

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN MOBILE AND PORTABLE
ELECTRONIC DEVICES INCORPORATING
HAPTICS (INCLUDING SMARTPHONES AND
LAPTOPS) AND COMPONENTS THEREOF**

Inv. No. 337-TA-1004

Inv. No. 337-TA-990

(Consolidated)

**ORDER 27: CONSTRUING THE TERMS OF THE ASSERTED CLAIMS OF
THE PATENT AT ISSUE**

(February 2, 2017)

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I. INTRODUCTION

Complainant Immersion Corporation (“Immersion”) filed a complaint on February 11, 2016. The complaint, as supplemented, alleges violations of section 337 based on the importation and sale of certain mobile electronic devices incorporating haptics and components thereof that purportedly infringe U.S. Patent Nos. 8,773,356 (“the ’356 patent”); 8,619,051 (“the ’051 patent”); and 8,659,571 (“the ’571 patent”). 81 Fed. Reg. 14,889-890 (Mar. 18, 2016). The investigation was instituted on March 18, 2016. *Id.* The Notice of Institution named Apple Inc. (“Apple”), AT&T Mobility LLC (“AT&T”), and AT&T Inc.¹ as respondents. *Id.* at 14,890.

Immersion filed another complaint on May 5, 2016. The complaint, as supplemented, alleges violations of section 337 based on the importation and sale of certain mobile and portable electronic devices incorporating haptics and components thereof that purportedly infringe U.S. Patent Nos. 8,749,507 (“the ’507 patent”); 7,808,488 (“the ’488 patent”); 7,336,260 (“the ’260 patent”); and 8,581,710 (“the ’710 patent”). 81 Fed. Reg. 37,210-211 (June 9, 2016). The Commission instituted the investigation on June 9, 2016. *Id.* Apple and AT&T (collectively, “Respondents”) were named as respondents. The Notice of Institution authorized the Chief Administrative Law Judge to “consolidate Inv. No. 337-TA-990 and this investigation if he deems it appropriate.” *Id.* at 37,211. The investigations were consolidated on June 9, 2016. (*See* Order No. 3.)

Pursuant to Ground Rule 5A, a *Markman* hearing was held October 18, 2016. Prior to the hearing, Immersion, Respondents, and the Commission Investigative Staff (“Staff”) met and conferred in an effort to reduce the number of disputed claim terms to a minimum. The parties also filed initial and reply claim construction briefs, wherein each party offered its construction

¹ AT&T Inc. has been terminated from this Investigation. (*See* Notice of Comm’n Determination Not to Review an Initial Determination Terminating the Investigation as to one Respondent on the Basis of Withdrawal of the Compl. (May 4, 2016).)

for the claim terms in dispute, along with support for its proposed interpretation. After the hearing and pursuant to Order No.9, the parties submitted an updated Joint Claim Construction Chart.²

II. IN GENERAL

The claim terms construed in this Order are done so for the purposes of this section 337 Investigation. Those terms not in dispute need not be construed. *See Vanderlande Indus. Nederland BV v. Int'l Trade Comm'n*, 366 F.3d 1311, 1323 (Fed. Cir. 2004) (noting that the administrative law judge need only construe disputed claim terms).

III. RELEVANT LAW

“An infringement analysis entails two steps. The first step is determining the meaning and scope of the patent claims asserted to be infringed. The second step is comparing the properly construed claims to the device accused of infringing.” *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed. Cir. 1995) (*en banc*) (internal citations omitted), *aff'd*, 517 U.S. 370 (1996). Claim construction is a “matter of law exclusively for the court.” *Id.* at 970-71. “The construction of claims is simply a way of elaborating the normally terse claim language in order to understand and explain, but not to change, the scope of the claims.” *Embrex, Inc. v. Serv. Eng'g Corp.*, 216 F.3d 1343, 1347 (Fed. Cir. 2000).

² For convenience, the briefs and chart submitted by the parties are referred to hereafter as:

CMIB	Immersion's Initial <i>Markman</i> Brief
CMRB	Immersion's Reply <i>Markman</i> Brief
RMIB	Respondents' Initial <i>Markman</i> Brief
RMRB	Respondents' Reply <i>Markman</i> Brief
SMIB	Staff's Initial <i>Markman</i> Brief
SMRB	Staff's Reply <i>Markman</i> Brief
JC	Updated Joint Proposed Claim Construction Chart

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