

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN DIGITAL VIDEO
RECEIVERS AND RELATED
HARDWARE AND SOFTWARE
COMPONENTS**

Investigation No. 337-TA-1103

**NOTICE OF THE COMMISSION'S FINAL DETERMINATION FINDING A
VIOLATION OF SECTION 337; ISSUANCE OF A LIMITED
EXCLUSION ORDER AND CEASE AND DESIST ORDERS;
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 a violation of section 337 of the Tariff Act of 1930, as amended, in this investigation and has issued a limited exclusion order and cease and desist orders prohibiting importation of infringing digital video receivers and related hardware and software components.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone (202) 708-2532. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On March 16, 2018, the Commission instituted this investigation based on a supplemented complaint filed on behalf of Rovi Corporation of San Jose, California; Rovi Guides, Inc. of San Jose, California; and Veveo, Inc. of Andover, Massachusetts (collectively, "Rovi"); as well as Rovi Technologies Corporation of San Jose, CA. The supplemented complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337"), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain digital video receivers and related hardware and software components by reason of infringement of one or more claims of U.S. Patent Nos. U.S. Patent No. 7,779,011 ("the '011 patent"); 7,937,394 ("the '394 patent"); 7,827,585 ("the '585 patent"); 9,294,799 ("the '799 patent"); 9,396,741 ("the

'741 patent"); 9,578,363 ("the '363 patent"); 9,621,956 ("the '956 patent"); and 9,668,014 ("the '014 patent"). 83 FR 11792 (Mar. 16, 2018). The Commission's notice of investigation named as respondents Comcast Corporation of Philadelphia, Pennsylvania; Comcast Cable Communications, LLC of Philadelphia, Pennsylvania; Comcast Cable Communications Management, LLC of Philadelphia, Pennsylvania; Comcast Business Communications, LLC of Philadelphia, Pennsylvania; Comcast Holdings Corporation of Philadelphia, Pennsylvania; and Comcast Shared Services, LLC of Chicago, Illinois (collectively, "Comcast"). *Id.* The Office of Unfair Import Investigations was also named as a party in this investigation. *Id.*

The Commission previously terminated the investigation as to complainant Rovi Technologies Corporation; as to the '956, '394, '014, '799, and '363 patents in their entirety; and as to certain claims of the '011, '585, and '741 patents. Order No. 12, *unreviewed*, Notice (July 24, 2018); Order No. 33, *unreviewed*, Notice (Sept. 19, 2018); Order 39, *unreviewed*, Notice (Oct. 25, 2018).

On June 3, 2019, the presiding ALJ issued Order No. 47, a summary determination ("SD"), which, *inter alia*, granted Rovi's motions for summary determination as to importation and sale after importation. On June 11, 2019, Comcast filed a petition for review of the SD. On June 18, 2019, Rovi responded to Comcast's petition. On June 25, 2019, the Commission investigative attorney ("IA") responded to Comcast's petition.

On June 4, 2019, the ALJ issued the final initial determination ("final ID"). On June 17, 2019, Comcast and Rovi each filed a petition for review of the final ID. On June 25, 2019, Comcast and Rovi responded to each other's petition, and the IA responded to both.

In addition, the Commission received comments from Rovi on the public interest pursuant to Commission Rule 210.50(a)(4). The Commission also received comments from the following organizations in response to the Commission's notice soliciting public interest comments, 84 FR 27804 (June 14, 2019): Tea Party Patriots Action; Americans for Limited Government; Frontiers of Freedom Institute; Market Institute; and Conservatives for Property Rights (joined by 60 Plus Association, and Americans for Limited Government). The Commission also received correspondence from Rep. Peter King (R-N.Y.) (Sept. 19, 2019), Rep. Jackie Speier (D-Cal.) (Sept. 6, 2019), and Rep. Steve Stivers (R-Ohio) (Aug. 27, 2019).

On August 15, 2019, the Commission determined to review in part the SD as to reimportation, and not to review the remainder of the SD. Notice at 3 (Aug. 15, 2019) ("Notice of Review"). As to the final ID, in relevant part the Commission terminated the investigation with a finding of no violation as to the '585 and '741 patents, but determined to review infringement of the '011 patent. *Id.* The Commission solicited briefing on certain questions pertaining to infringement of the '011 patent. *Id.* at 4.

On August 29, 2019, the parties filed responses to the Commission notice, and on September 10, 2019, Comcast and Rovi filed replies.

Having examined the record of this investigation, including the final ID and the parties' submissions, the Commission has determined that Comcast's X1 set-top boxes are used by Comcast's users to directly infringe claim 9 of the '011 patent at Comcast's inducement. Thus,

Comcast violated section 337 with regard to claim 9 of the '011 patent. The Commission declines to reach the issue of whether there has been a section 337 violation as to claim 1 of the '011 patent because of the delay and burden associated with deciding the issue and because such a finding would not afford any additional relief to Rovi. Thus, the Commission need not decide the issue. *See Yingbin-Nature (Guangdong) Wood Indus. Co. v. Int'l Trade Comm'n*, 535 F.3d 1322, 1331-32 (Fed. Cir. 2008).

The Commission has further determined that the appropriate remedy is: (1) a limited exclusion order prohibiting the entry of infringing digital video receivers and related hardware and software components; and (2) cease and desist orders directed to respondents. The Commission has determined that the public interest factors enumerated in section 337(d) and (f), 19 U.S.C. 1337(d), (f), do not preclude the issuance of the limited exclusion order or the cease and desist orders. The Commission has determined that a bond in the amount of zero percent of entered value is required during the period of Presidential review. 19 U.S.C. 1337(j)(3).

The investigation is terminated. The Commission's reasoning in support of its determinations is set forth more fully in its opinion. The Commission's orders and opinion were delivered to the President and the United States Trade Representative on the day of their issuance.

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 Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: April 23, 2020