

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

CERTAIN DIGITAL SET-TOP BOXES AND
COMPONENTS THEREOF

Inv. No. 337-TA-712

**ORDER NO. 33: INITIAL DETERMINATION GRANTING VERIZON'S AMENDED
MOTION FOR SUMMARY DETERMINATION THAT IT HAS
SATISFIED THE ECONOMIC PRONG OF THE DOMESTIC
INDUSTRY REQUIREMENT**

(January 11, 2011)

On September 7, 2010, Complainants Verizon Communications Inc. and Verizon Services Corp. (collectively, "Verizon") moved for summary determination that they have satisfied the economic prong of the domestic industry requirement of Section 337(a)(3). (Motion Docket No. 712-014.) Verizon asserts five patents in this Investigation: U.S. Patent Nos. 5,666,293 ("the '293 patent"); 5,635,979 ("the '979 patent"); 6,381,748 ("the '748 patent"); 6,367,078 ("the '078 patent"); and 7,561,214 ("the '214 patent"). According to Verizon, the patents describe interactive television programming guides, technology for updating software on a television set-top box, and using a set-top box to access content on the Internet. (Mot. Mem. at 2, 5.)

Verizon submitted with its motion a declaration from Eric Bruno, a vice president of product management for Verizon. (Mot., Ex. 1 (Declaration of Eric Bruno (March 16, 2010) ("Bruno Decl.")).) Mr. Bruno states that the technologies in the Verizon patents are embodied in set-top boxes, software, and network equipment used to provide Verizon's FiOS TV services. (*Id.* at ¶ 5.) Mr. Bruno states that { } employed by Verizon in { }

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{ } “were involved in the design, development and creation of the first FiOS TV service offering,” starting in 2004. (*Id.* at 12.) Mr. Bruno avers that Verizon has now deployed FiOS TV services in 14 states and the District of Columbia. (*Id.* ¶ at 9.) Mr. Bruno asserts that FiOS TV video services cannot operate without set-top boxes. (*Id.* at ¶ 7.) He also states that software programs on FiOS set-top boxes—including an Interactive Media Guide, graphical user interfaces, and other applications—“are critical elements in Verizon’s FiOS TV service.” (*Id.*)

Mr. Bruno states that Verizon is investing \$23 billion to deploy a fiber-optic network through which it provides FiOS TV video services. (Bruno Decl. at ¶¶ 3, 10.) Mr. Bruno identifies within that figure a { } investment in the construction and operation of “portions of the network specifically used for video services.” (*Id.* at ¶ 10.) Mr. Bruno states the video services equipment “supplies digital broadcast and other video signals to customers” and “updates operating system software and other application software” on set-top boxes connected to Verizon’s network. (*Id.*) Mr. Bruno avers that Verizon has deployed video services equipment in {

} . (*Id.* at ¶ 9.)

Mr. Bruno explains that the { } investment in video network facilities and equipment described above { } the ’293, ’979, and ’748 Patents.” (Bruno Decl. at ¶ 11.) Mr. Bruno also states that “more than { } employees, located at more than { } different Verizon facilities in the United States, and with a total payroll of more than { } have been involved in “the development, deployment, and enhancement of FiOS TV services.” (*Id.* at ¶ 12.) Mr. Bruno avers that these employees and their associated salaries { } the ’293, ’979, and ’748 Patents.” (*Id.* at ¶ 13.)

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Mr. Bruno states that by the end of 2010, Verizon will have invested more than { } in set-top boxes for use in the provisioning of FiOS TV services. (Bruno Decl. at ¶ 18.) Mr. Bruno avers that Verizon “devotes substantial resources” to testing, installing, supporting, and marketing these set-top boxes, including { } for equipment, engineering, software, and labor to further develop Verizon’s FiOS TV services. (*Id.*) Mr. Bruno states that Verizon’s investment in set-top boxes { } the ’293, ’979, ’748, ’078, and ’214 Patents.” (*Id.* at ¶ 19.)

