

[REDACTED]
[REDACTED]

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

In the Matter of

**CERTAIN VIDEO CAPABLE
ELECTRONIC DEVICES, INCLUDING
COMPUTERS, STREAMING DEVICES,
TELEVISIONS, CAMERAS, AND
COMPONENTS AND MODULES
THEREOF**

Inv. No. 337-TA-1379

**AMAZON RESPONDENTS' PETITION FOR REVIEW OF INITIAL
DETERMINATION FINDING VIOLATION OF SECTION 337**

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	STATEMENT OF ISSUES FOR WHICH AMAZON REQUESTS REVIEW.....	4
III.	LEGAL STANDARD FOR COMMISSION REVIEW.....	5
IV.	STATEMENT OF FACTS RELEVANT TO AMAZON’S PETITION.....	6
A.	The Parties	6
1.	Complainants Nokia Technologies Oy and Nokia Corporation	6
2.	Respondents Amazon.com, Inc. and Amazon.com Services LLC	6
B.	Procedural Background.....	6
C.	Accused Products.....	7
V.	COMMISSION REVIEW SHOULD BE GRANTED ON CERTAIN ISSUES.....	7
A.	The ID Erred in Finding that Nokia Satisfied the Economic Prong of the Domestic Industry Requirement	8
1.	The ID Erred by Adopting Conclusions from a Separate Investigation Based on Evidence That Was Not in the Record Here	8
2.	The ID Erred in Its Determination of the Patent-Practicing Article and Application of the Realities of the Marketplace Test.....	11
3.	The ID Erred in Determining that the Investments Related to the Downstream Domestic Industry Products were Significant	27
B.	The ID Erred in Finding a Violation as to the ’808 Patent	34
1.	The ID Misinterpreted “Surrounding the Macroblock in Question”	36
2.	When the Proper Construction of “Surrounding the Macroblock in Question” Is Applied, the ’808 Patent Is Both Not Infringed and Invalid in Light of JVT-F100.....	43
3.	The ID Committed an Entirely Independent Error on Invalidity by Applying the Wrong Obviousness Standard and Ignoring Evidence of a Clear Motivation to Combine	50
C.	The ID Erred in Rejecting Amazon’s Non-Technical Defenses.....	58

1.	The ID Clearly Erred by Finding “Encoder” Claims Were Not Essential	58
2.	The ID’s Findings on Implied Waiver Directly Contradict Governing Precedent and Were Based on Clearly Erroneous Conclusions of Fact.....	62
3.	The ID Erred in Concluding Amazon Had Not Shown Nokia Breached Its Duty to Negotiate in Good Faith.....	66
4.	The ID Erred in Concluding That Amazon Had Not Shown Nokia Breached RAND	71
D.	The ID Erred in its Public Interest Determinations	79
1.	Nokia Threatens Harm to Competitive Conditions in the U.S. Economy	80
2.	Nokia Threatens Harm to U.S. Consumers.....	86
3.	Nokia Threatens Harm to the Public Health & Welfare	87
VI.	CONTINGENT REVIEW SHOULD BE GRANTED ON CERTAIN ISSUES	91
A.	If the Commission Reviews the ID’s Noninfringement Finding for the ’134 Patent, the Commission Should Review the ID’s Finding for on Claim Element 9[c].....	91
B.	If the Commission Reviews the ID’s Noninfringement Finding for the ’134 Patent, It Should Also Review the ID’s Validity Finding	94
C.	If the Commission Reviews Obviousness of the ’808 Patent, It Should Confirm that No Secondary Considerations Save the Patent from Invalidity	96
VII.	CONCLUSION.....	98

CASES

<i>Aptalis Pharmatech, Inc. v. Apotex Inc.</i> , 718 F. App'x 965 (Fed. Cir. 2018)	36, 38
<i>Barnes & Noble, Inc. v. LSI Corp.</i> , 849 F. Supp. 2d 925 (N.D. Cal. 2012)	62
<i>Beloit Corp. v. Valmet Oy</i> , 742 F.2d 1421 (Fed. Cir. 1984).....	18
<i>Certain AMOLED Display Panels and Modules for Mobile Devices, and Components Thereof</i> , Inv. No. 337-TA-1351, Initial Deter. (Nov. 15, 2024)	10, 15, 19
<i>Certain Artificial Eyelash Extension Sys., Prod. & Components Thereof</i> , Inv. No. 337-TA-1226, Comm'n Op. (Oct. 24, 2022).....	passim
<i>Certain Concealed Cabinet Hinges and Mounting Plates</i> , Inv. No. 337-TA-289, Comm'n Op. 1990 ITC LEXIS 3 (Jan. 8, 1990)	33
<i>Certain Earpiece Devices and Components Thereof</i> , Inv. No. 337-TA-1121, Comm'n Op. (Nov. 8, 2019).....	5
<i>Certain Electronic Devices, Including Wireless Commc'n Devices, Portable Music and Data Processing Devices, and Tablet Computers</i> , Inv. No. 337-TA-794 (Aug. 5, 2013).....	80, 81, 86
<i>Certain EPROM, EEPROM, Flash Memory, and Flash Microcontroller Semiconductor Devices, and Prods. Containing Same</i> , Inv. No. 337-TA-395, Comm'n Notice, 2000 ITC LEXIS 318 (Oct. 16, 2000)	5
<i>Certain Gaming and Ent. Consoles, Related Software, and Components Thereof</i> , Inv. No. 337-TA-752, Nokia Public Interest Statement (June 8, 2012)	82
<i>Certain Integrated Circuit Chips and Products Containing the Same</i> , Inv. No. 337-TA-859, Comm'n Op. (Aug. 22, 2014).....	11
<i>Certain Kinesiotherapy Devices and Components Thereof</i> , Inv. No. 337-TA-823, Comm'n Op. (June 17, 2013)	28
<i>Certain Light-Emitting Diode Products, Systems, and Components Thereof (III)</i> , Inv. No. 337-TA-1168, Comm'n Notice (October 1, 2020)	18
<i>Certain LTE- and 3G-Compliant Cellular Communications Devices</i> , Inv. No. 337-TA-1138, Comm'n Notice (June 1, 2020)	18

<i>Certain Magnetic Tape Cartridges & Components Thereof,</i> Inv. No. 337-TA-1058, Comm’n Op. (Apr. 9, 2019)	passim
<i>Certain Marine Air Conditioning Systems, Components Thereof, and Prods.</i> <i>Containing the Same,</i> Inv. No. 337-TA-1346, Comm’n Op. (Mar. 28, 2024).....	14
<i>Certain Microprocessors, Components Thereof and Prods. Containing Same,</i> Inv. No. 337-TA-781, Initial Deter. (Dec. 14, 2012).....	88
<i>Certain Modular Structural Sys.,</i> Inv. No. 337-TA-164, USITC Pub. No. 1668, Comm’n Op. (June 1984).....	11
<i>Certain Multimedia Display and Navigation Devices and Systems, Components</i> <i>Thereof, and Products Containing Same,</i> Inv. No. 337-TA-694, Corrected Comm’n Op. (Aug. 8, 2011).....	10
<i>Certain Printing and Imaging Devices and Components Thereof,</i> Inv. No. 337-TA-690, Comm’n Op. (Feb. 17, 2011).....	32, 33
<i>Certain Semiconductor Devices, Semiconductor Device Packages, and Prods.</i> <i>Containing the Same,</i> Inv. No. 337-TA-1010, Initial Deter. (July 28, 2017).....	18
<i>Certain Sleep-Disordered Breathing Treatment Sys. and Components Thereof,</i> Inv. No. 337-TA-890, Initial Deter. (Sept. 14, 2014)	passim
<i>Certain Stringed Musical Instruments and Components Thereof,</i> Inv. No. 337-TA-586, Comm’n Op. (May 16, 2008)	13
<i>Certain Subsea Telecoms. Sys. and Components Thereof,</i> Inv. No. 337-TA-1098, Comm’n Op. (Oct. 21, 2019).....	28
<i>Certain UMTS and LTE Cellular Commc’n Modules and Prods. Containing the</i> <i>Same,</i> Inv. No. 337-TA-1240, Initial Deter. (Apr. 28, 2022)	63, 65, 81
<i>Certain Video Game Sys. and Wireless Controller and Components Thereof,</i> Inv. No. 337-TA-770, Comm’n Op. (Oct. 28, 2013).....	15, 20, 25, 28
<i>Certain Wireless Commc’n Devices, Portable Music and Data Processing</i> <i>Devices, Computers and Components Thereof,</i> Inv. No. 337-TA-1240, Third Party U.S. FTC’s Statement on Public Interest (June 6, 2012).....	81, 82, 83

<i>Certain Wireless Commc’n Devices, Portable Music and Data Processing Devices, Computers and Components Thereof, Inv. No. 337-TA-745, Third Party U.S. FTC's Statement on Public Inteterest (June 6, 2012).</i>	81
<i>Certain Wireless Devices with 3G and/or 4G Capabilities and Components Thereof, Inv. No. 337-TA-868, Nokia PI Statement (Jan. 15, 2013)</i>	82
<i>Certain X-Ray Breast Imaging Devices and Components Thereof, Inv. No. 337-TA-1063, Initial Deter. (Sept. 13, 2018)</i>	32
<i>Conversant Wireless Licensing S.A.R.L. v. Apple, Inc., No. 15-cv-05008-NC, 2019 WL 4038419 (N.D. Cal. May 10, 2019)</i>	63
<i>Cook Biotech Inc. v. Acell, Inc., 460 F.3d 1365 (Fed. Cir. 2006)</i>	39
<i>Core Wireless Licensing S.a.r.l. v. Apple, Inc., 899 F.3d 1356 (Fed. Cir. 2018)</i>	62, 63, 82
<i>eBay Inc. v. MercExchange, LLC, 547 U.S. 388 (2006)</i>	86, 87
<i>Edwards Lifesci. LLC v. Cook Inc., 582 F.3d 1322 (Fed. Cir. 2009)</i>	38
<i>Eisai Co. Ltd. v. Dr. Reddy's Labs., Ltd., 533 F.3d 1353 (Fed. Cir. 2008)</i>	54
<i>Erico Int’l Corp. v. Vutec Corp., 516 F.3d 1350 (Fed. Cir. 2008)</i>	56
<i>Ericsson, Inc. v. D-Link Systems, Inc., 773 F.3d 1201 (Fed. Cir. 2014)</i>	75
<i>Ex Parte Yannick Lefevre, Amitkumar Mahadevan, & Werner Van Hoof, No. 2024-001371, 2024 WL 4285714 (P.T.A.B. Sept. 24, 2024)</i>	56
<i>Intel Corp. v. Qualcomm Inc., 2020-2092, 2020-2093, 2022 WL 880681 (Fed. Cir. 2022)</i>	54, 55
<i>Intel Corp. v. Qualcomm Inc., 21 F.4th 801 (Fed. Cir. 2021)</i>	passim
<i>KSR Int’l Co. v. Teleflex Inc., 550 U.S. 398 (2007)</i>	passim

<i>LaserDynamics, Inc. v. Quanta Comput., Inc.</i> , 694 F.3d 51 (Fed. Cir. 2012).....	73
<i>Lelo Inc. v. Int’l Trade Comm’n</i> , 786 F.3d 879 (Fed. Cir. 2015).....	27
<i>LG Elecs., Inc. v. Bizcom Elecs., Inc.</i> , 453 F.3d 1364 (Fed. Cir. 2006).....	43
<i>MCM Portfolio LLC v. Hewlett-Packard Co.</i> , 812 F.3d 1284 (Fed. Cir. 2015).....	57
<i>Microsoft Corp. v. Motorola, Inc.</i> , 864 F. Supp. 2d 1023 (W.D. Wash. 2012).....	66, 76
<i>Microsoft Corp. v. Motorola, Inc.</i> , No. C10–1823JLR, 2013 WL 2111217 (W.D. Wash. Apr. 25 2013)	75, 76, 77
<i>MicroStrategy Inc. v. Bus. Objects Ams.</i> , 238 F. App’x 605 (Fed. Cir. 2007)	41
<i>Qualcomm Inc. v. Broadcom Corp.</i> , 548 F.3d 1004 (Fed. Cir. 2008).....	62, 63, 64
<i>Qualcomm Inc. v. Broadcomm Corp.</i> , No. CIV. 05CV1958-B(BLM), 2007 WL 1031373 (S.D. Cal. Mar. 21, 2007), <i>aff’d in relevant part, Qualcomm Inc. v. Broadcom Corp.</i> , 548 F.3d 1004 (Fed. Cir. 2008).....	59
<i>Schaper Mfg. Co. v. Int’l Trade Comm’n</i> , 717 F.2d 1368 (Fed. Cir. 1983).....	12
<i>TCL Commc’n Tech. Holdings, Ltd. v. Telefonaktiebolaget LM Ericsson</i> , No. SACV 14-341, 2018 WL 4488286 (C.D. Cal. Sept. 14, 2018), <i>rev’d on</i> <i>other grounds</i> 943 F.3d 1360 (Fed. Cir. 2019).....	78
<i>Telemac Cellular Corp. v. Topp Telecom, Inc.</i> , 247 F.3d 1316 (Fed. Cir. 2001).....	39
<i>Thorner v. Sony Computer Ent Am. LLC</i> , 669 F.3d 1362 (Fed. Cir. 2012).....	41
<i>Univ. of Fla. Rsch. Found. Inc. v. Motorola Mobility, LLC</i> , 3 F. Supp. 3d 1374 (S.D. Fla. 2014)	40
STATUTES	
19 C.F.R. § 210.....	passim

19 U.S.C. § 1337(a)(3).....11

19 U.S.C. § 1337(d)(1) 91, 93

OTHER AUTHORITIES

88 Fed. Reg. 84832 (Dec. 6, 2023).....79

100th Cong. 2nd Sess. (1988).....84

H.R. Conf. Rep. 100-576, 1988 WL 170253, 100th Cong. 2nd Sess. (1988) 84

S. Rep. 93-1298, 1974 WL 11696 (1974).....90

Trade Reform Act of 1974, Report of the Committee on finance U.S. Senate
Together with Additional Views on H.R. 10710, Nov. 26, 1974 90

TABLE OF ABBREVIATIONS

Term	Abbreviation/Shorthand
Inv. No. 337-TA-1379	Investigation
Complainants Nokia Technologies Oy and Nokia Corporation	Nokia or Complainants
Respondents Amazon.com, Inc. and Amazon.com Services LLC	Amazon
Respondent HP Inc.	HP
Amazon and HP collectively	Respondents
Office of Unfair Import Investigations	Staff
U.S. Patent No. 7,532,808	'808 patent
U.S. Patent No. 8,204,134	'134 patent
'808 and '134 patents, collectively	Asserted Patents
Claims 1, 7, 10, 16, 21, 22, 29, 40 and 48 of the '808 patent Claims 9, 11, and 13-15 of the '134 patent	Asserted Claims (collectively or individually by patent)
Surface Go 2, Surface Pro 7+, Surface Pro 8, Surface Pro 9, Surface Pro 10, Surface Go 3, Surface Studio 2+, Surface Laptop 3, Surface Laptop 4, Surface Laptop 5, Surface Laptop 6, Surface Laptop SE, Surface Laptop Studio, and Surface Laptop Studio 2+	Microsoft Surface Domestic Industry Products
Xbox X and S Series gaming consoles	Microsoft Xbox Domestic Industry Products
Microsoft Surface Domestic Industry Products and Microsoft Xbox Domestic Industry Products	Microsoft DI or Domestic Industry Products
Galaxy S20, Galaxy S20 5G, Galaxy S20 FE, Galaxy S20 FE 5G, Galaxy S20+, Galaxy S20+ 5G, Galaxy S20 Ultra, Galaxy S20 Ultra 5G, Galaxy S21, Galaxy S21 5G, Galaxy S21+, Galaxy S21+ 5G, Galaxy S21 Ultra, Galaxy S21 Ultra 5G, Galaxy S21 FE, Galaxy S21 FE 5G, Galaxy S22, Galaxy S22+, Galaxy S22 Ultra, Galaxy S23, Galaxy S23+, Galaxy S23 Ultra, Galaxy S23 FE, Galaxy S24, Galaxy S24+, Galaxy S24 Ultra, Galaxy Z Fold 5, Galaxy Z Fold 4, Galaxy Z Fold 3, Galaxy Z Fold 3 5G, Galaxy Z Flip 5, Galaxy Z Flip 4, Galaxy Z Flip 4 5G, Galaxy Z Flip 4 Bespoke Edition, Galaxy Z Flip 3 5G, Galaxy Z Flip 3 5G Bespoke Edition	Samsung DI or Domestic Industry Products
Microsoft Domestic Industry Products and Samsung Domestic Industry Products	Domestic Industry Products
Nokia's Verified Complaint Under Section 337 of the Tariff Act of 1930, as amended	Compl.
Intellectual Property Rights	IPR
Administrative Law Judge	ALJ
U.S. International Trade Commission	Commission

Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337	Section 337
Standard Setting Organization	SSO
Standard Essential Patent	SEP
(Fair) Reasonable and Non-Discriminatory	(F)RAND
International Telecommunications Union	ITU
International Organization for Standardization	ISO
Non-Practicing Entity	NPE
Patent Asserting Entity	PAE
Federal Trade Commission	FTC
United States Trade Representative	USTR
Joint Video Team	JVT
Complainants' Corrected Prehearing Brief, EDIS No. 825403	CPHB
Respondents' Prehearing Brief, EDIS No. 825393	RPHB
Staff's Prehearing Brief, EDIS No. 825555	SPHB
Complainants' Corrected Initial Post-Hearing Brief, EDIS No. 830252	CIB
Respondents' Initial Post-Hearing Brief, EDIS No. 829818	RIB
Staff's Initial Post-Hearing Brief, EDIS No. 830214	SIB
Complainant's Post-Hearing Reply Brief, EDIS No. 830596	CRB
Respondents' Post-Hearing Reply Brief, EDIS No. 830552	RRB
Staff's Post-Hearing Reply Brief, EDIS No. 831188	SRB
Hearing Transcript	Tr.
Initial Determination	ID
Recommended Determination	RD
Initial Determination and Recommended Determination in Investigation No. 337-TA-1380	1380 ID/RD

[REDACTED]

Pursuant to 19 C.F.R. § 210.43, Amazon petitions for review of the January 30, 2025 ID, which incorrectly found a violation of Section 337 at the request of Nokia. Upon determination to review, the Commission should also extend the target date, as set forth in Amazon’s motion for extension filed concurrently herewith.

I. INTRODUCTION

The ID—like the determination in 337-TA-1380 upon which it relies—suffered from fundamental legal, factual, and procedural errors that must be reviewed and corrected because no violation has occurred. Excluding U.S. Respondent Amazon from importing its feature-rich downstream products into the United States at the request of Finnish Complainant Nokia based on narrow, weak, and allegedly standard essential patents is contrary to the law, factual record, public interest, and purpose of Section 337.

To begin, this ID’s treatment of the domestic industry requirement was even more radical than the 1380 analysis of that threshold issue. The 1380 ID cut corners by applying only one of three factors of the realities of the marketplace test to one subset of domestic industry products, yielding the wrong result as to that subset. But this ID not only adopted that flawed conclusion—*whose facts are not even in this record*—it also abandons and redoes the portions of the domestic industry analysis that the 1380 ID handled correctly. This ID reached the opposite conclusion from the 1380 ID regarding the majority of the domestic industry products. While some variance may be acceptable from ALJ to ALJ, litigants and the public ought to be able to find cogent, consistent policies and analytical frameworks to help shape their conduct. This ID, the 1380 ID, and the recent 1351 ID reach wildly disparate results regarding domestic industry on nearly the same facts. Review is imperative to return predictability and conformity to the domestic industry analysis.

[REDACTED]

This ID's problems were not limited to the domestic industry issue. On the '808 patent, the ID began by interpreting portions of its own claim construction such that it effectively deleted the critical word "surrounding" from the Asserted Claims. That change—which directly contradicted both the plain meaning of the term and the '808 patent's intrinsic evidence—allowed the ID to find infringement when the accused H.264 standard utilizes only two segments. Such a small set cannot possibly "surround" the macroblock in question, as the claims expressly require, so the ID should have found no violation. Even worse, the ID proceeded to contradict its own "surrounding" analysis for purposes of priority, allowing the '808 patent to escape a reference that both parties agreed contained all the elements of the Asserted Claims, JVT-F100.

The ID also committed a second, independent set of errors regarding '808 obviousness. When considering Amazon's proposed combination that updated MPEG-1's skip mode with the multi-block predictor from H.263/JM-1, the ID attempted to impose a novel "necessity" requirement. That finds no support in the caselaw, however, which demands only that a POSITA "could have combined [the prior art] ... and would have seen the benefits of doing so." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 422 (2007) (emphasis added). Here, given the evolution of the predictor from MPEG-1 to H.263/JM-1, there was ample evidence on that point. As such, the ID should have found the '808 patent invalid.

Next, the ID made similar mistakes and omissions regarding Amazon's non-technical defenses. For example, in addressing implied waiver, the ID directly contradicted Federal Circuit precedent holding standards-body participants like Nokia have a duty to disclose their patents prior to standard approval, something Nokia does not dispute it failed to do. Most egregiously, in addressing breach of good faith and RAND, the ID ignored that Amazon sought rate-setting in the U.K.—something Nokia has not requested in the 13 legal proceedings it brought against Amazon

[REDACTED]

on its standard essential patents around the world—and that Amazon is unconditionally willing to accept at whatever the rate that will be set by the U.K. High Court. The ID similarly ignored Nokia’s expert’s concessions about patent pool rates and the unrebutted testimony of Amazon’s expert Dr. Simcoe about Nokia’s efforts to hold up the industry with its patents.

Finally, although the Commission ordered the ALJ to take evidence with respect to the public interest, the ALJ only dismissively addressed even the most fundamental concepts of public interest. For example, the ID proceeded as if “public health and welfare” does not include considerations of employment, economic growth, or U.S. investments and activities, instead ignoring those considerations. And the ID wholly failed to address that Nokia is a foreign patent-assertion entity seeking to assert SEPs on narrow features against the downstream products of a U.S. company—a company that has unconditionally committed to pay *to Nokia* whatever RAND rate the U.K. court sets. Nokia has openly conceded it does not sell or develop relevant products and has only come to the ITC to “force” a license, exerting leverage for *supra*-RAND licensing terms. EDIS Doc. ID 827089 at 9:5–17 (1379 Hearing Nokia Opening Statement). Nokia itself argued for years against exactly the exclusionary relief for SEPs it now seeks, something the ID acknowledges. *E.g., Certain Wireless Devices with 3G and/or 4G Capabilities and Components Thereof*, Inv. No. 337-TA-868, Nokia’s Comments Relating to the Public Interest at 4 (Jan. 15, 2013) (“[W]here a potential licensee agrees to pay FRAND compensation...an exclusion order is not a proper remedy....”). The ITC does not exist to provide licensing leverage to entities who are not protecting a domestic industry. Nokia should fail in its effort to abuse the ITC for such leverage due to the flaws in its case, and the mistaken logic and flawed conclusions in the ID.

Given that the ID’s conclusions were based on clearly erroneous findings of fact and erroneous conclusions and application of the law, with many negatively affecting Commission

[REDACTED]

policy that will result in relief contrary to Section 337, Amazon requests review on the issues identified herein. Reversal on any of these issues will result in reversal of the finding of violation.

II. STATEMENT OF ISSUES FOR WHICH AMAZON REQUESTS REVIEW

Pursuant to 19 C.F.R. § 210.43, Amazon seeks review of the following issues based on erroneous factual findings, legal conclusions, and/or important policy implications:

- A. Whether Nokia satisfied the domestic industry requirement's economic prong because:
 - The ID erred by adopting conclusions from a separate investigation based on evidence that was not in the record in this Investigation;
 - The ID erred in its determination of the patent-practicing article and application the realities of the marketplace test; and
 - The ID erred in determining that investments related to the downstream Domestic Industry Products were significant.
- B. Whether the ID erred in finding a violation on the '808 patent because:
 - The ID erred in misconstruing and misapplying "skip coding mode," leading to erroneous conclusions on the issues of infringement, priority, and validity;
 - The ID erred by misapplying the motivation to combine requirement against Amazon's combination of MPEG-1 with H.263/JM-1.
- C. Whether the ID erred in rejecting Amazon's non-technical defenses because:
 - The ID's findings on implied waiver are based on contradictions of Federal Circuit authority and erroneous factual conclusions;
 - The ID erred in concluding that Amazon had not shown Nokia breached its duty to negotiate in good faith;
 - The ID ignored material evidence demonstrating Nokia's licensing "program rates" are unreasonable; and
 - The ID erred in not finding that Nokia's licensing offers were discriminatory.
- D. Whether the ID's public interest analysis is based on clearly erroneous factual findings, erroneous legal conclusions, and carries important policy implications.

[REDACTED]

To the extent the Commission reviews the ID, it should also review the following intermediate holdings for erroneous factual findings, legal conclusions, and/or important policy implications.

- Whether the ID erred in finding that H.264 infringes on claim element 9[c] of the '134;
- Whether the ID erred in finding the '134 patent valid in view of TML-9; and
- Whether the ID erred in asserting there was industry praise for the '808 patent.

In addition, the Commission must make its own determination on remedy and public interest and should decline to adopt the erroneous legal and factual conclusions of the ID.

III. LEGAL STANDARD FOR COMMISSION REVIEW

The Commission may review an ID for one or more of the following reasons: (i) a finding or conclusion of material fact is clearly erroneous; (ii) a legal conclusion is erroneous, without governing precedent, rule or law, or constitutes an abuse of discretion; or (iii) the determination is one affecting Commission policy. 19 C.F.R. § 210.43(b)(1). A petition for review will be granted “if it appears that an error or abuse of the type described in paragraph (b)(1) of [section 210.43] is present or if the petition raises a policy matter connected with the initial determination, which the Commission thinks it necessary or appropriate to address.” *Id.* § 210.43(d)(2).

Once a petition is granted, the Commission’s review is conducted de novo. *Certain EPROM, EEPROM, Flash Memory, and Flash Microcontroller Semiconductor Devices, and Prods. Containing Same*, Inv. No. 337-TA-395, Comm’n Notice, 2000 ITC LEXIS 318, at *8–9 (Oct. 16, 2000); *Certain Earpiece Devices and Components Thereof*, Inv. No. 337-TA-1121, Comm’n Op. at 11 (Nov. 8, 2019). The Commission “may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, the initial determination of the administrative law judge...[and] also may make any findings or conclusions that in its judgment are proper based

[REDACTED]

on the record in the proceeding.” 19 C.F.R. § 210.45(c).

IV. STATEMENT OF FACTS RELEVANT TO AMAZON’S PETITION

A. The Parties

1. Complainants Nokia Technologies Oy and Nokia Corporation

Nokia is Finnish. Compl. ¶¶ 10, 13; RX-1981C (Gray) 219:8–10. Nokia’s history in cellular and wireless technology, touted in its briefs to the ALJ, is irrelevant here. For the purposes of this Investigation, Nokia is an NPE with no relevant U.S. presence, domestic industry, patent-practicing products, or products competing with those it seeks to exclude. RX-1982C.0044–.0045 (Martikainen); Tr. (Braun) 166:18–167:2, (Mody) 1250:1–12, 1251:9–25. Nokia seeks to leverage the threat of an exclusion order to coerce supra-RAND royalties from Amazon who is a willing licensee on RAND terms. EDIS Doc. ID 827089 1379 Tr. at 9:5–17 (Nokia admitting it is at the Commission to “force” Respondents to take a license).

2. Respondents Amazon.com, Inc. and Amazon.com Services LLC

Amazon.com, Inc. and Amazon.com Services LLC are Delaware corporations with principal places of business in Washington and Virginia, respectively. Tr. (Hayden) 993:11–16; RX-2217. Amazon is a customer-centric U.S. company, renowned for transforming online retail and device innovation. Tr. (Hayden) 987:17–988:1, 989:1–5. Founded in a Bellevue garage, Amazon now employs 1.1 million workers nationwide, supports over 1.5 million additional jobs, and has created more jobs than any U.S. company over the last decade. *Id.*; RX-2217; RX-1440. Amazon’s investments have yielded countless innovations, including household name e-readers (Kindle), tablets (Fire), and voice-controlled speakers (Alexa). Tr. (Hayden) 988:2–17, 989:6–11, 993:3–25; RX-2217; RX-1437.0002; RX-1438.0007; RX-1439.0006; RX-1440.0002.

B. Procedural Background

Nokia’s October 31, 2023 Complaint alleged that Amazon is violating Section 337 by

[REDACTED]

infringing the Asserted Patents. The Commission instituted on November 30, 2024. 88 Fed. Reg. 84832. Fifty-six claims have been terminated by withdrawal. Order Nos. 20, 44, 52 (all unreviewed). Amazon sought summary determination of noninfringement or in the alternative that the '808 patent is not entitled to the priority date Nokia asserts, and that the '808 patent is invalid. Motion 1379-031. Summary determination was denied. Order No. 50 (unreviewed). This Investigation's evidentiary hearing was held from July 24-31, 2024.

C. Accused Products

Nokia accuses products of infringing the '808 and '134 patents if they are H.264 standard-compliant. Tr. (Orchard) 472:4–21, (Kia) 593:14-594:5; JX-0007; JX-0008. This includes chipsets and mobile operating systems within the Accused Products. Tr. (Orchard) 471:8-19, (Kia) 615:9–616:7, 618:22–619:8. Nokia asserts the “encoding” claims of the '808 patent (claims 1, 10, 21, 29, and 4) against Amazon's fire tablets, Ring cameras, and Blink cameras. Nokia asserts the “decoding” claims of the '808 patent (claims 7, 16, 22, and 40) against Amazon's Echo Shows, Fire Tablets, Fire TVs, Fire TV Sticks, and Fire TV Cube. Tr. (Orchard) 471:8–19. For the '134 patent, Nokia accuses the same products as it does for the '808 patent—products that decode—but exclude the Ring and Blink Products because they encode. Tr. (Kia) 614:4–8.

As it does for infringement, Nokia alleges the Domestic Industry Products practice the Asserted Claims of the Asserted Patents simply because they are compliant with the H.264 standard. Tr. (Orchard) 472:4–11. The same third-party off-the-shelf chipsets and operating systems relied upon for domestic industry are also accused of infringing the Asserted Patents. Tr. (Acton) 1338:25–1339:8, 1388:6–16. And there is no difference in Nokia's analysis.

V. COMMISSION REVIEW SHOULD BE GRANTED ON CERTAIN ISSUES

Amazon requests that the Commission review the issues set forth below.

[REDACTED]

[REDACTED]

A. The ID Erred in Finding that Nokia Satisfied the Economic Prong of the Domestic Industry Requirement

The ID committed three independent errors with respect to economic domestic industry. First, the ID erred by incorporating by reference a *separate* Investigation with *additional* evidence in its record, and then adopting its conclusion *wholesale* with *no analysis*. Second, the ID incorrectly concluded that the patent-practicing article extended beyond Nokia’s technical domestic industry contentions to the downstream devices for economic domestic industry. The ID then applied the realities of the marketplace test in a nonsensical manner and reached conclusions unsupported by the factual record or Commission precedent. The ID’s analysis was also in stark contrast with the ALJ’s order on summary determination, where the correct law was explained, and the parties were instructed regarding the evidentiary showing to be made at the hearing. EDIS Doc. ID 826101 (Order No. 49: Denying Nokia’s Motion for Summary Determination) (“1379 MSD Order”). Third, the ID incorrectly determined that investments in the downstream Domestic Industry Products were significant. All these errors should be reviewed, and the ID’s determination on economic domestic industry should be reversed.

