

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN MOBILE DEVICES WITH
MULTIFUNCTION EMULATORS**

Investigation No. 337-TA-1170

**NOTICE OF COMMISSION DETERMINATION FINDING NO VIOLATION OF
SECTION 337; TERMINATION OF INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm, with modifications, the Administrative Law Judge's ("ALJ") final initial determination ("ID") issued on March 16, 2021, finding no violation of section 337 in the above-referenced investigation. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, D.C. 20436, telephone (202) 205-3042. 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 August 16, the Commission instituted this investigation based on a complaint filed by Dynamics Inc. ("Dynamics") of Cheswick, Pennsylvania. 84 FR 42009-10 (Aug. 16, 2019). The complaint, as supplemented, alleges 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, or the sale within the United States after importation of certain mobile devices with multifunction emulators by reason of infringement of one or more of claims 1 and 5-8 of U.S. Patent No. 8,827,153 ("the '153 patent"); claims 1-20 of U.S. Patent No. 10,032,100 ("the '100 patent"); claims 1-7, 9-13, 19, 21, and 22 of U.S. Patent No. 10,223,631 ("the '631 patent"); and claims 1-16 of U.S. Patent No. 10,255,545 ("the '545 patent"). *Id.* at 42010. The Commission's notice of investigation named

as respondents Samsung Electronics Co., Ltd of Gyeonggi, Republic of Korea and Samsung Electronics America, Inc. of Ridgefield Park, New Jersey (collectively, “Samsung”). *Id.* The Office of Unfair Import Investigations is not participating in this investigation.

On September 3, 2019, the ALJ set a sixteen-month target date of December 16, 2020 for completion of the investigation. Order No. 3 (Sept. 3, 2019). The Order set an evidentiary hearing for May 11-15, 2020.

On November 26, 2019, the ALJ held a *Markman* hearing, and on January 31, 2020, issued Order No. 7, construing certain claim terms of the asserted patents.

On May 20, 2020, the ALJ issued an initial determination granting Dynamics’ unopposed motion for partial termination of the investigation as to claims 5, 6, and 8 of the ’153 patent, claims 2, 3, 5, 7, 9-11, 13-17, 19, and 20 of the ’100 patent, claims 2, 3, 5, 7, 9-13, 19, and 21 of the ’631 patent, and claims 2, 4, and 6-16 of the ’545 patent. Order No. 15 (May 20, 2020), *unreviewed by* Notice (June 15, 2020).

Due to the COVID-19 pandemic, the ALJ amended the procedural schedule several times. On March 12, 2020, the Commission postponed all in-person hearings under section 337 scheduled within the next sixty days. *See* 85 FR 15498 (Mar. 18, 2020). Thus, the ALJ issued Order No. 10, rescheduling the evidentiary hearing for June 22-26, 2020.

On April 6, 2020, the ALJ issued Order No. 12, resetting the target date to February 23, 2021 due to the COVID-19 pandemic. Order No. 12 (Apr. 6, 2020), *unreviewed by* Notice (Apr. 24, 2020).

On May 14, 2020, the Commission extended the postponement of all section 337 hearings. *See* 85 FR 30734-5 (May 20, 2020). On June 22, 2020, the Commission further extended the postponement of all in-person section 337 hearings. 85 FR 38388-9 (June 26, 2020).

On August 11, 2020, the ALJ scheduled a virtual hearing for November 16-20, 2020 and reset the target date for July 16, 2021. Order No. 24 (Aug. 11, 2020), *unreviewed by* Notice (Sept. 8, 2020).

On March 16, 2021, the ALJ issued the final ID, finding no violation of section 337. The ID found that the importation requirement under 19 U.S.C. 1337(a)(1)(B) is satisfied. ID at 28. Specifically, the ID found that “[t]he parties stipulated to facts establishing the importation requirement is met for both respondents” and that “Samsung does not dispute the Commission’s jurisdiction over this investigation or that the requisite importation or sale in connection with importation has taken place for each Accused Product.” *Id.* Accordingly, the ID found that the Commission has jurisdiction over this investigation and that the importation requirement has been satisfied. *Id.*

