

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

In the Matter of

**CERTAIN MOBILE TELEPHONES AND
WIRELESS COMMUNICATION
DEVICES FEATURING DIGITAL
CAMERAS, AND COMPONENTS
THEREOF**

Investigation No. 337-TA-703

**NOTICE OF COMMISSION DETERMINATION TO REVIEW THE INITIAL
REMAND DETERMINATION IN PART AND ON REVIEW TO AFFIRM A
DETERMINATION OF NO 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 affirm, on modified grounds, the remand initial determination (“remand ID”) issued by the presiding administrative law judge (“ALJ”) on May 21, 2012, finding no violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337), as amended, (“section 337”) in the above-captioned investigation. The investigation is thus terminated with a finding of no violation of section 337.

FOR FURTHER INFORMATION CONTACT: Amanda S. Pitcher, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2532. 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) 205-2737. 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: This investigation was instituted on February 23, 2010, based upon a complaint filed on behalf of Eastman Kodak Company of Rochester, New York (“Kodak”) on January 14, 2010, and supplemented on February 4, 2010. *75 Fed. Reg.* 8112. The complaint alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States

after importation of certain mobile telephones and wireless communication devices featuring digital cameras, and components thereof, that infringe certain claims of U.S. Patent No. 6,292,218 (“the ’218 patent”). The notice of investigation named as respondents Apple, Inc. of Cupertino, California (“Apple”); Research in Motion, Ltd. of Ontario, Canada; and Research in Motion Corp. of Irving, Texas (collectively, “RIM”). Claim 15 is the only asserted claim remaining in the investigation.

On January 24, 2011, then-Chief Judge Luckern issued a final Initial Determination (“final ID”) finding no violation of section 337. On March 25, 2011, the Commission determined to review the final ID in its entirety. 76 *Fed. Reg.* 17,965 (March 31, 2011). On June 30, 2011, the Commission issued a notice that determined to affirm in part, reverse in part, and remand in part, the final ID. The Commission remanded the investigation in order for the ALJ to consider (1) infringement under the Commission’s construction of the “still processor” limitation; (2) infringement under the Commission’s construction of the “motion processor” limitation; (3) whether Kodak waived the argument that the iPhone 3GS and iPhone 4 in their non-flash-photography mode practice the “initiating capture” limitation under the doctrine of equivalents and if not, whether the iPhone 3GS and iPhone 4 practice this limitation under the doctrine of equivalents; and (4) validity in light of the Commission’s claim constructions, including further analysis of the pertinence of the *ex parte* reexaminations of the ’218 patent and an explanation of the secondary considerations of nonobviousness. After remand, Chief Judge Luckern retired, and the investigation was reassigned to Judge Pender.

On May 21, 2012, Judge Pender issued the remand ID finding no violation of section 337. In particular, he found claim 15 to be obvious in view of Japanese Patent Application Laid-Open Disclosure No. H5-122574 (“Mori”) and U.S. Patent No. 5,493,335 to Parulski (“Parulski ’335”). He found the claim to be infringed by the accused RIM products and by the Apple iPhone 3G, but not the iPhone 3GS and iPhone 4. Kodak and the Commission investigative attorney (“IA”) petitioned for review of, *inter alia*, the ALJ’s finding that claim 15 of the ’218 patent is invalid. RIM has petitioned for review of the ALJ’s finding of infringement by the accused RIM products, the ALJ’s failure to consider certain newly introduced products that RIM contends do not infringe, and the ALJ’s finding that claim 15 is not obvious in view of the combination of U.S. Patent No. 4,887,161 (Watanabe), U.S. Patent No. 3,971,065 (Bayer), and Sharp ViewCam. Apple petitioned for review of the ALJ’s finding that the iPhone 3G infringes claim 15, and Apple joined in RIM’s petition on the invalidity issues. The IA, Apple and RIM filed responses to Kodak’s petition. The IA and Kodak filed responses to RIM’s and Apple’s petitions.

Having reviewed the record of this investigation, including the parties’ petitions for review and responses thereto, as well as the parties’ submissions to the ALJ, both before and after remand, and the transcripts of the hearing conducted by the ALJ, the Commission has determined to review the ALJ’s remand ID in part. The Commission has determined to review the ALJ’s finding of infringement of the ’218 patent by the accused RIM products and the iPhone 3G, and his finding of invalidity based on the Mori and Parulski ’335 combination. The Commission affirms the remaining findings of the ALJ. On review, the Commission has determined to (1) find that the accused RIM products and the Apple iPhone 3G infringe claim

15; and (2) affirm the ALJ's invalidity findings regarding the Mori and Parulski '335 combination on modified grounds.

The Commission's determination and reasons in support thereof will be further detailed in the Commission's forthcoming opinion.

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 sections 210.42-46 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42-46).

By order of the Commission.

/s/
Lisa R. Barton
Acting Secretary to the Commission

Issued: July 20, 2012