

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN PERSONAL DATA AND
MOBILE COMMUNICATIONS DEVICES
AND RELATED SOFTWARE**

Investigation No. 337-TA-710

**NOTICE OF THE COMMISSION'S FINAL DETERMINATION
FINDING A VIOLATION OF SECTION 337;
ISSUANCE OF A LIMITED EXCLUSION ORDER;
TERMINATION OF THE INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 in this investigation and has issued a limited exclusion order prohibiting importation of infringing personal data and mobile communications devices and related software. The Commission has determined that exclusion of articles subject to this order shall commence on April 19, 2012.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2532. 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 April 6, 2010, based on a complaint filed by Apple Inc., and its subsidiary NeXT Software, Inc., both of Cupertino, California (collectively, "Apple"), alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain personal data and mobile communications devices and related software that infringe certain U.S. patents. 75 *Fed. Reg.* 17434 (Apr. 6, 2010). The notice of investigation named as respondents

High Tech Computer Corp. of Taoyuan City, Taiwan and its United States subsidiaries HTC America Inc. of Bellevue, Washington, and Exedia, Inc. of Houston, Texas (collectively, “HTC”).

Several patents that had been asserted by Apple in this investigation were earlier asserted by Apple in Investigation No. 337-TA-704 against Nokia Corp. of Espoo, Finland and Nokia Inc. of White Plains, New York (collectively, “Nokia”). On motion by the Commission investigative attorney (“IA”) in the 704 investigation and by the respondents in both investigations, the Chief ALJ transferred Apple’s assertion of overlapping patents against Nokia from the 704 investigation into the 710 investigation. *See* Inv. No. 337-TA-704, Order No. 5 (Apr. 26, 2010). However, Apple and Nokia entered a settlement agreement, and on July 21, 2011, the Commission determined not to review the presiding ALJ’s termination of the investigation as to Nokia in the 710 investigation based on settlement.

On July 15, 2011, the ALJ issued the final ID. By that time, the investigation had narrowed to certain claims of four patents: claims 1, 3, 8, 15, and 19 of U.S. Patent No. 5,946,647 (“the ’647 patent”); claims 1, 2, 24, and 29 of U.S. Patent No. 6,343,263 (“the ’263 patent”); claims 1, 5, and 6 of U.S. Patent No. 5,481,721 (“the ’721 patent”); and claims 1 and 7 of U.S. Patent No. 6,275,983 (“the ’983 patent”). The final ID found a violation of section 337 by HTC by virtue of the infringement of claims 1, 8, 15, and 19 of the ’647 patent, and claims 1, 2, 24, and 29 of the ’263 patent. The final ID found that claim 3 of the ’647 patent was not infringed. In addition, the final ID found that Apple had demonstrated neither infringement nor Apple’s own practice (for purposes of establishing the existence of a domestic industry) of claims 1, 5, and 6 of the ’721 patent and claims 1 and 7 of the ’983 patent. The final ID concluded that HTC had not demonstrated that any of the asserted patent claims were invalid. The ALJ recommended the issuance of a limited exclusion order but that zero bond be posted during the Presidential review period.

HTC, Apple, and the IA each petitioned for review of the final ID. On September 15, 2011, the Commission determined to review several issues regarding each of the four patents asserted in this investigation. *76 Fed. Reg.* 58,537 (Sept. 21, 2011). The parties filed briefing on the issues under review, remedy, the public interest, and bonding. In addition, the following non-parties submitted comments on the public interest: the Association for Competitive Technology; Google Inc.; and T-Mobile USA., Inc. (“T-Mobile”).

Having examined the record of this investigation, including the ALJ’s final ID and the aforementioned briefing and comments, the Commission has determined that there is a violation of section 337 by reason of the importation and sale of articles that infringe claims 1 and 8 of the ’647 patent. The Commission has determined to reverse the ALJ’s finding of violation as to claims 15 and 19 of the ’647 patent and as to the asserted claims of the ’263 patent. The Commission affirms the ALJ’s conclusion that there has been no violation as to the ’721 and ’983 patents.

The Commission has further determined that the appropriate remedy is a limited exclusion order prohibiting the entry of personal data and mobile communications devices and related software that infringe claims 1 or 8 of the ’647 patent. The Commission has also determined that the public

interest factors enumerated in section 337(d), 19 U.S.C. § 1337(d), do not preclude the issuance of the limited exclusion order. Notwithstanding the foregoing, the Commission has determined that based on consideration of competitive conditions in the United States economy, the exclusion of articles subject to the order shall commence on April 19, 2012 to provide a transition period for U.S. carriers. In addition, the Commission has determined, based on consideration of the effect of exclusion on United States consumers, that until December 19, 2013, HTC may import refurbished handsets to be provided to consumers as replacements under warranty or an insurance contract (whether the warranty or contract is offered by HTC, a carrier, or by a third party). This exemption does not permit HTC to call new devices “refurbished” and to import them as replacements. The Commission has determined not to issue a cease and desist order and that zero bonding is required during the period of Presidential review, 19 U.S.C. § 1337(j). The investigation is terminated.

The Commission’s order and opinion were delivered to the President and the United States Trade Representative on the day of their issuance.

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 sections 210.42-46 and 210.50 of the Commission’s Rules of Practice and Procedure (19 C.F.R. §§ 210.42-46 and 210.50).

By order of the Commission.

/s/
James R. Holbein
Secretary to the Commission

Issued: December 19, 2011