Mr. Bruno also outlines Verizon’s investment in developing software for set-top boxes. (Bruno Decl. at ¶¶ 14-17.) Mr. Bruno states that in 2009 nearly { } Verizon employees in the United States worked to develop an Interactive Media Guide and other software downloaded to Verizon set-top boxes. (*Id.* at ¶¶ 15, 16.) Mr. Bruno avers that this software implements or will implement the functionalities described in the ’078 and ’214 patents. (*Id.* at ¶ 17.) Mr. Bruno asserts that Verizon’s investment in developing this software enables it to exploit those two patents. Mr. Bruno further explains that Verizon’s software investment enables it to exploit the ’293, ’979, and ’748 patents because the technologies described in those patents “are what enable Verizon to download its software to [] set-top boxes” and provide users with “access [to] Internet content.” (*Id.* at ¶ 16.)

Verizon also submitted the declaration of Shadman Zafar, a senior vice president of product design and development. (Mot., Ex. 2 (Declaration of Shadman Zafar (March 16, 2010) (“Zafar Decl.”)).) Mr. Zafar provides further detail on the resources Verizon has devoted to developing Verizon’s Interactive Media guide, “widget” applications, and other software for FiOS TV set-top boxes. (*Id.* at ¶ 3.) Mr. Zafar explains that widgets extend the functionality of the set-top box and the Interactive Media Guide to allow, for example, interactive gaming or the

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display of local weather and traffic information. (*Id.* at 3, n.1.) Mr. Zafar also states a widget may provide an interface to Internet-based social networking sites using a subscriber's television, set-top box, and remote control. (*Id.*) Mr. Zafar avers that Verizon's software-related investment includes {

{ } (*Id.* at ¶¶ 4-5.) Mr. Zafar avers that "the salaries of Verizon employees in the United States . . . developing this software" account for { } percent of those annual investments. (*Id.* at ¶ 6.)

In accordance with Ground Rule 2.3, Verizon submitted with its motion statements of material facts ("SMF") that it contends are not disputed. Those statements mirror and rely upon the declarations of Mr. Bruno and Mr. Zafar. Verizon contends that based on the evidence of record there can be no dispute that it satisfies the economic prong of the domestic industry requirement. (Mot. Mem. at 1.)

On September 24, 2010, Respondent Cablevision Systems Corporation ("Cablevision") filed an opposition to the present motion. Cablevision raises three main objections to Verizon's motion. First, Cablevision claims that Verizon did not clearly articulate which statutory subsection it is relying upon for its domestic industry. Cablevision asserts that this lack of clarity is reason enough to deny the motion. (Opp. at 2, 4-6.)

Second, Cablevision alleges that Verizon has not shown a sufficient connection between its expenditures and the patented technology at issue in this Investigation. (*Id.* at 6-7.) Particularly, Cablevision argues that the technology at issue in this Investigation is set-top boxes, and therefore only investments specifically attributable to set-top boxes may count toward a domestic industry. (*Id.* at 13.) Cablevision claims that Verizon has no applicable investment in set-top boxes because

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Verizon is “merely an importer” of set-top boxes made in China. (*Id.* at 11-12.) Cablevision cites deposition testimony from Mr. Bruno in which he stated, “I don’t believe we [Verizon] {
} (*Id.* at 12 (emphasis added by Cablevision).) Cablevision further contends that the FiOS network “is not the product at issue, and, thus, general investments in the FiOS network cannot be used to establish a domestic industry” (*Id.*)

Finally, Cablevision contends that because Verizon has not allocated its expenditures with sufficient detail, there can be no determination that those investments are “substantial,” as required by Section 337(a)(3)(C). (*See id.* at 15.)

