UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of	
CERTAIN WIRELESS COMMUNICATION DEVICES, PORTABLE MUSIC AND DATA PROCESSING DEVICES, COMPUTERS AND COMPONENTS THEREOF	**Investigation No. 337-TA-745**

NOTICE OF COMMISSION DECISION FINDING NO VIOLATION OF SECTION 337 AS TO U.S. PATENT NO. 6,246,862; TERMINATION OF INVESTIGATION WITH A FINDING OF NO VIOLATION

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found no violation of 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in the above-captioned investigation with respect to U.S. Patent No. 6,246,862 ("the '862 patent"). The investigation is terminated with a finding of no violation.

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 November 8, 2010, based on a complaint filed by Motorola Mobility, Inc. of Libertyville, Illinois ("Motorola"). 75 *Fed. Reg.* 68619-20 (Nov. 8, 2010). 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 communication devices, portable music and data processing devices, computers and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 6,272,333 ("the '333 patent"); 6,246,697 ("the '697 patent"); and 5,636,223 ("the '223 patent"), the '862 patent, U.S. Patent No. 5,359,317 ("the '317 patent"), and U.S.

Patent No. 7,751,826 ("the '826 patent"). The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named Apple Inc. of Cupertino, California ("Apple") as respondent. The Office of Unfair Import Investigation ("OUII") was named as a participating party, however, on July 29, 2011, OUII withdrew from further participation in the investigation. *See* Commission Investigative Staff's Notice of Nonparticipation (July 29, 2011). The Commission later partially terminated the investigation as to the '317 patent and the '826 patent. Notice (June 28, 2011); Notice (Jan 27, 2012).

On April 24, 2012, the presiding administrative law judge ("ALJ") issued his final initial determination ("Final ID"), finding a violation of section 337 as to the '697 patent and no violation of section 337 as to the '223 patent, the '333 patent, and the '862 patent. On May 9, 2012, the ALJ issued a recommended determination on remedy and bonding.

On June 25, 2012, the Commission determined to review the Final ID in part. 77 Fed. Reg. 38826-29 (June 29, 2012). On August 24, 2012, the Commission found no violation with respect to the '333 patent, the '697 patent, and the '223 patent. 77 *Fed. Reg.* 52759-761 (Aug. 30, 2012). The Commission remanded the investigation to the ALJ with respect to the '862 patent upon reversing his finding that the patent is invalid as indefinite. *Id.*; see Order (Aug. 24, 2012). Specifically, the Commission instructed the ALJ to make findings regarding infringement, validity, and domestic industry concerning the '862 patent. The Commission's Order instructed the ALJ to set a new target as necessary to accommodate the remand proceedings. On October 1, 2012, the ALJ issued Order No. 36, setting the target date for completion of the remand proceedings as April 22, 2013. Order No. 36 (Oct. 1, 2012). On October 18, 2012, the Commission determined not to review the ID setting the new target date. Notice (Oct. 18, 2012).

On December 18, 2012, the ALJ issued his final initial determination on remand ("Remand ID"), finding no violation of section 337 with respect to the '862 patent. In particular, the ALJ found that the relevant accused products infringe claim 1 of the '862 patent literally and under the doctrine of equivalents, but that claim 1 is invalid as anticipated by U.S. Patent No. 6,052,464 to Harris ("Harris '464"). The ALJ further found that claim 1 is not invalid for obviousness in light of Harris '464 in combination with the knowledge of one of ordinary skill in the art or in combination with U.S. Patent No. 5,894,298 to Hoeksma ("Hoeksma '298"). The ALJ also found that Motorola has satisfied the economic and technical prongs of the domestic industry requirement with respect to the '862 patent.

On January 7, 2013, Motorola petitioned for review of the Remand ID's construction of the limitation "a touch sensitive input device" of claim 1 of the '862 patent and the Remand ID's finding that claim 1 of the '862 patent is invalid as anticipated by Harris '464. Also on January 7, 2013, Apple filed a contingent petition for review of the Remand ID's findings that the relevant accused products infringe claim 1 of the '862 patent literally and under the doctrine of equivalents.

On February 19, 2013, the Commission determined to review the Remand ID in part. 78 *Fed. Reg.* 12785-86 (Feb. 25, 2013). Specifically, the Commission determined to review the Remand ID's construction of the limitation "touch sensitive input device" in claim 1 of the '862

patent. The Commission also determined to review the Remand ID's finding that the accused products literally infringe claim 1. The Commission further determined to review the Remand ID's finding that claim 1 of the '862 patent is anticipated and its finding that claim 1 was not shown to be obvious. The Commission determined not to review the remaining issues in the Remand ID and adopted those findings. In connection with the question of whether claim 1 of the '862 patent is obvious, the Commission posed the following question to the parties:

> Does the evidence in the record support a finding that claim 1 of the '862 patent is obvious in view of Harris '464 in combination with the knowledge of one of ordinary skill in the art or in combination with Hoeksma '298 where the evidence demonstrates that the existence of portable communication devices using "touch sensitive input devices," including touch screens, were known in the art prior to the filing of the application leading to the '862 patent and is disclosed in Hoeksma '298? In discussing this issue, please refer to the teachings of the references, the knowledge of one of ordinary skill in the art at the time of filing of the '862 patent application, and the evidence in the record regarding the motivation to combine Harris '464 with the knowledge of one of ordinary skill in the art or with Hoeksma '298. Also, please address whether there are any secondary considerations that would prevent a finding of obviousness.

78 *Fed. Reg.* at 12786.

On March 8, 2013, Motorola and Apple filed initial submissions in response to the Commission's Notice of Review. On March 15, 2013, Motorola filed a response to Apple's opening brief. Also on March 15, 2013, Apple filed a response to Motorola's opening brief.

Having examined the record of this investigation, including the ALJ's Remand ID and the parties' submissions, the Commission has determined to terminate the investigation with a finding of no violation of section 337 with respect to the '862 patent. Specifically, the Commission construes the claim limitation "touch sensitive input device" in claim 1 of the '862 patent in accordance with its plain and ordinary meaning, which does not include any device that is actuated by physical force, such as a conventional pushbutton keypad. The Commission affirms the Remand ID's finding that the accused products literally infringe claim 1 of the '862 patent based on the finding that communication of the input signal is actually disabled when the proximity sensor is triggered in the accused products, but vacates and does not reach the Remand ID's finding that communication of the input signal is effectively disabled at the lower sampling rate.

The Commission reverses the Remand ID's finding that Harris '464 anticipates claim 1 of the '862 patent. The Commission further finds that Apple has shown by clear and convincing evidence that claim 1 of the '862 patent is obvious in view of Harris '464 in combination with the knowledge of one of ordinary skill in the art and in view of Harris '464 in combination with Hoeksma '298.

The investigation is terminated. A Commission Opinion will issue shortly.

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 210.45, .49 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.45, .49).

By order of the Commission.

Lisa R. Barton
Acting Secretary to the Commission

Issued: April 22, 2013