

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN MOBILE DEVICES AND
RELATED SOFTWARE

Inv. No. 337-TA-750
REMAND

**ORDER NO. 22: INITIAL DETERMINATION GRANTING JOINT MOTION TO
TERMINATE THE INVESTIGATION**

(May 28, 2014)

On May 22, 2014, complainant Apple, Inc. (“Apple”) and respondent Motorola Mobility LLC (“Motorola”) filed a joint motion to terminate the investigation. (Motion No. 750-042.) Apple and Motorola state that good cause exists to terminate the Investigation pursuant to Commission Rule 210.21(b) because Apple and Google Inc. (“Google”), the parent company of Motorola, have reached an agreement that eliminates the dispute between Apple and Motorola that is the subject matter of this Investigation. On May 27 2014, the Commission Investigative Staff (“Staff”) filed a response to the joint motion. The Staff does not oppose the termination of this Investigation.

The Commission’s Rules provide that “[a]ny party may move at any time for an order to terminate an investigation in whole or in part as to any or all respondents on the basis of a settlement, a licensing or other agreement....” 19 C.F.R. § 210.21(a)(2); *see also Certain Organizer Racks & Products Containing Same*, Inv. No. 337-TA-466, Order No. 7 at 2 (February 19, 2001). Commission Rule 210.21(b)(1) further specifies that in order for an investigation to be terminated as to a respondent on the basis of a licensing or other settlement agreement, the motion for termination must include: (1) copies of the licensing or other settlement agreement; (2) any supplemental agreements; and (3) a statement that there are no

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other agreements, written or oral, express or implied, between the parties concerning the subject matter of the investigation. 19 C.F.R § 210.21(b)(1). In addition, the motion must include a public version of any licensing or other settlement agreement containing confidential business information. *Id.*

Pursuant to Ground Rule 3.2, Apple and Motorola provided notice of this motion to the Commission Investigation Staff (“Staff”).

The motion to terminate is based on a Settlement Agreement¹ between Apple and Motorola. (Joint Motion Memorandum.) Apple and Motorola contend that the 2013 version of Commission Rule 210.21(b) is not applicable to their joint motion because in the Commission’s “June 4, 2013 ‘Notice Clarifying Commission Rules,’ the Commission ruled that the newly-amended Rules ‘are not applicable to investigations instituted before May 20, 2013.’ Docket No. MISC-040 (June 4, 2013).” (Jt. Mot. Memo. at 2.) Apple and Motorola point out that “[b]ecause this Investigation was instituted on November 23, 2010 (*see* 75 Fed. Reg. 74081), the 2013 Commission Rules do not apply. Rather, the Rules in existence at the time of institution govern this Investigation. *See, e.g., Certain Mobile Wireless Devices, Associated Software, and Components Thereof*, Inv. No. 337-TA-744, Order No. 36 (May 12, 2014) (Essex, ALJ) (“This investigation was instituted in 2011. The April 19, 2013 Commission Rules do not apply in this instance as those amended Rules are applicable to investigations instituted on or after May 20, 2013”). Accordingly, the Commission Rules in existence at the time the present Investigation was instituted govern for purposes of the present Motion.” (Jt. Mot. Memo. at 2.) Based on the version of Commission Rule 210.21(b) applicable at the institution of this Investigation, a “motion for termination by settlement shall contain copies of the licensing or other settlement

¹ The Settlement Agreement is a Joint Cooperation Agreement between Apple and Motorola’s parent company, Google Inc., that eliminates the dispute between Apple and Motorola concerning the subject matter of this investigation. (Jt. Mot. Memo. at 3.)

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agreement, any supplemental agreements, and a statement that there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation.” See 37 C.F.R. § 210.21(b) (as amended 73 Fed. Reg. 38322 (July 7, 2008)).

In accordance with the applicable Commission Rule 210.21(b), the parties filed a public version of the Settlement Agreement, attached hereto as Attachment A. The motion further states, consistent with Commission Rule 210.21(b)(1), that there are no other agreements, written or oral, express or implied, between Apple and Motorola concerning the subject matter of this investigation. (Jt. Mot. Memo. at 4.) Citing to *Certain Integrated Chipsets And Products Containing Same*, Inv. No. 337-TA-428, Order No. 12 (June 20, 2000) and *Certain Devices Having Elastomeric Gel and Components Thereof*, Inv. No. 337-TA-732, Order No. 20 (Jan. 28, 2011), Apple and Motorola contend that the “[t]ermination of this Investigation is in the public interest in that the termination will conserve public resources and will not negatively affect public health and welfare, competitive conditions in the U.S. economy, production of like or directly competitive articles in the U.S., or U.S. consumers. (Jt. Mot. Memo. at 4.)