On September 24, 2010, the Commission Investigative Staff (“Staff”) filed a response in support of Verizon’s motion. Staff states that the domestic industry economic prong requires investment “directed to the ‘articles’ protected by the patent.” (Staff Resp. at 6.) Staff contends that any reliance by Verizon on an investment that “is not directly related to the accused article, *i.e.*, a set-top box,” should not be counted when determining whether the economic prong has been met. (*Id.*) Applying this standard, Staff rejects Verizon’s reliance on its \$23 billion investment in deploying the FiOS network in general, and also rejects Verizon’s reliance on investment in network equipment specific to video services. (*Id.*)

Nevertheless, Staff finds undisputed facts supporting a determination that Verizon has satisfied the economic prong of the domestic industry requirement. (Staff Resp. at 5.) Staff relies on statements in the Bruno and Zafar declarations that discuss Verizon’s investment in its “Interactive Media Guide, widgets, application software, support systems, and other enhancements for the set-top boxes.” (*Id.* at 5.)

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Upon review of the motion papers, proposed findings of facts, and responses thereto, the Administrative Law Judge finds as follows.

The Commission Rules permit a party to “move with any necessary supporting affidavits for a summary determination in its favor upon all or any part of the issues to be determined in the investigation.” 19 C.F.R. § 210.18(a). Summary determination “shall be rendered if pleadings and any depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a summary determination as a matter of law.” 19 C.F.R. § 210.18(b).

Summary determination under Commission Rule 210.18 is analogous to summary judgment under Federal Rule of Civil Procedure 56. *See Certain Asian-Style Kamaboko Fish Cakes*, Inv. No. 337-TA-378, Order No. 15 at 3 (U.S.I.T.C., May 21, 1996) (unreviewed initial determination). The moving party bears the initial burden of establishing that there is an absence of a genuine issue of material fact and that it is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). When such an initial showing is established, the burden shifts to the opposing party, who “must set forth specific facts showing that there is a genuine issue for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). To avoid summary judgment, the non-moving party must produce evidence of sufficient caliber to support judgment in its favor. *See Anderson*, 477 U.S. at 252. Such evidence must be real and substantial, not merely colorable. *Id.* at 249-50; *Matsushita Elec. Indus. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (“[The non-moving party] must do more than simply show that there is some metaphysical doubt as to the material facts.”). If the responding party fails to make such a showing, the moving party is then entitled to judgment as a matter of law. *See Celotex*, 477 U.S. at 325.

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When ruling on a motion for summary judgment, courts must examine all the evidence in the light most favorable to the non-moving party. *Anderson*, 477 U.S. at 255. All “justifiable inferences” are to be drawn in the non-moving party’s favor. *Id.*

To show a violation of Section 337, Verizon must demonstrate, among other things, that a domestic industry exists in the articles protected by the patent, or is in the process of being established. 19 U.S.C. § 1337(a)(2); *Certain Coaxial Cable Connectors and Components Thereof and Products Containing Same*, Inv. No. 337-TA-650, Comm’n Op. at 37 (U.S.I.T.C., March 31, 2010) (“*Coaxial Cable Connectors*”). Under the definitions of Section 337(a), an industry exists if there is “significant investment in plant and equipment,” “significant employment of labor or capital,” or “substantial investment in [the patent’s] exploitation, including engineering, research and development, or licensing.” 19 U.S.C. § 1337(a)(3)(A),(B),(C); *Certain Stringed Musical Instruments & Components Thereof*, Inv. No. 337-TA-586, Comm’n Op. at 13 (U.S.I.T.C., May 16, 2008) (“*Stringed Instruments*”). The Commission has divided the domestic industry requirement into an economic prong (which requires certain activities) and a technical prong (which requires that these activities relate to the intellectual property being protected). *Id.*

Turning to the evidence at issue in the present motion, the Administrative Law Judge finds that Verizon made an initial showing of certain facts alleged to be beyond dispute. (*See, e.g., Bruno Decl. and Zafar Decl.*) Therefore, it was Cablevision’s burden to come forward with real and substantial evidence showing that there is a genuine issue for trial. *See Anderson*, 477 U.S. at 249-50. While Cablevision raised various *pro forma* “objections”¹ to many of the facts asserted by

¹ For example, Cablevision’s objections to SMF No. 6 have no substantive or persuasive value and were disregarded. (RSMF No. 6 (“Cablevision objects to Undisputed Material Fact No. 6’s statement that ‘Verizon has invested substantial resources in designing, developing, maintaining, and enhancing . . .’ as vague and containing a legal conclusion regarding the substantiality of Verizon’s alleged investments.”).)

