

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

Before the Honorable E. James Gildea
Administrative Law Judge

In the Matter of

CERTAIN WIRELESS
COMMUNICATIONS BASE STATIONS
AND COMPONENTS THEREOF

Investigation No. 337-TA-871

RESPONDENTS' RESPONSE TO COMPLAINANT ADAPTIX, INC.'S
MOTION TO TERMINATE THE INVESTIGATION BASED ON
WITHDRAWAL OF THE COMPLAINT AND REQUEST FOR
SHORTENED RESPONSE TIME
[MOTION DOCKET NO. 871-045]

I. INTRODUCTION

Pursuant to Ground Rule 3, Respondents Ericsson Inc. and Telefonaktiebolaget LM Ericsson (collectively "Ericsson" or "Respondents") hereby respectfully respond to Complainant Adaptix, Inc.'s ("Adaptix" or "Complainant") Motion to Terminate the Investigation Based on Withdrawal of the Complaint and Request for Shortened Response Time. For the reasons discussed below, Ericsson does not oppose this motion. Ericsson notes that it already has responded to Complainant's Request for Suspension of the Procedural Schedule on Tuesday, December 3, 2013.

II. ADAPTIX'S SANCTIONABLE CONDUCT THROUGHOUT THE INVESTIGATION

On January 24, 2013, Adaptix filed its Complaint against Ericsson alleging infringement of U.S. Patent No. 6,870,808 based on certain optional functionalities set forth in the LTE standards. Throughout discovery, Ericsson repeatedly demonstrated that its accused hardware/software products do not implement any of the allegedly infringing optional functionalities. Ericsson further demonstrated that the '808 patent was invalid, both as obvious

in light of references identified by Ericsson, and as anticipated by one of Adaptix's own prior patents. Finally, Ericsson clearly demonstrated that any relief in this Investigation would be contrary to the public interest, particularly in light of Adaptix's status as a patent assertion entity.¹ Despite this overwhelming evidence, Adaptix persisted in pursuing its case with unsubstantiated claims that lack merit in this forum, or any other forum, in a transparent attempt to leverage the threat of an ITC exclusion order into exorbitant royalties.

On November 27, 2013, Ericsson served Adaptix with Respondents' Motion for Sanctions Pursuant to Commission Rule 210.4 and Memorandum of Points and Authorities in Support Thereof. Faced with Ericsson's sanctions motion, Adaptix moved to terminate this Investigation on the eve of trial based on the complete withdrawal of its Complaint. At no time did Ericsson offer to pay or pay Adaptix any monies, royalties, or other consideration for Adaptix's withdrawal of its Complaint.

III. CONCLUSION

Adaptix is a patent assertion entity that has engaged in abusive litigation tactics by bringing baseless claims against Ericsson in the ITC. Adaptix has wasted the time, energy, and resources of not only Ericsson, but also the United States government. Unfortunately, Ericsson is not able to recover the burden and expense of defending against Adaptix's baseless claims and sanctionable conduct. For this reason, and the reasons set forth above, Ericsson does not oppose Adaptix's motion to terminate the Investigation.

¹The Commission's Investigative Staff, in its Pre-hearing Brief, also recognized the invalidity of the '808 patent and the lack of infringement by the accused products, as well as the lack of any domestic industry.

Dated: December 11, 2013

Respectfully submitted,

/s/ Paul C. Goulet

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LM Ericsson and Ericsson Inc.*

CERTIFICATE OF SERVICE

I, Avery L. Archambo, hereby certify that on December 11, 2013, copies of the foregoing **Respondents' Response to Complainant's Motion to Terminate the Investigation Based on Withdrawal of the Complaint and Request for Shortened Response Time** were filed and served upon the following as indicated:

<p>The Honorable Lisa R. Barton Acting Secretary U.S. International Trade Commission 500 E. Street, S.W., Room 112 Washington, D.C. 20436</p>	<p><input checked="" type="checkbox"/> Via EDIS <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Courier (FedEx) <input checked="" type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Email</p>
<p>The Honorable E. James Gildea Administrative Law Judge U.S. International Trade Commission 500 E Street, S.W. Room 317 Washington, DC 20436 Sarah.zimmerman@usitc.gov Kenneth.schopfer@usitc.gov (2 Copies)</p>	<p><input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Courier (FedEx) <input checked="" type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Email</p>
<p>Monica Bhattacharyya, Esq. Investigative Attorney Office of Unfair Import Investigations U.S. International Trade Commission 500 E Street, S.W., Room 401 Washington, DC 20436 (202) 205-1848 Monica.bhattacharyya@usitc.gov</p>	<p><input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Courier (FedEx) <input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Email</p>
<p><i>For Complainant, Adaptix, Inc.</i></p> <p>Daniel E. Yonan, Esq. Sterne, Kessler, Goldstein & Fox PLLC 1100 New York Avenue, N.W. Washington, DC 20005 (202) 371-2600 DOCKET-ADAPTIX-3310.001ITC0@skgf.com</p>	<p><input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Courier (FedEx) <input checked="" type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Email</p>

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<p><i>For Complainant Adaptix, Inc.</i></p> <p>Paul Hayes, Esq. Hayes, Messina, Gilman & Hayes PLLC 300 Brickstone Square, 9th Floor Andover, MA 01810 (978) 809-3850 adaptixall@hayesmessina.com</p>	<p><input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Courier (FedEx) <input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Email</p>
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/s/ Avery L. Archambo

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