“the ‘190 patent”). The notice of investigation named the following respondents: HTC Corporation of Taoyuan, Taiwan and HTC America, Inc. of Bellevue, Washington (collectively, “HTC”); Pantech Co., Ltd. of Seoul, Republic of Korea and Pantech Wireless, Inc. of Atlanta, Georgia (collectively, “Pantech”); Huawei Technologies Co., Ltd. of Shenzhen, China and FutureWei Technologies, Inc. d/b/a Huawei Technologies (USA) of Plano, Texas

(collectively “Huawei”); and ZTE Corporation of Shenzhen, China and ZTE (USA) Inc. of Richardson, Texas (collectively “ZTE”). The ‘575 patent and respondent Pantech have been terminated from the investigation. The Commission Office of Unfair Import Investigations did not participate in this investigation.

On September 30, 2013, the ALJ issued a final ID finding a violation of Section 337 by HTC. Specifically, the ALJ concluded that two of the accused HTC smartphones, *i.e.*, the HTC Vivid and HTC Droid Incredible 4G LTE, infringe the asserted claims of the ‘538 patent. The ALJ found, however, that none of the other accused HTC smartphones infringes the asserted claims of the ‘538 patent and that none of the accused HTC, Huawei, or ZTE smartphones infringes the asserted claims of the ‘471 patent or the ‘190 patent. The ALJ found that the smartphones of Flashpoint’s licensees Apple Inc. (“Apple”) and Motorola Mobility Holdings, Inc. (“Motorola”) meet the technical prong of the domestic industry requirement with respect to the ‘538 patent, but that none of the licensed Motorola or Apple smartphones meet the technical prong of the domestic industry requirement with respect to either the ‘471 or ‘190 patents. The ALJ found that Flashpoint established the economic prong of the domestic industry requirement under Sections 337(a)(3)(A), (B), and (C) with respect to all of the asserted patents. The ALJ also found that HTC has not established that the asserted patents are invalid in view of the prior art or the on-sale bar. The ALJ further found that the ‘190 and ‘538 patents are not unenforceable for failure to name an inventor.

On October 31, 2013, Flashpoint filed a petition for review challenging the ALJ’s findings. On the same day, respondents filed a joint petition for review challenging the ALJ’s findings. On the same day, HTC filed a separate petition for review challenging the ALJ’s findings with respect to issues affecting only HTC. The parties submitted responses to the petitions on November 8, 2013.

On December 16, 2013, the Commission determined to review the ALJ’s findings regarding the following issues: (1) infringement of the asserted claims of the ‘538 patent by the HTC Vivid and HTC Droid Incredible 4G LTE smartphones; (2) the technical prong of the domestic industry requirement for the ‘538 patent; (3) obviousness of the asserted claims of the ‘538 patent over U.S. Patent No. 5,835,772 to Thurlo, U.S. Patent No. 5,740,801 to Branson, the “Admitted Prior Art,” U.S. Patent No. 5,638,501 to Gough *et al.*, and U.S. Patent No. 5,898,434 to Small; (4) claim construction of the term “operating system” in the asserted claims of the ‘471 patent; (5) infringement of the ‘471 patent by the accused HTC, Huawei, and ZTE products; (6) the technical prong of the domestic industry requirement for the ‘471 patent; (7) anticipation of the asserted claims of the ‘471 patent in view of U.S. Patent No. 5,687,376 to Celi, Jr. *et al.*; (8) infringement of the asserted claim of the ‘190 patent; (9) technical prong of the domestic industry requirement for the ‘190 patent; (10) anticipation and obviousness of the ‘190 patent in view of U.S. Provisional Patent Application 60/037,963 to Parulski (“Parulsi-963”); (11) anticipation and obviousness of the ‘190 patent in view of the Color Zaurus Reference (“Zaurus”); (12) anticipation and obviousness of the ‘190 patent in view of the Japanese Laid-Open Patent Application No. H09-298678 to Saito; (13) validity of the ‘538, ‘471, and ‘190 patents in view of the on-sale bar; (14) enforceability of claim 19 of the ‘538 patent with respect to joint inventorship; and (15) the economic prong of the domestic industry requirement with respect to the ‘538, ‘471, and ‘190 patents. The Commission requested briefing from the parties

on fourteen (14) questions. The parties submitted their opening responses on January 3, 2014 and their reply responses on January 10, 2014.

Having examined the record of this investigation, including the ALJ's final ID, the parties' petitions for review, and the submissions of the parties on review, the Commission has determined to reverse the ALJ's determination of violation of Section 337 and to find no violation of Section 337 with respect to the asserted patents. Specifically, the Commission finds that: (1) the HTC Vivid and HTC Droid Incredible 4G LTE smartphones do not infringe the asserted claims of the '538 patent; (2) complainant has met the technical prong of the domestic industry requirement for the '538 patent; (3) respondents have not shown that the asserted claims of the '538 patent are obvious; (4) the ALJ correctly construed the term "operating system" in the asserted claims of the '471 patent, (5) the accused HTC, Huawei, and ZTE products do not infringe the asserted claims of the '471 patent; (6) complainant has not proved the technical prong of the domestic industry requirement for the '471 patent; (7) respondents have not shown that the asserted claims of the '471 patent are anticipated; (8) the accused HTC, Huawei, and ZTE products do not infringe the asserted claim of the '190 patent; (9) complainant has not proved the technical prong of the domestic industry requirement for the '190 patent; (10) respondents have not shown that the asserted claim of the '190 patent is anticipated or rendered obvious; (11) respondents have not shown that the asserted claims of the '538, '471, and '190 patents are invalid in view of the on-sale bar; (12) respondents have not shown that claim 19 of the '538 patent is unenforceable due to failure to name an inventor; and (13) complainant has proved that the economic prong of the domestic industry requirement with respect to the '538, '471, and '190 patents. The Commission has further determined to take no position on whether the asserted claim of the '190 patent is anticipated or rendered obvious by Parulski-963 or Zaurus. A Commission opinion will issue promptly.

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 Part 210 of the Commission's Rules of Practice and Procedure (19 C.F.R. Part 210).

By order of the Commission.



Lisa Barton  
Secretary to the Commission

Issued: March 14, 2014