

PUBLIC

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

In the Matter of

**CERTAIN WIRELESS DEVICES WITH
3G CAPABILITIES AND COMPONENTS
THEREOF**

Inv. No. 337-TA-800

Order No. 70

Respondent Nokia¹ moved for an order compelling complainant InterDigital² to answer interrogatories and produce documents relating to InterDigital's ongoing license negotiations for the patents-in-suit, and to products that embody any claims of the patents-in-suit ("InterDigital Products"). Motion Docket No. 800-38. Nokia states that respondent Huawei³ supports the motion. *See Mot.* at 2. Respondent ZTE⁴ filed a response joining Nokia's motion. InterDigital filed an opposition to Nokia's motion to compel and a cross-motion to compel the same information. Motion Docket No. 800-41. Nokia filed an opposition to InterDigital's cross-motion to compel, and also filed a motion for leave to reply in support of its motion to compel. Motion Docket No. 800-43. Motion No. 800-43 for leave to reply is granted.⁵

¹ "Nokia" refers collectively to respondents Nokia Corporation and Nokia Inc.

² "InterDigital" refers collectively to complainants InterDigital Communications, LLC, InterDigital Technology Corporation, and IPR Licensing, Inc.

³ "Huawei" refers collectively to respondents Huawei Technologies Co., Ltd. and Futurewei Technologies, Inc. Respondent Huawei Device USA was not a party to this investigation at the time Nokia filed its motion.

⁴ "ZTE" refers to respondents ZTE Corporation and ZTE (USA).

⁵ InterDigital subsequently filed a Notice of Supplemental Facts Relevant to InterDigital's Cross-Motion to Compel Nokia's Documents and Information Responsive to InterDigital's
(footnote continued on next page)

Nokia argues that InterDigital should be ordered to produce information relating to its ongoing license negotiations because this information is relevant both to InterDigital's allegations of a licensing-based domestic industry and to Nokia's FRAND defense. *See* Mot. at 26-28. As for information relating to InterDigital Products, Nokia argues that an order compelling this information is warranted inasmuch as proof that an asserted patent covers the product or service of a licensee is relevant to InterDigital's establishment of a licensing-based domestic industry. *See id.* at 29-30.

InterDigital argues in response that Nokia's motion to compel should be denied as moot because InterDigital has already agreed in writing to produce the requested information. InterDigital Opp'n at 1, 5-10. InterDigital also requests that Nokia be ordered to produce information relating to Nokia's licensing practices and FRAND affirmative defense. *Id.* at 11-14.

Nokia's opposition to InterDigital's cross-motion to compel states that Nokia has repeatedly told InterDigital that Nokia intends to produce its license agreements, license negotiation documents and FRAND-related documents. Nokia Opp'n at 1. Nokia further states that Nokia has produced, and continues to produce, information at issue. *Id.* Indeed, since filing their motions, the parties have indicated their intention to produce responsive discovery.

Notwithstanding the assurances from InterDigital and Nokia that they would provide the discovery at issue, it is unclear from the parties' filings whether the discovery has in fact been provided. Accordingly, Motion No. 800-38 is granted in part, and Motion No. 800-41 is granted.

(footnote continued from previous page)

Interrogatories Nos. 81, 95-99, 101-102, and 105 and Requests for Production Nos. 98-102, 106, 116-118, and 120-122. InterDigital also filed a Notice of Supplemental Authority Concerning Respondent Nokia's Motion to Compel Information Regarding "InterDigital Products."

InterDigital shall immediately produce the requested discovery relating to InterDigital's ongoing license negotiations, and Nokia shall immediately produce the requested discovery relating to Nokia's licensing practices and FRAND affirmative defense.⁶

Within seven days of the date of this document, each party shall file with the Commission Secretary a statement as to whether or not it seeks to have any portion of the document redacted from the public version. Any party seeking to have a portion of this document redacted from the public version must submit to this office a copy of this document with red brackets indicating the portion, or portions, asserted to contain confidential business information.

So ordered.



David P. Shaw
Administrative Law Judge

Issued: September 19, 2012

⁶ Motion No. 800-38 is denied as to the discovery relating to InterDigital Products. Such discovery is not relevant to InterDigital's assertion of a licensing-based domestic industry, inasmuch as such a domestic industry can be based on patent licensing alone, without need to show actual production of licensed articles in the United States. See InterDigital's Notice of Suppl. Authority at 2-3 (citing *InterDigital Commc'ns, LLC v. Int'l Trade Comm'n*, No. 2010-1093, slip op. at 21-23 (Fed. Cir. Aug. 1, 2012)).

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PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER NO. 70** has been served by hand upon the Commission Investigative Attorney, **Brian Koo, Esq.**, and the following parties as indicated on FEB. 15 2013.



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

FOR COMPLAINANTS INTERDIGITAL COMMUNICATIONS, INC., INTERDIGITAL TECHNOLOGY CORPORATION, AND IPR LICENSING, INC.:

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