

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN COMPUTING DEVICES
UTILIZING INDEXED SEARCH
SYSTEMS AND COMPONENTS
THEREOF**

Investigation No. 337-TA-1389

**NOTICE OF COMMISSION DETERMINATION TO REVIEW AND, ON REVIEW, TO
AFFIRM AN INITIAL DETERMINATION GRANTING IN PART RESPONDENTS'
MOTION FOR SUMMARY DETERMINATION OF NONINFRINGEMENT**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review and, on review, to affirm with modified and supplemental reasoning the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 18) granting in part the respondents' motion for summary determination of noninfringement with respect to U.S. Patent No. 8,498,977 ("the '977 patent"). The '977 patent is terminated from the investigation.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-3228. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.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: On January 29, 2024, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based on a complaint filed by X1 Discovery, Inc. of Pasadena, California ("Complainant"). See 89 FR 5574-75 (Jan. 29, 2024). The complaint, as amended, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain computing devices utilizing indexed search systems and components thereof by reason of the infringement of certain claims of the '977 patent and U.S. Patent No. 8,856,093 ("the '093 patent"). *Id.* The complaint also alleges that a domestic industry exists. *Id.* The notice of investigation names seven respondents, including: ASUSTeK Computer Inc. of Taipei City, Taiwan; ASUS Computer International of Fremont,

California; Acer Inc. of Xizhi, Taiwan; Acer America Corporation of San Jose, California; Dell Technologies Inc. and Dell Products, both of Round Rock, Texas; and Dell (Chengdu) Company Limited of Sichuan, China (“Dell Chengdu”). *Id.* The Office of Unfair Import Investigations is not participating in this investigation.

The Commission previously terminated respondent Dell Chengdu based on partial withdrawal of the complaint. Order No. 8 (May 6, 2024), *unreviewed by Comm’n Notice* (May 22, 2024).

The Commission also previously terminated the investigation as to claims 5, 8-11, 13, 15-16, and 20 of the ’977 patent and claims 1-7, 11-12, 14-17, and 19 of the ’093 patent based on partial withdrawal of the complaint. Order No. 15 (Aug. 27, 2024), *unreviewed by Comm’n Notice* (Sept. 23, 2024).

On August 5, 2024, respondents Acer Inc., Acer America Corporation, ASUSTek Computer Inc., ASUS Computer International, Dell Technologies Inc. and Dell Products L.P. (collectively, “Respondents”) moved for summary determination of noninfringement as to all remaining asserted patent claims. On August 15, 2024, Complainant filed an opposition to the motion.

On August 23, 2024, Respondents filed a motion to strike a portion of Complainant’s opposition as being based on an untimely infringement theory. On September 3, 2024, the ALJ granted the motion to strike in part. Order No. 17 (Sept. 3, 2024).

On September 3, 2024, the ALJ issued the subject ID granting in part Respondents’ motion for summary determination of noninfringement. Specifically, the ID finds that, based on the proper construction of the claim limitation “non-adjacent in at least one of the identified documents,” there is no material issue of fact that the accused products do not infringe the asserted claims of the ’977 patent. The ALJ’s denial of summary determination of noninfringement as to the ’093 patent does not constitute an initial determination and is not before the Commission. *See* 19 CFR 210.18(f) (stating that only a grant of summary determination shall constitute an initial determination).

On September 9, 2024, Complainant filed a motion for partial reconsideration of the ID. On September 13, 2024, Respondents filed an opposition to the motion for reconsideration.

On September 10, 2024, Complainant filed a petition for review of the subject ID. Complainant contends that the ID errs in its construction of the term “non-adjacent in at least one of the identified documents.” Specifically, Complainant asserts that the ALJ incorrectly based the construction on prosecution disclaimer in a patent Complainant argues is “indirectly related” to the Asserted Patents. On September 17, 2024, Respondents filed a response arguing that the ID correctly construes the disputed term and Complainant has no infringement arguments under that proper construction.

On September 16, 2024, the ALJ denied Complainant's motion for partial reconsideration of the ID because the ID is before the Commission and the ALJ lacks authority to reconsider it. Order No. 21 (Sept. 16, 2024).

Having reviewed the record, including the subject ID and the parties' petitions and responses thereto, the Commission has determined to review the subject ID (Order No. 18) and, on review, to affirm the ID with modified and supplemental reasoning as detailed in the concurrently issued Commission opinion. The '977 patent is terminated from the investigation with a finding of noninfringement.

The Commission vote for this determination took place on October 25, 2024.

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 CFR Part 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton
Secretary to the Commission

Issued: October 25, 2024