

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

**In the Matter of**

**CERTAIN ELECTRONIC IMAGING  
DEVICES**

**Investigation No. 337-TA-850**

**NOTICE OF COMMISSION DETERMINATION TO DENY COMPLAINANT'S  
PETITION FOR RECONSIDERATION AND TO DENY RESPONDENTS' PETITION  
FOR RECONSIDERATION**

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

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to deny the petition for reconsideration of the Commission's finding of no violation of Section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337 ("Section 337") filed by complainant Flashpoint Technology, Inc. ("Flashpoint") of Peterborough, New Hampshire, and to deny the petition for reconsideration filed by respondents HTC Corporation of Taoyuan, Taiwan and HTC America, Inc. of Bellevue, Washington (collectively, "HTC") in the above-referenced investigation.

**FOR FURTHER INFORMATION CONTACT:** Jia Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-4737. 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 June 29, 2012, based on a complaint filed by Flashpoint, alleging violations of Section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic imaging devices by reason of infringement of certain claims of U.S. Patent Nos. 6,504,575 ("the '575 patent"), 6,222,538 ("the '538 patent"), 6,400,471 ("the '471 patent"), and 6,223,190 ("the '190 patent"). The notice of investigation named the following respondents: HTC; Pantech Co., Ltd. of Seoul, Republic of Korea and Pantech Wireless, Inc. of Atlanta, Georgia (collectively, "Pantech"); Huawei Technologies Co.,

Ltd. of Shenzhen, China and FutureWei Technologies, Inc. d/b/a Huawei Technologies (USA) of Plano, Texas (collectively “Huawei”); and ZTE Corporation of Shenzhen, China and ZTE (USA) Inc. of Richardson, Texas (collectively “ZTE”). The ‘575 patent and respondent Pantech had been terminated from the investigation prior to the administrative law judge (“ALJ”)’s final initial determination (“ID”). The Commission’s Office of Unfair Import Investigations did not participate in this investigation.

On September 30, 2013, the ALJ issued a final ID finding a violation of Section 337 by HTC. Specifically, the ALJ concluded that two of the accused HTC smartphones, *i.e.*, the HTC Vivid and HTC Droid Incredible 4G LTE, infringe the asserted claims of the ‘538 patent. The ALJ found that none of the other accused HTC smartphones infringe the ‘538 patent and that none of the accused HTC, Huawei, or ZTE smartphones infringe the asserted claims of the ‘471 patent and the ‘190 patent. The ALJ also found that the ‘190 and ‘538 patents are not unenforceable for failure to name an inventor.

On December 16, 2013, the Commission determined to review the ALJ’s findings with respect to fifteen (15) issues, including, *inter alia*, infringement of the asserted claims of the ‘538 patent by the HTC Vivid and HTC Droid Incredible 4G LTE smartphones and the enforceability of claim 19 of the ‘538 patent with respect to joint inventorship.

On March 14, 2014, the Commission determined to reverse the ALJ’s determination of violation of Section 337 and to find no violation of Section 337 with respect to any of the asserted patents. 79 *Fed. Reg.* 15610 (Mar. 14, 2014). The Commission found, *inter alia*, that the HTC Vivid and HTC Droid Incredible 4G LTE smartphones do not infringe the asserted claims of the ‘538 patent and that respondents have not shown that claim 19 of the ‘538 patent is unenforceable due to failure to name an inventor. *Id.*

On April 4, 2014, Flashpoint filed a petition for reconsideration of the Commission’s determination with respect to induced infringement of the ‘538 patent. On the same day, HTC filed a petition for reconsideration of the Commission’s determination with respect to the unenforceability of the ‘538 patent. On April 11, 2014, Flashpoint filed an opposition to HTC’s petition for reconsideration and HTC filed an opposition to Flashpoint’s petition for reconsideration.

Having considered the matter, the Commission determines to deny Flashpoint’s petition for reconsideration. Flashpoint has not shown that the Commission’s determination that Flashpoint has not shown induced infringement raises new questions upon which Flashpoint had no opportunity to submit arguments pursuant to Commission Rule 210.47 (19 C.F.R. § 210.47). The Commission also determines to deny HTC petition for reconsideration. HTC has not shown that the Commission’s determination with respect to inventorship raises new questions upon which HTC had no opportunity to submit arguments pursuant to Commission Rule 210.47. The Commission also rejects HTC’s argument that if a co-inventor of any claim, asserted or unasserted, is omitted from a patent, the entire patent is invalid and unenforceable at the Commission. It is well established under Federal Circuit law that “inventorship is determined on a claim-by-claim basis.” *Trovan, Ltd. v. Sokymat SA, Irori*, 299 F.3d 1292, 1302 (Fed. Cir. 2002).

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 C.F.R. Part 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa Barton', with a stylized flourish at the end.

Lisa Barton  
Secretary to the Commission

Issued: May 12, 2014