

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

**Washington, D.C.**

**In the Matter of**

**CERTAIN ELECTRONIC DEVICES WITH  
IMAGE PROCESSING SYSTEMS,  
COMPONENTS THEREOF, AND  
ASSOCIATED SOFTWARE**

**Inv. No. 337-TA-724**

**ORDER NO. 48      GRANTING REQUEST TO RELEASE CONCLUSIONS OF LAW  
FROM FINAL INITIAL DETERMINATION**

(July 25, 2011)

On July 11, 2011, Respondent filed an unopposed request seeking an additional day to submit proposed redactions of the final initial determination in this Investigation. (Motion Docket No. 724-049.) The Administrative Law Judge granted said request. (Order No. 47.) The parties submitted proposed redactions for a public version of the final initial determination, which were rejected on July 14, 2011 for various reasons. The parties submitted revised proposed redactions for a public version of the final initial determination. Complainants' proposed redactions were again rejected on July 21, 2011. Complainants were specifically advised that only confidential business information, as defined in the Protective Order, may be redacted, even if this means redacting portions of sentences.

On July 22, the Administrative Law Judge received a letter from counsel for Respondent requesting that the conclusions of law in the final initial determination be made public. Having considered said request, the Administrative Law Judge scheduled a teleconference with the parties to allow them an opportunity to present argument on whether unredacted conclusions of law should be released to the public. After scheduling the teleconference, the Administrative

Law Judge further received correspondence from one of the nonparty entities whose confidential information is in issue. Said nonparty requested release of certain of its information, which it says may be made public. In addition, Respondent submitted correspondence detailing its objections to those redactions proposed by Complainants and already rejected by the Administrative Law Judge on July 21.

On July 25, 2011, the scheduled teleconference took place on the record. The Administrative Law Judge heard and considered the arguments set forth by counsel for Complainants, Respondent, and the Commission Investigative Staff. Complainants noted that they were withdrawing their proposed redactions with respect to conclusion of law number 22. Complainants further requested at the conference that if the Administrative Law Judge determined that the conclusions of law should be released, Complainants should be permitted to appeal to the Commission.

The Administrative Law Judge has the discretion, pursuant to Commission Rule 210.5(e), to decide whether information designated by a supplier is entitled to confidential treatment in an initial determination. Having heard the parties' positions on the matter of whether an unredacted version of the conclusions of law in the final initial determination may be made public, the Administrative Law Judge finds that Respondent's request should be GRANTED. The information in the conclusions of law of the final initial determination is not entitled to confidential treatment as it has already been disclosed in pertinent part in the public version of Order No. 15 (*see* Order No. 15 at 3, 14), and early release of the conclusions of law is appropriate considering Complainants' delays in providing reasonable redactions for the public version. Complainants submitted proposed redactions of Order No. 15, all of which were approved, and therefore Complainants cannot at this time conceal information that they failed to

protect earlier in the Investigation. Complainants' request for leave to appeal to the Commission on this matter pursuant to Commission Rule 210.5(e) is DENIED.

**SO ORDERED.**

  
E. James Gildea  
Administrative Law Judge

**ATTACHMENT A**  
**CONCLUSIONS OF LAW**

## X. CONCLUSIONS OF LAW

1. The Commission has personal jurisdiction over the parties, subject-matter jurisdiction, and in rem jurisdiction over the Accused Products.
2. The importation or sale requirement of Section 337 is satisfied.
3. All of the accused Mac OS X Devices identified in Section I.E. above that implement DXT literally infringe asserted claims 1 and 6 of the '087 patent. The accused iDevices and iOS SDK do not infringe asserted claims 1 and 6 of the '087 patent.
4. All of the accused Mac OS X Devices identified in Section I.E. above that implement DXT literally infringe asserted claims 7, 12, 15, and 23 of the '417 patent. The accused iDevices and iOS SDK do not infringe asserted claims 7, 12, 15, and 23 of the '417 patent.
5. All of the accused Mac OS X Devices identified in Section I.E. above that implement DXT literally infringe asserted claims 11, 14, and 16 of the '978 patent. The accused iDevices and iOS SDK do not infringe asserted claims 11, 14, and 16 of the '978 patent.
6. All of the accused Mac OS X Devices identified in Section I.E. above that implement DXT literally infringe asserted claims 4, 13, and 16 of the '146 patent. The accused iDevices and iOS SDK do not infringe asserted claims 4, 13, and 16 of the '146 patent.
7. None of the Accused Products indirectly infringe asserted claims 1 and 6 of the '087 patent.
8. None of the Accused Products indirectly infringe asserted claims 7, 12, 15, and 23 of the '417 patent.