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Verizon, some of which will be discussed in more detail below, Cablevision did not submit any actual evidence showing that material issues of fact are in dispute here. *See Certain Electronic Devices, Including Mobile Phones, Portable Music Players, and Computers*, Inv. No. 337-TA-701, Order No. 58 at 5 (U.S.I.T.C., Nov. 18, 2010) (“Electronic Devices”) (unreviewed) (rejecting *pro forma* objections to alleged facts); *see also* Ground Rule 2.4 (“All material facts set forth in the moving party’s SMF may be deemed admitted by a nonmoving party unless specifically controverted in the nonmoving party’s responsive statement.”). The Administrative Law Judge finds that there are no material issues of disputed fact with respect to the following:

1. Verizon provides communications services to customers in the United States. (Bruno Decl. at ¶ 3; Cablevision Resp. to SMF (“RSMF”) No. 1.)
2. Starting in 2004, Verizon employed { } people in { } to design, develop, and create the first FiOS TV offering. (Bruno Decl. at ¶ 6; RSMF No. 15.)
3. Verizon has deployed FiOS TV services in fourteen states and the District of Columbia. (Bruno Decl. at ¶ 9; RSMF No. 2.)
4. All of the asserted Verizon patents describe technologies that are integral components of Verizon’s FiOS TV services or of networks and/or systems that allow Verizon to provide FiOS TV services. (Bruno Decl. at ¶ 4; RSMF No. 4.)
5. FiOS TV video services cannot operate without set-top boxes. (Bruno Decl. at ¶ 7; RSMF Nos. 7, 20.)
6. Software programs on FiOS set-top boxes—including an Interactive Media Guide, graphical user interfaces, and other applications—are critical elements in Verizon’s FiOS TV service. (Bruno Decl. at ¶ 7; Zafar Decl. at ¶ 3; RSMF Nos. 7, 20.)²
7. Verizon invested { } in the construction and operation of portions of the

² Cablevision cites deposition testimony that raises a dispute as to whether the software described in this paragraph {

{ } (See RSMF Nos. 7-8.) Regardless of { } Cablevision cites no evidence that Verizon’s FiOS TV service will work without this software. To the contrary, the deposition testimony cited by Cablevision states that without this software, “[t]he service { } (See RSMF No. 7.) Thus, even acknowledging the evidence cited by Cablevision, Verizon’s assertion that this software is “critical” remains undisputed. Further, even if some of the software included in this investment were optional, it may still be considered in an analysis under Section 337(a)(3)(C) if it relates to Verizon’s efforts to exploit the patents at issue. *See Electronic Devices* at 7-8.

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FiOS network specifically used for video services. This video services equipment supplies digital broadcast and other video signals to customers and updates operating system software and other application software on set-top boxes connected to Verizon's network. (Bruno Decl. at ¶ 10; RSMF No. 14.)

8. Included within Verizon's { } investment in the paragraph above is equipment Verizon installed in {

} This equipment is specifically used for video services. (Bruno Decl. at ¶¶ 9, 10; RSMF No. 14.)

9. Included within Verizon's { } investment identified above is { } for the payroll of more than { } employees, located at more than { } different Verizon facilities in the United States, that have been involved in the development, deployment, and enhancement of FiOS TV services. (Bruno Decl. at ¶ 12; RSMF No. 15.)

10. The employees identified in the paragraph above and their associated salaries { } the '293, '979, and '748 patents. (Bruno Decl. at ¶ 13; RSMF Nos. 15, 17.)

11. Verizon's { } investment in video network facilities and equipment { }, and enables Verizon to exploit, the '293, '979, and '748 patents. (Bruno Decl. at ¶ 11; RSMF No. 17.)

12. By the end of 2010, Verizon invested at least { } in purchasing set-top boxes that enable its customers to access FiOS TV services. (Bruno Decl. at ¶ 18; RSMF No. 19.)

