

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

In the Matter of

**CERTAIN MOBILE DEVICES,
ASSOCIATED SOFTWARE, AND
COMPONENTS THEREOF**

Investigation No. 337-TA-744

**NOTICE OF A COMMISSION FINAL DETERMINATION NOT TO REVIEW AN
INITIAL DETERMINATION GRANTING A JOINT MOTION TO TERMINATE THE
BOND FORFEITURE PROCEEDING ON THE BASIS OF A STIPULATION AND
REQUEST TO THE COMMISSION TO ISSUE AN ORDER TO CUSTOMS AND
BORDER PROTECTION TO RELEASE THE BONDS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (“ID”) (Order No. 37) issued by presiding administrative law judge (“ALJ”) granting a joint motion to terminate the bond forfeiture proceeding on the basis of a stipulation and request to the Commission to issue an order to Customs and Border Protection to release the bonds.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3115. 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 November 5, 2010, based on a complaint filed by Microsoft Corporation of Redmond, Washington (“Microsoft”). *75 Fed. Reg.* 68379-80 (Nov. 5, 2010). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 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 mobile devices, associated software, and components thereof by reason of infringement of U.S. Patent Nos. 5,579,517 (“the ‘517 patent”); 5,758,352; 6,621,746 (“the ‘746 patent”); 6,826,762; 6,909,910; 7,644,376; 5,664,133; 6,578,054; and 6,370,566 (“the ‘566 patent.”) Subsequently, the ‘517 and the ‘746 patents were terminated from the investigation. The notice of investigation, as amended, named Motorola Mobility, Inc. of Libertyville, Illinois and Motorola, Inc. of Schaumburg, Illinois as respondents. Motorola, Inc. n/k/a Motorola Solutions was terminated from the investigation based on withdrawal of infringement allegations on July 12, 2011.

The evidentiary hearing on the question of violation of section 337 was held in August of 2011. On December 20, 2011, the ALJ issued his final ID finding a violation of section 337 with respect to one of the asserted patents. Following review of the ID in part, the Commission found a violation of section 337 with respect to the ‘566 patent and determined that (i) the appropriate remedy is a limited exclusion order directed to respondent Motorola’s products that infringe the asserted claims of the ‘566 patent; (ii) the public interest will not be adversely affected by entry of the proposed exclusion order; and (iii) there should be bond set at a reasonable royalty rate of \$0.33 per imported device during the period of Presidential review.

On December 18, 2013, the ALJ issued an ID denying complainant’s motion for forfeiture of respondent’s bond and also denying respondent’s motion for return of its bond posted during the period of Presidential review. (Order No. 33.) In summary, the ALJ’s December 18, 2013 ID (Order No. 33) stated, pursuant to 19 C.F.R. § 210.50(d), that Microsoft’s request for forfeiture of Motorola’s bond and Motorola’s request for the recovery of its bond were both premature due to the ongoing appeal at the Federal Circuit of the Commission’s Final Determination in this investigation. The ALJ stated in Order No. 33 that Microsoft and Motorola could re-file their motions after completion of the appeals process before the Federal Circuit. (Order No. 33 at 4 and 5.)

On March 19, 2014, Microsoft filed a renewed motion for forfeiture of the Motorola bond. On April 3, 2014, the ALJ issued Order No. 34: “Initial Determination Granting Complainant Microsoft Corporation’s Renewed Motion for Forfeiture.” Subsequently, on the same day, Motorola filed an opposition to Microsoft’s renewed motion. As a consequence of Motorola’s opposition, the ALJ withdrew Order No. 34 on May 6, 2014 via Order No. 35. On April 9, 2014, Microsoft submitted a motion for leave to file a reply as well as the reply to Motorola’s opposition. On April 15, 2014, Motorola submitted an opposition to Microsoft’s motion for leave to file a reply.

On May 12, 2014, the ALJ issued an ID (Order No. 36), granting Microsoft’s motion for leave, and also granting in part Microsoft’s renewed motion for forfeiture of Motorola’s bond. Order No. 36 stated that the amount of Motorola’s bond to be forfeited to Microsoft remained to be settled.

On October 14, 2014, Microsoft and Motorola filed a joint motion to terminate the bond forfeiture proceeding and request the Commission issue an Order instructing Customs and Border Protection (“CBP”) to release the bonds posted by Motorola in view of the stipulation reached by the parties.

On October 16, 2014, the ALJ issued an ID (Order No. 37). The ALJ noted that, in accordance with Commission Rule 210.21(b), Microsoft and Motorola entered into a stipulation agreement. The ALJ found that there is no indication that termination of this bond forfeiture proceeding based on the stipulation agreement would have an adverse impact on the public interest. Additionally, the ALJ found that there are significant public interest benefits in resolving litigation through settlement thereby avoiding needless litigation and conserving both public resources and private resources. Based on the foregoing, the ALJ granted the motion, and recommended that the Commission issue an Order instructing CBP to release the bonds posted by Motorola in view of the stipulation reached by the parties. No party petitioned for review of the subject ID. The Commission has determined not to review the subject ID.

CBP is instructed to release the bonds posted by Motorola during the period of Presidential review in this investigation.

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.



Lisa R. Barton
Secretary to the Commission

Issued: November 20, 2014