NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

INTERDIGITAL COMMUNICATIONS, INC., INTERDIGITAL TECHNOLOGY CORPORATION, IPR LICENSING, INC.,
Appellants

v.

UNITED STATES INTERNATIONAL TRADE COMMISSION,
Appellee

NOKIA, INC., MICROSOFT MOBILE OY,
Intervenors

ZTE CORPORATION, ZTE (USA) INC.,
Intervenors

2014-1176

Appeals from the United States International Trade Commission in Investigation No. 337-TA-800.

Decided: February 18, 2015

RICHARD P. BRESS, Latham & Watkins LLP, Washington, DC, argued for appellants. Also represented by

MAXIMILIAN A. GRANT, BERT C. REISER, GABRIEL BELL, RON E. SHULMAN; MICHAEL BRETT LEVIN, DAVID S. STEUER, Wilson, Sonsini, Goodrich & Rosati, PC, Palo Alto, CA.

PANYIN HUGHES, Office of the General Counsel, International Trade Commission, Washington, DC argued for appellee. Also represented by WAYNE W. HERRINGTON.

PATRICK J. FLINN, Alston & Bird LLP, Atlanta, Georgia, argued for intervenors Nokia Inc., Microsoft Mobile Oy. Also represented by JOHN D. HAYNES, SCOTT BENJAMIN PLEUNE, ROSS RITTER BARTON.

JAY H. REIZISS, Brinks Gilson & Lione, Washington, DC, for intervenor ZTE Corporation, ZTE (USA) Inc. Also represented by CYNTHIA A. HOMAN, CHARLES M. MCMAHON, DAVID LINDNER, LAURA A. LYDIGSEN.

Before PROST, *Chief Judge,* MAYER and LOURIE, *Circuit Judges.*

PROST, *Chief Judge*.

InterDigital Communications, Inc., InterDigital Technology Corporation, and IPR Licensing, Inc. (collectively, "InterDigital") appeal from the final determination of the United States International Trade Commission ("Commission") finding no violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337. *See Certain Wireless Devices with 3G Capabilities and Components thereof*, Inv. No. 337-TA-800 (Dec. 19, 2013) ("*Commission Decision*"). For the reasons set forth below, we affirm.

BACKGROUND

The patents at issue are directed to cellphone technology, and in particular, code division multiple access ("CDMA") networks. For purposes of this appeal, the

following simplified overview of the technology is sufficient.[1]

A CDMA network allows multiple cellphones, referred to in the patents as subscriber units, to use the same radio frequencies for multiple simultaneous communications. A CDMA system is able to do this by modulating the data with unique codes. One problem with CDMA systems is that signals within the same geographical area can interfere with one another, and that problem is exacerbated as transmission power levels are increased.

A. Patents at Issue

This appeal involves U.S. Patent Nos. 7,706,830 ("'830 patent"), 8,009,636 ("'636 patent"), 7,502,406 ("'406 patent"), 7,706,332 ("'332 patent"), and 7,616,970 ("'970 patent"). Throughout this case, the patents have been grouped as follows: (1) the Power Ramp-Up Patents (the '830 and '636 patents), (2) the Power Control Patents (the '406 and '332 patents), and (3) the Dual Mode Patent (the '970 patent). We address each patent group below.

1. The Power Ramp-Up Patents

The Power Ramp-Up Patents address the way a subscriber unit establishes a connection with a base station in order to initiate a communication such as a voice call. In particular, these patents describe a subscriber unit that, in order to avoid unnecessary power usage and minimize interference with other connections, gradually ramps up the power level of its transmissions before initiating a call. *See* '830 patent col. 6 ll. 55–67. The subscriber unit starts transmitting at a low power level

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[1] We provided a more detailed description of this technology in *InterDigital Commc'ns, LLC v. Int'l Trade Comm'n*, 690 F.3d 1318, 1320–21 (Fed. Cir. 2012), an appeal involving related patents and technology.

and then repeatedly sends transmissions—called "short codes"—at increasing power levels until the base station detects the transmissions and sends back an acknowledgement to the subscriber unit. *Id.* The transmissions are called "short codes" because they are shorter than a regular length code. *Id.* col. 7 ll. 40–41. Once the acknowledgement is received, a substantive communication such as a voice call can be initiated. *Id.* col. 6 ll. 63–67.

InterDigital asserts independent claim 1 and dependent claims 2, 3, and 5 of the '830 patent and independent claim 1 and dependent claims 2, 4, and 6–8 of the '636 patent. Claim 1 of the '830 patent, which is representative for purposes of this appeal, provides in relevant part:

> 1. A wireless code division multiple access (CDMA) subscriber unit comprising:
>
> a transmitter configured such that, when the subscriber unit is first accessing a CDMA network and wants to establish communications with a base station associated with the network over a communication channel to be indicated by the base station, the transmitter *successively sends transmissions* prior to the subscriber unit receiving from the base station an indication that at least one of the *successively sent transmissions* has been detected by the base station;
>
> wherein each of the *successively sent transmissions* is produced using a sequence of chips, wherein the sequence of chips is not used to increase bandwidth;
>
> . . . .
>
> wherein each of the *successively sent transmissions* is shorter than the message;

. . . .

Id. col. 10 l. 54–col. 11 l. 16 (emphases added).

2. The Power Control Patents

The Power Control Patents relate to how the subscriber unit and the base station adjust their transmission power level after a connection is established. *See* '406 patent col. 5 ll. 46–66. In particular, the patents describe sending messages back and forth indicating whether the power level should be increased or decreased. *Id.* These messages are known as "adaptive," *id.* col. 2 ll. 29–30, or "automatic power control" information ("APC information"), *id.* col. 5 ll. 48–50.

For the '406 patent, InterDigital asserts dependent claims 6, 13, 20, and 26 (which depend, respectively, from independent claims 1, 7, 15, and 21) and independent claim 29. For the '332 patent, InterDigital asserts claims 2–4, 7–11, 14, 22–24 and 27. Claims 1 and 7 of the '406 patent, which InterDigital asserts are representative for present purposes, provide:

> 1. A method for controlling transmission power levels of a code division multiple access (CDMA) subscriber unit, the method comprising:
>
> receiving by the subscriber unit *a power control bit* on a downlink control channel, *the power control bit* indicating either an increase or decrease in transmission power level;
>
> transmitting a plurality of channels by the subscriber unit, the plurality of channels including a traffic channel and a reverse control channel;
>
> in response to the received *power control bit*, adjusting a transmission power level of both the traffic channel and the reverse

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