

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN PORTABLE ELECTRONIC
DEVICES AND RELATED SOFTWARE

Investigation No. 337-TA-721

NOTICE OF COMMISSION FINAL
DETERMINATION FINDING 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 found no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337 with respect to United States Patent No. 6,999,800 (“the ‘800 patent”) in this investigation, and has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Amanda S. Pitcher, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2737. 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 (<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 June 17, 2010, based on a complaint filed by HTC Corporation (“HTC”) of Taiwan. 75 Fed. Reg. 34,484-85 (June 17, 2010). The complaint alleged violations of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and sale within the United States after importation of certain portable electronic devices and related software by reason of infringement of various claims of the ‘800 patent; United States Patent No. 5,541,988 (“the ‘988 patent”); United States Patent No. 6,320,957 (“the ‘957 patent”); United States Patent No. 7,716,505 (“the ‘505 patent”); and United States Patent No. 6,058,183 (“the ‘183 patent”) (subsequently terminated from the investigation). The complaint named Apple Inc. as the Respondent.

On October 17, 2011, the ALJ issued his final ID, finding no violation of section 337 by the Respondent. Specifically, the ALJ found that the Commission has subject matter jurisdiction and that Apple did not contest that the Commission has *in rem* and *in personam* jurisdiction. The ALJ also found that there was an importation into the United States, sale for importation, or sale within the United States after importation of the accused portable electronic devices and related software. Regarding infringement, the ALJ found that Apple does not infringe claims 1, 2, 4, 6, 10, 11, 14 and 15 of the '800 patent, claims 1 and 10 of the '988 patent, claims 8-9 of the '957 patent and claims 1-2 of the '505 patent. With respect to invalidity, the ALJ found that the asserted claims are not invalid. Finally, the ALJ concluded that an industry exists within the United States that practices the '988 and '957 patents, but not the '800 and '505 patents as required by 19 U.S.C. § 1337(a)(2).

On October 31, 2011, HTC filed a petition for review of the ID, which also included a contingent petition for review. Also on October 31, 2011, Apple filed a contingent petition for review. On November 8, 2011, the parties filed responses to the petition and contingent petitions for review. On December 16, 2011, the Commission determined to review the ID in part. The Commission determined to review the ALJ's findings for '800 patent in its entirety and requested briefing on nine issues, and on remedy, the public interest and bonding. 76 Fed. Reg. 79708-09 (Dec. 22, 2011). The Commission did not review any issues related to the '505 patent and reviewed in part the ALJ's findings for the '988 and '957 patents. *Id.* The Commission took no position on one limitation and affirmed the remainder of the ALJ's findings for the '988 and '957 patents. *Id.* The Commission terminated those patents from the investigation. *Id.*

On January 4, 2012, the parties filed written submissions on the issues under review, remedy, the public interest, and bonding. On January 11, 2012, the parties filed reply submissions on the issues on review, remedy, the public interest, and bonding.

Having examined the record of this investigation, including the ALJ's final ID, the Commission has determined that there is no violation of section 337. Specifically, the Commission has determined to reverse the ALJ's finding that the "switching the PDA system from normal mode to sleep mode when the PDA system has been idle for a second period of time" limitation of claim 1 is met and affirm the ALJ's determination that the accused products do not meet the "implementing a power detection method comprising steps of: detecting an amount of power of a source in the power system; switching the mobile phone system to off mode when the detected amount is less than a first threshold; and switching the PDA system to off mode when the detected amount is less than a second threshold" limitations of claim 1. In addition, the Commission affirms the ALJ's finding that no domestic industry exists for the '800 patent. The Commission also finds that Apple's waiver argument is moot.

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.

A handwritten signature in black ink, appearing to read "J. R. Holbein". The signature is fluid and cursive, with a long horizontal stroke at the end.

James R. Holbein
Secretary to the Commission

Issued: February 17, 2012