13. In 2009, Verizon derived approximately { } in revenue from the provision of set-top boxes to customers. (Bruno Decl. at ¶ 2; RSMF No. 3.)

14. Verizon devotes substantial resources to testing, installing, supporting, and marketing set-top boxes. (Bruno Decl. at ¶ 18; RSMF Nos. 18-19.)

15. The technologies described in the asserted Verizon patents { } of set-top boxes in Verizon's FiOS TV network. (Bruno Decl. at ¶ 19; RSMF No. 20.)

16. Verizon invested { } in the development of software for FiOS TV set-top boxes. { } of this investment is for the salaries of Verizon employees in the United States for their work in developing such software. (Zafar Decl. at ¶¶ 4-6; RSMF No. 8.)³

³ Cablevision cites deposition testimony that raises a dispute as to whether the software described in this paragraph { } { } (See n. 2 above.) However, Cablevision cites no evidence that Verizon's stated investment in software includes anything other than { } (See RSMF Nos. 7-8.)

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17. In 2009 nearly { } employees of Verizon's IT organization within the United States worked to develop an Interactive Media Guide and other software that is downloaded to Verizon set-top boxes. (Bruno Decl. at ¶¶ 15, 16; RSMF No. 10.)
18. Verizon's investment in software outlined in the previous two paragraphs enables Verizon to exploit each of the patents asserted in this Investigation. (Bruno Decl. at ¶¶ 16-17; RSMF No. 11.)⁴

Having found the foregoing facts to be without material dispute, the Administrative Law Judge will address Cablevision's arguments that summary determination is not appropriate even in light of those facts.

Cablevision's first criticism of Verizon's motion is that Verizon has not adequately identified the statutory authority for the relief it seeks. (Opp. at 2, 4-6.) The Administrative Law Judge finds this argument to be without merit. Verizon's motion cites Section 337(a)(3)(C), and the motion specifically claims that Verizon satisfies the domestic industry requirement with "a substantial investment in engineering and research and development related to . . . the technology of the asserted patents." (See Mot. at 1). Cablevision's brief demonstrates that Cablevision had adequate notice of the legal authority for Verizon's motion as Cablevision's brief engages that authority in detail. (See, e.g., Opp. at 7-10.)

Cablevision's second argument is that Verizon has not shown a sufficient connection between its domestic expenditures and the patented technology at issue in this Investigation. (Opp. at 6-15.) Staff similarly argues that some of Verizon's investments "are unrelated to set-top boxes" and should not be counted in determining whether the economic prong of the domestic industry

⁴ In connection with Verizon's software-related investments, Cablevision cites Mr. Zafar's deposition testimony in which he stated that he did not know the number of different Verizon patents that would cover technology in Verizon's set-top boxes. (See Opp. at 14 n. 4.) However, the fact that Verizon's set-top boxes may exploit *more* patents than those asserted in this Investigation does not contradict Mr. Bruno's declaration concerning investments directed to exploiting the asserted patents. The same activities may directly exploit more than one patented technology.

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requirement has been met. (Staff Resp. at 6.)

The standard for evaluating Verizon's showing is Section 337(a)(3)(C), the statutory section upon which Verizon relies. (See Mot. at 1.) That section states that "an industry in the United States shall be considered to exist if there is in the United States . . . substantial investment in . . . exploitation [of the patent], including engineering, research and development, or licensing." 19 U.S.C. § 1337(a)(3)(C). The Commission recently interpreted this language in *Coaxial Cable Connectors*.⁵ *Coaxial Cable Connectors* at 44. The Commission noted that the term "exploit" means "to put to productive use" and "to take advantage of." *Id.* at 49. The Commission found that investments in engineering and research and development "represent efforts to facilitate and/or hasten the practical application of the invention by, for example, bringing it to market." *Id.* at 47. The Commission examined the legislative history of Section 337(a)(3)(C) and found that the examples of domestic industries in the congressional record "share a common thread, namely, the intellectual property right holder is taking steps to foster propagation or use of the underlying intellectual property." *Id.* at 49. The Commission also explained that a complainant relying on Section 337(a)(3)(C) has the burden to show that any claimed activities "pertain to the particular patent(s) at issue." *Id.* at 50.

