

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN SUBSEA TELECOMMUNICATION
SYSTEMS AND COMPONENTS THEREOF**

Investigation No. 337-TA-1098

**NOTICE OF COMMISSION DECISION TO REVIEW, AND ON REVIEW,
TO AFFIRM WITH MODIFICATION AN INITIAL DETERMINATION GRANTING-
IN-PART RESPONDENTS' MOTION FOR SUMMARY DETERMINATION AS TO
THE TECHNICAL PRONG OF THE DOMESTIC INDUSTRY REQUIREMENT
WITH RESPECT TO U.S. PATENT 8,380,068**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review, and on review, to affirm with modification an initial determination (“ID”) (Order No. 46) of the presiding administrative law judge (“ALJ”) granting-in-part Respondents’ motion for summary determination as to the technical prong of the domestic industry requirement with respect to U.S. Patent 8,380,068.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708-4716. 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 <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://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 26, 2018, based on a complaint filed by Complainants Neptune Subsea Acquisitions Ltd. of the United Kingdom, Neptune Subsea IP Ltd. of the United Kingdom, and Xtera, Inc. of Allen, Texas. *See* 83 Fed. Reg. 3770-71 (Jan. 26, 2018). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain subsea telecommunication systems and components thereof by reason of infringement of one or more claims of U.S. Patent No. 8,380,068 (“the ’068 patent”); U.S. Patent

No. 7,860,403 (“the ’403 patent”); U.S. Patent No. 8,971,171 (“the ’171 patent”); U.S. Patent No. 8,351,798 (“the ’798 patent”); and U.S. Patent No. 8,406,637 (“the ’637 patent”). *See id.* The notice of investigation identified the following respondents: Nokia Corporation of Finland; Nokia Solutions and Networks B.V. of the Netherlands; Nokia Solutions and Networks Oy of Finland; Alcatel-Lucent Submarine Networks SAS of France; Nokia Solutions and Networks US LLC of Phoenix, Arizona; NEC Corporation of Japan; NEC Networks & System Integration Corporation of Japan; and NEC Corporation of America of Irving, Texas. *See id.* The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation. *See id.*

On September 25, 2018, Respondents filed a motion for summary determination that: (1) Complainants fail to satisfy the technical prong of the domestic industry requirement with respect to the ’068 patent; (2) Complainants fail to satisfy the technical prong of the domestic industry requirement with respect to the ’798 patent; and (3) the asserted claims of the ’171 patent are invalid. On October 5, 2018, Complainants and OUII filed responses in opposition to Respondents’ motion.

On November 19, 2018, in the subject ID, the ALJ granted-in-part Respondents’ motion, specifically with respect to the technical prong of the domestic industry requirement as to the ’068 patent, but Order No. 46 otherwise deferred ruling on the ’798 and ’171 patents. On November 28, 2018, Complainants filed a petition for Commission review of the subject ID, and on December 6, 2018, Respondents and OUII filed responses in opposition to Complainants’ petition.

As explained in the Commission Opinion, the Commission has determined to review the ID, and on review, to affirm the ID with modification.

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 CFR part 210).

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: December 19, 2018