1. The ID Erred by Adopting Conclusions from a Separate Investigation Based on Evidence That Was Not in the Record Here

Instead of grappling with the facts of this Investigation regarding the Xbox Domestic Industry Products, the ALJ abdicated decision-making authority to another ALJ. *See* ID at 101. In a brief paragraph, the ID stated that “the parties stipulated that the record [in the 1380 Investigation] would include testimony and exhibits from this Investigation relating to, among other things, economic domestic industry.” *Id.* No reciprocal stipulation, however, exists to use evidence from the 1380 Investigation in this Investigation. Nor are the evidentiary records perfectly aligned. The 1380 Investigation includes exhibits and testimony not admitted in the 1379

[REDACTED]

Investigation. The ID then proceeded to conclude—with no analysis whatsoever—that “[b]ased on the evidence and for the reasons stated [in the 1380 Investigation], Nokia has shown an economic domestic industry under subsections (A) and (B) for the patents asserted in this investigation that are practiced by the Microsoft Xbox domestic industry products.” ID at 101. The two exhibits on which the 1380 ID relied on for this conclusion are absent from the record in *this* Investigation.

The ID’s statement that the 1380 determination was “[b]ased primarily on the record from this investigation” is incorrect with respect to the Xbox Domestic Industry Products. The 1380 Investigation’s determination cited a total of five documents in its determination: three public product documentation pages that list the AMD chipsets as “custom” in their description (*see* CX-2924C, CX-2157, CX-2158), and two documents that were the cornerstone of the determination that are *not* in the evidentiary record here. *See* Inv. No. 337-TA-1380, ID at 164–68.

At the 1379 evidentiary hearing, Nokia failed to prove (i) how the AMD chipset used in the Xbox product is customized; (ii) whether the AMD chipset had any exclusive operational relationship with the Xbox product; and (iii) whether the AMD chipset is available exclusively to Microsoft. The *only* record evidence in this Investigation consisted of three documents that make passing reference to the chipsets as “custom,” with no technical information whatsoever about what is “customized” or whether the chipsets are sold exclusively to Microsoft. *See* CX-2924C; CX-2157; CX-2158.

After the close of the 1379 Investigation evidentiary hearing, the ALJ in the 1380 Investigation issued an MSD order highlighting a question regarding customization. EDIS Doc. ID 830054 (Order No. 41: Initial Deter. Granting-In-Part Respondents’ Motion for Summary Determination) (“1380 MSD Order”). In denying summary determination of no economic

[REDACTED]

domestic industry, the 1380 Investigation ALJ focused on the lack of evidence related to customization and determined that there was a “genuine issue of material fact which must be resolved by the evidentiary hearing. That is whether and to what extent the allegedly ‘off-the-shelf’ patent-practicing chipsets are customized for Microsoft and/or Samsung.” *Id.* at 6. Recognizing its failure to elicit such evidence in the 1379 Investigation, Nokia scrambled to admit additional evidence—and a lot of attorney argument—during the 1380 evidentiary hearing. Nokia identified two additional documents—a presentation (1380 Investigation, CX-0988) and online article (1380 Investigation, CX-1597) describing the AMD chipset used in the Xbox Series X—that it had previously included only in a string cite in a technical expert report without any analysis. These documents were not produced by Microsoft, and no Microsoft witness ever testified about them. Nor did any Nokia technical or economic expert analyze these documents or provide any opinions about them related to supposed customization. Instead, Nokia sought to admit them in the 1380 Investigation through attorney argument during cross-examination of *Amazon’s* economic expert, Dr. Mody, who had never seen them before. *See* 1380 Tr. at 1419:18–1421:17.

Even if these documents were in the evidentiary record here—which they are not—they do not support the conclusion in the 1380 ID that the AMD custom chipset is exclusive to Microsoft. At most, these documents show that the AMD chipset is “custom” and that Microsoft had some involvement in the development of the chipset. The 1380 ID improperly shifted the burden to Amazon and did not hold Nokia to its required proof. *See Certain Multimedia Display and Navigation Devices and Systems, Components Thereof, and Products Containing Same*, Inv. No. 337-TA-694, Corrected Comm’n Op. at 5 (Aug. 8, 2011). This is particularly true when analyzing the realities of the marketplace because extending the domestic industry to downstream products “is the exception to the rule,” and is “not automatic.” *Certain AMOLED Display Panels and*

[REDACTED]

Modules for Mobile Devices, and Components Thereof, Inv. No. 337-TA-1351, Initial Deter. at 172 (Nov. 15, 2024) (“*AMOLED Display Panels*”) (citing *Video Game Sys. and Wireless Controller and Components Thereof*, Inv. No. 337-TA-770, Comm’n Op. at 66 (Oct. 28, 2013) (“*Video Game Sys.*”). The 1379 ID made matters much worse by relying on the 1380 ID and, therefore, crediting evidence not even in the 1379 record.

Relying on and adopting the decision of another ALJ with no independent analysis and based on a different evidentiary record was a profound error that must be reversed.

2. The ID Erred in Its Determination of the Patent-Practicing Article and Application of the Realities of the Marketplace Test

The ID rubber-stamped Nokia’s sweeping and inappropriate dilution of the domestic industry requirement contrary to Commission precedent and the factual record. This is error. By statute, the domestic industry is defined in terms of the patented article. *See* 19 U.S.C. § 1337(a)(3) (complainant must show domestic industry exists “with respect to articles protected by the patent”); *see also Certain Modular Structural Sys.*, Inv. No. 337-TA-164, USITC Pub. No. 1668, Comm’n Op. at 12 (June 1984). In circumstances such as this one, the Commission must “determine what the appropriate domestic industry articles are.” *Certain Integrated Circuit Chips and Products Containing the Same*, Inv. No. 337-TA-859, Comm’n Op. at 36 (Aug. 22, 2014).

Here, by Nokia’s own contentions, the patent-practicing articles are standard-compliant commodity chipsets and Android OS that Nokia’s licensees acquire from third parties. The ID, however, misapplied every step of the analysis on its way to erroneously concluding that Nokia can rely on the broad investments of its licensees in feature-rich consumer products merely because they incorporate those standard-compliant components. This conclusion is contrary to Commission precedent, based on erroneous factual findings, and should be reversed.

a. The ID Incorrectly Identified the Downstream Products as the Patent-Practicing Articles Despite Nokia’s Reliance on Only the Chipsets and Android OS for Technical Domestic Industry

The patent-practicing article is determined by focusing on the claims. *Schaper Mfg. Co. v. Int’l Trade Comm’n*, 717 F.2d 1368, 1371 (Fed. Cir. 1983) (“In cases under § 337 involving United States article patents, the relevant domestic ‘industry’ extends only to articles which come within the claims of the patent relied on.”). Yet, the ID did not apply the standard: the ID did not analyze the claims in determining the patent-practicing article for purposes of economic domestic industry, and completely ignored that Nokia’s experts relied exclusively on the chipsets and Android OS for technical domestic industry. ID at 78–80.

Nokia bore the burden to prove *both* the technical and economic prongs of the domestic industry requirement. By Nokia’s own contentions, the chipsets and Android OS—and *nothing else*—are required to practice the Asserted Patents. CIB at 85 (“The DI Products practice the ’134 Patent for the *same reasons as discussed above for infringement* because each of those products *contains chips or an Android OS* (for Samsung) that Dr. Kia confirmed results in the same capabilities as the Accused Products.”) (emphasis added); *see also* CIB at 12–40 (offering same evidence for infringement and technical domestic industry related to ’808 patent because used same chipsets and Android OS). Nokia and its experts analyzed the same chipsets and Android OS that were accused of infringement for purposes of the technical prong. Tr. (Orchard) 585:23–586:3 (“Q. In your opinion, do the DI products...practice the Asserted Claims in the same way that the accused products infringe the claims? A. I think, yes. I can’t think of any notable differences.”); Tr. (Kia) 699:12–16 (“Q. Do the Microsoft DI products practice the asserted claims for the same reasons you described earlier with respect to the HP products infringement with the Intel and AMD chips? A. Yes. They do the same thing.”), 702:12–16 (“Q. So do the Samsung DI products with

[REDACTED]

the Android operating system practice the asserted claims for the same reasons as you described earlier with respect to infringement? A. Yes, they do.”), 703:15–19 (“Now, are your opinions as to how Samsung’s DI products with Qualcomm chips, how they practice the asserted claims, is that the same as what you described earlier with respect to infringement? A. Yes, they are the same.”). If other aspects of the downstream products were relevant, Nokia’s experts would have needed to analyze them. By focusing exclusively on the chipsets and Android OS, Drs. Orchard and Kia confirmed that those are the relevant patent-practicing articles rather than the downstream products incorporating them.

Nokia’s decision to base its technical domestic industry on the same chipsets and Android OS as were accused of infringement conveyed a clear benefit: Nokia’s experts had to perform and present only one set of technical analyses, where each expert simply referred back to his prior discussion of infringement while discussing technical domestic industry. Tr. (Orchard) 585:23–586:3; (Kia) 699:12-16, 702:12-16, 703:15–19. But Nokia’s tactical decision also carried a corresponding cost: Nokia was stuck with those same patent-practicing articles—the chipsets and Android OS—as the focus of its economic analysis. *Certain Stringed Musical Instruments and Components Thereof*, Inv. No. 337-TA-586, Comm’n Op. at 12–14, (May 16, 2008). Nokia knew it could not demonstrate significant enough investments in the chipsets and Android OS. Nokia endeavored to shift the patent-practicing article to downstream products in order to rely on large, but irrelevant, numbers.

The ID erred in adopting Nokia’s flawed arguments. The ID’s statement that “[i]t cannot be disputed that video-capable end-user electronic devices, including the Samsung Galaxy smartphone, Microsoft Surface computer, and Microsoft Xbox gaming device, are the devices that are alleged to be covered by the asserted claims,” ID at 79, underscores the problematic nature of

[REDACTED]

its analysis: it ignored Nokia’s technical contentions and the evidence presented at the hearing. Nokia never provided, and the ID did not find, *any* testimony from its experts opining that *any* aspect of the Domestic Industry Products other than the chipsets and Android OS meet *any* limitations of any Asserted Claims.

Instead of relying on the claims or expert testimony, the ID cited to irrelevant portions of the specification from the Asserted Patents that no party in this Investigation relied on as relevant to the Asserted Claims. ID at 79–80. *See Certain Marine Air Conditioning Systems, Components Thereof, and Prods. Containing the Same*, Inv. No. 337-TA-1346, Comm’n Op. (Mar. 28, 2024) (vacating ID’s independent findings based on *sua sponte* analysis of evidence). The ID referenced ’808 claims 21 and 22 and their recital of “multimedia terminal,” but included no analysis of these claims or the expert testimony associated with these claims. Nokia’s expert, Dr. Orchard, testified that “terminations of a telecommunication system” that “accommodate[s] multimedia content” can be the claimed “multimedia terminal” in claims 21 and 22, Tr. (Orchard) 501:2–12, but provided no testimony that anything other than the chipsets meet this limitation. That is because, as explained by Amazon’s expert, Dr. Acton, “multimedia terminal” can refer to a chipset. Tr. (Acton) 1389:10–17. The ID disregarded all expert testimony related to these claims. ID at 79.

The ID also claimed that the relevant products “have, in this investigation, been consistently identified as the overall devices,” ID at 80, while citing to background testimony and ignoring the testimony proffered on infringement and technical domestic industry. How certain products are referenced off-hand at different stages of the case simply cannot replace an appropriate analysis of the patent-practicing article based on the Asserted Claims and the evidence presented at the hearing. Nor does this reflect Amazon’s position throughout this Investigation:

[REDACTED]

that the relevant articles are the chipsets and Android OS, not the overall devices. *See, e.g.,* Opp. to MSD at 4; RPHB at 232; RRB at 52–53, 55.

Nokia’s reliance on the chipsets and Android OS to satisfy the technical prong renders those components the relevant patent-practicing articles for determining investments under the economic prong. The ID should be reversed because it erred in its analysis of the patent-practicing article by failing to follow the law, failing to recognize Nokia’s technical domestic industry contentions, failing to analyze the claims, and disregarding expert testimony.

b. The ID’s Analysis of the Realities of the Marketplace Test Is Nonsensical and Contrary to Commission Precedent

Where a patent-practicing article is incorporated into another system or device, extending the domestic industry to those downstream products “is the exception to the rule.” *See AMOLED Display Panels*, 337-TA-1351, Initial Deter. at 172 (citing *Certain Modular-Structural Systems*, Comm’n Op. at 12); *see also Video Game Sys.*, Comm’n Op. at 66 (Oct. 28, 2013) (“It may happen that the patented article *is not itself an actual article of commerce*, but is physically incorporated as a component in a downstream article of commerce.... In such circumstances, the Commission *may, depending on the facts of each particular investigation*, extend the relevant ‘industry’ to a downstream article of commerce incorporating the patented component.”) (emphasis added) (internal citations omitted). Nokia has not shown that the facts of this Investigation support its proposed expansion.

The Commission established a three-part test to decide whether to extend the domestic industry beyond patent-practicing articles. It considers the realities of the marketplace, including: (1) whether the patent-practicing article is a separate article of commerce; (2) whether the patent-practicing article is essential to the downstream product; and (3) whether the domestic activities have a direct relationship to the exploitation of the patented technology. *Certain Magnetic Tape*

[REDACTED]

Cartridges & Components Thereof, Inv. No. 337-TA-1058, Comm’n Op. at 48–50 (Apr. 9, 2019) (“*Magnetic Tape Cartridges*”) (citing *Video Game Sys.*, Comm’n Op. at 66). “In sum, the Commission has credited domestic investments when they are made with respect to an ‘essential,’ ‘necessary,’ and/or ‘integral’ part of the article covered by the patent claims and/or is ‘central to enabling’ exploitation of the article covered by the patent claims.” *Magnetic Tape Cartridges*, Comm’n Op. at 50.

Before the 1379 evidentiary hearing, Nokia moved for summary determination that the economic prong of the domestic industry requirement was met; the ALJ denied the motion. 1379 MSD Order at 11. After considering the applicable caselaw, the ALJ explained what evidence should be elicited when determining whether an expansion of the domestic industry to the downstream products was warranted:

At the evidentiary hearing, the parties should address, among other things, the realities of the marketplace vis-à-vis what is covered by the asserted patents as well as the required relationship, if any, between the domestic industry article and what is covered by the asserted patents.

Id. at 10.

But Nokia failed to present any such evidence at the hearing. As discussed above, Nokia affirmatively argued that the chipsets and Android OS—and those components alone—practice the Asserted Patents. *See supra*, Section V.A.2.a. The hearing evidence also showed that the third-party chipsets and Android OS are themselves separate articles of commerce sold to and used by many other companies in their respective products. *See infra*, Section V.A.2.b.i. That the chipsets and Android OS are used by others—including Amazon—is the backbone of Nokia’s technical analysis for technical domestic industry *and* infringement. *See* Tr. (Kia) 701:21–702:16.

[REDACTED]

Despite Nokia's many evidentiary failures, the ID contorted the relevant legal standards, made unfounded inferences, and incorrectly concluded that the realities of the marketplace support counting investments in feature-rich consumer products with a wealth of functionalities irrelevant to the standardized technology at issue. It must be reversed.

(i) First Factor: Separate Entity or Article of Commerce

The first factor asks a straightforward question: whether the patent-practicing article itself a separate entity or article of commerce. *See Magnetic Tape Cartridges*, 337-TA-1058, Comm'n Op. at 40, 48 (Apr. 19, 2019) (patented tape cassettes sold separately from unpatented tape drives); *see also Certain Sleep-Disordered Breathing Treatment Sys. and Components Thereof*, Inv. No. 337-TA-890, Initial Deter. at 147–50 (Sept. 14, 2014) (“*Sleep-Disordered Breathing*”) (patented masks sold separately from humidifiers and flow generators).