Based on the guidance from the Commission outlined above, Verizon's investments will satisfy the economic prong under Section 337(a)(3)(C) if those investments are for engineering or

⁵ *Coaxial Cable* evaluated a claim that patent litigation activity satisfied the economic prong of Section 337(a)(3)(C). See *Coaxial Cable Connectors* at 43. The Administrative Law Judge notes that Cablevision has inappropriately decontextualized language from the remand opinion in that investigation (Inv. No. 337-TA-650) in asserting that the finding that complainant's licensing activities must pertain to the particular patent at issue should affect the analysis here. (Opp. at 8-9.) In that investigation, complainant had attempted to argue that licensing related litigation expenses for patents that *had not been asserted* in the investigation should be counted toward the economic domestic industry requirement. Thus the statements Cablevision cited from the remand opinion are inapposite. However, as Cablevision acknowledges, the reasoning in the Commission's opinion is illuminating in this Investigation. (See Opp. at 9.)

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research and development within the United States that fosters propagation or use of the technology covered by the asserted patents. *See Coaxial Cable Connectors* at 49-50. The Administrative Law Judge finds that several of the undisputed facts above demonstrate Verizon has met this standard. For example, Verizon employed { } of people in { } { } to design, develop, and create the first FiOS TV offering, starting in 2004. (Bruno Decl. at ¶ 6.) By 2009, more than { } Verizon employees, located at more than { } different Verizon facilities in the United States, were involved in the development, deployment, and enhancement of FiOS TV services. (*Id.* at ¶ 12.) In 2009, nearly { } employees of Verizon's IT organization within the United States worked to develop an Interactive Media Guide and other software downloaded to Verizon set-top boxes. (*Id.* at ¶ 15.)

Cablevision does not dispute that these activities constitute engineering and development. Instead, Cablevision (and to some extent Staff) argues that these activities are not connected to the asserted patents. (*See, e.g.,* Opp. at 11; Staff Resp. at 6.) These arguments appear to be based on an assumption that the only relevant activities in this Investigation are those devoted to designing the inner workings of a set-top box. (*See* Opp. at 12; Staff Resp. at 6.) That assumption is not correct. As noted above, the Commission has indicated that engineering efforts directed at "bringing [patented technology] to market" are relevant to a domestic industry analysis under Section 337(a)(3)(C). *See Coaxial Cable Connectors* at 47. Verizon brings the technology in the asserted patents to the marketplace through development of the FiOS TV video system. (*See, e.g.,* Bruno Decl. at ¶¶ 13, 16-17.) Accordingly, it is appropriate to consider Verizon's domestic investments in portions of that system that pertain to the particular patents asserted in this

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Investigation.⁶ *See Coaxial Cable Connectors* at 50.

Turning to Cablevision's objection to Verizon's set-top box investment (Opp. at 11-12), purchasing set-top boxes from a foreign supplier, without more, is unlikely to satisfy the domestic industry requirement. However, Cablevision's argument that Verizon is "merely an importer" of set-top boxes made in China (*see id.*) ignores significant undisputed facts. Cablevision cites to evidence, which, if viewed in the light most favorable to Cablevision, tends to show that Verizon buys set-top boxes made in China and provides them to customers in the United States for a fee. (*See Bruno Decl.* at ¶¶ 3, 18; Opp., Ex. 1 at 95:4-11 (Deposition of Eric Bruno (July 12, 2010)).) However, it is undisputed⁷ that Verizon devotes substantial resources to testing the set-top boxes, installing them in customers' homes in fourteen states, and supporting their operation. (*See Bruno Decl.* at ¶¶ 9, 18; RSMF Nos. 2, 19.) It is also undisputed that Verizon develops software that is critical to the operation of these boxes. (*See Bruno Decl.* at ¶ 7; RSMF Nos. 7, 20.) These activities bring the technology in Verizon's asserted patents to the consumer market. (*See Bruno Decl.* at ¶¶ 16-17, 19; RSMF No. 20.) It is further undisputed that Verizon's investment in set-top boxes returned approximately { } of revenue in 2009. (*See Bruno Decl.* at 3; RSMF No. 3.) Therefore, when viewed in context, these activities are relevant to an analysis under Section 337(a)(3)(C). *See Coaxial Cable Connectors* at 49-50.

