

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.**

In the Matter of

**CERTAIN LTE- AND 3G-COMPLIANT
CELLULAR COMMUNICATIONS
DEVICES**

Investigation No. 337-TA-_____

**COMPLAINANT INVT SPE LLC'S STATEMENT
REGARDING THE PUBLIC INTEREST UNDER 19 C.F.R § 210.8(b)**

Complainant INVT SPE LLC ("INVT") hereby submits this Statement Regarding the Public Interest pursuant to Commission Rule 210.8(b), 19 C.F.R. § 210.8. The proposed respondents are Apple Inc., HTC Corporation, HTC America, Inc., ZTE Corporation, and ZTE (USA) Inc. (collectively "Respondents"). Issuance of the relief requested will not adversely impact the public health, safety, or welfare conditions in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers. Thus, this Investigation does not present an instance where the Commission, the parties, and the public should be required to undergo the time and expense of discovery and trial for a Recommended Determination by the ALJ on the public interest.

For purposes of the Complaint and this public interest statement, INVT seeks a limited exclusion order and a cease and desist order or orders directed to certain infringing LTE- and 3G-compliant cellular communications devices manufactured by the Respondents whether imported or sold by Respondents or another company (the "Accused Products"). The Accused Products infringe one or more valid and enforceable United States patents owned by INVT, including certain claims of United States Patent Nos. 6,760,590; 7,206,587; 7,764,711; 7,848,439; and 7,339,949 (collectively the "Asserted Patents"). The Asserted Patents are

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essential to certain LTE and 3G standards as detailed in INVT's Complaint, and INVT remains ready, willing, and able to license the Asserted Patents on fair, reasonable, and non-discriminatory ("FRAND") terms.

Whether to issue remedial orders based on standards-essential patents ("SEPs") is evaluated after a violation determination. *Certain Industrial Control System Software, Systems Using Same, and Components Thereof*, Inv. No. 337-TA-1020, Order Denying Request for Entry Into Early Disposition Pilot Program (U.S.I.T.C. Sept. 13, 2016). INVT submits that there is no reason to withhold Commission remedies because Respondents have failed to engage in meaningful negotiations to arrive at mutually agreeable FRAND licenses. INVT seeks the requested relief only after Respondents have declined to accept INVT's license offers, and failed to counter-offer or otherwise explain why they do not believe INVT's offers are FRAND, or why they do not need to license the Asserted Patents. Accordingly, no hold-up concerns are manifest. Rather, this Investigation fits squarely within the situations in which Section 337 relief is appropriate due to violations based on FRAND-encumbered SEPs, as described by the United States Department of Justice and United States Patent and Trademark Office Policy Statement on Remedies for Standard-Essential Patents Subject to Voluntary FRAND Commitments.¹ For example, the Policy Statement provides that such situations include where the potential licensee refuses to negotiate, whether actually or constructively. *Id.*

Issuance of the requested remedial orders will thus provide effective relief in the face of ongoing patent infringement by Respondents and eliminate Respondents' unfair competition. As the Commission has stated, "the public interest favors the protection of U.S. intellectual property

¹ USDOJ/USPTO Policy Statement on Remedies for Standard-Essential Patents Subject to Voluntary FRAND Commitments at 7 (2013) ("Policy Statement"), available at <https://www.justice.gov/sites/default/files/atr/legacy/2014/09/18/290994.pdf>.

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rights by excluding infringing imports.” *Certain Two-Handle Centerset Faucets and Escutcheons, and Components Thereof*, Inv. No. 337-TA-422, Comm’n Op. at 9 (U.S.I.T.C. July 21, 2000). Protecting INVT’s important intellectual property rights in the United States through the requested remedial orders will accordingly serve the public interest while having little or no adverse effect on health and welfare.