The answer in this Investigation is unequivocally “yes.” It is undisputed that Microsoft and Samsung *acquire* the chipsets and Android OS from third parties—who also provide those chipsets and Android to many other companies and consumers. *See* Tr. (Herrington) 371:2–16. Even Nokia does not dispute that the chipsets used in the Surface and Galaxy products are sold to countless other companies who then in-turn incorporate those very same chipsets into other downstream products. *See id.* at 371:14–20 (acknowledging the same chipsets are sold to and used by other companies, including in the accused products); *see also, e.g.*, CX-2140.0004 (Microsoft Surface Laptop 5 with “Intel Core i7-1255U” CPU and “Intel Iris Xe” GPU); RX-3219.0034 (HP Laptop 17t-cn200 with same “Intel Core i7-1255U” CPU and “Intel Iris Xe” GPU). The ID similarly recognized this point. *See* ID at 81 (“[T]he evidence supports that the [*sic*] certain of the chipsets...can be and are provided as separate articles to be integrated into non-domestic industry products.”). As to the custom AMD chipsets used in the Xbox products, Nokia cannot credibly

[REDACTED]

dispute that Microsoft acquires them in commerce from AMD. That the patent-practicing article is itself an article of commerce dictates against expanding the domestic industry to include the downstream product. *Certain Semiconductor Devices, Semiconductor Device Packages, and Prods. Containing the Same*, Inv. No. 337-TA-1010, Initial Deter. at 251 (July 28, 2017) (“*Semiconductor Devices*”). For this factor, the inquiry can—and should have—ended here.

The ID, however, did not look to whether the patent-practicing articles are *sold in* commerce, but instead to whether the alleged Domestic Industry Products are *sold with* the patent-practicing articles. ID at 81. This is irrelevant and the feature-rich downstream Domestic Industry Products are not the correct marketplace. *See Sleep-Disordered Breathing*, Initial Deter. at 147 (determining that patent-practicing masks are compatible with other CPAP devices and sold separately from complainant’s flow generators and humidifiers); *Magnetic Tape Cartridges*, Comm’n Op. at 48 (determining that patent-practicing tapes were not compatible with any drive other than corresponding drive sold by complainant).

The ID cited two initial determinations in support of its proposition that the downstream device—not the patent-practicing articles—reflect the relevant domestic industry. ID at 82. Both were vacated as to economic domestic industry and, under *Beloit*, have no authoritative value. *Certain LTE- and 3G-Compliant Cellular Communications Devices*, Inv. No. 337-TA-1138, Comm’n Notice (June 1, 2020); *Certain Light-Emitting Diode Products, Systems, and Components Thereof (III)*, Inv. No. 337-TA-1168, Comm’n Notice (October 1, 2020); *see Certain Electric Skin Care Devices, Brushes and Chargers Therefor*, Inv. No. 337-TA-959, Comm’n Op. at 10 (Feb. 13, 2017) (referring to taking “no position” as vacating under *Beloit Corp. v. Valmet Oy*, 742 F.2d 1421, 1423 (Fed. Cir. 1984)).

[REDACTED]

The ID also directly contradicted another recent ID from ALJ Moore in *AMOLED Display Panels*, 337-TA-1351, Initial Deter. (Nov. 15, 2024). There, ALJ Moore considered whether an unquestionably customized product was a “separate article of commerce” for purposes of the *Magnetic Tapes* test (*Magnetic Tape Cartridges*, Inv. No. 337-TA-1058, Comm’n Op.). The patent-practicing articles were AMOLED screens that were manufactured by Samsung Display Company (“SDC”) for its parent Samsung Electronics Co., Ltd. (“SEC”). *AMOLED Display Panels*, 337-TA-1351, Initial Deter. at 160. The AMOLED screens were “sold only from SDC to SEC as components for incorporation into the corresponding Galaxy DI Products, or as replacement parts for those Galaxy DI Products; they have no other use.” *Id.* at 160. ALJ Moore concluded that the AMOLED domestic industry screens were nevertheless separate articles of commerce because they were sold by a subsidiary SDC to the parent SEC in an arms-length transaction. *Id.* at 161.¹

The ID’s remaining analysis on article of commerce was irrelevant to this factor. For example, the ID repeatedly asserted that the chipsets and Android OS are not separate articles of commerce because they are “essential” to the operation of the Domestic Industry Products. ID at 81–82. No Commission authority supports this logic because it conflates two separate inquiries under the *Magnetic Tape Cartridge* framework. Indeed, several prior cases determined that a

¹ Nokia’s expert in this Investigation, Mr. Herrington, was the economic expert for the *respondents* in *AMOLED Display Panels*. There, he concluded that “the AMOLED DI Products...are the appropriate article of commerce by which to evaluate the domestic industry.” *See Id.* at 157, n.49. Though the vast majority of the record is confidential, the ID cites Mr. Herrington’s testimony for the proposition that “[t]he AMOLED DI Products themselves are a product that can be exploited from an economic perspective, even apart from their use in a Galaxy phone.” *Id.* Mr. Herrington concludes the opposite here for chipsets and Android OS because, in part, the DI products “are always sold with a GPU being integrated into them” and “would not function the way the consumer would expect” without the chipsets. *See Tr. (Herrington)* 329:22–331:21. The same is, of course, true for the Galaxy devices in *AMOLED Display Panels*.

[REDACTED]

patent-practicing article is a separate article of commerce despite its essentiality to a broader system. *See, e.g., Video Game Sys.*, Comm’n Op. at 68 (patent-practicing toy wands are themselves articles of commerce despite that they “cannot be used on their own or with any other attractions”); *Sleep-Disordered Breathing*, Initial Deter. at 140 (patented humidifier are separate articles of commerce even though “neither the masks nor the humidifier can be used standing alone without a flow generator.”).

As to the custom AMD chipset used in the Xbox products, the ID concluded it was exclusive to Microsoft. ID at 82–83. This not supported by the record and irrelevant. The entire documentary record regarding customization of the AMD chipsets consists of just three documents that make passing reference the word “custom.” *See* CX-2924C, CX-2157, and CX-2158. At most, these documents show that the AMD chipset is “custom” and that Microsoft had some involvement in the development of the chipset. Amazon acknowledged throughout this Investigation that the AMD chipsets are customized in some way, but Nokia—who bore the burden on this issue—never sought evidence about what is customized in the AMD chipsets used in the Xbox Domestic Industry Products, who performs the customization, or any related investments. Although Nokia served a subpoena on Microsoft, it did not ask about customization or exclusivity. Although Nokia served a subpoena on AMD, it did not ask about customization or exclusivity. Nokia did not seek to have Microsoft or AMD participate in the evidentiary hearing, nor did it bring forth any contractual agreements or other evidence regarding Microsoft’s relationship with AMD. In fact, Nokia’s position on technical domestic industry undermines any relevance of the alleged customization—there is no suggestion customization has anything to do with the patented technology, and to the contrary, Drs. Kia and Orchard both testified that it does not. *See, e.g., Tr.* (Kia) 700:18–22 (confirming AMD chipset used in the Xbox products operate in same way as non-

[REDACTED]

Xbox AMD chipsets related to '134 patent); (Orchard) 585:23–586:3 (confirming chipsets in Domestic Industry Products operate in same way as Accused Products related to '808 patent). From this scant evidence, the ID inferred that because the AMD chipset was customized in some unspecified way, it was necessarily exclusive to Microsoft. *Id.* at 82–83. The record is devoid of evidence to support this leap, nor is this relevant to whether the custom AMD chipset is an article of commerce. Regardless of customization, the AMD chipset is sold by AMD to Microsoft.

The same is true for the Android operating system for the Samsung Galaxy Products. As with Microsoft and AMD, Samsung did not participate in the evidentiary hearing, nor did Nokia seek any discovery related to customization or exclusivity of the Android OS used in the Samsung Galaxy Products. There is no dispute that Android OS is an open-source platform that Google makes available for free to anyone who wants to use it. Tr. (Kia) 702:17–25; Tr. (Mody) 1223:23–1224:10. And the record reflects that [REDACTED] and Samsung makes the resulting code available to anyone who wants to use it. Tr. (Kia) 702:21–25 ([REDACTED]); *see also* RX-1978C (Sheppard) at 83:21–84:5.

The ID incorrectly analyzed the “article of commerce” factor. The patent-practicing articles are indisputably articles of commerce.

(ii) Second Factor: Exclusive Operational Relationship

The second factor looks at whether the patent-practicing article and downstream product are part of a proprietary and exclusive system such that the patent-practicing article could not be exploited without the downstream product. *See Magnetic Tape Cartridges*, Inv. No. 337-TA-1058, Comm’n Op. at 50–56 (holding that “[t]he exclusive operational relationship between 3592 tapes and 3592 tape drives is similar to the electronic receivers and toy wand in *Video Game Systems*,

[REDACTED]

the flow generator and humidifier in *Sleep-Disordered Breathing*, the computer and software relationship in *Personal Computers*, and the floppy disk drive and head assembly at issue in *Floppy Disk Drives*"). The ALJ recognized this requirement in the order denying Nokia's motion for summary determination:

In applying that analysis in *Certain Magnetic Tape Cartridges*, "the Commission concluded that domestic investments in (non-patented) tape drives were properly considered in the economic domestic industry analysis because the tapes covered by the asserted patents "cannot be 'exploited' absent their use in conjunction with IBM 3592 tape drives." *Id.* at 50–51. The Commission described this "exclusive operational relationship" as "similar to the electronic receivers and toy wand in *Video Game Systems*, the flow generator and humidifier in *Sleep-Disordered Breathing*, the computer and software relationship in *Personal Computers*, and the floppy disk drive and head assembly at issue in *Floppy Disk Drives*."

1379 MSD Order at 9–10 (citing *Magnetic Tape Cartridges*, Inv. No. 337-TA-1058, Comm'n Op. at 50–51).

The ID did not find—and no evidence exists—that the chipsets or Android OS had an exclusive operational relationship or would not be exploited absent investments in the downstream domestic industry products. In fact, the opposite is demonstrably true: the very same third-party chipsets and Android OS can and are used in a myriad of other consumer devices. Tr. (Mody) 1225:3–9. As one example, if Microsoft had invested *nothing* in the Surface Laptop 4, the very same Intel Core i7-1255U processor that Nokia argues practices the Asserted Patents would have come to market in the HP Laptop 17t-cn200 and many other products. CX-2140.0004; RX-3219.0034. Similarly, if Samsung had invested *nothing* in the Galaxy Phones, Android OS would nevertheless remain implemented by hundreds—if not thousands—of consumer electronic devices, including those offered by Amazon. Tr. (Mody) 1223:21–1224:10; 1225:3–9.

[REDACTED]

Despite recognizing the correct analysis in the 1379 MSD Order, the ID morphed this factor into one irrelevant question: whether the patent-practicing articles are “essential” to the downstream product. ID at 83–84. Though this is the topic Nokia preferred to address at the hearing, it is not the factor that must be considered. The ID’s analysis contradicts the 1379 MSD Order, Commission precedent, and recent decisions from other ALJs. The ID cited to, but misapplied, *Magnetic Tape Cartridges* and *Sleep-Disordered Breathing*. *Id.* In *Magnetic Tape Cartridges*, the Commission determined that the domestic industry should be expanded beyond the patent protected tapes to include the drives used to read the tapes. Inv. No. 337-TA-1058, Comm’n Op. at 50–53. In particular, the Commission highlighted the “*exclusive operational relationship* between the 3592 tapes and 3592 tape drives” and found that the “3592 drives are *necessary to exploit* the IBM 3592 tape cartridges.” *Id.* at 51, 53 (emphasis added); *see also id.* at 53 (“Here, the ‘3592 tape and drive products at issue make up a closed, proprietary data storage system’ and there is no dispute that one cannot be used without the other.”). Because the 3592 tapes were designed to be used exclusively with the 3592 tape drives, exploitation of the patented technology *required* sales of and investments in the 3592 tape drives. These are not the circumstances here.

Most informative as it relates to the facts in this Investigation is the decision in *Sleep-Disordered Breathing*, Inv. No. 337-TA-890, Initial Deter. at 147–50. In that investigation, the ALJ analyzed whether the domestic industry should extend to include the H5i humidifier, S9 flow generator, and masks. *Id.* The H5i humidifier and masks were protected by the asserted patents, whereas the S9 flow generator was not. The ALJ determined that the domestic industry related to the H5i humidifier included the S9 flow generator, but not the masks, and the domestic industry for the masks was limited to the masks themselves. *Id.* In distinguishing between the humidifier

[REDACTED]

and the masks, the ALJ explained: “I find that the S9 flow generator is central to enabling ResMed to exploit the patented technology of the H5i humidifier *because the H5i humidifier is designed to work only with the S9 flow generator*, and [redacted] H5i humidifiers are sold in a ‘co-pack’ with an S9 flow generator. In contrast, I find that the S9 and H5i are not central to enabling ResMed to exploit the patented technology of its masks *because these masks are compatible with other CPAP devices and humidifiers*, and they are marketed and sold separately from ResMed’s flow generator and humidifier.” *Id.* at 147 (emphasis added); *see also id.* at 150 (“The H5i humidifier is wholly dependent on the S9 flow generator, and the S9 is thus central to enabling ResMed to exploit the patented technology of its humidifier.”).

The chipsets and Android OS in this Investigation are analogous to the masks in *Sleep-Disordered Breathing*, but further removed because they are third-party products. Like the masks, the chipsets and Android OS in this Investigation can be—and are—used with other electronic devices. *See, e.g.*, CX-2140.0004 (Microsoft Surface Laptop 5 with “Intel Core i7-1255U” CPU and “Intel Iris Xe” GPU); RX-3219.0034 (HP Laptop 17t-cn200 with same “Intel Core i7-1255U” CPU and “Intel Iris Xe” GPU).

The ID’s conclusion that “the chipsets and operating systems cannot function unless they are connected to and integrated into *an* electronic device *such as* tablets, phones, and the Xbox game system” (ID at 84 (emphasis added)) is legally insufficient and contrary to *Sleep-Disordered Breathing*. There, the complainant similarly argued that the masks “cannot be used standing alone without a flow generator.” *Sleep-Disordered Breathing*, Initial Deter. at 140. Even though *a* flow generator *such as* the S9 flow generator was required for the masks to function, the ALJ nevertheless determined that such a non-exclusive relationship was insufficient to extend the domestic industry because the masks are “compatible with other CPAP devices and humidifiers.”

[REDACTED]

Id. at 147. The same is true here for the chipsets and Android OS. *See* Tr. (Mody) 1223:21–1224:10; 1225:3–9. The ID erred in its conclusions of law as applied to the facts here.

(iii) Third Factor: Direct Relationship to Exploitation of Patented Technology

The third factor considers “whether the domestic industry activities ‘have a direct relationship to exploitation of the patented technology.’” *Magnetic Tape Cartridges*, Comm’n Op. at 48 (citing *Video Game Sys.*, Comm’n Op. at 66). The ID did not find—because Nokia did not proffer—any direct relationship between the investments in the downstream Domestic Industry Products and exploitation of the patented technology. Nokia openly counted the *entirety* of Microsoft’s and Samsung’s investments in the downstream and feature-rich Surface, Galaxy, and Xbox products. *See* Tr. (Mody) 1227:4–1230:1, 1403:12–18. Nokia made no effort to determine or demonstrate what of Microsoft’s or Samsung’s investments were related to the exploitation of the patented technology, H.264, video decoding, or even video playback generally.

The ID erred in concluding that *any* investments—regardless of their connection to the patented technology—are directly related to the exploitation of the patented technology so long as they are needed to bring the domestic industry products to market. ID at 58. Such a reading is inconsistent with Commission precedent and renders this factor superfluous.