Other undisputed facts show that Verizon has substantial domestic development activities

⁶ As discussed below, not all expenditures by Verizon in building its FiOS network should be credited as efforts to exploit the patents.

⁷ After Verizon propounded evidence from Mr. Bruno showing Verizon's investments pertain to the exploitation of the asserted patents, it was Cablevision's burden to come forward with evidence (not merely attorney argument) that would create a material dispute on that point. *See Matsushita Elec. Indus.*, 475 U.S. 574 at 586 ("[The non-moving party] must do more than simply show that there is some metaphysical doubt as to the material facts.") Cablevision failed to do so. Accordingly, the relationship between the asserted patents and the investments discussed above stands undisputed. (*See, e.g.*, RSMF No. 20.)

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that “pertain to the particular patent(s) at issue.” *See Coaxial Cable Connectors* at 50. Mr. Bruno’s declaration expressly connects specific engineering and development endeavors to the exploitation of the patents asserted in this Investigation, and neither Cablevision nor Staff disputed those connections. (*See, e.g.*, Bruno Decl. at ¶¶ 13, 16-17; RSMF Nos. 11, 17, 20; Staff Resp. at 7 (“The Staff has no objection to any of the facts presented in Verizon’s Statement of Undisputed Material Facts.”).) Mr. Bruno’s assertions are not hollow; he provides a technical explanation about how the patented technology { } FiOS TV video services. (*See, e.g.*, Bruno Decl. at ¶¶ 5, 7, 10; RSMF No. 4.) He explains that FiOS TV video services cannot operate without set-top boxes, and that Verizon-developed software is critical to set-top box operation. (Bruno Decl. at ¶ 7; RSMF No. 7; n. 2 *supra*.)

Cablevision’s final argument is that because Verizon has not allocated its expenditures with sufficient detail, there can be no determination that those investments are “substantial,” as required by Section 337(a)(3)(C). (*See Opp.* at 15.) However, the standard advanced by Cablevision imposes a burden beyond the requirements of the statute. Section 337(a) does not define what a “substantial” investment is; nor does it require a particular accounting method.

The Commission has stated that establishment of an economic domestic industry is not dependent on any “minimum monetary expenditure”; nor is there a “need to define or quantify the industry itself in absolute mathematical terms.” *See Stringed Instruments* at 25-26. “A precise accounting is not necessary, as most people do not document their daily affairs in contemplation of possible litigation.” *Id.* at 26. Rather, a complainant must demonstrate a sufficiently focused and concentrated effort to lend support to a finding of a “substantial investment.” *Id.*; *see also Electronic Devices* at 5 (rejecting argument that movant “failed to give a precise accounting”).

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Construing the evidence in Cablevision's favor, the FiOS network is used for other communications services beyond those technologies described in the asserted patents. (*See, e.g.,* Opp. at 21.) Therefore, not all expenditures by Verizon in building its FiOS network should be counted toward a domestic industry. However, under even a conservative estimate, the Administrative Law Judge finds that Verizon has put forth a sufficiently focused effort in exploiting the patented technology through domestic investments. For example, the Bruno declaration states Verizon's total investment in building the Verizon FiOS network (\$23 billion) and then separately identifies that portion of the investment "used specifically for video services" { }. (Bruno Decl. at ¶ 10.) The declaration claims that the { } subset "relates directly to, and enables Verizon to exploit," some of the patents at issue in this Investigation. (*Id.* at ¶ 10.) The Bruno declaration similarly specifies a { } subset of the { } investment that constitutes payroll for development activities. (*Id.* at ¶ 12.) The declaration connects the payroll investment and other specific investments to the patented technology. (*See, e.g., id.* at ¶¶ 12-13, 16-17.)

