

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

Before the Honorable Theodore R. Essex
Administrative Law Judge

In the Matter of

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

Investigation No. 337-TA-868

**JOINT MOTION TO TERMINATE THE INVESTIGATION BY SETTLEMENT AND
ARBITRATION AGREEMENT WITH RESPECT TO RESPONDENTS HUAWEI
TECHNOLOGIES, CO., LTD., FUTUREWEI TECHNOLOGIES, INC. AND HUAWEI
DEVICE USA, INC.**

Pursuant to Commission Rule 19 C.F.R. §§ 210.21(a)(2), (b), and (d), Complainants InterDigital Communications, Inc., InterDigital Technology Corporation, IPR Licensing, Inc., and InterDigital Holdings, Inc. (collectively “InterDigital”) and Respondents Huawei Technologies, Co., Ltd., Futurewei Technologies, Inc., and Huawei Device USA, Inc. (collectively, the “Huawei Respondents”) respectfully move to terminate this Investigation with respect to the Huawei Respondents on the basis of a settlement and arbitration agreement reached between Complainants and the Huawei Respondents. Specifically, Complainants and the Huawei Respondents state that they have entered into a binding settlement and arbitration agreement attached as Confidential Exhibit A (“Agreement”), pertaining to the subject matter of this Investigation.

Pursuant to Commission Rule 210.21(b) and (d), the parties are contemporaneously filing a public version of this Motion.

PUBLIC VERSION

Pursuant to Commission Rule 210.21(b)(1), Complainants and the Huawei Respondents verify that there are “no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation.”

Pursuant to Commission Rule 210.50(b)(2), Complainants and the Huawei Respondents state that the termination of this Investigation as to the Huawei Respondents will not adversely affect the public interest because it 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.

Pursuant to 19 C.F.R. § 210.21(a)(1), Complainants also request the ALJ limit service of Confidential Exhibits A-E to the settling parties and the Commission Investigative Staff. Good cause exists because Complainants believe that Complainants’ ongoing efforts to negotiate with the non-moving Respondents would be significantly prejudiced with the disclosure of the Agreement.

Pursuant to Ground Rule 3.2, counsel for Complainants and counsel for the Huawei Respondents certify that they notified all other parties regarding the substance of this motion at least two business days prior to its filing. The Commission Investigative Staff has indicated that it will take a position after review of the motion. The Samsung, Nokia, and ZTE Respondents have also indicated they will take a position after they have reviewed the moving papers.

For the reasons set forth in the Memorandum of Points and Authorities submitted herewith, Complainants and the Huawei Respondents respectfully request that the Administrative Law Judge (1) issue an Initial Determination granting this Joint Motion to Terminate the above captioned Investigation in accordance with 19 C.F.R. §§ 210.21(a)(2), (b),

PUBLIC VERSION

and (d) as to the Huawei Respondents based on the Agreement, and (2) certify the Motion to the Commission.

Respectfully submitted,

Dated: January 2, 2014

/s/ Bert C. Reiser
Maximilian A. Grant
Bert C. Reiser
Matthew J. Moore
Jonathan D. Link
LATHAM & WATKINS LLP
555 Eleventh Street, N.W., Suite 1000
Washington, DC 20004
Telephone: (202) 637-2200
Facsimile: (202) 637-2201

Ron E. Shulman
LATHAM & WATKINS LLP
140 Scott Drive
Menlo Park, CA 94025
Telephone: (650) 328-4600
Facsimile: (650) 463-2600

Julie M. Holloway
LATHAM & WATKINS LLP
505 Montgomery Street
Suite 2000
San Francisco, CA 94111
Telephone: (415) 391-0600
Facsimile: (415) 395-8095

David S. Steuer
Michael B. Levin
Maura L. Rees
WILSON SONSINI GOODRICH
& ROSATI
650 Page Mill Road
Palo Alto, California 94304-1050
Telephone: (650) 493-9300
Facsimile: (650) 493-6811

PUBLIC VERSION

Larry L. Shatzer
WILSON SONSINI GOODRICH
& ROSATI
1700 K Street, NW
Washington, DC 20006-3817
Telephone: (202) 973-8800
Facsimile: (202) 973-8899

*Counsel for Complainants InterDigital
Communications, Inc., InterDigital
Technology Corporation, IPR Licensing,
Inc., and InterDigital Holdings, Inc.*

/s/ Stanley Young
Sturgis M. Sobin
Ashley E. Miller
COVINGTON & BURLING LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401
Telephone: 202.662.6000
Facsimile: 202.662.6291