1. How the Accused Products Are Used in the United States

Respondents’ products potentially subject to remedial orders in this Investigation are certain LTE- and 3G-compliant cellular communications devices. The cellular communications devices at issue include, but are not limited to, mobile phones, tablets, and smartwatches. These devices are configured to operate on an LTE and/or a 3G network and allow users to place and receive telephone calls, to run applications, and to communicate over cellular communications networks in accordance with a subset of relevant LTE and 3G communications standards cited in the Complaint. These devices provide users with both voice and data connections. Data is used for applications such as connecting to the internet, streaming videos, email, and at times even for voice calls (e.g., Voice over LTE). The Accused Products are used by United States consumers for mobile entertainment and communication purposes, including a number of civic and personal functions such as emergency services. However, issuance of any requested remedial order would not diminish such services to implicate public health, safety, or welfare concerns, as discussed below.

2. No Public Health, Safety, or Welfare Concerns Relate to the Requested Remedial Orders

The Accused Products do not implicate any public health, safety, or welfare concerns. Specifically, the Accused Products are not medical or health devices, are not otherwise health-related, and are not essential for public safety or welfare. Moreover, as discussed below, there

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are alternative sources of like, directly competitive, and substitute alternatives in the United States and no health or safety-related features are unique to the Respondents' Accused Products. Accordingly, there are no public health, safety, or welfare considerations that would counsel against excluding the Respondents' Accused Products.

3. INVT's Licensees and Third Parties Make Like or Directly Competitive Articles Which Could Replace the Subject Articles if They Were to be Excluded

Entities authorized to practice the patented technology and third parties not named in this Investigation make like and directly competitive articles that would replace the Accused Products after the issuance of the requested remedial orders. For example, Samsung, which holds a [REDACTED] license to the Asserted Patents, makes a variety of mobile phones, tablets, and smartwatches that compete directly with the Accused Products of the Respondents. Similarly, there are a variety of other companies not named in this Investigation that make like and directly competitive articles that would replace the Accused Products.

4. INVT's Licensees and Third Parties Have the Capacity to Replace the Volume of Articles Subject to the Requested Remedial Orders in a Commercially Reasonable Time in the United States

INVT's licensees, such as Samsung, as well as third party manufacturers not named in this Investigation have the capacity to replace the volume of products potentially subject to an exclusion order and/or a cease and desist order within a commercially reasonable time in the United States. According to reports, Samsung is one of the top two smartphone suppliers in the United States.² Other manufacturers not named in this Investigation make and sell competing products and will be unaffected by any remedial orders issued in this Investigation. Samsung has

² Todd Haselton, Samsung retakes top spot from Apple in US smartphone market, Kantar says, CNBC (Aug. 9, 2017, 8:49 AM), <https://www.cnbc.com/2017/08/09/samsung-retakes-top-spot-from-apple-in-us-smartphones-kantar-says.html>.

[REDACTED]

previously asserted, and the Commission has accepted, Samsung's own assertions that it and other manufacturers (including several not named in this Investigation) have the capacity to replace 3G and LTE cellular communications devices. *See, e.g., Certain Electronic Devices, Including Wireless Communication Devices, Portable Music and Data Processing Devices, and Tablet Computers*, Inv. 337-TA-794, Notice of the Commission's Final Determination Finding a Violation of Section 337; Issuance of a Limited Exclusion Order and a Cease and Desist Order; Termination of the Investigation (U.S.I.T.C. June 4, 2013). Accordingly, Samsung and other manufacturers have the capacity to replace the volume of articles potentially subject to remedial orders in a commercially reasonable time in the United States.

5. The Requested Remedial Orders Would Minimally Impact Consumers

As stated above, if the Respondents' infringing products were excluded, consumers and carriers would not be deprived of like or competitive products and consumers would not be adversely impacted because INVT's licensees and other suppliers would easily meet United States market demand with devices not subject to the remedial orders. Competing products are readily available in the United States from other sources, including those licensed by INVT. Thus, the potential exclusion order and cease and desist order will have no meaningful impact on United States consumers.

6. Conclusion

For the foregoing reasons, the remedies sought in INVT's Complaint, filed concurrently herewith, will not adversely affect the public interest.

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