

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

Before the Honorable Robert K. Rogers, Jr.
Administrative Law Judge

In the Matter of

CERTAIN WIRELESS DEVICES WITH 3G
AND/OR 4G CAPABILITIES AND
COMPONENTS THEREOF

Investigation No. 337-TA-868

**RESPONDENTS SAMSUNG ELECTRONICS CO., LTD., SAMSUNG ELECTRONICS
AMERICA, INC., AND SAMSUNG TELECOMMUNICATIONS AMERICA, LLC
STATEMENT ON THE PUBLIC INTEREST**

Pursuant to 19 C.F.R. ¶ 210.14(f), Respondents Samsung Electronics Co. Ltd., Samsung Electronics America, Inc., and Samsung Telecommunications America, LLC (“Samsung”) submit this Statement on the Public Interest in connection with the January 2, 2013 Complaint filed by InterDigital Communications, Inc., InterDigital Technology Corporation, IPR Licensing, Inc. and InterDigital Holdings, Inc. (“InterDigital”).

I. HOW SAMSUNG’S ARTICLES ARE USED IN THE UNITED STATES

InterDigital seeks an exclusion order against a range of products that are critical to wireless communications, including Samsung’s smartphone and tablet products (“3G/4G wireless devices”). Complaint at 3. Samsung currently sells more 3G/4G wireless devices in the United States than any other company and serves as a leading innovator in that area, releasing dozens of new devices each year and repeatedly bringing first to market new features and functionalities. Samsung employs more than 2,000 U.S. personnel involved in commercializing and supporting these devices in the U.S.

In addition to its status as a market leader, Samsung has the largest breadth of distribution for its products in the United States. For example, Samsung sells its 3G/4G wireless devices to the “big four” carriers—AT&T, Sprint, T-Mobile, and Verizon—and many local and regional carriers, such as US Cellular and MetroPCS. Samsung’s wide breadth of distribution enables more customers—including

rural and economically-disadvantaged consumers—access to cutting-edge technology. Samsung prides itself on offering consumers maximum choice across platforms, carriers, and price points.

II. PUBLIC HEALTH, SAFETY, AND WELFARE CONCERNS ASSOCIATED WITH ANY EXCLUSION ORDERS

In contrast to InterDigital’s characterization of Samsung’s products as being “mainly used by U.S. consumers for mobile entertainment and communication purposes” (InterDigital’s January 2, 2013 Statement Regarding the Public Interest at 4), consumers and health and safety professionals increasingly rely on Samsung mobile phones and connected tablets to access and communicate health and medical information, report and respond to emergencies, and stay in contact with children and the elderly. *See Certain Baseband Processor Chips and Chipsets*, Inv. No. 337-TA-543, Comm’n Op. on Remedy, Public Interest and Bonding (public version, June 19, 2007) (finding that “[i]f some 3G handsets are excluded from the U.S. market, the public would lose some of the public health and safety benefits that could flow from enhanced data transmission capabilities, improved ability to locate a caller, and elimination of voice blanking as more members of the public move to phones with 3G technology.”). Moreover, a 3G/4G wireless device provides many families with their only connectivity to the Internet, further underscoring the need for a range of affordable and accessible products. The varying price points and diverse carrier sales channels—including both pre-paid and post-paid—through which Samsung’s 3G/4G wireless devices are sold assists consumers who may not have access to other wireless devices to stay connected and obtain and transmit important health and safety information in the event of a natural disaster, health emergency, or other time of need.

III. WHETHER LIKE OR DIRECTLY COMPETITIVE ARTICLES EXIST THAT COULD REPLACE THE ACCUSED ARTICLES FOLLOWING EXCLUSION

InterDigital contends, without support, that any U.S. consumer will have access to 3G/4G wireless devices offering the same features as the accused products through InterDigital’s licensees. *See* InterDigital’s January 2, 2013 Statement Regarding the Public Interest at 4-5.¹ But InterDigital failed to

¹ InterDigital failed to address in its Public Interest Statement the expiration of any of these licenses. Critically, InterDigital’s 2007 license agreement with Apple—the largest supplier of mobile

identify competitive devices offering the same features and advantages as the accused Samsung products. For example, U.S. consumers may not want to purchase other 3G/4G wireless devices that do not operate with Samsung-specific software or features. Certainly, InterDigital cannot provide any substitute to Samsung's accused products, because InterDigital is a non-practicing entity and does not make any competitive articles that could replace Samsung's products if they were to be excluded.

But even if there were a sufficient supply of substitute devices available, the public interest would still be affected by a reduction in the range of choices available to consumers and the consequent effect that would have on economic welfare. As Commissioner Pinkert recently explained:

[T]he availability of substitutes does not necessarily mean the consumer's desire for quality and variety can be satisfied in the absence of the infringing devices. This observation is particularly apposite in a rapidly changing, technologically driven, market like today's smartphone market. **Excluding devices from such a market could be significantly detrimental to economic welfare, regardless of whether substitutes are available.**

Certain Personal Data and Mobile Comm. Devices and Related Software, Inv. No. 337-TA-710, Comm'n Op., Add'l Views of Commissioner Pinkert on Remedy and the Public Interest, at 2 (emphasis added).

Indeed, no competitor can meet demand at each wireless carrier that would suffer lost inventory and sales as a result of the exclusion of Samsung's mobile devices in the event an exclusion order is issued. Samsung sells one or more devices to nearly every national, regional, and local wireless carrier. Many of these carriers rely heavily on Samsung's product catalog to serve the needs of consumers in their respective markets and at their target price points and no other manufacturer can match Samsung's diverse array of products for as diverse an array of consumers.