David W. Haller
Emily R. Holness
COVINGTON & BURLING LLP
620 Eighth Avenue
New York, New York 10018
Telephone: (212) 841-1057
Facsimile: (646) 441-9057

Stanley Young
Robert T. Haslam
Wallace J. Lee
COVINGTON & BURLING LLP
333 Twin Dolphin Drive, Suite 700
Redwood Shores, CA 94065-1418
Telephone: (650) 632-4701
Facsimile: (650) 632-4801

PUBLIC VERSION

Winslow B. Taub
L.J. Chris Martiniak
COVINGTON & BURLING LLP
One Front Street
San Francisco, CA 94111-5356
Telephone: (415) 591-6000
Facsimile: (415) 591-6091

*Counsel for Respondents Huawei
Technologies, Co., Ltd., Huawei Device
USA, Inc., and Futurewei Technologies, Inc.*

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

Before the Honorable Theodore R. Essex
Administrative Law Judge

In the Matter of

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

Investigation No. 337-TA-868

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF JOINT MOTION
TO TERMINATE THE INVESTIGATION BY SETTLEMENT AND ARBITRATION
AGREEMENT WITH RESPECT TO RESPONDENTS HUAWEI TECHNOLOGIES,
CO., LTD., FUTUREWEI TECHNOLOGIES, INC. AND HUAWEI DEVICE USA, INC.

Pursuant to Commission Rule 19 C.F.R. §§ 210.21(a)(2), (b), and (d), Complainants InterDigital Communications, Inc., InterDigital Technology Corporation, IPR Licensing, Inc., and InterDigital Holdings, Inc. (collectively “InterDigital”) and Respondents Huawei Technologies, Co., Ltd., Futurewei Technologies, Inc. and Huawei Device USA, Inc. (collectively, the “Huawei Respondents”) respectfully move to terminate this Investigation with respect to the Huawei Respondents on the basis of a settlement and arbitration agreement reached between Complainants and the Huawei Respondents. Specifically, Complainants and the Huawei Respondents state that they have entered into a binding settlement and arbitration agreement attached as Confidential Exhibit A (“Agreement”), pertaining to the subject matter of this Investigation.

Commission Rule 210.21(b), which governs termination of an investigation based upon a settlement agreement, states:

- (1) An investigation before the Commission may be terminated as to one or more respondents pursuant to section 337(c) of the Tariff Act of 1930 on the basis of a licensing or other settlement agreement. A motion for termination by settlement shall contain copies of the licensing or other settlement agreement, any

PUBLIC VERSION

supplemental agreements, and a statement that there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation. If the licensing or other settlement agreement contains confidential business information within the meaning of § 201.6(a) of this chapter, a copy of the agreement with such information deleted shall accompany the motion.

(2) The motion and agreement(s) shall be certified by the administrative law judge to the Commission with an initial determination if the motion for termination is granted. If the licensing or other agreement or the initial determination contains confidential business information, copies of the agreement and initial determination with confidential business information deleted shall be certified to the Commission simultaneously with the confidential versions of such documents. Notice of the initial determination and the agreement shall be provided to the U.S. Department of Health and Human Services, the U.S. Department of Justice, the Federal Trade Commission, the U.S. Customs Service, and such other departments and agencies as the Commission deems appropriate. If the Commission's final disposition of the initial determination results in termination of the investigation in its entirety, a notice will be published in the Federal Register. Termination by settlement need not constitute a determination as to violation of section 337 of the Tariff Act of 1930.

19 C.F.R. § 210.21(b).

Further, Commission Rule 210.21(d), which governs termination of an investigation based upon an arbitration agreement, states:

Termination based upon arbitration agreement. Upon filing of a motion for termination with the administrative law judge or the Commission, a section 337 investigation may be terminated as to one or more respondents pursuant to section 337(c) of the Tariff Act of 1930 on the basis of an agreement between complainant and one or more of the respondents to present the matter for arbitration. The motion and a copy of the arbitration agreement shall be certified by the administrative law judge to the Commission with an initial determination if the motion for termination is granted. If the agreement or the initial determination contains confidential business information copies of the agreement and initial determination with confidential business information deleted shall be certified to the Commission with the confidential versions of such documents. A notice will be published in the Federal Register if the Commission's final disposition of the initial determination results in termination of the investigation in its entirety. Termination based on an arbitration agreement does not constitute a determination as to violation of section 337 of the Tariff Act of 1930.

19 C.F.R. § 210.21(d).

PUBLIC VERSION

In the confidential version of this Motion, Complainants and the Huawei Respondents have attached an unredacted, confidential copy of the Agreement as Confidential Exhibit A in compliance with Commission Rule 210.21(b) and (d), along with Confidential Exhibits B-E. In the public version of this Motion, Confidential Exhibits A-E will be redacted in their entirety as confidential business information within the meaning of 19 C.F.R. § 201.6.

