

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 AFFIRM IN PART AND REVERSE IN PART
A DETERMINATION OF NO VIOLATION OF SECTION 337;
REMAND OF THE INVESTIGATION FOR FURTHER PROCEEDINGS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm in part, reverse in part, and remand in part, 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, California (“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. On February 7, 2011, Kodak, Apple, RIM, and the Commission investigative attorney each filed a petition for review of the ALJ’s final ID. Each party filed a response submission on February 15, 2011. On March 25, 2011, the Commission determined to review the final ID in its entirety, 76 *Fed. Reg.* 17965 (Mar. 31, 2011). The parties filed their opening briefs on April 8, 2011, and their responsive briefs on April 15, 2011. On April 8, 2011, the Commission extended the target date of this investigation by one month, from May 23, 2011 to June 23, 2011, and on June 23, 2011, the Commission extended the target date until June 30, 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 modify certain of the ALJ’s claim constructions. The Commission has modified the ALJ’s construction of the claim terms “motion processor” and “still processor,” and remands the question of infringement of these limitations to the ALJ.

The Commission has also modified the ALJ’s construction of “at least three different colors” in the limitation “a second number of color pixel values provided in a second color pattern having at least three different colors.” We find that the accused products infringe this limitation.

Finally, the Commission has determined to modify the construction of “initiating capture of a still image while previewing a motion image.” The Commission finds that the Apple iPhone 3G and the RIM accused products practice this limitation, and affirms the ALJ’s determination that Kodak has waived the argument that in a flash-photography mode of operation the Apple iPhone 3GS and Apple iPhone 4 practice this limitation. We find that the Apple iPhone 3GS and iPhone 4 do not literally infringe the asserted claim in their non-flash-photography modes of operation. The Commission takes no position on whether Kodak has waived its opportunity (including by its representations to the ALJ in connection with Order No. 27) to argue that the iPhone 3GS and iPhone 4 in their non-flash modes infringe this limitation, so construed, under the doctrine of equivalents or whether the iPhone 3GS and iPhone 4 practice this limitation under the doctrine of equivalents. These questions are remanded to the ALJ.

Because of the modified claim constructions, the Commission believes it appropriate to provide the ALJ and respondents the opportunity on remand to revisit invalidity under 35 U.S.C. §§ 102 and 103. Pending the results of the remand determination, the Commission takes no position on the invalidity of the asserted patent claim based on any piece of art or combination of art and takes no position on the pertinence of objective indicia of nonobviousness.

The Commission affirms the remaining matters in the final ID, including the constructions of other claim terms, validity under 35 U.S.C. § 112, enforceability, domestic industry, and exhaustion.

The Commission hereby extends the target date by two months, to August 30, 2011, in order to provide the ALJ with sufficient time for himself to extend the target date based on the need for further remand proceedings.

The Commission's determination and reasons therefor will be further detailed in the Commission's forthcoming opinion.

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
Secretary to the Commission

Issued: June 30, 2011