As an initial matter, the Staff agrees with the private parties that the termination of this Investigation should be governed by the version of the Commission rules that was in effect as of the date of the institution of this investigation. (Staff Resp. at 1.) Next, the Staff submits that the Settlement Agreement indicates the parties’ intent to settle this investigation. (Staff Resp. at 4.) The Staff points out that “[t]he private parties thus seem to have complied with the procedural requirements of the Commission Rules.” (Staff Resp. at 4.) Therefore, “the Staff is of the view that the settlement agreement provides a basis on which to terminate the investigation.” (Staff Resp. at 4.)

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“The Staff is not aware of any information that would indicate that the settlement agreement between Apple and Motorola will harm 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.” (Staff Resp. at 4.) Thus, “[t]he Staff believes, based on the available information, that terminating this investigation based on the settlement agreement will not be contrary to the public interest.” (Staff Resp. at 5.) As such, the Staff does not oppose the termination. (Staff Resp. at 5.)

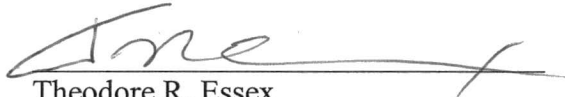
Based on the pleadings filed in connection with the joint motion to terminate the investigation including the exhibits attached thereto, the ALJ finds that there is no indication that termination of this Investigation in view of the settlement agreement would have an adverse impact on the public interest. The ALJ finds the termination of this Investigation will not have an adverse impact on the availability to the public of mobile devices and related software. The ALJ finds that there are significant public interest benefits in resolving litigation through settlement thereby avoiding needless litigation and conserving both public resources and private resources.

Motion No. 750-042 is hereby **GRANTED**. This initial determination, along with supporting documentation, is hereby certified to the Commission.

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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.

SO ORDERED.


Theodore R. Essex
Administrative Law Judge

ATTACHMENT A

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

**Hon. Theodore R. Essex
Administrative Law Judge**

In the Matter of:

**CERTAIN MOBILE DEVICES AND
RELATED SOFTWARE**

**Investigation No. 337-TA-750
REMAND**

JOINT MOTION TO TERMINATE INVESTIGATION

Complainant Apple Inc. (“Apple” or “Complainant”) and Respondent Motorola Mobility LLC (“Motorola” or “Respondent”) move pursuant to Commission Rule 210.21(b) to terminate this Investigation for good cause, in view of an agreement between Apple and Google Inc. (“Google”), the parent company of Motorola, that eliminates the dispute between Apple and Motorola that is the subject matter of this Investigation. The memorandum of points and authorities submitted in support of this motion sets forth the reasons why this termination should be permitted.

In compliance with Commission Rule 210.21(b), Apple and Motorola state that there are no other agreements, written or oral, express or implied between Apple and Motorola concerning the subject matter of the investigation.

In compliance with Commission Rule 210.50(b)(2), Apple and Motorola state that the termination of this Investigation is in the public interest in that the termination does not affect 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.

In compliance with Commission Rule 210.21(b), a complete, confidential version of the agreement between Apple and Google is attached hereto as Confidential Exhibit 1, and a redacted version, with confidential business information removed, is attached as Exhibit 2.

Pursuant to Ground Rule 3.2, Apple and Motorola provided notice of this motion to the Commission Investigative Staff ("Staff") two business days before filing. The Staff indicated that it will take a position after reviewing the motion papers.

Accordingly, Apple and Motorola jointly request termination of this Investigation pursuant to Commission Rule 210.21(b).

Dated: May 22, 2014

Respectfully submitted,

/s/ Brian E. Ferguson

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UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

Hon. Theodore R. Essex
Administrative Law Judge

In the Matter of:

**CERTAIN MOBILE DEVICES AND
RELATED SOFTWARE**

**Investigation No. 337-TA-750
REMAND**

**MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF JOINT MOTION TO TERMINATE
THE INVESTIGATION**

Complainant Apple Inc. (“Apple” or “Complainant”) and Respondent Motorola Mobility LLC (“Respondent” or “Motorola”) jointly submit this Memorandum of Points and Authorities in support of their joint motion to terminate the Investigation pursuant to Commission Rule 210.21(b). The Commission Investigative Staff (“Staff”) has indicated it will take a position after reviewing these papers.

