

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

**In the Matter of**

**CERTAIN WIRELESS  
COMMUNICATIONS EQUIPMENT  
AND ARTICLES THEREIN**

**Investigation No. 337-TA-866**

**NOTICE OF COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL  
DETERMINATION GRANTING COMPLAINANTS' MOTION FOR SUMMARY  
DETERMINATION THAT CERTAIN REFERENCES ARE NOT PRIOR ART**

**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 the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 42) granting the motion of complainants Samsung Electronics Co., Ltd. of Seoul, Republic of Korea, and Samsung Telecommunications America, LLC of Richardson, Texas (collectively "Samsung") that two references, Japanese Application 2008-000199 and its international application published as PCT Publication No. WO 2009/087743 (collectively, "References") are not prior art with respect to U.S. Patent No. 8,165,081 ("the '081 patent").

**FOR FURTHER INFORMATION CONTACT:** Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2301. 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 January 31, 2013, based on a Complaint filed by Samsung Electronics Co., Ltd. of Seoul, Republic of Korea, and Samsung Telecommunications America, LLC of Richardson, Texas (collectively "Samsung"). 78 *Fed. Reg.* 6837-38 (Jan. 31, 2013). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 ("section 337"), in the importation into the United States, the sale for importation, and the sale within the

United States after importation of certain wireless communications equipment and articles therein by reason of infringement of certain claims of U.S. Patent Nos. 7,782,749; the '081 patent; 8,208,438; 8,228,827; 6,617,929; 6,767,813 ("the '813 patent"); and 6,865,682. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named as respondents Ericsson Inc. of Plano, Texas and Telefonaktiebolaget LM Ericsson of Stockholm, Sweden (collectively "Respondents"). The Office of Unfair Import Investigations was also named as a party. The Commission previously terminated the investigation with respect to the '813 patent. Notice (July 12, 2013); Order No. 30 (June 12, 2013).

On July 30, 2013, Samsung filed a motion for summary determination that the References are not prior art with respect to the '081 patent under either 35 U.S.C. §§ 102(a), 102(b), 102(e), or 103(a). On August 9, 2013, Respondents opposed the motion. Also on August 9, 2013, the Commission investigative attorney filed a response in support of the motion.

On September 17, 2013, the ALJ issued the subject ID, granting Samsung's motion. The ALJ found Respondents had sufficient notice of Samsung's position. The ALJ also found that the References do not qualify as prior art under section 102(a) because the '081 patent was filed before the References were published and the References relate to a foreign application that does not show that the invention was known or used in the United States. The ALJ further found that the References do not qualify as prior art under section 102(b) because they were not published more than one year prior to the filing date of the '081 patent. The ALJ also found that Japanese Application 2008-000199 does not qualify as prior art under section 102(e) because it is not an application filed under the PCT and that PCT Publication No. WO 2009/087743 does not qualify as prior art under section 102(e) because it was not published in English. Because the References do not qualify as prior art under section 102, the ALJ found that they do not qualify as prior art under section 103(a). No petitions for review were filed.

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 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42).

By order of the Commission.



Lisa R. Barton  
Acting Secretary to the Commission

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