

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.**

In the Matter of

**CERTAIN CELLULAR BASE STATION
COMMUNICATION EQUIPMENT,
COMPONENTS THEREOF, AND
PRODUCTS CONTAINING SAME**

Investigation No. 337-TA-1302

**NOTICE OF COMMISSION DETERMINATION NOT TO
REVIEW AN INITIAL DETERMINATION GRANTING SUMMARY
DETERMINATION THAT THE COMPLAINANT SATISFIED THE ECONOMIC
PRONG OF THE DOMESTIC INDUSTRY REQUIREMENT**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (“ID”) (Order No. 17) issued by the presiding administrative law judge (“ALJ”) in the above-captioned investigation, granting summary determination that the complainant satisfied the economic prong of the domestic industry requirement.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-2392. 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 <https://www.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: On February 25, 2022, the Commission instituted this investigation based on a complaint, as amended, filed on behalf of Apple Inc. of Cupertino, California (“Apple”). 87 FR 10819 (Feb. 25, 2022). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain cellular base station communication equipment, components thereof, and products containing same that infringe certain claims of U.S. Patent Nos. 9,882,282 (“the ’282 patent”); 10,263,340 (“the ’340 patent”); and 9,667,290 (“the ’290 patent”). *Id.* The complaint also alleges that a domestic industry exists. *Id.* The Commission’s notice of investigation names as respondents Ericsson AB of Stockholm, Sweden, and Ericsson Inc. of Plano, Texas (together, “Ericsson”). *Id.* The Office of Unfair Import Investigations is participating in this investigation

on the issues of remedy, the public interest, and bonding. Commission Investigative Staff's Notice of Partial Participation (Mar. 7, 2022).

On September 26, 2022, Apple moved for a summary determination that it has satisfied the economic prong of the domestic industry requirement with respect to the '282, '340, and '290 patents. Apple also attached to its motion a stipulation in which Ericsson agreed not to dispute Apple's satisfaction of the economic prong in this investigation.

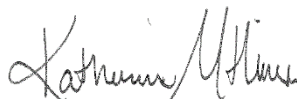
On November 2, 2022, the ALJ issued the subject ID pursuant to Commission Rule 210.18(b) (19 CFR 210.18(b)) granting the motion and issuing summary determination that Apple satisfied the economic prong of the domestic industry requirement to the '282, '340, and '290 patents. The ID adopts Apple's sales-revenue-based allocation methodology, and finds that the allocated investments are significant for the reasons set forth in Apple's motion. No party petitioned for review of the subject ID.

The Commission has determined not to review the subject ID.¹

The Commission vote for this determination took place on December 2, 2022.

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.



Katherine M. Hiner
Acting Secretary to the Commission

Issued: December 2, 2022

¹ Commissioner Kearns notes that it remains an open question to him whether the significance of U.S. investments under Sections 337(a)(3)(A) and (B) should be evaluated in light of all employment of plant and equipment and labor and capital relating to the domestic industry products, including for manufacturing (both foreign and domestic), rather than being limited to a single category like research and development ("R&D"). *See Certain Movable Barrier Operator Systems and Components Thereof*, Inv. No. 337-TA-1118, Separate Views of Chair Kearns Regarding Economic Prong Issues (Jan. 12, 2021). In affirming the ID's finding of a domestic industry under Section 337(a)(3)(A) and (B) here, he finds that given the importance of R&D to the inventions at issue and the large share of R&D occurring in the United States, and in the absence of any argument to the contrary, it is unlikely that information on other types of investments would cause him to question the existence of a domestic industry.