

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

**In the Matter of**

**CERTAIN ELECTRONIC DEVICES,  
INCLUDING WIRELESS  
COMMUNICATION DEVICES,  
PORTABLE MUSIC AND DATA  
PROCESSING DEVICES, AND TABLET  
COMPUTERS**

**Investigation No. 337-TA-794**

**COMPLAINANTS' RESPONSE TO  
RESPONDENT'S SECOND NOTICE OF NEW FACTS**

Complainants Samsung Electronics Co., Ltd. and Samsung Telecommunications America, LLC respectfully object to Respondent Apple Inc.'s improper Notice of New Facts filed on March 4, 2013. Pursuant to the Commission's Notice, the parties to this investigation and any interested third parties were required to submit briefs no later than December 10, 2012. See 77 Fed. Reg. 70464-66 (Nov. 26, 2012). The Commission's Notice expressly states that "No further submissions on these issues will be permitted unless otherwise ordered by the Commission." *Id.* This is now the second time that Apple has violated the Commission's instructions. Apple previously submitted an improper Notice of New Facts on December 21, 2012, and Samsung moved to strike it from the record on December 28, 2012. Given that Apple once again did not seek leave to file an additional submission, much less receive permission to do so, Apple's latest Notice violates the Commission's instructions and should not be considered.

If the Commission chooses to consider Apple's alleged new facts, Samsung respectfully requests that it be given an equal opportunity to present its views on the matters raised by Apple. To that end, a short response is set forth below for the Commission's consideration.

#### **RESPONSE TO APPLE'S SECOND NOTICE OF NEW FACTS**

The confidential decision of the Tokyo District Court issued on February 28, 2013 (Exhibit A to Apple's Notice), concerns Apple's infringement of a Japanese Patent (JP 4,642,898)—a patent not at issue in this investigation. The Tokyo court's order was decided according to Japanese law (see page 9 of the Decision, stating that "in this case, Japanese law applies"), not U.S. or French law (which Apple contends applies to Samsung's ETSI declarations concerning essentiality and FRAND provisions). Samsung submits that the decision of the Japanese court is therefore not relevant to any issues before the Commission.

The Commission must decide the issues presented to it based on the extensive evidentiary record that has been developed in this investigation after a full hearing on the merits. At the hearing, Apple had every opportunity to introduce whatever evidence it might have had to support its well-publicized assertions that Samsung acted in a manner contrary to any obligations it may have owed to the European Telecommunications Standards Institute (“ETSI”). Yet Apple failed to meet that burden, and each and every one of its FRAND-related defenses was categorically rejected by the ALJ for failure of proof. Significantly, the ALJ concluded that Apple had failed to show that it was willing to negotiate a FRAND license for Samsung’s declared-essential patents. (*Id.* at 470.) The evidence of record here demonstrated that Apple never had any intention of voluntarily entering into a FRAND license for any of the asserted Samsung declared-essential patents. (*Id.*) The record in Japan, which, by contrast, involves different patents as well as a different body of law, is not before the Commission and therefore has no relevance here.

For the above reasons as well as those set forth fully in Samsung’s briefs in response to the Commission’s Questions, Samsung submits that nothing in Apple’s latest Notice of New Facts would prevent the Commission from granting the requested exclusion order in this Investigation.

### **CONCLUSION**

Samsung respectfully requests that the Commission disregard Apple’s second improper Notice of New Facts.

Dated: March 6, 2013

Respectfully submitted,

*/s/ S. Alex Lasher*

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**In the Matter of Certain Electronic Devices, Including Wireless Communication Devices,  
Portable Music and Data Processing Devices, and Tablet Computers**

**Inv. No. 337-TA-794**

**CERTIFICATE OF SERVICE**

I, Lucas Stratton, hereby certify that on this 6th day of March, 2013, copies of the foregoing document were served upon the following parties as indicated:

The Honorable Lisa R. Barton Acting Secretary U.S. International Trade Commission 500 E Street, SW Washington, D.C. 20436	<input type="checkbox"/> Via First Class Mail <input checked="" type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Courier <input type="checkbox"/> Via Electronic Mail <input checked="" type="checkbox"/> Via E-filing
The Honorable E. James Gildea Administrative Law Judge U.S. International Trade Commission 500 E Street, SW Washington, D.C. 20436 Email: <a href="mailto:Sarah.Zimmerman@usitc.gov">Sarah.Zimmerman@usitc.gov</a>	<input type="checkbox"/> Via First Class Mail <input checked="" type="checkbox"/> Via Hand Delivery (2 copies) <input type="checkbox"/> Via Overnight Courier <input checked="" type="checkbox"/> Via Electronic Mail
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/s/ Lucas Stratton  
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