

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

In the Matter of

**CERTAIN DIGITAL SET-TOP BOXES AND
COMPONENTS THEREOF**

Investigation No. 337-TA-712

**NOTICE OF COMMISSION DETERMINATION TO REVIEW AN INITIAL
DETERMINATION GRANTING COMPLAINANT'S MOTION FOR SUMMARY
DETERMINATION THAT IT HAS SATISFIED THE ECONOMIC PRONG OF THE
DOMESTIC INDUSTRY REQUIREMENT; SCHEDULE FOR FILING WRITTEN
SUBMISSIONS ON THE ISSUES UNDER REVIEW**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review an initial determination of the presiding administrative law judge ("ALJ") granting the motion of complainants Verizon Communications Inc. of New York, New York and Verizon Services Corp. of Arlington, Virginia (collectively, "Verizon") for summary determination that it has satisfied the economic prong of the domestic industry requirement in the above captioned investigation.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2301. 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 (<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 April 21, 2010, based upon a complaint filed by Verizon. *75 Fed. Reg.* 20861-2 (Apr. 21, 2010). The complaint, as amended, 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 digital set-top boxes and components thereof that infringe certain claims of U.S. Patent Nos. 5,666,293; 5,635,979; 6,381,748; 6,367,078; and 7,561,214. The complaint named Cablevision Systems Corp. of Bethpage, New York as

respondent.

On September 7, 2010, Verizon moved for summary determination that its activities in the United States concerning its FiOS TV services satisfy the economic prong of the domestic industry requirement under 19 U.S.C. § 1337(a)(3)(C). On September 24, 2010, Cablevision filed an opposition to Verizon's motion. Also on September 24, 2010, the Commission investigative attorney ("IA") filed a response in support of Verizon's motion.

On January 11, 2011, the ALJ issued the subject ID, granting Verizon's motion. On January 20, 2011, the Cablevision filed a petition for review of the subject ID. On January 27, 2011, Verizon filed a response to the petition for review. On January 28, 2011, the IA filed a response to the petition for review.

The Commission has determined to review the subject ID. The parties should brief their positions on the issues on review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in responses to the following questions:

1. For each patent asserted in this investigation, please identify the specific article(s) of commerce being asserted as the basis of complainant's domestic industry that is alleged to practice the patents-in-suit. Please address the set-top box, the software that resides on the set-top box, and the FiOS network in your discussion.
2. In addition, for each article that is alleged to practice one or more of the asserted patents in response to question no. 1, please identify each investment relied upon and how each investment relates to the engineering and/or research and development of that article. Please do not include marketing investments.
3. For investments in products, services, or infrastructure that are not alleged to be directly covered by the claims of the patent, please:
 - (a) explain how these products, services, or infrastructure are necessary or integral to the alleged domestic industry article identified in question 1 and/or the extent to which they are necessary to enable the article to practice said patent claims, and
 - (b) identify the amount of each investment relied upon, and for each investment, explain how it relates to the engineering and/or research and development of the product, service, and/or infrastructure identified in subpart(a).
4. Please provide an analysis of how the Commission should reconcile its opinion concerning domestic industry investments under 19 U.S.C. § 1337(a)(3)(C) as discussed in *Certain Coaxial Cable Connectors and Components Thereof and Products Containing Same*, Inv. No. 337-TA-650, Comm'n Op. (U.S.I.T.C.,

March 31, 2010) (“*Coaxial Cable Connectors*”) with the Federal Circuit’s decision in *Schaper Mfg. Co. v. U.S. Int’l Trade Comm’n*, 717 F.2d 1368, 1371 (Fed. Cir. 1983). In particular, please discuss how the term “exploitation” as defined in *Coaxial Cable Connectors* applies in the context of engineering and/or research and development expenditures. Also, please discuss the level of technical specificity concerning the connection between the alleged domestic industry investment and the asserted patent(s) a complainant must provide in order to satisfy the requirements of *Schaper*. See also *Certain Variable Speed Wind Turbines and Components Thereof*, Inv. No. 337-TA-376, USITC Pub. 3003 at 71 (Nov. 1996) and *Certain Diltiazem Hydrochloride and Diltiazem Preparations*, Inv. No. 337-TA-349, USITC Pub. No 2902 at 138-141 (June 1995).

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

Initial submissions must be filed no later than close of business thirty (30) days after issuance of this notice. Reply submissions must be filed no later than close of business fourteen (14) days after service of the initial submissions.

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 210.43(d) of the Commission’s Rules of Practice and Procedure (19 C.F.R. Part 210.43(d)).

By order of the Commission.

/s/

William R. Bishop
Hearings and Meetings Coordinator

Issued: February 10, 2011