

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

In the Matter of

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

Investigation No. 337-TA-800

**COMPLAINANT INTERDIGITAL'S MOTION TO TERMINATE THIS
INVESTIGATION AS TO THE LG RESPONDENTS BY WITHDRAWAL OF THE
COMPLAINT**

Pursuant to Commission Rule 19 C.F.R. §§ 210.21(a)(1) and 210.15(a)(2), Complainants InterDigital Communications, Inc., InterDigital Technology Corporation, and IPR Licensing, Inc. (collectively "InterDigital") respectfully move to terminate this Investigation based on withdrawal of the complaint as to the remaining respondents, LG Electronics, Inc., LG Electronics USA, Inc., and LG Electronics Mobilecomm USA, Inc. (collectively "LG").

No initial determination on violation of section 337 has issued as to LG due to LG's prior and erroneous termination from the investigation based on its wholly groundless assertion of arbitration, and no extraordinary circumstances exist that would prevent termination of this Investigation as to LG based on the withdrawal of the complaint. Further, termination as to LG will conserve the resources of the Commission and the parties. InterDigital hereby represents that there are no agreements, written or oral, express or implied, between the parties concerning the subject matter of this Investigation.

For the reasons set forth in the Memorandum of Points and Authorities submitted herewith, InterDigital respectfully requests that the Commission issue a Determination granting

this Motion to Terminate the above captioned Investigation as to LG in accordance with 19 C.F.R. §§ 210.21(a)(1) based on the withdrawal of the complaint.

Respectfully Submitted,

Dated: January 13, 2014

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In the Matter of

**CERTAIN WIRELESS DEVICES WITH
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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
COMPLAINANT INTERDIGITAL'S MOTION TO TERMINATE THIS
INVESTIGATION AS TO THE LG RESPONDENTS BY WITHDRAWAL OF THE
COMPLAINT**

Pursuant to Commission Rule 19 C.F.R. §§ 210.21(a)(1) and 210.15(a)(2), Complainants InterDigital Communications, Inc., InterDigital Technology Corporation, and IPR Licensing, Inc. (collectively "InterDigital") respectfully move to terminate this Investigation based on withdrawal of the complaint as to the remaining respondents, LG Electronics, Inc., LG Electronics USA, Inc., and LG Electronics Mobilecomm USA, Inc. (collectively "LG").¹

I. BACKGROUND

The Commission instituted Investigation No. 337-TA-800 (the "Investigation") in August 2011, naming Nokia Corporation and Nokia Inc. (collectively "Nokia"), Huawei Technologies Co., Ltd., FutureWei Technologies, Inc., and Huawei Device USA (collectively "Huawei"), and ZTE Corporation and ZTE (USA) (collectively "ZTE") as respondents. In October 2011, InterDigital moved (i) to amend the complaint to add U.S. Patent No. 8,009,636

¹ On December 20, 2013, InterDigital filed a petition for review in the United States Court of Appeals for the Federal Circuit, seeking an appeal of the Commission's Final Determination in this Investigation as to Nokia, Huawei, and ZTE. InterDigital will continue to pursue that appeal.

and (ii) to add LG as respondents, asserting the same patents against LG as it asserted against Nokia, Huawei, and ZTE. (Mot. Dkt. 800-006.) The ALJ granted InterDigital's motion by an Initial Determination dated December 5, 2011 (Order No. 5) that became final on December 21, 2011. In January 2012, LG moved to terminate the Commission proceedings against it, asserting that InterDigital's infringement claim raises an arbitrable dispute under a 2006 license agreement. (Mot. Dkt. 800-040.) In June 2012, the Administrative Law Judge ("ALJ") granted LG's motion to terminate the investigation in favor of arbitration. (Order No. 30.) The Commission declined to review the Order and it became final on July 6, 2012.

InterDigital appealed the termination of LG from the investigation and on June 7, 2013, the Federal Circuit reversed. The Court found that "[i]t was legal error for the ALJ to terminate the investigation without assessing whether LG's license defense was at least plausible." *InterDigital Commc'ns, LLC v. Int'l Trade Comm'n*, 718 F.3d 1336, 1347 (Fed. Cir. 2013). In reversing termination of LG from the investigation, the Court found that the license at issue is "unambiguous" and that LG's assertions of arbitrability and license were "wholly groundless." *Id.* Even the dissent, which was directed solely to whether the Court had jurisdiction over InterDigital's appeal, went out of its way to note that "there is no plausible argument that LG could prevail under its patent license agreement, and hence [] LG's position is 'wholly groundless.'" *Id.* at 1347-48. On October 3, 2013, nearly fifteen months after the Commission terminated LG from the investigation, and nearly four months after the Court issued its opinion reversing that termination, the Federal Circuit denied LG's petition for rehearing and rehearing en banc and remanded LG to the Commission for further proceedings.

Meanwhile, the 800 Investigation proceeded on InterDigital's claims against Nokia, Huawei, and ZTE. Fact and expert discovery was completed, an evidentiary hearing was

held, and in June 2013, ALJ Shaw issued an Initial Determination on InterDigital's claims against Nokia, Huawei, and ZTE. The Commission issued its notice with respect to the Nokia, Huawei, and ZTE respondents on December 19, 2013, and its accompanying opinion on December 20, 2013.

The ALJ's initial determination and the Commission's final determination addressed infringement and invalidity issues related to U.S. Patent Nos. 7,502,406; 7,706,332; 7,706,830; 8,009,636; 7,536,013; 7,970,127; and 7,616,970 as they relate to the Nokia, Huawei, and ZTE accused products. Notably, neither the ALJ nor the Commission addressed any LG accused products, due to LG's wholly groundless assertion of arbitration and subsequent termination.