The Administrative Law Judge concludes, based on undisputed facts, that Verizon's domestic activities directed at exploiting the asserted patents are substantial.⁸ Verizon hired dozens of people in the United States to develop the FiOS system, and the patented technology is integral to that system. (Bruno Decl. at ¶¶ 5-6; RSMF Nos. 4, 15.) Verizon also paid { } employees in the United States { } to further develop that system and to develop

⁸ It is noted that Cablevision questions whether certain of Verizon's investments include activities beyond the borders of the United States. (*See, e.g.,* RSMF 5.) The Administrative Law Judge does not rely on any activity not expressly stated by Verizon to have occurred in the United States when concluding that Verizon has met the economic prong of the domestic industry requirement. However, as shown in the undisputed facts above, there is ample evidence of efforts in the United States to exploit the patents.

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software that exploits the patents. (Bruno Decl. at ¶ 12; Zafar Decl. at ¶¶ 4-6; RSMF Nos. 5, 10-11.)

Verizon has brought the patented technology to market in fourteen states and the District of Columbia. (Bruno Decl. at ¶ 9; RSMF No. 2.) Verizon has also built equipment specifically used for video services in { } (Bruno Decl. at ¶¶ 9-10; RSMF No. 5.)⁹

Based on the foregoing, it is the Initial Determination of the Administrative Law Judge that Verizon's motion for summary determination with respect to an economic domestic industry for the Verizon Patents (Motion Docket No. 712-014) should be GRANTED. It should be noted, however, that the Administrative Law Judge makes no finding at this time as to whether the technical prong of the domestic industry requirement is met.

This Initial Determination is hereby certified to the Commission. Pursuant to 19 C.F.R. § 210.42(h), this Initial Determination shall become the determination of the Commission unless a party files a petition for review of the Initial Determination pursuant to 19 C.F.R. § 210.43(a), or the Commission, pursuant to 19 C.F.R. § 210.44, orders on its own motion a review of the Initial Determination or certain issues herein.

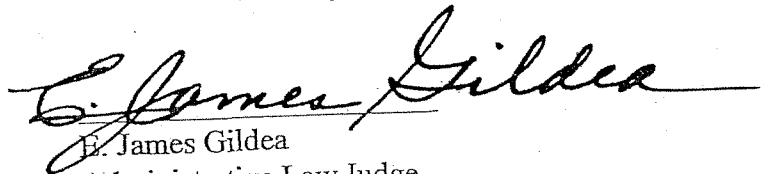
Within seven days of the date of this document, each party shall submit to the Office of the Administrative Law Judges a statement as to whether or not it seeks to have any portion of this document deleted from the public version. The parties' submissions may be made by facsimile and/or hard copy by the aforementioned date.

⁹ While some of Verizon's investments in the FiOS network may have been made { }
{ } (see RSMF No. 5), the existence and description of Verizon video services equipment { }
is undisputed. (See Bruno Decl. at ¶¶ 9-10; RSMF No. 5.)

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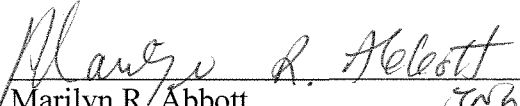
Any party seeking to have any portion of this document deleted from the public version thereof must submit to this office a copy of this document with red brackets indicating any portion asserted to contain confidential business information. The parties' submissions concerning the public version of this document need not be filed with the Commission Secretary.

SO ORDERED.


E. James Gildea
Administrative Law Judge

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **ORDER 33** has been served by hand upon, the Commission Investigative Attorney, **Brian F. Moore, Esq.**, and the following parties as indicated on **January 28, 2011**.


Marilyn R. Abbott *JNB*
U.S. International Trade Commission
500 E Street, SW, Room 112A
Washington, DC 20436

**On Behalf of Complaint Verizon Communications
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**On Behalf of Respondent Cablevision Systems
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