Complainants and the Huawei Respondents have executed the Agreement and it is fully effective and binding. [] Attached as Confidential Exhibits B-E []

Pursuant to Commission Rule 210.21(b)(1), Complainants and Huawei verify that there are “no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation.”

Termination of this Investigation as to the Huawei Respondents 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.

The parties request confidential treatment of the Agreement because it contains confidential business information within the meaning of 19 C.F.R. § 201.6. In light of Complainants’ ongoing efforts to license their patents, Complainants assert that public disclosure of the terms of this Agreement, including the negotiated terms of the arbitration, would be prejudicial to Complainants and would give potential licensees an unfair bargaining advantage. *See e.g. Certain Variable Speed Wind Turbines and Components Thereof*, Inv. No. 337-TA-641, Order No. 14 (Oct. 15, 2008) (holding that disclosure of the financial terms of a settlement could be harmful to complainant and unfairly advantage the respondents); *Certain Silicon Microphone Packages and Products Containing Same*, Inv. No. 337-TA-629, Order No. 9 (May 22, 2008)

PUBLIC VERSION

(denying disclosure of the financial terms of license agreements and reasoning that “[t]he public interest favors settlement to avoid needless litigation and to conserve public and private resources” (quoting *Certain Buffer Systems & Components Thereof Used in Container Processing Lines*, Inv. No. 337-TA-609, Order No. 8 (Sept. 27, 2007))); *Certain Semiconductor Integrated Circuits Using Tungsten Metallization and Products Containing Same*, Inv. No. 337-TA-648, Order No. 30 (Dec. 23, 2008) (granting Complainants’ motion for a protective order preventing disclosure of a full, unredacted version of the settlement agreement between complainants and a settling respondent to the non-settling respondents).

Pursuant to 19 C.F.R. § 210.21(a)(1), Complainants also request the ALJ limit service of the confidential Agreement (Confidential Exhibits A-E) to the settling parties and the Commission Investigative Staff. Good cause exists because Complainants’ ongoing efforts to negotiate with the non-moving Respondents would be significantly prejudiced with the disclosure of the Agreement.

The Agreement executed by InterDigital and Huawei Respondents resolves the disputes between the parties with respect to the patents at issue in this Investigation. Under these circumstances, Commission Rule 210.21(a)(2), (b), and (d) authorizes the ALJ to terminate an investigation. It is in the interest of the public and administrative economy to grant this motion. Commission policy and the public interest generally favor agreements terminating respondents, which preserve resources for both the Commission and the private parties, and termination based on a settlement agreement is routinely granted. *See, e.g., Certain Semiconductor Chips with Minimized Chip Package Size and Prods. Containing Same*, Inv. No. 337-TA-630, Order No. 25 at 4, (Sept. 4, 2008) (“the termination of an investigation as to a respondent, such as that proposed by the motion, is generally in the public interest”); *Certain Wireless Consumer Elecs.*

PUBLIC VERSION

Devices and Components Thereof, Inv. No. 337-TA-853, Comm'n Op. (Sept. 20, 2013)

(“Moreover, the public interest favors settlement to avoid needless litigation and to conserve public and private resources.”).

For the reasons set forth above, Complainants and the Huawei Respondents respectfully request that the Administrative Law Judge (1) issue an Initial Determination granting this Joint Motion to Terminate the above-captioned Investigation as to the Huawei Respondents based on the Agreement, and (2) certify the Motion to the Commission.

Respectfully submitted,

Dated: January 2, 2014

/s/ Bert C. Reiser
Maximilian A. Grant
Bert C. Reiser
Matthew J. Moore
Jonathan D. Link
LATHAM & WATKINS LLP
555 Eleventh Street, N.W., Suite 1000
Washington, DC 20004
Telephone: (202) 637-2200
Facsimile: (202) 637-2201

Ron E. Shulman
LATHAM & WATKINS LLP
140 Scott Drive
Menlo Park, CA 94025
Telephone: (650) 328-4600
Facsimile: (650) 463-2600

Julie M. Holloway
LATHAM & WATKINS LLP
505 Montgomery Street
Suite 2000
San Francisco, CA 94111
Telephone: (415) 391-0600

PUBLIC VERSION

Facsimile: (415) 395-8095

David S. Steuer
Michael B. Levin
Maura L. Rees
WILSON SONSINI GOODRICH
& ROSATI
650 Page Mill Road
Palo Alto, California 94304-1050
Telephone: (650) 493-9300
Facsimile: (650) 493-6811