Video Game Systems is illustrative of the Commission’s concern with counting investments unrelated to the exploitation of the patented technology—a concern the ID ignored. There, the patent-practicing toy wands—like the chipsets and operating system here—“c[ould] not be used on their own.” *See Video Game Sys.*, Comm’n Op. at 68. Even though a broader attraction was necessary to exploit the patented wands, the Commission nevertheless determined that investments unrelated to exploitation of the patented technology should not be considered. *Id.* (rejecting complainant CK’s view because “CK [did] not limit its ‘article of commerce’ theory to only the

[REDACTED]

specialized software and hardware of the MagiQuest technology. Rather, CK urge[d] the Commission to find that the article of commerce includes physical space, design themes, physical props, other peripheral items, and sales and training staff.”). Here, it is undisputed that the chipsets and Android OS be used with countless other devices. Nokia, however, made no effort to determine what investments relate to the chipsets or other potentially relevant features like video playback. Instead, Nokia claimed unapportioned investments in *every* aspect of the feature-rich devices. Under Nokia and the ID’s interpretation of precedent, every penny of Microsoft’s and Samsung’s investment in the Xbox, Surface, and Galaxy devices (including, for example, in the keyboard, face sensors, controllers, UI, security features, and networking features) should count as investments directed to the patented video coding technology. This directly contradicts precedent.

Separately from its erroneous legal conclusions, the ID was also plagued with factual inaccuracies and improper burden shifting. Most egregiously, the ID concluded, “Amazon has not adduced any credible evidence that the asserted patents can be exploited without the chipsets or operating system integrated into the domestic industry products so they can encode and decode video.” ID at 86. Nokia contends that *every H.264 standard-compliant bitstream* practices the asserted patents. *See* Tr. (Opening) at 29:22–30:4. By Nokia’s own contentions, the Asserted Patents are “exploited” by the *millions* of non-domestic industry devices decoding *billions* of H.264 bitstreams. The ID also mischaracterized Amazon’s position, stating that Amazon “appears to be contending that a direct relationship to exploitation of the patented technology can be shown only by allocating investments on a feature-by-feature basis.” ID at 85. Amazon has never so argued. Rather, Amazon has consistently argued that Nokia must show some connection between the claimed investments and the patented technology, as *Magnetic Tape Cartridges* and the ITC’s

[REDACTED]

governing statute requires. *See Magnetic Tape Cartridges*, Comm’n Op. at 48; *see also* RPHB at 240-42; RRB at 62–64; Tr. (Mody) 1227:4–1228:22, 1228:24–1230:1.

The ID also faulted Amazon’s economic expert, Dr. Nisha Mody,² for relying on the testimony of Microsoft’s and Samsung’s witnesses that do not address investments specifically in video coding technology. *See* ID at 86–88. The lack of testimony, however, is precisely the point. Nokia subpoenaed both Microsoft and Samsung, yet it failed to inquire into their investment directed to the patented technology. The ID erred by inappropriately shifting the burden to Amazon to prove a negative, finding the lack of testimony “not determinative.” *Id.*

* * *

Put simply, Nokia asserts that it can rely on the full investments of its licensees into feature-rich and expensive consumer products simply because they acquire standard-compliant commodity components from third parties. No Commission precedent supports such an expansive view of the domestic industry requirement, and the ID erred in adopting it.

3. The ID Erred in Determining that the Investments Related to the Downstream Domestic Industry Products were Significant

The ID erred by adopting Nokia’s investment figures and significance analysis without holding Nokia to its burden of proof. The complainant bears the burden of establishing that the domestic industry requirement is satisfied. *Lelo Inc. v. Int’l Trade Comm’n*, 786 F.3d 879, 883 (Fed. Cir. 2015). “Further, a complainant must present credible and reliable evidence in order to meet its burden.” *Certain Artificial Eyelash Extension Sys., Prod. & Components Thereof*, Inv. No. 337-TA-1226, Comm’n Op. at 48 (Oct. 24, 2022) (“*Artificial Eyelash.*”) (citing *Certain Soft-Edged Trampolines and Components Thereof*, Inv. No. 337-TA-908, Comm’n Op. at 54–57 (May

² The ID repeatedly referred to Dr. Mody as “Ms. Mody.” *See* ID at 87. For clarity, Dr. Mody obtained a Ph.D. in Political Economy and Public Policy. Tr. (Mody) 1219:14–24.

[REDACTED]

1, 2015); *Certain Stringed Musical Instruments & Components Thereof*, 337-TA-586, Comm’n Op. at 14 (May 16, 2008)). Nokia did not meet this standard, and the ID erred by finding otherwise.

a. The ID Erred by Accepting Nokia’s Inflated Investment Numbers

The domestic industry investments adopted by the ID include investments directed to non-domestic industry products as well as noncognizable expenses. The ID improperly dismissed these included investments as not having a significant impact or being *de minimus*. ID at 99–101. But not all investments count toward the domestic industry requirement, and, without credible and reliable evidence, the alleged domestic industry cannot be assessed. *Artificial Eyelash*, 337-TA-1226, Comm’n Op. at 61. For example, investments that are too attenuated from the domestic industry product or that relate to multiple products and are not directly attributable to the domestic industry products cannot be used to satisfy the economic prong of the domestic industry requirement. *See, e.g., Certain Subsea Telecoms. Sys. and Components Thereof*, Inv. No. 337-TA-1098, Comm’n Op. at 41 (Oct. 21, 2019); *Video Game Sys.*, Comm’n Op. at 56–57. As a further example, investments related to marketing and administrative costs generally do not count. *See Certain Kinesiotherapy Devices and Components Thereof*, Inv. No. 337-TA-823, Comm’n Op. at 29 n.8 (June 17, 2013).

Rather than holding Nokia to its burden of providing reliable investment numbers in the alleged Domestic Industry Products, the ID criticized Amazon for not offering an “alternative calculation.” ID at 100. This was not Amazon’s burden. Where a complainant includes noncognizable investments, it fails to meet its burden and it is not the job of either a respondent or the ALJ to perform new calculations to cure that failure. *See Artificial Eyelash*, 337-TA-1226, Comm’n Op. at 47, 61.

[REDACTED]

(i) The ID Erred by Including Investments in Non-Domestic Industry Products

The ID ignored Nokia's election to rely on R&D as the basis for counting investments in the alleged Domestic Industry Products and erred in treating the alleged investments as general investments in a Domestic Industry Product. Of course, R&D largely occurs before launch of a product. *See, e.g.,* RX-1980C (Oberoi) 35:21–37:5 ([REDACTED]); RX-1979C (Romero) 35:9–36:19 ([REDACTED]); CX-4574C. As a result, at least some of the activities relate to products that have yet to launch and that Nokia does not claim to be Domestic Industry Products. Tr. (Mody) 1231:15–19.

Nokia did not even attempt to remove these expenses associated with non-domestic industry products and Nokia's expert, Mr. Herrington, did not consider this issue. Mr. Herrington testified he did not recall looking at launch dates for the alleged Domestic Industry Products in preparing his opinion. Tr. (Herrington) 386:5–387:12. As a result, Nokia's investments include expenses not associated with the alleged Domestic Industry Products. The ID adopted these investments even though Nokia failed to meet its burden.

For example, the Surface Laptop 3, one of the alleged Microsoft Surface Domestic Industry Products, launched prior to the R&D investment period. RPX-0209C; Tr. (Herrington) 386:5–387:12; *see also id.* 384:23–385:1 (confirming investment period of July 1, 2020, through June 30, 2023 for Microsoft). None of the alleged domestic industry activities relate to this product, but Nokia still included expenses that it attributed to this product over a three-year period in its calculation. For the remaining Surface products, Nokia relied on the same faulty analysis. CX-5522C; CX-5523C; RPX-0209C.

Similarly, the Xbox launched many years ago. The record lacks any testimony regarding

[REDACTED]

the extent to which the R&D investments relate to the Xbox Domestic Industry Products, rather than other non-domestic industry Xbox products. There is only generalized testimony suggesting that R&D relates to [REDACTED] (RX-1979C (Romero) 23:22–24:15), which Nokia has not shown—and presumably would not—apply to the already launched Xbox Domestic Industry products.

Nokia offered no means to separate pre- and post-launch activities or limit the R&D investments to only the alleged Domestic Industry Products. The ID erred by dismissing this issue. ID at 99. The ID claimed, “[A]s Mr. Herrington testified, even where a product was launched during a calendar year, the amount of accounting that may have extended post-launch would not have had a significant impact on the calculations.” *Id.* (citing Tr. (Herrington) 386:15–20). The cited testimony, however, does not support the ID’s conclusion. Mr. Herrington merely made the non-controversial statement that the alleged Domestic Industry Products “were launching at various times over the DI period” and made no statement regarding the possible impact on the calculations. Tr. (Herrington) 386:15–20.

(ii) The ID Erred by Including Noncognizable Expenses as Domestic Industry Investments

The ID further erred by including noncognizable expenses related to both plant and equipment, and labor and capital.

Nokia’s proffered investments in plant and equipment include depreciation of old equipment or assets. *See, e.g.*, RX-1980C (Oberoi) 21:21–23:5. But Mr. Herrington did not receive—nor did Nokia seek—information as to what equipment the depreciation expenses are for, when the purchases were made, or to what degree, if any, the depreciation relates to the alleged Domestic Industry Products. Tr. (Herrington) 388:22–389:10, (Mody) 1233:17–1234:2. The ID disregarded this failure, improperly shifting the burden of proof away from Nokia by concluding

[REDACTED]

only that “depreciation expenses have been recognized as cognizable expenses.” ID at 100. Whether depreciation may be included based on sufficient evidence is not the question. The issue is whether Nokia provided sufficient evidence—adequate proof to render the calculations including depreciation reliable. Nokia did not, and the ID erred by accepting these purported investments without proof as to their reliability.

Similarly, the ID adopted labor investments including expenses recognized as noncognizable and expenses in plant and equipment, not labor. RX-1980C (Oberoi) 45:12–21 (testifying labor investments included [REDACTED] [REDACTED]); Tr. (Mody) 1235:7–19 (testifying Samsung labor investments included [REDACTED]). Despite the clear indication from Microsoft and Samsung that its labor investments included noncognizable expenses, Nokia made no effort to obtain additional information that would have permitted their inclusion. Tr. (Mody) 1233:17–1234:7. The ID dismissed Nokia’s failure and disregarded their inclusion as *de minimus*. ID at 100. Nokia was required to establish the reliability of the alleged investments. *Artificial Eyelash*, 337-TA-1226, Comm’n Op. at 61. By acknowledging that Nokia included noncognizable investments even if “*de minimus*,” the ID also recognized Nokia did not meet its burden.

Regarding Microsoft, the ID made two additional errors related to the labor and capital investment. First, the “People” category relied on for Microsoft labor investments reflects the holistic cost of employees, RX-1980C (Oberoi) 18:12–18, and likely included millions of dollars in severance expenses. Tr. (Mody) 1234:10–1235:6; RX-0986; RDX-0013C.0020. The ID dismissed this argument as “speculative,” ID at 100-01, but that there is even a question as to whether severance was included underscores the lack of reliability of Nokia’s alleged investment numbers adopted by the ID. Further, as Dr. Mody testified, the ITC is charged with protecting

[REDACTED]

domestic industries and jobs. Tr. (Mody) 1234:10–1235:6. Counting severance, which relates to cutting U.S. jobs, is counter to the purpose of Section 337. *Id.* That this issue has not been decided by the Commission, ID at 101, does not suggest such expenses are proper. And the ID was silent on whether such investments are similar to those found to be noncognizable (*e.g.*, sales and marketing) under current precedent. Tr. (Mody) 1234:10–1235:6. The ID erred by accepting severance expenses as cognizable investments for the domestic industry.

Second, the ID erred by including alleged “capital” in the supposed investments relating to the Microsoft. ID at 90. In his calculations, Mr. Herrington included all plant and equipment investments as “capital” investments under subprong (B). Tr. (Herrington) 392:12–19. Equipment expenses are not capital investments. Tr. (Mody) 1232:17–1233:3. No Commission decision approves including all subprong (A) investments as “capital” under subprong (B), or including plant and equipment expenses under subprong (B) at all. *Certain X-Ray Breast Imaging Devices and Components Thereof*, Inv. No. 337-TA-1063, Initial Deter. at 269–72 (Sept. 13, 2018). The ID erred by including all of Microsoft’s subprong (A) investments as “capital” under subprong (B).

b. The ID Erred in Determining the Investments in the Alleged Domestic Industry Products Were Significant

Even if Nokia were permitted to *identify* investments in the downstream products, the ID improperly disregarded that only minor functionality in those products is even arguably protected by the Asserted Patents. The domestic industry investments must be *qualitatively* and *quantitatively* significant. *Certain Printing and Imaging Devices and Components Thereof*, Inv. No. 337-TA-690, Comm’n Op. at 26 (Feb. 17, 2011) (internal citation omitted). As it relates to significance, “[t]he Commission has [] examined the nature of complainant’s activities to determine whether they are directed to the practice of one or more claims of the asserted patent.”

[REDACTED]

Id. at 28 (finding no evidence of “whether complainant’s undertakings had a direct bearing on the practice of the patent”); *Certain Concealed Cabinet Hinges and Mounting Plates*, Inv. No. 337-TA-289, Comm’n Op. 1990 ITC LEXIS 3, (Jan. 8, 1990) at 23 (giving less weight to investments relating to optional dowel “[b]ecause of [the] indirect bearing on the patented features of the [product]”). While citing Amazon’s position related to qualitative significance, the ID never addressed it. ID at 92–93. Instead, the ID immediately jumped to quantitative significance without addressing the nature or quality of Microsoft’s and Samsung’s activities as they relate to the Asserted Patents.

As discussed above, Nokia did not show *any* alleged domestic industry investments directed to any aspect of the Asserted Patents, much less qualitatively significant investments. The ID erred by ignoring that Nokia’s proffered R&D investments were completely unrelated to the patented technology. Because the ID erred in determining these investments were significant, this is an independent basis to reverse the finding of violation.

* * *

The ID’s determination related to economic domestic industry was fundamentally flawed—it contradicted established Commission precedent and inappropriately shifted the burden of proof. Related to the Xbox Domestic Industry Products, the ID erred by indiscriminately adopting the determination of a *different* ALJ in a *different* Investigation with a *different* record. The ID then erroneously identified the patent-practicing article as the downstream products without proper analysis of the claims or expert testimony limiting the technical domestic industry to the chipset and Android OS—all in contradiction with the ITC’s enabling statute. The ID compounded this error by misapplying the realities of the marketplace test in nonsensical manner inconsistent with Commission decisions. Finally, the ID adopted Nokia’s inflated investment

[REDACTED]

figures without holding Nokia to its burden of proof, including accepting noncognizable expenses and investments in non-domestic industry products, and it ignored the lack of qualitative significance as the investments had no direct relationship to the Asserted Patents. The Commission should reverse the incorrect conclusion that Nokia satisfied the economic prong of the domestic industry requirement.

B. The ID Erred in Finding a Violation as to the '808 Patent

The ID committed two independent sets of errors with respect to the '808 patent, either of which would yield a finding of no violation when corrected. Both sets of errors require review.

First, the ID misconstrued and misapplied the claim term “skip coding mode.” Consistent with the '808 patent’s express lexicography, the original claim construction defined “skip coding mode” as:

[A] coding mode in which a zero (non-active) motion vector or a non-zero (active) motion vector is associated with each skip mode macroblock, depending on the characteristics of the motion in image segments surrounding the macroblock in question.

Corrected Order No. 38 at 15. As the hearing approached, however, a dispute developed among the parties around the word “surrounding,” *i.e.*, how many “image segments” would be required to “surround[] the macroblock in question”? Because the prior art MPEG-1 standard examined a single neighboring block when calculating its motion vector, Nokia needed “surrounding the macroblock in question” to mean more than “just one.” But, with the accused H.264 standard examining only two neighboring blocks, Nokia could not afford to have “surrounding the macroblock in question” require more than “two.”³ Thus, Nokia advocated for an interpretation of

³ Contrary to the ID, Amazon has never contended “surrounding” must mean “exactly two.” ID at 26. Rather, Amazon has stressed the implications of Nokia’s theories, *i.e.*, that Nokia could only prevail if “surrounding” included “two.”

[REDACTED]

“two or more,” hoping to thread the needle between obtaining an infringement finding while managing to avoid invalidity.