9. None of the Accused Products indirectly infringe asserted claims 11, 14, and 16 of the '978 patent.
10. None of the Accused Products indirectly infringe asserted claims 4, 13, and 16 of the '146 patent
11. The asserted claims 1 and 6 of the '087 patent are not invalid under 35 U.S.C. § 102 for anticipation.
12. The asserted claims 7, 12, 15, and 23 of the '417 patent are not invalid under 35 U.S.C. § 102 for anticipation.
13. The asserted claims 11, 14, and 16 of the '978 patent are not invalid under 35 U.S.C. § 102 for anticipation.
14. The asserted claims 4, 13, and 16 of the '146 patent are not invalid under 35 U.S.C. § 102 for anticipation.
15. The asserted claims 1 and 6 of the '087 patent are invalid under 35 U.S.C. § 103 for obviousness.
16. The asserted claims 7, 12, 15 and 23 of the '417 patent are invalid under 35 U.S.C. § 103 for obviousness.
17. Asserted claims 14 and 16 of the '978 patent are invalid under 35 U.S.C. § 103 for obviousness, but asserted claim 11 is not invalid under 35 U.S.C. § 103 for obviousness.
18. Asserted claim 13 of the '146 patent is invalid under 35 U.S.C. § 103 for obviousness, but asserted claims 4 and 16 of the '146 patent are not invalid under 35 U.S.C. § 103 for obviousness.

19. None of the asserted claims of the '417, '978, and '416 patents are invalid under 35 U.S.C. § 112.
20. An implied license and the doctrine of patent exhaustion apply to those Mac OS X Devices incorporating the NVIDIA GPU that are protected by the NVIDIA License (MacBook, MacBook Air, and Mac mini).
21. The evidence does not demonstrate that the NVIDIA Term Sheet was unenforceable for lack of substantial performance.
22. The doctrine of patent exhaustion does not apply to those Accused Products protected by the Intel License.
23. Apple's estoppel and constructive contract affirmative defenses are rejected.
24. A domestic industry exists with respect to the '087 patent, as required by Section 337.
25. A domestic industry exists with respect to the '417 patent, as required by Section 337.
26. A domestic industry exists with respect to the '978 patent, as required by Section 337.
27. A domestic industry exists with respect to the '146 patent, as required by Section 337.
28. With respect to Respondent Apple Inc., it has been established that no violation exists of Section 337 for claims 1 and 6 of the '087 patent.
29. With respect to Respondent Apple Inc., it has been established that no violation exists of Section 337 for claims 7, 12, 15, and 23 of the '417 patent.
30. With respect to Respondent Apple Inc., it has been established that no violation exists of Section 337 for claims 14, and 16 of the '978 patent. A violation exists of Section 337 for claim 11 of the '978 patent for the accused Mac OS X Accused Products that do not contain an NVIDIA GPU.

31. With respect to Respondent Apple Inc., it has been established that no violation exists of Section 337 for claim 13 of the '146 patent. A violation exists of Section 337 for claims 4 and 16 of the '146 patent for the accused Mac OS X Accused Products that do not contain an NVIDIA GPU.

This Initial Determination's failure to discuss any matter raised by the parties, or any portion of the record, does not indicate that it has not been considered. Rather, any such matter(s) or portion(s) of the record has/have been determined to be irrelevant, immaterial or meritless. Arguments made on brief which were otherwise unsupported by record evidence or legal precedent have been accorded no weight.