This Investigation, as it pertains to the LG respondents, remains before the Commission and is still in its early, prehearing stage. As LG itself noted in its January 10, 2014 Additional Comments Regarding Further Proceedings, fact discovery had not yet closed, depositions had just commenced, and expert discovery had not yet started when the ALJ granted LG's motion to terminate. Further, LG did not participate in the evidentiary hearing in February 2013, did not present witnesses, did cross-examine adverse witnesses, and did not submit post-hearing briefs. InterDigital agrees with LG that this Investigation, with respect to the dispute between InterDigital and LG, is still in the prehearing discovery stage.

II. LEGAL STANDARD

Commission Rule 210.21(a)(1), which governs termination of an investigation based upon withdrawal of a complaint or certain allegations contained therein, states:

Any party may move at any time prior to the issuance of an initial determination on violation of section 337 of the Tariff Act of 1930 to terminate an investigation in whole or in part as to any or all respondents, on the basis of withdrawal of the complaint or certain allegations contained therein... A motion for termination of

an investigation based on withdrawal of the complaint, or for good cause, shall contain a statement that there are no agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation, or if there are any agreements concerning the subject matter of the investigation, all such agreements shall be identified, and if written, a copy shall be filed with the Commission along with the motion...

19 C.F.R. § 210.21(a)(1).

Termination of an investigation will be “readily granted to a complainant during the prehearing stage of an investigation” in the “absence of extraordinary circumstances.” *E.g.*, *Certain Ultrafiltration Membrane Sys. and Components Thereof*, Inv. No. 337-TA-107, Commission Action and Order, at 2 (Mar. 11, 1982).

The Commission routinely recognizes that a complainant can seek termination of an investigation as to certain respondents by withdrawing the complaint pursuant to Commission Rule 210.21(a)(1). See *Certain Consumer Electronics With Display And Processing Capabilities*, Inv. No. 337-TA-884, Notice of Commission Determination (Dec. 20, 2013); *Certain Consumer Electronics With Display And Processing Capabilities*, Inv. No. 337-TA-884, Notice of Commission Determination (Aug. 16, 2013); *Certain Sintered Rare Earth Magnets, Method Of Making Same And Products Containing Same*, Inv. No. 337-TA-855, Notice of Commission Determination (Jul. 12, 2013); *Certain Blu-Ray Disc Players, Components Thereof and Products Containing The Same*, Inv. No. 337-TA-824, Notice of Commission Determination (Jan. 14, 2013); *Certain Kinesiotherapy Devices And Components Thereof*, Inv. No. 337-TA-823, Notice of Commission Determination (Oct. 31, 2012).

III. ARGUMENT

Because of the delay in the disposition of InterDigital’s claims against LG caused by LG’s wholly groundless assertion of arbitration, and in light of the December 20, 2013 Commission Determination as to the other respondents, InterDigital hereby withdraws its

complaint as to LG, and respectfully requests the Commission terminate the investigation pursuant to Commission Rule § 201.21(a)(1).²

As noted above, this Investigation, as to the LG respondents, is still in its early, prehearing stages. LG recognized as much in its January 10, 2014 Additional Comments Regarding Further Proceedings, that fact discovery had not yet closed, depositions had just commenced, and expert discovery had not yet started when the ALJ granted LG's motion to terminate. Further, LG did not participate in the evidentiary hearing in February 2013, did not present witnesses, did cross-examine adverse witnesses, and did not submit post-hearing briefs.

Because this Investigation is still in the prehearing stage as to LG, and because there are no extraordinary circumstances that prevent termination of this Investigation as to LG, termination of this Investigation as to LG should be “readily granted.” *E.g., Certain Ultrafiltration Membrane Sys. and Components Thereof*, Inv. No. 337-TA-107, Commission Action and Order, at 2 (Mar. 11, 1982). Such a termination as to LG will conserve the resources of the Commission and the parties. In addition, termination of this Investigation as to LG will not adversely affect the public interest because such termination will 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.

As required under Commission Rule 210.21(a)(1), InterDigital hereby represents that there are no agreements, written or oral, express or implied, between the parties concerning the subject matter of this Investigation.

² As noted above, InterDigital is pursuing its appeal of the Commission’s determination in the 800 Investigation and reserves all rights, should the Federal Circuit reverse the Commission’s determination or any portion thereof, to pursue any and all claims against LG in a subsequent investigation.

For the reasons set forth above, InterDigital respectfully requests that the Commission issue a Determination granting this Motion to Terminate the above captioned Investigation in accordance with 19 C.F.R. §§ 210.21(a)(1) based on the withdrawal of the complaint as to the last remaining respondents.

Respectfully Submitted,

Dated: January 13, 2014

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CERTIFICATE OF SERVICE

It is hereby certified that copies of **COMPLAINANT INTERDIGITAL'S MOTION TO TERMINATE THIS INVESTIGATION AS TO THE LG RESPONDENTS BY WITHDRAWAL OF THE COMPLAINT** were served on January 13, 2014 as follows:

<p>Lisa R. Barton Acting Secretary to the Commission U.S. International Trade Commission 500 E Street, S.W., Room 112A Washington, DC 20436</p>	<p>By EDIS</p>
<p>The Honorable David P. Shaw Administrative Law Judge U.S. International Trade Commission 500 E Street, S.W. Washington, D.C. 20436</p>	<p>By Hand Delivery (1 copy) and email: Patricia.Chow@usitc.gov</p>
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