

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN COMPUTERS AND COMPUTER
PERIPHERAL DEVICES, AND COMPONENTS
THEREOF, AND PRODUCTS CONTAINING
SAME**

Investigation No. 337-TA-841

**NOTICE OF COMMISSION DETERMINATION
TERMINATING THE INVESTIGATION
WITH A FINDING OF NO VIOLATION OF SECTION 337**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to terminate the above-captioned investigation with a finding of no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337.

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 May 2, 2012, based on a complaint filed by Technology Properties Limited, LLC ("TPL") of Cupertino, California. 77 Fed. Reg. 26041 (May 2, 2012). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, by reason of infringement of certain claims of U.S. Patent Nos. 6,976,623 ("the '623 patent"), 7,162,549 ("the '549 patent"), 7,295,443 ("the '443 patent"), 7,522,424 ("the '424 patent"), 6,438,638 ("the '638 patent"), and 7,719,847 ("the '847 patent"). The complaint further alleged the existence of a domestic industry. The notice of investigation named twenty-one respondents, some of whom have since settled from the

investigation. As a result of these settlements, the '638 patent is no longer at issue, as it has not been asserted against the remaining respondents. The remaining respondents are Acer Inc. of New Taipei City, Taiwan; Canon Inc. of Tokyo, Japan; Hewlett-Packard Company of Palo Alto, California; HiTi Digital, Inc. of New Taipei City, Taiwan; Kingston Technology Company, Inc. of Fountain Valley, California; Newegg, Inc. and Rosewill Inc., both of City of Industry, California; and Seiko Epson Corporation of Nagano, Japan.

On October 4, 2012, the ALJ issued a *Markman* order construing disputed claim terms of the asserted patents. Order No. 23. On January 7-11, 2013, the ALJ conducted an evidentiary hearing, and on August 2, 2013, the ALJ issued the final ID. The ALJ found that TPL demonstrated the existence of a domestic industry, as required by 19 U.S.C. § 1337(a)(2), through TPL's licensing investment under 19 U.S.C. § 1337(a)(3)(C). ID at 152-55. The ALJ rejected TPL's domestic-industry showing based upon OnSpec Electronic, Inc.'s research and development, and engineering investments under section 337(a)(3)(C), as well as subsections (a)(3)(A) and (a)(3)(B). *Id.* at 155-57.

The ALJ found that the respondents had not shown that any of the asserted patent claims are invalid. However, the ALJ found that TPL demonstrated infringement of the '623 patent, and not the other patents. With respect to the '623 patent, the ALJ found that TPL demonstrated direct infringement of the asserted apparatus claims (claims 1-4 and 9-12). Accordingly, the ALJ found a violation of section 337 by the four respondents accused of infringing these apparatus claims.

On August 19, 2013, the parties filed petitions for review, and on August 27, 2013, the parties filed responses to each other's petitions.

On October 24, 2013, the Commission issued a notice that determined to review the ID in its entirety. The Commission notice invited briefing from the parties on five enumerated topics, and briefing from the parties and written submissions on remedy, the public interest, and bonding. On November 7, 2013, the parties filed opening briefs and written submissions, and non-party Intel Corp. filed a submission on remedy and the public interest. On November 15, 2013, the parties filed responses to each other's filings.

On December 11, 2013, TPL and Acer filed a joint motion to terminate the investigation as to Acer on the basis of a settlement agreement. Having examined the record of this investigation, including the December 11, 2013 motion and exhibits thereto, the Commission has determined to grant the motion to terminate the investigation as to Acer. *See* 19 C.F.R. § 210.21. The Commission finds that settlements are generally within the public interest and that terminating Acer will not cause an adverse effect on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, or U.S. consumers. *See* 19 C.F.R. § 210.50(b)(2).

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, and the briefing in response to the notice of review, the

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

The Commission has determined to find no violation of section 337 for the following reasons. For the '623 patent, the Commission adopts the respondents' proposed construction of "accessible in parallel." The Commission therefore reverses the ID's finding of infringement as to that patent. Based upon that claim construction, the Commission also finds that TPL has not demonstrated the existence of an article protected by the '623 patent. The Commission finds that the Federal Circuit's decisions in *InterDigital Communications, LLC v. ITC*, 690 F.3d 1318 (Fed. Cir. 2012), 707 F.3d 1295 (Fed. Cir. 2013) and *Microsoft Corp. v. ITC*, 731 F.3d 1354 (Fed. Cir. 2013), require a complainant to make such a demonstration regardless of whether the domestic industry is alleged to exist under 19 U.S.C. § 1337(a)(3)(A), (B), or (C).

For the '443, '424, and '847 patents, the Commission affirms the ID's determination that TPL failed to demonstrate that the accused products infringe the asserted claims. The Commission also finds for these three patents that TPL failed to demonstrate the existence of a domestic industry because it failed to demonstrate the existence of articles practicing these patents.

TPL did not raise the '549 patent in its petition for review. 19 C.F.R. § 210.43(b)(2). The Commission affirms the ID's noninfringement finding, and its finding that TPL failed to show that its domestic industry products meet certain claim limitations.

The reasons for the Commission's determinations will be set forth more fully in the Commission's opinion.

Commissioner Aranoff dissents from the Commission's finding that TPL was required to demonstrate the existence of articles practicing the asserted patents in order to show a domestic industry based on licensing under 19 U.S.C. § 1337(a)(3)(C).

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, 210.50).

By order of the Commission.

A handwritten signature in black ink, appearing to read "Lisa R. Barton", with a stylized flourish at the end.

Lisa R. Barton
Acting Secretary to the Commission

Issued: December 19, 2013

**CERTAIN COMPUTERS AND COMPUTER PERIPHERAL
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PRODUCTS CONTAINING THE SAME**

Inv. No. 337-TA-841

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served upon the following parties as indicated on **December 19, 2013**.



Lisa R. Barton, Acting Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
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Certificate of Service – Page 2

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