

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 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 A FINAL
DETERMINATION OF NO VIOLATION OF SECTION 337; SCHEDULE FOR FILING
WRITTEN SUBMISSIONS ON THE ISSUES UNDER REVIEW AND ON REMEDY,
THE PUBLIC INTEREST, AND BONDING**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on January 24, 2011, finding no violation of section 337 in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, 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) 205-2000. 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: 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 (19 U.S.C. § 1337) 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 complaint named as respondents Apple, Inc., of Cupertino,

Calif. (“Apple”); Research in Motion, Ltd., of Ontario, Canada; and Research in Motion Corp., of Irving, Texas (collectively, “RIM”). Claim 15 is now the only claim in issue.

On January 24, 2011, the ALJ issued a final ID finding no violation of section 337. The ALJ found that none of the accused Apple and RIM products infringe asserted claim 15 of the ‘218 patent. In addition, the ALJ found that claim 15 is invalid for obviousness under 35 U.S.C. § 103. The ALJ found, however, that the domestic industry requirement is satisfied with respect to the asserted patent. With respect to remedy, the ALJ recommended that if the Commission disagrees with the finding of no violation, the Commission should issue a limited exclusion order and cease and desist orders directed to Apple and RIM. In addition, the ALJ recommended, in the event that a violation is found, that no bond be required during the Presidential review period.

On February 7, 2011, Kodak, Apple, RIM, and the Commission investigative attorney each filed a petition for review of the ALJ’s final ID. The parties each filed a response submission on February 15, 2011.

Having examined the record of this investigation, including the ALJ’s final ID and the submissions of the parties, the Commission has determined to review the final ID in its entirety.

The parties should brief their positions on the issues on review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in responses to the following questions:

1. Kodak has argued in its petition for review that the ALJ made a ruling on obviousness with respect to prior art combinations that Kodak did not have an opportunity to address. The parties should address whether the ALJ permissibly relied on these prior art combinations and whether these combinations render claim 15 invalid for obviousness.
2. Kodak has argued in its petition for review that the ALJ did not address the claim constructions of the presiding ALJ in Inv. No. 337-TA-663. The parties should address whether the ALJ should have considered the claim constructions in Inv. No. 337-TA-663 and what effect those constructions should have in this case.
3. Kodak has argued in its petition for review that the ALJ did not address the reexaminations at the U.S. Patent and Trademark Office of the ‘218 patent. The parties should address whether the ALJ should have considered the reexaminations and what effect those reexaminations should have in this case.
4. Please explain whether U.S. Patent No. 5,493,335 is prior art, and if so, on what statutory basis.

5. What is the meaning of “color pixel value” in part (b) of claim 15? Is it “the value of a color pixel”? In your answer, address the patent’s discussion of each red, green, or blue element of a display being a “pixel” (column 8 lines 17-28).

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in a respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the United States Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission’s action. *See* Presidential Memorandum of July 21, 2005, 70 *Fed. Reg.* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission’s consideration. Complainant is also requested to state the date that the patent expires and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on Friday April 8, 2011. Reply submissions must be filed no later than the close of business on Friday April 15, 2011. The written submissions must be no longer than 100 pages and the reply submissions must be no longer than 50 pages. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All non-confidential written submissions will be available for public inspection at the Office of the Secretary.

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 and 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42-46 and 210.50).

By order of the Commission.

/s/
James R. Holbein
Acting Secretary to the Commission

Issued: March 25, 2011