IV. THE IMPACT OF EXCLUSION ON CONSUMERS IN THE UNITED STATES

The exclusion of Samsung's mobile phones and tablets would negatively affect U.S. consumers. Consumers may face difficulty in obtaining repair parts or replacement devices under existing warranty obligations, even though Samsung and its resellers contractually guarantee such repair and service.

devices in the U.S. besides Samsung—will expire within weeks of the target date in this case. See InterDigital's September 7, 2007 Form 8-K, available at <http://www.sec.gov/Archives/edgar/data/1405495/000115752307009039/a5487526.txt>.

Exclusion would also limit consumer choice in the expanding 3G/4G wireless device market, particularly for customers who desire an Android-powered device, a low-cost device, a pre-paid device, or a post-paid device from a regional carrier. The reduced competition in the mobile device market may also result in restricted Internet access, product shortages, fewer innovations, and higher prices.

V. THE INVESTIGATION THREATENS HARM TO THE PUBLIC INTEREST

InterDigital is a patent assertion entity (“PAE”) whose primary business is litigating against some of the world’s most innovative and productive companies to extract royalty payments. In the first two quarters of 2012, ninety three percent (93%) of InterDigital’s \$141 million in revenues came from patent licensing royalties. *See* Apr. 25, 2012 InterDigital Press Release “InterDigital Announces First Quarter 2012 Financial Results”; July 25, 2012 InterDigital Press Release “InterDigital Announces Second Quarter 2012 Financial Results.” Simply put, rather than manufacturing or designing innovative products that compete with Samsung’s accused products, InterDigital’s real expertise is litigation.

The Federal Trade Commission (“FTC”) has identified the potential for abuse by PAEs. In its analysis of the problems arising from the use of the patent litigation process as a strategy for enhancing royalty revenues from patents, the FTC notes that patent transactions with existing product manufacturers, or “*ex post* transactions,” can “distort competition in technology markets,” thereby “depriv[ing] consumers of the benefits of that competition.” Fed. Trade Comm’n, *The Evolving IP Marketplace, Aligning Patent Notice and Remedies with Competition*, 54 (March 2011). Such distortions, the FTC explains, may pass on inflated or premium purchase costs to consumers, increase costs and risks to manufacturers and deter innovation. This, in turn, may decrease the manufacturer’s “return on its innovative effort, which could lower its incentive or ability to make future investments in R&D.” *Id.* at 54. As the FTC recognizes, the negative effects of PAEs’ hold-up tactics can harm consumers.

This use of litigation to extract exorbitant monetary payments is not the business practice of “extensive licensing” that is “genuinely designed to exploit” intellectual property rights as envisioned by Congress when it amended Section 337 in 1988. *See, e.g., Certain NAND Flash Memory Devices &*

Products, Inv. No. 337-TA-553, Initial Determination (Nov. 20, 2006).² InterDigital does not promote the public interest by licensing technology; it harms innovation by misusing injunctive relief to impose a toll on productive and innovative companies. Such misuse of injunctive relief by a PAE to extort royalties has raised public interest concerns in many different forums of national importance. Indeed, Congress has manifested this concern through legislation, such as in the America Invents Act, which directs the GAO to study and report to Congress on the consequences of PAE litigation, including the “economic impact of such litigation on the economy of the United States, including the impact on inventors, job creation, employers, employees, and consumers[.]” Leahy-Smith America Invents Act, Pub. L. No. 112-29 § 34, 125 Stat. 284, 340 (2011).

InterDigital’s present Complaint presents a clear example of the PAE-generated abuses identified by the courts and the FTC. No broader economic purpose—other than artificially strengthening InterDigital’s negotiating position—could be served by the extraordinary remedy that InterDigital seeks. Indeed, eliminating major suppliers in the mobile device markets would hinder competitive conditions in the U.S. economy, to the detriment of consumers. A remedial order here would limit innovation, reduce competition among 3G/4G wireless device manufacturers and sellers, and harm consumers.

The concerns raised by InterDigital’s complaint are exacerbated because the asserted patents are purportedly standard-essential patents (“SEPs”) and are subject to FRAND licensing commitments. Recently, there has been unprecedented industry and government interest in policy regarding SEPs and FRAND licensing commitments. In this case, Samsung expects to present evidence demonstrating why granting the relief requested by InterDigital under the asserted patents would be contrary to the public interest.

² The Federal Circuit’s recent decision regarding InterDigital’s licensing does not warrant a different result. *See InterDigital Commc’ns, LLC v. Int’l Trade Comm’n*, No. 2010-1093, 2013 WL 124064 (Fed. Cir. Jan. 10, 2013). In that case, the Federal Circuit was considering “whether InterDigital’s patent licensing activities satisfied the ‘domestic industry’ requirement of section 337 of the Tariff Act of 1930, 19 U.S.C. §§ 1337(a)(2) and 1337(a)(3).” *Id.* at *1. That statute, however, does not endorse providing a potential licensor with improper leverage in licensing negotiations. As the FTC has recognized, that is an important element of public interest concern.

Respectfully submitted,

February 21, 2013

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CERTIFICATE OF SERVICE

I hereby certify that on February 21, 2013, copies of the foregoing RESPONDENTS SAMSUNG ELECTRONICS CO., LTD., SAMSUNG ELECTRONICS AMERICA, INC., AND SAMSUNG TELECOMMUNICATIONS AMERICA, LLC STATEMENT ON THE PUBLIC INTEREST were caused to be served upon the following, via delivery methods indicated:

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