The ID adopted Nokia’s interpretation, even though it contradicts both the plain meaning of “surrounding” and the intrinsic teachings of the ’808 patent itself, all of which uniformly indicated that “surrounding” meant completely encapsulating. That error resulted in an incorrect finding of infringement. But while the ID adopted “two or more” when analyzing infringement, when it came to evaluating priority, the ID contradicted its own reasoning and interpreted “surrounding” as just “one or more.” This inconsistent interpretation allowed the ’808 patent to overcome prior art the parties agreed contained every element of the Asserted Claims. These blatant errors and inconsistencies require review and reversal.

Second, completely distinct from “surrounding,” the ID also misapplied the motivation to combine requirement to Amazon’s other prior art. The MPEG-1 standard included all elements of the claims but only used one neighboring segment when calculating its motion vector. Expanding one segment to “two or more” was completely obvious to those of skill in the art, as shown by that approach being incorporated into other industry standards like H.263. Nevertheless, insisting that the combination needed to be “necessary”—something not required by any Federal Circuit caselaw or other authority—the ID rejected Amazon’s obviousness combination and saved the ’808 patent. When the proper standard is applied, the combination of MPEG-1 and H.263/JM-1 easily renders the patent obvious, and for that independent reason no violation should be found.



1. The ID Misinterpreted “Surrounding the Macroblock in Question”

a. Plain Meaning and All Record Evidence Support the Idea that “Surrounding” Cannot Mean “Two” Image Segments

(i) The Plain and Ordinary Meaning of “Surrounding the Macroblock in Question” Does Not Include Just Two Segments

By including the phrase “surrounding the macroblock in question” in its claim construction order without further clarification, the ALJ left that phrase to have its plain and ordinary meaning. Despite the intensity of the parties’ current dispute, that meaning is not hard to discern.

For example, the Federal Circuit has addressed the common understanding of “surrounding.” In *Aptalis*, the Federal Circuit addressed a similar issue involving the term “surrounding” in the context of a coating “*surrounding* said core.” *Aptalis Pharmatech, Inc. v. Apotex Inc.*, 718 F. App’x 965, 968 (Fed. Cir. 2018) (emphasis added). Observing that “dictionaries define ‘surround’ as ‘to enclose on all sides,’” the court held that “[a] coating that surrounds the core or encloses it on all sides connotes a continuous coating, *i.e.*, one that covers the entire surface of the core.” *Id.* at 968–69. Applying that ordinary meaning here, to “surround[] the macroblock in question,” the image segments must enclose that macroblock on all sides.

Significantly, Nokia’s own technical expert, Dr. Orchard, had the very same understanding as the Federal Circuit. At the evidentiary hearing, he was forced to admit “surrounding” means “encapsulat[ing].” Tr. (Orchard) 540:20–541:11. Moreover, he confirmed an analogy that helped illustrate the point: telling his university students “not to cheat from desks *surrounding* their desks” prohibited them from looking at the papers belonging to anyone on any side—left, right, front, back, or the diagonals. Tr. (Orchard) 573:7–574:7; *see also id.* at 446:5–22. If “surrounding” referred to only two of those neighboring desks, the ban on cheating would hardly be effective.

While the ID denigrated these admissions as “not helpful,” ID at 25, n. 6, it provided no basis or support for a contrary understanding of “surrounding” as less than “on all sides.”

(ii) The Intrinsic Evidence in the '808 Patent Aligns with the Plain and Ordinary Meaning of “Surrounding the Macroblock in Question”

The construction of “surrounding the macroblock in question” is not only dictated by the plain and ordinary meaning of those words, but also by the '808 patent’s written description.

Indeed, the first “preferred embodiment” of the '808 patent illustrates which macroblocks are “surrounding” through Figure 9. As shown below, that figure highlights at least six macroblocks around the “macroblock in question” as those to be “analyzed by the surrounding motion analysis”:

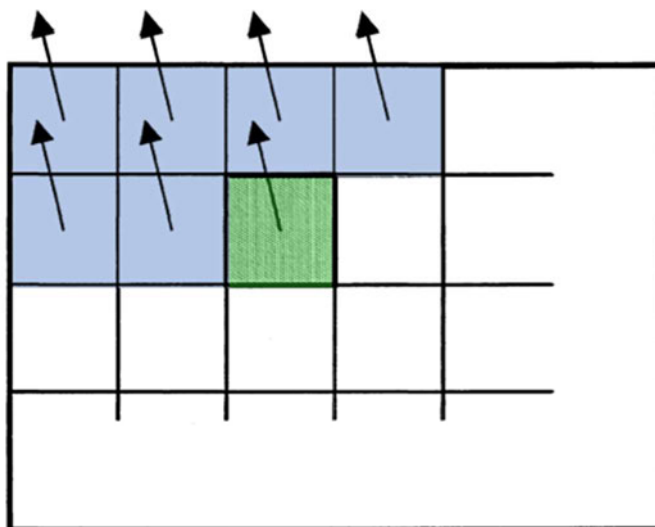


FIG. 9

Id. at Fig. 9 (annotated); *see also* Tr. (Orchard) 553:1–554:2 (agreeing that the “previously encoded macroblocks neighboring the macroblock to be coded” shown in Figure 9 “includes six” macroblocks). The text associated with Figure 9 confirms this relationship:

ing three step procedure. Firstly, surrounding motion analysis block retrieves motion information for the macroblocks or sub-blocks surrounding the macroblock to be coded (i.e. previously encoded macroblocks neighboring the macroblock to be coded, as shown in FIG. 9) and generates a median motion vector prediction for the macroblock. The median motion

JX-0003 at 19:31–36 (emphasis added). Significantly, the highlighted language above is definitional due to its use of “i.e.” The Federal Circuit has repeatedly held that a “specification’s use of ‘i.e.’ signals an intent to define the word to which it refers.” *Edwards Lifesci. LLC v. Cook Inc.*, 582 F.3d 1322, 1334 (Fed. Cir. 2009). Thus, “surrounding the macroblock” cannot mean anything less than what is depicted here. And a review of the 80 times the ’808 specification uses that word shows that they are all consistent with that interpretation. *See generally* JX-0003; *see Aptalis Pharmatech, Inc.*, 718 F. App’x at 970 (stating the “specification’s frequent references to applying” the plain meaning of the team supported plain meaning).

Conversely, the ’808 patent’s specification also describes non-surrounding embodiments, demonstrating that the inventors knew how to claim a narrower arrangement and their use of “surrounding” was a deliberate choice. *See Aptalis Pharmatech, Inc.*, 718 F. App’x at 970. For example, the ’808 patent refers to a macroblock above and a macroblock to the left as analyzing the motion “in vicinity of the macroblock to be coded,” rather than “surrounding” it. *Compare* JX-0003 at 20:6–9, *with id.* at 19:28–31. Nokia’s expert Dr. Orchard admitted on cross-examination that “in the vicinity” and “surrounding” are “not equivalent.” Tr. (Orchard) 558:12–18.⁴ In yet another embodiment, the patent discusses an alternative in which the coding mode of “one or

⁴ The ID does not address this admission, other than to characterize it as “without context.” ID at 29-30. But the testimony shows the context was the ’808 patent.

[REDACTED]

more” macroblocks is considered. Once again, the inventors did not use the term “surrounding” to describe this approach. *Compare* JX-0003 at 19:21–27, *with id.* at 19:28–31.

The inventors of the ’808 patent clearly understood the importance of the words they were choosing. Their frequent and consistent use of the term “surrounding” with the express definition they provided, and in accordance with its plain and ordinary meaning, mandates that “surrounding the macroblock in question” cannot mean merely two segments. Rather, it must mean enough segments to encapsulate the macroblock in question.

(iii) The ’808 Patent Expressly Incorporates JM-1, Which Further Confirms It Takes More than Two Segments to “Surround the Macroblock in Question.”

“When a document is ‘incorporated by reference’ into a host document, such as a patent, the referenced document becomes effectively part of the host document as if it were explicitly contained therein.” *Telemac Cellular Corp. v. Topp Telecom, Inc.*, 247 F.3d 1316, 1329 (Fed. Cir. 2001). An incorporated document thus is considered intrinsic evidence when construing the claims of the host patent. *See id.*; *Cook Biotech Inc. v. Acell, Inc.*, 460 F.3d 1365, 1377 (Fed. Cir. 2006).

Here, the ’808 patent expressly incorporates “JM-1,” the JVT’s publication leading up to the H.264 standardization process, and does so “in its entirety.”⁵ JX-0003, 17:43–53, 10:31–39; *see also id.*, 19:36–41, 23:13–17. While performing claim construction, the ALJ recognized the significance of JM-1, calling it “the starting point” for the ’808 patent. Order No. 38 (Construing Claim Term) at 7. The ALJ expressly concluded that “the skip coding mode of the invention is a redefinition of the skip coding mode of JM1,” and noted that “[t]he ’808 patent is clear and unequivocal on this point.” *Id.*

⁵ JM-1 was published in 2001, two years before the ’808 application. *Compare* RX-0546, *with* JX-0003.

Like the text of the '808 specification described above, JM-1 expressly depicts four macroblocks (A, B, C, and D) in Figure 10 and describes them as “surrounding macroblocks” relative to the “macroblock in question” (macroblock E):

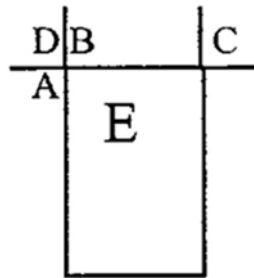


FIGURE 10

RX-0546 at Figure 10 (annotated), 5.4.1, 3.4.5.1. Accordingly, JM-1 provides another specific piece of intrinsic evidence bolstering the proper meaning of “surrounding,” which the ID misconstrued and necessitates review.

b. The ID Contradicted Plain Meaning and the Record Evidence by Allowing “Surrounding” to Include Just Two Image Segments.

Despite unanimity regarding the meaning of “surrounding the macroblock in question,” the ID contradicted the evidence by finding that “surrounding the macroblock in question” could include just two image segments. ID at 31. Specifically, the ID concluded that ““image segments surrounding the macroblock in question”” requires “two or more image segments surrounding the macroblock.”⁶ There are several glaring problems with the ID’s construction. *Id.*

⁶ The ID’s use of “surrounding” to construe “surrounding” is its own problem. *See, e.g., Univ. of Fla. Rsch. Found. Inc. v. Motorola Mobility, LLC*, 3 F. Supp. 3d 1374, 1377 (S.D. Fla. 2014) (citing *ACTV, Inc. v. Walt Disney Co.*, 346 F.3d 1082, 1090 (Fed. Cir. 2003) (finding the use of “wireless” to define “wireless” was “circular and unhelpful” and “constitute[d] improper claim construction.”)).

[REDACTED]

First, the ID avoided construing the disputed phrase “surrounding the macroblock” and instead merely construed “image segments” as “two or more image segments.” But this focus on the fact that “‘image segments’ [i]s plural” does not actually address the central dispute of how those segments relate spatially to “the macroblock in question.” ID at 27.

Next, the ID stopped at the words “image segments” and failed to examine evidence it should. It never looks at a dictionary for the ordinary meaning of “surrounding.” For example, the ID never looks for a disclaimer or disavowal of the ordinary meaning of surrounding in the specification. *See, e.g., Thorner v. Sony Computer Ent Am. LLC*, 669 F.3d 1362, 1366–67 (Fed. Cir. 2012).

Third, while the ID repeated the phrase “surrounding the macroblock in question” in its new construction, it never actually applied that language during its infringement analysis. ID at 33. The ID merely dismissed Amazon’s complaints that the two macroblocks do not surround the macroblock in question as a “re-packaging of its claim construction argument...that the claims require an analysis of more than two macroblocks.” *Id.* In short, the ID improperly rendered the phrase “surrounding the macroblock in question” meaningless in application.⁷ The cases are legion holding that a construction that renders disparate words meaningless is disfavored. *Intel Corp. v. Qualcomm Inc.*, 21 F.4th 801, 810 (Fed. Cir. 2021) (“It is highly disfavored to construe terms in a way that renders them void, meaningless, or superfluous.”) (citing *Wasica Finance GmbH v. Continental Auto. Sys., Inc.*, 853 F.3d 1272, 1288 n.10 (Fed. Cir. 2017)). Similarly, different terms are presumed to have different meanings. *See MicroStrategy Inc. v. Bus. Objects Ams.*, 238

⁷ The ID appeared to want to read “surrounding the macroblock” to mean “in the region surrounding the macroblock.” Setting aside that those are different phrases with different meanings, this approach would render meaningless the claim language that already says the segments/macroblocks are “neighboring,” which is disfavored. JX-0003.

[REDACTED]

F. App’x 605, 609 (Fed. Cir. 2007) (citing *CAE Screenplates Inc. v. Heinrich Fiedler GmbH & Co. KG*, 224 F3d 1308, 1317 (Fed. Cir. 2000) (“In the absence of any evidence to the contrary, we must presume that the use of these different terms in the claims connotes different meanings.”); *Applied Med. Res. Corp. v. U.S. Surgical Corp.*, 448 F.3d 1324, 1333 n.3 (Fed. Cir. 2006) (“[T]he use of two terms in a claim requires that they connote different meanings....”)).

Finally, rather than looking for embodiments in the specification that support the ID’s construction, the ID sought to dismiss contradictory evidence. For example, the ID rejected Dr. Orchard’s student/desk analogy as “not helpful.” ID at 25, n 6. The ID completely disregarded Figure 9 as merely an “example of macroblock portioning,” and ignored its “i.e.” definitional language.⁸ ID at 29. The ID also found it irrelevant that the inventors chose to describe the lone two-block embodiment as “analyzing the motion in the *vicinity* of the macroblock” rather than “surrounding the macroblock.” ID at 29.

Worst of all, the ID dismissed JM-1 as “extrinsic” when it was actually intrinsic, having been expressly incorporated by reference. *See supra* Section V.B.1.a.iii. The ID’s dismissal of JM-1 is a complete reversal regarding the significance of JM-1. Where JM-1 was the “starting point” for the patent during claim construction, the ID downplayed JM-1’s relevance as showing “at most, that in different standards-related documents, different numbers of macroblocks were understood as surrounding a macroblock in question.” *Compare* Order No. 38 (Construing Claim Term) at 7, *with* ID at 30. Similarly, the ID attempted to recast JM-1, suggesting it does not “stand for or support the proposition that ‘surrounding’ in the construction of the claim term ‘skip coding mode’ in the ’808 patent necessarily means more than two macroblocks.” *Id.* This effort to retrospectively

⁸ Curiously, the ID pointed to an excerpt that does not mention “surrounding the macroblock in question,” and argued that an embodiment of “one or more” supports its “two or more,” construction when the two are contradictory. ID at 29.

[REDACTED]

undermine an incorporated portion of the specification is plain error. *LG Elecs., Inc. v. Bizcom Elecs., Inc.*, 453 F.3d 1364, 1375 (Fed. Cir. 2006) (reversing where district court erred by “failing to give proper weight to the incorporated industry standard” and “fail[ing] to consider the standard as intrinsic evidence”).

2. When the Proper Construction of “Surrounding the Macroblock in Question” Is Applied, the ’808 Patent Is Both Not Infringed and Invalid in Light of JVT-F100.

Not surprisingly given that the phrase appears in every Asserted Claim, the ID’s misinterpretation of “surrounding the macroblock in question” had dramatic consequences. First, the ID’s error that two segments can “surround” the macroblock in question led to a finding of infringement, as the accused H.264 standard examines two—and only two—neighboring blocks when calculating its motion vectors. Second, and even more troubling, the ID contradicted its own reasoning on “surrounding” when examining the ’808 patent’s priority. Improperly giving it credit for “one or more segments,” the ID allowed the ’808 patent to predate JVT-F100, a reference the parties agreed met all the elements of the Asserted Claims. Both of these errors must be reviewed and reversed, yielding a finding of no violation.

a. The Two Image Segments H.264 Analyzes Do Not “Surround the Macroblock in Question,” Leading to Noninfringement of All Claims.

At the hearing, it was undisputed that the accused H.264 products analyze two neighboring blocks—those above and to the left of the macroblock being encoded—when calculating motion vectors. ID at 32. Even Nokia’s own technical expert agreed that, if “surrounding” meant more than two segments, there was no infringement of any Asserted Claim:

Q. [I]f the construction, the clause ‘segments surrounding the macroblock in question,’ if the Court decides that requires three blocks, you agree H.264 would not infringe, right?