Apple and Motorola note that a threshold issue concerning the instant Motion is what version of Commission Rule 210.21(b) applies. Specifically, the Commission Rules were amended effective April 19, 2013 (*see* 78 Fed. Reg. 23474). New Rule 210.21(b), as amended requires, in part, that the parties to a settlement agreement submit “copies of the licensing or other settlement agreements, any supplemental agreements, [and] *any documents referenced in the motion or attached agreements....*” *See* Commission Rule 210.21(b) (as amended April 19, 2013) (emphasis added). Apple and Motorola submit, however, that the 2013 version of

Commission Rule 210.21(b) is not applicable to the current Motion. In its June 4, 2013 “Notice Clarifying Commission Rules,” the Commission ruled that the newly-amended Rules “are not applicable to investigations instituted before May 20, 2013.” Docket No. MISC-040 (June 4, 2013). Because the instant Investigation was instituted on November 23, 2010 (*see* 75 Fed. Reg. 74081), the 2013 Commission Rules do not apply. Rather, the Rules in existence at the time of institution govern this Investigation. *See, e.g., Certain Mobile Wireless Devices, Associated Software, and Components Thereof*, Inv. No. 337-TA-744, Order No. 36 (May 12, 2014) (Essex, ALJ) (“This investigation was instituted in 2011. The April 19, 2013 Commission Rules do not apply in this instance as those amended Rules are applicable to investigations instituted on or after May 20, 2013”). Accordingly, the Commission Rules in existence at the time the present Investigation was instituted govern for purposes of the present Motion.

According to the applicable version of Commission Rule 210.21(b), an investigation may be terminated on the basis of a licensing or settlement agreement. The Rule states in relevant part that a “motion for termination by settlement shall contain copies of the licensing or other settlement agreement, any supplemental agreements, and a statement that there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation.” *See* 37 C.F.R. § 210.21(b) (as amended 73 Fed. Reg. 38322 (July 7, 2008)). Rule 210.21(b) also provides that if that if the agreement contains confidential business information, “a copy of the agreement with such information deleted shall accompany the motion.” Notably, this former, yet still applicable version of the Rule does not contain the new, additional requirement to submit “any documents referenced in the motion or attached agreements.”

Pursuant to the above-identified Commission Rule, Apple and Motorola move to terminate this Investigation and state that good cause exists for granting this motion. Apple and Motorola's parent company, Google Inc. ("Google") have entered into a Joint Cooperation Agreement ("JCA") that eliminates the dispute between Apple and Motorola concerning the subject matter of this Investigation. Pursuant to Commission Rule 210.21(b) a complete and confidential copy of the JCA is attached as Confidential Exhibit 1. Further, and in compliance with Commission Rule 210.21(b), a redacted version of the JCA, with confidential business information removed, is attached as Exhibit 2.¹ Thus, there is no remaining dispute between Apple and Motorola with respect to this Investigation and good cause therefore exists for terminating this Investigation in its entirety.

It is in the interest of the public and administrative economy to grant this motion. Termination based on a settlement agreement, which preserves resources for both the Commission and the private parties, is routinely granted. *See, e.g., Certain Equipment for Telecommunications or Data Communications Networks, Including Routers, Switches, & Hubs, & Components Thereof*, Inv. No. 337-TA-574, Order No. 27 at 4 (May 24, 2007); *Certain Safety Eyewear & Components Thereof*, Inv. No. 337-TA-433, Order No. 37 at 2 (Nov. 3, 2000); *Certain Synchronous Dynamic Random Access Memory Devices, Microprocessors, & Products Containing Same*, Inv. No. 337-TA-431, Order No. 11 at 2 (July 13, 2000); *Certain Integrated*

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Circuit Chipsets & Products Containing Same, Inv. No. 337-TA-428, Order No. 16 at 5 (Aug. 22, 2000). This is equally true if the investigation is in the remand stage, such as the present one. *See, e.g., Certain Variable Speed Wind Turbines and Components Thereof*, Inv. No. 337-TA-641 (Remand), Comm’n Notice (April 18, 2014); *Certain Personal Computers, Monitors, and Components Thereof*, Inv. No. 337-TA-519, Comm’n Notice (July 19, 2006) (“the Commission has determined that termination of the investigation would not have an adverse impact on the public interest and that termination based on a settlement agreement is generally in the public interest”).

There are no procedural impediments to granting this motion. Apple and Motorola have confirmed, in compliance with Commission Rule 210.21(b), that there are no other agreements, written or oral, express or implied between Apple and Motorola regarding the subject matter of this investigation. Termination of this Investigation is in the public interest in that the termination will conserve public resources and will not negatively affect public health and welfare, competitive conditions in the U.S. economy, production of like or directly competitive articles in the U.S., or U.S. consumers. *See, e.g., Certain Integrated Chipsets And Products Containing Same*, Inv. No. 337-TA-428, Order No. 12 (June 20, 2000); *Certain Devices Having Elastomeric Gel and Components Thereof*, Inv. No. 337-TA-732, Order No. 20 (Jan. 28, 2011) (“public policy supports termination in order to conserve public and private resources”).