With respect to the domestic industry requirement, the ID found that Dynamics had satisfied the domestic industry requirement for the '100 patent, but not the '153, '631, and '545 patents. ID at 183-84. For the '153 patent, the ID found that Dynamics failed to show it practiced any claim of the patent, but had shown it made significant investments under section 337(a)(3)(A) and (B), 19 U.S.C. 1337(a)(3)(A)-(B). *Id.* at 60-64, 158-79. Likewise, as to the '631 patent, the ID found that Dynamics failed to show it practiced any claim of the patent, but had made significant investments for purposes of subsections (a)(3)(A) and (B). *Id.* at 127-31, 158-79. For the '545 patent, the ID found that Dynamics had shown it was “in the process” of practicing claim 1, but had not shown it was “in the process” of establishing a U.S. industry. *Id.* at 148-52, 180-83; *see also* 19 U.S.C. 1337(a)(2).

With respect to infringement and validity, the ID found that Samsung infringes claims 1 and 7 of the '153 patent and that Samsung failed to establish that those claims are invalid. ID at 45-58, 64-69. The ID also found that Samsung infringes claims 1, 4, 6, 12, and 18 of the '100 patent (except for claim 6 as to certain modified products), but that the asserted claims, except for claim 4 are invalid as anticipated or obvious by prior art. *Id.* at 83-88, 96-115. The ID further found that Samsung directly infringes claims 1, 4, 6, and 22 of the '631 patent, but that those claims are invalid as anticipated or obvious by prior art. *Id.* at 121-127, 131-140. The ID also found that Samsung directly infringes claims 1, 3, and 5 of the '545 patent, but that those claims are invalid for anticipation. Finally, the ID found that Samsung failed to carry its burden with respect to various additional affirmative defenses under 35 U.S.C. 102(f), 116 (inventorship), or 112 (written description and enablement).

The ALJ recommended that the Commission should issue a limited exclusion order and cease and desist orders if it finds a violation but that no bond should be imposed on covered products that may be imported during the period of Presidential review. ID/RD at 186-91, 193.

On March 29, 2021, Dynamics filed a petition for review of the ID, and Samsung filed a contingent petition for review. On April 8, 2021, Dynamics and Samsung submitted responses to each other's petitions.

On May 17, 2021, the Commission determined to review the ID in part. 86 FR 27651-53 (May 21, 2021). Specifically, the Commission determined to review the ID with respect to the following: (1) for the '153 patent, claim construction of the term “analog waveform” as well as the related infringement and technical prong analyses and the ID's finding that the combination of Shoemaker and Gutman fails to render the asserted claims obvious; (2) for the '100 patent, whether Doughty in combination with VivoTech renders obvious claim 4 and whether such issue was waived, whether claims 4 and 6 are infringed, and whether the domestic industry requirement is satisfied; and (3) for the '545 patent, the ID's domestic industry findings. *Id.* at 27652. In connection with its review, the Commission requested that the parties brief their positions on certain issues.

Having examined the record of this investigation, including the ID, the parties' submissions and the responses thereto, the Commission has determined to affirm, with

modifications, the ID's finding of no violation of section 337 in this investigation. With respect to the issues under review, for the '153 patent, the Commission has determined to (1) adopt Samsung's proposed construction of the claim limitation "analog waveform" to mean "a wave shape whose amplitude changes in a continuous fashion," but clarify that the construction encompasses so-called real-world square waves; (2) affirm the ID's finding that the accused Samsung Products infringe the asserted claims; (3) affirm the ID's finding that Dynamics failed to adduce sufficient evidence to establish that its DI products practice any claims of the patent; and (4) reverse the ID's finding that the combination of Shoemaker and Gutman fails to render the asserted claims obvious. For the '100 patent, the Commission has determined to (1) reverse the finding that Samsung failed to show that Doughty in combination with VivoTech renders claim 4 obvious; (2) clarify that claims 4 and 6 are infringed; and (3) find the domestic industry requirement not met because the domestic industry claim has been found invalid. For the '545 patent, the Commission has determined to take no position on the ID's domestic industry findings related to a domestic industry in the process of being established.

Accordingly, the Commission has determined to terminate the investigation with a finding of no violation of section 337.

The Commission's vote on this determination took place on July 16, 2021.

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 210).

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: July 16, 2021