[REDACTED]

A. I would agree with that, yes.

Tr. (Orchard) 1891:7–11, 1891:12–23. Accordingly, when the proper construction of “surrounding the macroblock in question” is applied, the accused H.264 products must be absolved of any claim of infringement. Given that no violation is warranted, the Commission should review and reverse the ID’s infringement finding.

b. The ID Contradicted Its Own Mistaken Construction of “Surrounding” to Afford the ’808 Patent Earlier Priority and Save It from Invalidity Over JVT-F100.

The parties also agreed that JVT-F100—an early draft of the H.264 standard from December 2002—anticipates each limitation of the asserted ’808 claims, including the “skip coding mode.” ID at 59 (“If JVT-100 is prior art, the parties agree that it anticipates the asserted claims.”); *see also* EDIS No. 828760. The only dispute over JVT-F100 concerns timing, *i.e.*, whether it constituted prior art against the ’808 patent.

Although the ID agreed with Nokia that the ’808 patent was entitled to priority back to its March 15, 2002 provisional application, to do so the ID was forced to abandon its own, mistaken construction of “surrounding the macroblock in question.” ID at 59–62. Specifically, the ID’s priority determination hinged on a disclosure in the provisional application of “one or more” macroblocks that contradicted its construction requiring “two or more.” Perhaps recognizing its own internal inconsistency, the ID attempted to support its conclusion based on so-called “coding modes,” but these cannot satisfy the claim requirement that a motion vector be assigned “based on the characteristics of the motion.”

(i) **Nokia added the embodiment relevant to its infringement theory to the later-filed utility application, after JVT-F100.**

The '808 patent's provisional and utility applications contain materially different disclosures. Importantly, a comparison of the two shows that the two-macroblock embodiment critical to infringement here was added to the later-filed utility application.

The March 15, 2002 provisional application discloses a single embodiment that assigns a zero or non-zero motion vector based on analysis of motion in six surrounding macroblocks. Tr. (Acton) 1363:7–17, 1366:9–23, 1367:9–12; RX-0010 ¶¶ 34–37. This method built off JM-1 (a draft standard (RX-0546)) but expanded the number of macroblocks from four (as used in JM-1) to six. Figure 3 in the provisional showed the six macroblocks used for analyzing “surrounding” motion:

'808 Provisional: Assigns Zero/Non-Zero MV Using Multi-MB Predictor

[0034] In the preferred embodiment of the invention the 'Analyze Surrounding Motion' block consists of three steps:

[0035] -Generate median motion vector prediction for the Macroblock as for example in reference 1

[0036] -If any of the resulting motion vector components has absolute value larger than a threshold (for example half a pixel) the motion is classified as 'Active Motion'. Otherwise it is classified as 'Non-Active Motion'.

[0037] -Depending on the classification result, activate the appropriate block to generating the motion parameters.

RX-0010 ('808 Provisional)

Figure 3: An example of Macroblock partitioning, surrounding motion for the Macroblock to be coded or decoded and the generated SKIP mode motion vector for the Macroblock (the darkened Macroblock in the figure) according to one possible embodiment of the invention.

RX-0010 ('808 Provisional)

1993 1998 2001 2002 2003

RDX-0012C.84

Source: RDX-0012C.84 (Acton)

RDX-0012C.0084; RX-0010, Fig. 3; Tr. (Acton) 1368:17–23, 1369:21–1370:8, 1364:4–8. This approach, as Amazon's expert Dr. Acton testified, would accurately account for global or regional

[REDACTED]

motion. RX-0010 at Fig. 3; Tr. (Acton) 1369:21–1370:8.⁹ The provisional did *not* disclose assigning a zero or non-zero motion vector using motion information from two macroblocks—the feature in H.264 that Nokia accused of infringement.

When Nokia filed its utility application on March 14, 2003, parts of the document certainly corresponded to the provisional application filed a year earlier. For example, the '808 patent specification's discussion of a “first preferred embodiment” came from the provisional application's discussion of the process for assigning a zero or non-zero motion vector using motion information from multiple macroblocks at the predictor. *Compare* JX-0003 at 19:11–20 and 19:28–51, *with* RX-0010, ¶¶ 34–38. And a cleaner version of provisional Figure 3 was included in the '808 patent specification as Figure 9. *Compare* RX-0010.0014, Fig. 3, *with* JX-0003.0014, Fig. 9; Tr. (Acton) 1368:17–23.

But, as Dr. Acton testified, much of the March 14, 2003 utility application was new matter, “add[ing] about 30 pages, 10 figures, and a new embodiment.” Tr. (Acton) 1375:7–12. In particular, Nokia added a new section to the specification regarding a previously-unmentioned “second preferred embodiment” beginning at column 20, line 6. Tr. (Acton) 1375:13–16; JX-0003, 20:6–25. As Dr. Acton explained, the “second preferred embodiment” assigned a zero or non-zero motion vector based on motion information from *two* macroblocks, and does not use a median motion vector predictor like the provisional's “surrounding [motion] analysis.” Tr. (Acton)

⁹ The ID referenced this embodiment as the “threshold analysis” embodiment and faulted Amazon for not explaining why that embodiment does not support the claims. ID at 60. But Nokia bears the burden to prove priority. Moreover, that embodiment cannot support the claims because it uses “three or more” macroblocks for the analysis, when the ID's construction required an embodiment that teaches “two or more.” *Compare* RIB at 23, *with* ID at 25. It simply does not teach the “two” so it cannot support the ID's construction. Again, the ID failed to apply its own new construction or to cite any evidence showing the provisional meets that construction.

[REDACTED]

1375:15–21, 1372:21–1373:3. This new matter corresponded to what had been adopted into the draft standard, JVT-F100. Tr. (Acton) 1374:14–20.

Despite the provisional application missing this two-macroblock disclosure, the ID found the Asserted Claims were still entitled to the provisional’s priority date. ID at 60–62. The ID based its finding on two sentences from the provisional:

Also, the coding modes of the already processed Macroblocks can be included. For example, if there is one or more stationary neighboring Macroblocks, ‘Non-Active Motion’ can be declared.

RX.-0010.0006 at [24]. The ID found that using “coding modes” as described in this paragraph provided sufficient support for the claims, including assigning a zero or non-zero motion vector based on motion information of two macroblocks. ID at 61-62. But the ID’s reliance on this excerpt contradicted its own constructions of “skip coding mode” and “surrounding,” neither of which the ID addressed.

(ii) The ID’s Reliance on “One or More” Macroblocks Contradicted Its “Two or More” Construction of “Surrounding”

The ID first contradicted its own construction of “surrounding” by finding that the provisional’s disclosure of using information about “one or more” macroblocks supports the claims. ID at 25. The ID relied on provisional paragraph 24, which states that “if there is *one or more* stationary neighboring Macroblocks, ‘Non-Active Motion’ can be declared.” to support the claims. ID at 60–61 (citing RX-0010.0006). But the provisional disclosure expressly recites using *one* macroblock, not the “*two or more*” image segments that the ID construed as “surrounding”:

Alleged Support in Provisional	“Skip Coding Mode” Construction
[0024] The motion analysis in ‘Analyze Surrounding Motion’ block can be implemented in various ways. For example, continuance, velocity, or deviation of the surrounding motion can be included in the analysis. Also, the coding modes of the already processed Macroblocks can be included. For example, if there is one or more stationary neighboring Macroblocks, ‘Non-Active Motion’ can be declared. (RX-0010.0006)	For the reasons discussed below, “image segments surrounding the macroblock in question” in the construction of “skip coding mode” requires two or more image segments surrounding the macroblock. (ID at 25)

Using information from “one or more” macroblocks is different from using information from “two or more” macroblocks. If not, then MPEG-1 alone should invalidate the Asserted Claims, because it uses a single block (*i.e.* one or more) to calculate its motion vector.

(iii) The ID’s Reliance on “Coding Modes” Does Not Save Its Flawed Priority Finding

Next, the ID contradicted its construction of “skip coding mode” by finding that assigning a “coding mode” to a macroblock supported the claims’ requirement of “assigning a motion vector *based on the characteristics of the motion*” in image segments. *See* ID at 60–61. But both experts agreed that “coding modes” are not characteristics of motion.

In particular, the ID relied on paragraph 24’s disclosure of using the “coding mode” of a stationary macroblock to assign motion or not.

[0024] The motion analysis in ‘Analyze Surrounding Motion’ block can be implemented in various ways. For example, continuance, velocity, or deviation of the surrounding motion can be included in the analysis. Also, the coding modes of the already processed Macroblocks can be included. For example, if there is one or more stationary neighboring Macroblocks, ‘Non-Active Motion’ can be declared.

Id. at 61 (RX-0010.0006 (highlighting added)). The ID found that, because “stationary” means “no motion,” paragraph 24 discloses assigning a motion vector based on motion information.

[REDACTED]

But, as Dr. Acton testified, paragraph 24 cannot provide support for the construed “skip coding mode” because the last two sentences in paragraph 24 relate to “coding modes,” not “motion information,” which are distinct and separate concepts. Tr. (Acton) 1403:15–18, 1405:10–12. “Coding modes” dictate how a macroblock is encoded, while motion information deals with the prediction of movement within video frames. *Id.* at 1405:14–19. Dr. Acton explained how a coding mode does not necessarily provide details about motion information. *Id.* at 1405:14–22. For example, in the ’808 patent, a block labeled with a “skip” coding mode may have motion (indicated by a non-zero motion vector) or no motion (indicated by a zero-motion vector). *Id.* at 1405:20–1406:4. Thus, merely knowing the coding mode—such as “skip”—offers no insight into the presence or absence of motion. Indeed, Nokia’s expert Dr. Orchard agreed that coding mode and motion information “are different concepts.” Tr. (Orchard) 1879:15–17. Dr. Orchard was adamant that a “person of ordinary skill in the art recognizes what they’re doing and are making precisely those distinctions that you’re—you’re kind of seeming to diminish the importance.” *Id.* at 1780:12–1781:3. This distinction is critical, underscoring that paragraph 24 cannot logically support claims related to motion information. The ID never addressed this evidence.

The experts’ opinions are corroborated by the ’808 patent itself, which distinguishes coding modes from motion information by placing them in separate embodiments. Specifically, the ’808 patent describes a distinct embodiment for using “coding modes” (*i.e.*, the “alternative embodiment” at 19:21–27), which repeats the same text as the two sentences in paragraph 24, and a distinct embodiment for using “motion” information (*i.e.*, the “second preferred embodiment” at 20:6–25). Tr. (Acton) 1406:14–22. As Dr. Acton testified, these distinct embodiments cannot both be supported by only the same two sentences from the provisional. *Id.* at 1406:14–22. The ID

hinged on Nokia's hypothetical to Dr. Acton regarding "if" paragraph 24 said "motion vector." ID at 61. But paragraph 24 does not say that, and Nokia cannot prove priority based on nonexistent language.

The ID eschewed all this evidence, too. Given that provisional paragraph 24 relates to "coding modes" rather than "motion" information, it cannot support the Asserted Claims. As such, Nokia is not entitled to the provisional priority date and the critical date for the Asserted Claims is the '808 patent's filing date, *i.e.*, March 14, 2003. With the proper priority date, the December 2002 prior art reference JVT-F100 invalidates the Asserted Claims.

3. The ID Committed an Entirely Independent Error on Invalidity by Applying the Wrong Obviousness Standard and Ignoring Evidence of a Clear Motivation to Combine

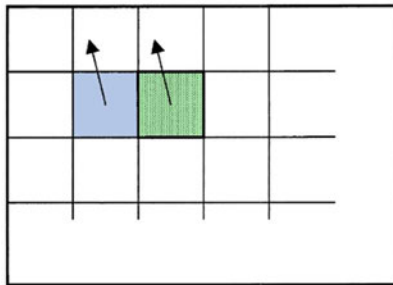
Separate and apart from misconstruing and misapplying "surrounding," the ID committed an independent error on invalidity that requires review and reversal. Specifically, the ID applied the wrong standard when evaluating the combination of MPEG-1 and H.263/JM-1. Although Amazon bore the burden to demonstrate obviousness by clear and convincing evidence, the ID's rejection of the combination because it was "unnecessary" was contrary to law and unsupported by any authority. Indeed, there is an implicit motivation to combine to comply with or update an industry standard. Amazon more than demonstrated that the combined teachings of the references considering the industry standards at the time would have suggested the combination to a POSITA.

a. MPEG-1 Discloses a "Skip Mode" Using a Single Macroblock Predictor

Introduced in 1993, MPEG-1 revolutionized video coding by efficiently reducing data through the use of I, P, and B frames. As the ID acknowledged, MPEG-1 taught a "skip mode" for which no data are stored or coded long before the '808 patent. ID at 55; Tr. (Acton) 1392:17–1393:3; Tr. (Orchard) 1882:18–1883:7; RX-0540, Section 2.4.4.4. It is undisputed that MPEG-1's

[REDACTED]

“skip mode” uses a single-macroblock motion-vector predictor based on the motion vector of the macroblock immediately to the left of the macroblock to be coded. RX-0540, D.6.5.2; Tr. (Acton) 1393:4–16; (Orchard) 1883:8–12. MPEG-1 taught, long before the ’808 patent, that using the predictor from the previous macroblock worked for global motion like panning—“the motion vector of a macroblock tends to be well correlated with the vector of the previous macroblock....[f]or example, in a *pan* [where] all vectors would be roughly the same.”



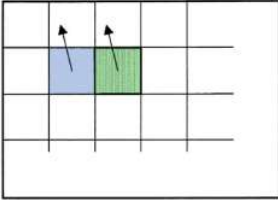
RX-0540; Tr. (Acton) 1396:20–1397:4; RX-0540, D.6.2.3; Tr. (Orchard) 1883:13–1884:15. Indeed, as recognized by the ID and both experts, MPEG-1 disclosed a skip mode that using a single-macroblock predictor could associate either a zero-motion vector or non-zero motion vector with each skip mode macroblock depending on the motion vector of the macroblock immediately to the left of the macroblock to be coded. ID at 55–56; Tr. (Acton) 1360:22–1361:13; Tr. (Orchard) 537:6–8.

MPEG-1: Skip Mode With Motion Using a Predictor

D.6.2.3 Coding of motion vectors

The motion vector of a macroblock tends to be well correlated with the vector of the previous macroblock. For example, in a pan all vectors would be roughly the same. Motion vectors are coded using a DPCM technique to make use of this correlation.

RX-0540 (MPEG-1)



1993

1998

2001

2002

2003

RDX-0012C.75

Source: RX-0540; RDX-0012C.75 (Acton)

b. H.263 and JM-1 Disclose Multiple Macroblock Predictors

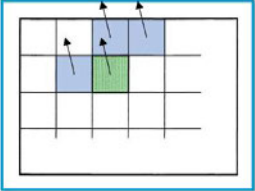
As the ID acknowledges, motion vector predictors evolved from using a single macroblock to using “multiple macroblocks” (or image segments) in JM-1 and H.263. ID at 54–55; Tr. (Acton) 1362:8–1363:17, 1394:7–12. In other words, a person of ordinary skill at the time of the ’808 patent would know that it is better to use a multi-macroblock predictor, rather than a single block. For example, H.263, which was published in 1998 (five years before the ’808 application) and referenced throughout the ’808 patent (*see, e.g.*, JX-0003 at 12:52, 12:59–64), used a multiple macroblock motion vector predictor:

H.263: Predictor Uses Multiple Macroblocks

6.1.1 Differential motion vectors

The macroblock vector is obtained by adding predictors to the vector differences indicated by MVD (see Table 14 and Table D.3). For differential coding with four vectors per macroblock, refer to Annex F. In case of one vector per macroblock, the candidate predictors for the differential coding are taken from three surrounding macroblocks as indicated in Figure 12. The predictors are calculated separately for the horizontal and vertical components.