* * *

For the foregoing reasons, Apple and Motorola jointly request that this motion be granted, and that this Investigation be terminated pursuant to Commission Rule 210.21(b).

Dated: May 22, 2014

Respectfully submitted,

/s/ Brian E. Ferguson

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Attorneys for Respondent Motorola Mobility LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on Monday, May 22, 2014 as indicated, on the following:

<p><i>Via EDIS and Hand-Delivery (2 Copies)</i></p> <p>The Honorable Lisa R. Barton Acting Secretary U.S. International Trade Commission 500 E Street SW, Room 112-A Washington, D.C. 20436</p>	<p><i>Via E-mail and Hand-Delivery</i></p> <p>Lisa Kattan Office of Unfair Import Investigations U.S. International Trade Commission 500 E Street, S.W., Room 401 Washington, D.C. 20436</p> <p>lisa.kattan@usitc.gov</p>
<p><i>Via E-mail and Hand Delivery (2 Copies)</i></p> <p>The Honorable Theodore R. Essex Office of the Administrative Law Judge U.S. International Trade Commission 500 E Street, S.W., Room 317 Washington, D.C. 20436</p> <p>tamara.foley@usitc.gov</p>	<p><i>Via E-mail Hand-Delivery</i></p> <p>Charles F. Schill Steptoe & Johnson LLP 1330 Connecticut Avenue, N.W. Washington, D.C. 20036</p> <p>cschill@steptoe.com</p> <p>Paul F. Brinkman Quinn Emanuel Urquhart & Sullivan, LLP 777 6th Street, NW 11th Floor Washington, D.C. 20001 Tel. (202) 538-8000 Direct</p> <p>paulbrinkman@quinnemanuel.com</p>

/s/ Michael P. Scanlan
Michael P. Scanlan
Paralegal

EXHIBIT 1

REMOVED FROM PUBLIC VERSION

EXHIBIT 2

Joint Cooperation Agreement (JCA)

This JCA between Apple and Google includes three parts:

and (ii) a litigation dismissal

Term & Termination

10-year initial term effective upon date of signature by both parties with automatic renewals for additional, successive 10-year terms.

(2) LITIGATION NOTICE

Existing Litigation and Disputes

Dismiss without prejudice all pending contract and patent-related litigation, investigations, appeals, pre- and post-grant challenges, including oppositions, nullity proceedings, cancellations and other patent office examinations between the parties and their affiliates (to the extent they can be dismissed without prejudice), including in the case of Google all actions instigated against Apple by MMI and in the case of Apple all actions instigated against MMI by Apple.

Each party will bear the cost of its own litigation expenses unless a cost reimbursement has already taken place in which case any money paid shall not be paid back. All court fees accrued that have not already been paid shall be shared equally by the parties. The parties will provide any consent necessary to secure the release of any bonds related to the proceedings.

(4) MISCELLANEOUS

All references to "we", "us" and "our" herein are understood to mean both parties and their Affiliates, and references to Apple, Google, MMI and a party are understood to mean the applicable party along with its Affiliates.

We each agree to cause our Affiliates to comply with the terms and conditions of this JCA. "Affiliate" as used herein means, with respect to any corporation or other entity, any other corporation or entity that now or hereafter directly or indirectly controls, is controlled by, or is under common control with such first corporation or other entity. For purposes of the foregoing, "control" means ownership of more than fifty percent (50%) of the voting securities of a corporation or other entity or the possession directly or indirectly of the power to direct or cause the direction of the management or policies of a corporation or other entity whether through the ownership of voting securities, by contract or otherwise.

This JCA shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of law.

Agreed:

GOOGLE INC.

By: 

(signature)

Printed Name: LARRY PAGE

Title: CEO

Date: May 15, 2014

APPLE INC.

By: 

(signature)


Printed Name: TIM COOK

Title: CEO

Date: MAY 15, 2014

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER 22** has been served by hand upon the Commission Investigative Attorney, Lisa M. Kattan, Esq., and the following parties as indicated, on May 28, 2014.



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

On Behalf of Complainant Apple Inc.:

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() Via Hand Delivery
(X) Via Express Delivery
() Via First Class Mail
() Other: _____

On behalf of Respondent Motorola Mobility, Inc.:

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