Larry L. Shatzer
WILSON SONSINI GOODRICH
& ROSATI
1700 K Street, NW
Washington, DC 20006-3817
Telephone: (202) 973-8800
Facsimile: (202) 973-8899

*Counsel for Complainants InterDigital
Communications, Inc., InterDigital
Technology Corporation, IPR Licensing,
Inc., and InterDigital Holdings, Inc.*

/s/ Stanley Young
Sturgis M. Sobin
Ashley E. Miller
COVINGTON & BURLING LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401
Telephone: 202.662.6000
Facsimile: 202.662.6291

David W. Haller
Emily R. Holness
COVINGTON & BURLING LLP
620 Eighth Avenue
New York, New York 10018
Telephone: (212) 841-1057
Facsimile: (646) 441-9057

Stanley Young
Robert T. Haslam
Wallace J. Lee

PUBLIC VERSION

COVINGTON & BURLING LLP
333 Twin Dolphin Drive, Suite 700
Redwood Shores, CA 94065-1418
Telephone: (650) 632-4701
Facsimile: (650) 632-4801

Winslow B. Taub
L.J. Chris Martiniak
COVINGTON & BURLING LLP
One Front Street
San Francisco, CA 94111-5356
Telephone: (415) 591-6000
Facsimile: (415) 591-6091

*Counsel for Respondents Huawei
Technologies, Co., Ltd., Huawei Device
USA, Inc., and Futurewei Technologies, Inc.*

CERTIFICATE OF SERVICE

It is hereby certified that copies of **JOINT MOTION TO TERMINATE THE INVESTIGATION BY SETTLEMENT AND ARBITRATION AGREEMENT WITH RESPECT TO RESPONDENTS HUAWEI TECHNOLOGIES, CO., LTD., FUTUREWEI TECHNOLOGIES, INC. AND HUAWEI DEVICE USA, INC. (PUBLIC VERSION)** were served on January 2, 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 Theodore R. Essex Administrative Law Judge U.S. International Trade Commission 500 E Street, S.W., Room 317 Washington, D.C. 20436</p> | <p>By Hand Delivery (2 copies) and email: Tamara.Foley@usitc.gov</p> |
| <p>Lisa Murray Office of Unfair Import Investigations U.S. International Trade Commission 500 E Street, S.W., Room 401 Washington, D.C. 20436</p> | <p>By email: lisa.murray@usitc.gov</p> |
| <p>Sturgis M. Sobin COVINGTON & BURLING LLP 1201 Pennsylvania Avenue, NW Washington, DC 20004 <i>Counsel for Respondents Huawei Technologies Co., Ltd., Huawei Device USA, Inc. and FutureWei Technologies, Inc.</i></p> | <p>By email: Huawei337-868@cov.com</p> |
| <p>Stephen J. Rosenman, Esq. ROPES & GRAY LLP One Metro Center 700 12th Street NW, Suite 900 Washington, DC 20005 <i>Counsel for Respondents Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Telecommunications America, LLC</i></p> | <p>By email: RopesITC868@ropesgray.com WCITC868@wc.com</p> |

| | |
|---|---|
| <p>Marsha E. Mullin ALSTON & BIRD LLP 333 South Hope Street 16th Floor Los Angeles, CA 90071 <i>Counsel for Respondents Nokia Corporation and Nokia Inc.</i></p> | <p>By email: 868NokiaIDC@alston.com</p> |
| <p>Jay H. Reiziss BRINKS GILSON & LIONE 1775 Pennsylvania Avenue, NW, Suite 900 Washington, DC 20006 <i>Counsel for Respondents ZTE Corporation and ZTE (USA)</i></p> | <p>By email: 868ZTEBrinks@brinksgilson.com</p> |

/s/ Erika J. Weinstein
Erika J. Weinstein
Litigation Analyst
LATHAM & WATKINS LLP
555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004-1304

EXHIBIT A

**CONFIDENTIAL EXHIBIT NOT INCLUDED IN
PUBLIC VERSION**

EXHIBIT B

**CONFIDENTIAL EXHIBIT NOT INCLUDED IN
PUBLIC VERSION**

EXHIBIT C

**CONFIDENTIAL EXHIBIT NOT INCLUDED IN
PUBLIC VERSION**

EXHIBIT D

**CONFIDENTIAL EXHIBIT NOT INCLUDED IN
PUBLIC VERSION**

EXHIBIT E

**CONFIDENTIAL EXHIBIT NOT INCLUDED IN
PUBLIC VERSION**