

**UNITED STATES INTERNATIONAL TRADE COMMISSION**  
**Washington, D.C. 20436**

**In the Matter of**

**CERTAIN PERSONAL DATA AND MOBILE  
COMMUNICATIONS DEVICES AND  
RELATED SOFTWARE**

**Investigation No. 337-TA-710**

**NOTICE OF COMMISSION DECISION TO REVIEW AN INITIAL  
DETERMINATION FINDING THAT COMPLAINANTS SATISFY  
THE ECONOMIC PRONG OF THE DOMESTIC INDUSTRY  
REQUIREMENT; ON REVIEW MODIFYING THE  
INITIAL DETERMINATION ON THE BASIS  
THAT THE DISPUTED ISSUE IS MOOT**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review the presiding administrative law judge's initial determination ("ID") (Order No. 102) finding that complainants have satisfied the economic prong of the domestic industry requirement. On review, the Commission has determined to modify the ID by striking a portion of it.

**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:** The Commission instituted this investigation on April 6, 2010, based on a complaint filed by Apple Inc., and its subsidiary NeXT Software, Inc., both of Cupertino, California (collectively, "Apple"), alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain personal data and mobile communications devices and related software. *75 Fed. Reg.* 17434 (Apr. 6, 2010). The complaint named as respondents High Tech Computer Corp. of Taiwan and

its United States subsidiaries HTC America Inc. of Bellevue, Washington, and Exedia, Inc. of Houston, Texas (collectively, “HTC”).

Several patents originally asserted by Apple in this investigation were earlier asserted by Apple against Nokia Corp. and Nokia Inc. (collectively, “Nokia”) in Investigation No. 337-TA-704. On motion by the Commission investigative attorney and by the respondents in both investigations, the Chief ALJ transferred Apple’s assertion of overlapping patents against Nokia from the 704 investigation into the 710 investigation. *See* Inv. No. 337-TA-704, Order No. 5 (Apr. 26, 2010).

On February 18, 2011, Apple moved for a summary determination that the economic prong of the domestic industry requirement of Section 337, 19 U.S.C. § 1337(a)(3)(C), was satisfied by virtue of, *inter alia*, Apple’s research and development (“R&D”) and engineering activities. On March 3, 2011, Nokia filed an opposition to Apple’s motion, which HTC subsequently joined. That same day, the Commission investigative attorney (“IA”) opposed Apple’s motion. The IA’s opposition argued that the Commission’s opinion in *Certain Printing & Imaging Devices & Components Thereof*, Inv. No. 337-TA-690 (Feb. 17, 2011), requires a context-dependent analysis of the marketplace, which Apple did not provide. Comm’n Op. at 30-31 (“the magnitude of the investment cannot be assessed without consideration of the nature and importance of the complainant’s activities to the patented products in the context of the marketplace or industry in question”). On March 9, 2011, Apple filed a reply, which noted that the *Printing and Imaging Devices* opinion was released only the day before Apple filed its motion. The reply also clarified Apple’s factual assertions so as to provide context for its engineering and R&D expenditures. Reply at 4 (“Thus, not only are Apple’s investments in research and development for the DI products substantial in nature, they are also sizeable in relation to Apple’s overall product-related expenses and investments.”) (quotation and modification omitted).

On April 7, 2011, the ALJ granted Apple’s motion as an ID. Order No. 102. The ALJ held that to “the extent that the Staff argues that a context-dependent analysis is required by the Commission in the *Printing and Imaging Devices* case, the Staff is wrong.” Order No. 102 at 3. The ALJ distinguished the *Printing and Imaging Devices* opinion on the basis, among other things, that the products there “were no longer sold and were never manufactured in the United States.” *Id.* at 11.

On April 8, 2011, the IA petitioned for review of the ID. The IA noted that the ID, after stating that a context-dependent analysis was unnecessary, proceeded to perform such a context-dependent analysis using information included in Apple’s reply. IA Petition for Review 3 (Apr. 8, 2011). The IA recommended that the ID merely be modified to remove the suggestion that a context-dependent analysis is unnecessary.

On April 15, 2011, Apple filed a two-page opposition agreeing with the IA that the ALJ performed the appropriate context-dependent inquiry, but arguing that as a result Commission review was inappropriate.

Nokia and HTC neither petitioned for review of the ID nor responded to the IA's petition.

Upon review of the record of this investigation, the Commission has determined that the issue raised by the IA is moot. There is no dispute that Apple has satisfied the economic prong of the domestic industry requirement; there is only a now-academic dispute about the methodology the ALJ should have followed in reaching his unchallenged conclusion. Accordingly, the Commission has determined to review the subject ID, and on review to modify it. In particular, the Commission strikes the sentence at the top of page 10 that begins with "The Staff's argument." The Commission also strikes the language that begins with "To the extent that the Staff argues" at the bottom of page 10 of the ID through and including the phrase "In contrast to the facts in *Printing and Imaging Devices*, in this investigation," at the bottom of page 11. As a result, the last sentence of page 11 now reads: "Apple performs virtually all of its research and development in the United States."

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 210.21 and 210.42 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.21, 210.42).

By order of the Commission.

/s/

James R. Holbein  
Acting Secretary to the Commission

Issued: May 9, 2011