

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

In the Matter of

**CERTAIN WIRELESS CONSUMER
ELECTRONICS DEVICES AND
COMPONENTS THEREOF**

Inv. No. 337-TA-853

**NOTICE OF COMMISSION DETERMINATION TO GRANT THE
CONSENT MOTION TO TERMINATE THE INVESTIGATION-IN-PART AS TO
RESPONDENTS KYOCERA CORPORATION AND KYOCERA COMMUNICATIONS,
INC. ON THE BASIS OF A SETTLEMENT AGREEMENT**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to grant the revised joint motion to terminate the above-captioned investigation in part as to respondents Kyocera Corporation and Kyocera Communications, Inc. (collectively “Kyocera”) based upon a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, 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 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 August 24, 2012, based on a complaint filed by Technology Properties Limited LLC, Phoenix Digital Solutions LLC of Cupertino, California (“PDS”), and Patriot Scientific Corporation of Carlsbad, California (collectively “Complainants”). 77 Fed. Reg. 51572-573 (August 24, 2012). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“section 337”), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wireless consumer electronics devices and components thereof by reason of infringement of certain claims of U.S. Patent No. 5,809,336. The Commission’s notice of investigation named the following as respondents: Acer, Inc. of Taipei, Taiwan and Acer America Corporation of San Jose, California; Amazon.com, Inc. of

Seattle, Washington; Barnes and Noble, Inc. of New York, New York; Garmin Ltd of Schaffhausen, Switzerland, Garmin International, Inc. of Olathe, Kansas, and Garmin USA, Inc. of Olathe, Kansas; HTC Corporation of Taoyuan, Taiwan and HTC America of Bellevue, Washington; Huawei Technologies Co, Ltd. of Shenzhen, China; Huawei North America of Plano, Texas (“Huawei NA”); Kyocera; LG Electronics, Inc. of Seoul, Republic of Korea and LG Electronics U.S.A., Inc. of Englewood Cliffs, New Jersey; Nintendo Co. Ltd. of Kyoto, Japan and Nintendo of America, Inc. of Redmond, Washington; Novatel Wireless, Inc. of San Diego, California; Samsung Electronics Co., Ltd., of Seoul, Republic of Korea and Samsung Electronics America, Inc. of Ridgefield Park, New Jersey; Sierra Wireless, Inc. of British Columbia, Canada and Sierra Wireless America, Inc. of Carlsbad, California (collectively “Sierra”); and ZTE Corporation of Shenzhen, China and ZTE (USA) Inc. of Richardson, Texas. The Office of Unfair Import Investigation was named as a participating party.

On February 4, 2013, the Commission terminated the investigation with respect to Sierra. Notice (Feb. 4, 2013); see Order No. 17 (Jan. 15, 2013). On February 15, 2013, the Commission issued a notice indicating that the Notice of Investigation had been amended to remove Huawei NA as a respondent and to add Huawei Device Co., Ltd. of Shenzhen, China; Huawei Device USA Inc. of Plano, Texas; and Futurewei Technologies, Inc. d/b/a Huawei Technologies (USA) of Plano, Texas as respondents. Notice (Feb. 15, 2013); see Order No. 14 (Jan. 8, 2013).

On August 23, 2013, Complainants and respondents Kyocera filed a joint motion to terminate the investigation with respect to Kyocera on the basis of a portfolio licensing agreement entered into between those parties. On August 27, 2013, Complainants and Kyocera filed a revised motion to terminate to indicate that the other respondents did not oppose the motion and that the Commission investigative attorney (“IA”) would take a position on the motion after it is filed. On August 28, 2013, the IA filed a response in support of the motion.

On September 6, 2013, the ALJ issued his final initial determination (“ID”), finding no violation of Section 337 with respect to all of the named respondents. On September 9, 2013, the ALJ issued a notice indicating that, because the final deadline for responses to the revised motion was not due to occur until after he had already issued the final ID on September 6, 2013, the motions are pending before the Commission.

Having examined the record of this investigation, the Commission has determined to grant the revised joint motion to terminate the investigation as to respondents Kyocera. Section 337(c) provides, in relevant part, that the Commission may terminate an investigation “on the basis of an agreement between the private parties to the investigation.” When the investigation is before the Commission, as is the case here, the Commission may act on a motion to terminate on the basis of settlement. *See Certain Insect Traps*, Inv. No. 337-TA-498, Notice of Commission Determination to Terminate the Investigation in its Entirety on the Basis of a Settlement Agreement, 69 *Fed. Reg.* 63176 (Oct. 29, 2004). Section 210.21(b) of the Commission’s Rules of Practice and Procedure (19 C.F.R. § 210.21(b)), which implements section 337(c), requires that a motion for termination based upon a settlement contain a copy of that settlement agreement, as well as a statement that there are no other agreements, written or oral, express or

implied, between the parties concerning the subject matter of the investigation. The revised joint motion complies with these requirements.

The Commission also considers the public interest when terminating an investigation based upon a settlement agreement. 19 C.F.R. § 210.50(b)(2). We find no evidence that termination of the investigation will prejudice the public interest or that settlement will adversely impact the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers. Moreover, the public interest favors settlement to avoid needless litigation and to conserve public and private resources.

Accordingly, the Commission hereby grants the consent motion to terminate this investigation on the basis of a settlement agreement.

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

By order of the Commission.



Lisa R. Barton
Acting Secretary to the Commission

Issued: September 20, 2013