In the special cases at the borders of the current GOB, slice, or picture, the following decision rules are applied in increasing order:



RX-0616 (H.263)

1993
1998
2001
2002
2003

RDX-0012C.77

Source: RX-0616; RDX-0012C.77 (Acton)

RDX-0012C.0077; RX-0616; *see also* Tr. (Acton) 1362:1–1363:5. Similarly, the JVT's early draft of the H.264 standard, called JM-1, was published in 2001 (two years before the '808 application), also used a multiple macroblock motion vector predictor:

JM-1: Predictor Uses Multiple Macroblocks

5.4.1 Differential motion vectors

Motion vectors for forward, backward, or bi-directionally predicted macroblock are differentially encoded. A prediction has to be added to the motion vector differences to get the motion vectors for the macroblock. The predictions are formed in way similar to that described in section 3.4.5. The only difference is that forward motion vectors are predicted only from forward motion vectors in surrounding macroblocks, and backward motion vectors are predicted only from backward motion vectors in surrounding macroblocks.

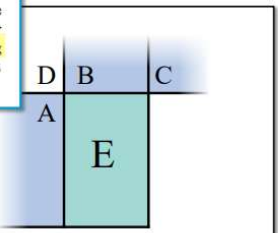


FIGURE 10
Median prediction of motion vectors.

RX-0546 (JM-1)

1993
1998
2001
2002
2003

RDX-0012C.79

Source: RX-0542; RDX-0012C.79 (Acton)

[REDACTED]

RDX-0012C.0079; RX-0546; *see also* Tr. (Acton) 1363:18–1364:3. The ’808 patent relies on JM-1’s multiple macroblock motion vector predictor for its first preferred embodiment. ’808 at 19:36–41.

c. The ID Erred in Requiring a Showing of “Necessity” Instead of Obviousness

Nokia admitted that MPEG-1 itself discloses every limitation of claims 1, 7, 10, and 16 except for the “skip coding mode” limitation. *See* EDIS No. 828760. Thus, the only remaining question for the ALJ was whether by 2002 (the year of the ’808 provisional), a POSITA would have found it obvious to update MPEG-1’s single-macroblock predictor to a multiple-macroblock predictor in precisely the same way H.263 (and JM-1) had done five years earlier. Rather than address this straightforward question, the ID erred by applying the wrong obviousness standard, leading to a legally erroneous conclusion.

Obviousness under § 103 is a legal question involving several underlying factual inquiries. *Eisai Co. Ltd. v. Dr. Reddy's Labs., Ltd.*, 533 F.3d 1353, 1356 (Fed. Cir. 2008). As the Supreme Court has explained, the inquiry is whether “[a] person having ordinary skill in the art *could have* combined [the prior art]...and would have seen the benefits of doing so.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 422 (2007) (emphasis added). Obviousness “does not require that a particular combination must be the preferred, or the most desirable, combination described in the prior art in order to provide motivation for the current invention.” *See Intel Corp. v. Qualcomm Inc.*, 2020-2092, 2020-2093, 2022 WL 880681, *4 (Fed. Cir. 2022) (“[T]he Board erred insofar as it penalized Intel for failing to ‘explain why or how using Lee’s particular circuitry would be necessary....’”).

Here, the ID applied the very type of “necessary” standard the Federal Circuit has expressly rejected. First, the ID complained that “Amazon cites no support for the proposition that was *necessary* to replace MPEG-1’s predictor and there is none.” ID at 57 (emphasis in original). The

[REDACTED]

ID continued, “The testimony Amazon cites elsewhere does not support that it was *necessary* to replace MPEG-1’s predictor.” *Id.* Finally, the ID bemoaned that Amazon’s expert “Dr. Acton did not testify and there is no support in the record for the proposition that it was *necessary* to replace MPEG-1’s predictors.” *Id.*

Given the ID improperly required proof that updating MPEG-1’s predictor was “necessary,” the Commission should review and reverse the ID’s obviousness finding.

d. The ID Erred in Finding No Evidence of a Motivation to Combine MPEG-1 with H.263 and JM-1.

In addition to applying an incorrect “necessary” standard to Amazon’s leading prior art combination, the ID also improperly rejected it for a purported lack of evidence regarding the motivation to combine. ID at 57. But there was ample evidence of a motivation to combine the references and update the MPEG-1 predictor from one macroblock to multiple macroblocks.

At the hearing, Dr. Acton testified how, following MPEG1’s use of a single macroblock, methods for motion vector prediction evolved to using predictive information gleaned from “multiple macroblocks” (or image segments) surrounding the macroblock in question. Tr. (Acton) 1362:8–1363:17, 1394:7–12. Specifically, Dr. Acton explained how the predictors in JM-1 and H.263 examine multiple macroblocks for their motion vector prediction. Tr. (Acton) 1393:20–1395:11. To illustrate the benefit of a multi-block median predictor, Dr. Acton offered an example involving a football in motion: if only the macroblocks immediately above and left are analyzed, and one has a zero motion vector, the macroblock in question would also be assigned a zero motion vector, “fail[ing]” to capture the football’s downward trajectory; in contrast, analyzing four or six macroblocks yields medians of 2.5,2.5 and 5,5, respectively, allowing active motion to be correctly declared. Tr. (Acton) 1380:10–1381:14; RDX-0012C.101–03 (Acton). Dr. Orchard never disputed the benefits of a multi-block median predictor. *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398,

[REDACTED]

401–03 (2007) (finding patent claiming design for an adjustable pedal with an electronic sensor an obvious improvement to a prior-art adjustable pedal (disclosed in the Asano prior reference) with a sensor (disclosed in other prior art references), because a skilled artisan “would have seen a benefit to upgrading Asano with a sensor”). The ID ignored this clear motivation to update MPEG-1 with the multi-block median predictors of H.263 or JM-1. According to Dr. Acton, because of this evolution, it would have required “little skill in the art” to recognize that updating MPEG-1’s skip mode with H.263 or JM-1’s multiple macroblock predictors would be a simple combination of prior art elements according to known methods to yield predictable results. Tr. (Acton) 1362:8-1363:17; 1402:19-1403:11, 1393:20-1394:16. And updating MPEG-1’s skip mode to be compliant with newer standards like H.263 or JM-1 is its own motivation to combine. *See, e.g., Erico Int’l Corp. v. Vutec Corp.*, 516 F.3d 1350, 1356 (Fed. Cir. 2008) (finding the prior art coupled with the industry standard supports an implicit motivation to combine) (citing *KSR Int’l Co.*, 550 U.S. at 421); *Ex Parte Yannick Lefevre, Amitkumar Mahadevan, & Werner Van Hoof*, No. 2024-001371, 2024 WL 4285714, at *3–4 (P.T.A.B. Sept. 24, 2024) (finding motivation to combine prior art references with standard because “[s]tandards are, well, standard.”). Dr. Acton further testified on the motivation to update MPEG-1’s predictor to the new standards. Tr. (Acton) at 1403:7–10 (“And now the standards for macroblock motion vector prediction are multiple macroblocks, like JM1 and H.263.... [so] I will do it that way.”)

Similarly, Nokia’s expert Dr. Orchard conceded that both H.263 and JM-1’s predictors use three macroblocks, which would be “enough segments to qualify as segments surrounding the macroblock in question”—meeting the “image segments surrounding” limitation in the ALJ’s claim construction. Tr. (Orchard) 1889:4–20; *see also id.* at 1889:22–1890:6. He also admitted that by 2002, the year of the ’808 provisional, a POSITA would have known about median motion

[REDACTED]

vector predictors, and “would know how to” convert MPEG-1’s single macroblock motion vector predictor to a multiple macroblock motion vector predictor, similar to those in H.263 and JM-1. Tr. (Orchard) 1890:8–22.

The ID erred by ignoring this motivation to combine and instead focusing on Dr. Orchard’s irrelevant opinion that a POSITA would not “consider it plausible to make such a substitution” because of the specific type of frame used:

Instead, the evidence supports that one of skill considering H.263 or JM-1, would not “even consider it plausible to make such a substitution.” Orchard Tr. at 1856:15–1858:19. MPEG-1’s B-picture skip mode is used with B-pictures. *See, e.g.*, MPEG-1 at .54–55. Dr. Orchard pointed out that H.263 does not even “have B-pictures. It has PB frames that are coded together. And the motion vector used on skip macroblocks in the B-pictures of the PB frames uses the motion vector that’s sent with the PB together. And so it’s something totally different than this.” Orchard Tr. at 1857:5–1858:19. In other words, those who drafted H.263, knowing about MPEG-1, decided to do something entirely different than what Dr. Acton suggests. Similarly, Dr. Orchard explained JM-1 “has B-pictures with B_skips, but the B_skips don’t use neighboring motion – or macroblocks to supply a motion vector.” *Id.* Those who worked on JM-1 thus also took a different

ID at 58. But the claims do not recite a particular frame type. And it is well established that “[t]he test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference.” *MCM Portfolio LLC v. Hewlett-Packard Co.*, 812 F.3d 1284, 1294 (Fed. Cir. 2015). “Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.” *Id.* (citation omitted). As Dr. Acton explained, what is significant is not the specific type of frame used, but rather the predictable results of using H.263 and JM-1’s multiple macroblock predictors to examine multiple macroblocks for motion vector prediction. Tr. (Acton) 1402:19–1403:11, 1393:20–1394:16. For

[REDACTED]

his part, Dr. Orchard similarly agreed that a POSITA “would know how to” convert MPEG-1’s single macroblock predictor to a multiple macroblock predictor. Tr. (Orchard) 1890:8–22.

Ultimately, the record evidence demonstrates that a skilled artisan *could have* updated the predictor of MPEG-1 from a single-macroblock to a multiple-macroblock approach and would have to match modern standards. *KSR Int’l Co.*, 550 U.S. at 422. That is all that was necessary, and therefore Amazon more than met its burden to invalidate the ’808 Asserted Claims. Accordingly, the Commission should review this combination and reverse the ID’s finding of nonobviousness.

C. The ID Erred in Rejecting Amazon’s Non-Technical Defenses

To the extent the Commission upholds any findings or determines that the claims of the Asserted Patents are infringed, the Commission should review the ID’s conclusions on Amazon’s non-technical defenses of implied waiver, breach of the duty of good faith, and breach of RAND. As an initial matter, the ID erred by concluding the “encoder” claims of the ’808 patent are not essential and therefore not subject to Nokia’s RAND obligations. Nokia’s contention that encoding claims are not standard essential is a litigation fiction that contradicts its expert’s testimony and its licensing and standard-declaration practices. And, for all essential patents, Nokia’s failure to timely disclose its allegedly essential patents to the ITU, failure to negotiate in good faith, and non-RAND offers, along with Amazon’s unconditional commitment to take a license on RAND terms, should preclude exclusionary relief here.

1. The ID Clearly Erred by Finding “Encoder” Claims Were Not Essential

The ID determined that the asserted “decoder” claims of the ’808 patent are essential to the H.264 standard and assessed RAND-related defenses for these claims. ID at 102. The ID, however, determined that what it called “encoding” claims (claims 1, 10, 21, 29, and 48 of the ’808 patent)

[REDACTED]

are not essential to H.264, and thus not subject to RAND. *Id.* (finding “the H.264 [standard] does not specify an encoding process”). Nokia’s infringement case for the ’808 “encoding” claims, however, was predicated solely on an H.264 standard compliant bitstream. If this is correct, then the encoding claims are necessarily infringed by compliance with the H.264 standard. As a result, the ID’s conclusion that these claims are unencumbered by RAND directly contradicts the express language of Nokia’s ITU commitment, which applies to any patents whose “use would be required to implement” the H.264 standard. RX-0074.0008; Tr. (Simcoe) 1549:19–1550:9, 1603:13–16 (explaining that the ITU’s RAND commitment applies to Nokia’s patents, including encoding patents required to implement the H.264 standard). While Amazon contends that no claim of the ’808 is infringed—and no claim is standard essential—to the extent the Commission affirms the ID’s infringement findings, the ID’s conclusion that “encoder” claims are not standard essential is erroneous and should be reversed.

The H.264 standard specifies a bitstream and a process for decoding the bitstream. RX-1499.0022 (definition 3.14 (bitstream)), .0023 (definition 3.41 (decoding process) and definition 3.47 (encoding process)). The bitstream must be H.264 compliant to be decodable using the H.264 standard’s decoding process. *E.g.*, RX-1499.0113 (“Decoding process...[t]his clause describes the decoding process, given syntax elements and upper-case variables from clause 7 [describing syntax for ‘allowed bitstreams’]”). That the H.264 standard does not specify a particular encoding process does not answer the question of whether a particular patent claim directed to encoding is essential to the H.264 standard. For example, the district court in *Qualcomm* found, by clear and convincing evidence, an encoding-only patent reasonably to be essential to the H.264 standard. *Qualcomm Inc. v. Broadcom Corp.*, No. CIV. 05CV1958-B(BLM), 2007 WL 1031373, at *16 (S.D. Cal.

[REDACTED]

Mar. 21, 2007), *aff'd in relevant part, Qualcomm Inc. v. Broadcom Corp.*, 548 F.3d 1004, 1018 (Fed. Cir. 2008).

If the Commission accepts Nokia's infringement analysis, it must also accept that the asserted "encoding" claims are standard essential. This is because Nokia's infringement theory was based solely on H.264 compliant bitstreams having H.264 "P_skip" macroblocks. CPHB at 46, 79, 80, 82–125 (using bitstream analysis to argue for infringement and pointing to H.264 specified semantics "mb_skip_run" and "mb_skip_flag" to show satisfaction of claim elements 1[B], 10[B], 1[D], 10[D], as well as claims 29 and 48); CIB at 9 ("Every video the experts looked at in this case (including videos encoded and decoded by the Accused and Domestic Industry Products) included 'P_skip macroblocks encoded into H.264-compliant bitstreams.'"); CIB at 19–20, 35–41 (arguing that limitations of independent and dependent encoding claims were infringed because the accused products "encode video into H.264 compliant formats"); Tr. (Orchard) at 458–60, 465 (contending Nokia's "skip mode" proposal was incorporated into the H.264 standard); Tr. (Orchard) at 472 ("For encoding, I used the fact that the encoding devices produced H.264-compliant bitstreams, along with video encoding testing analysis ..."); Tr. (Orchard) at 511 ("So the first thing we did is look at that video...to see that it was a video sequence that was accurately, or whatever, properly encoded in the H.264 standard."); Tr. (Orchard) at 512 (testimony regarding elements 1[A] and 10[A] being satisfied by the presence of an H.264 compliant bitstream having a macroblock with an "mb_skip_flag" set to 1 "which is assigning, to this macroblock, the skip coding mode"); Tr. (Orchard) at 520–522 (testimony regarding dependent claims 21, 29 and 48); Tr. (Orchard) at 531–32 (testifying that "accused and domestic industry products are practicing the claims" because "we examined [bitstreams] and showed that they, in fact, were H.264-compliant, and they included P-skip macroblocks"); Tr. (Orchard) at 585 (testifying his

[REDACTED]

infringement analysis “with respect to encoding claims” relied on “knowledge that [the accused products] were producing H.264-compliant bitstreams”); Tr. (Simcoe) 1549:19–1550:9. If infringement can be found by virtue of the presence of an H.264 compliant bitstream alone—regardless of how encoding occurs—the asserted encoding claims are claims “whose use [is] required to implement” H.264 and therefore essential to H.264 and subject to RAND.

Nokia’s infringement case is also consistent with the treatment of encoding claims at the time H.264 was under development. At that time, it was envisioned that patents covering “encoding” would be required to implement the H.264 standard. The JVT IPR policy itself envisioned that “encoder” patents would be required to implement the H.264 standard. RX-1692.0009 (“The JVT codec should have a simple royalty free ‘baseline’ profile (both on the encoder and decoder)...”). The ’808 patent also assumed that an encoder is “implemented according to JM1 of the JVT codec,” *i.e.*, H.264. JX-0003.0026 at 23:13–14. And most importantly, Nokia’s patent declarations for the Asserted Patents did not distinguish between encoding and decoding claims, RX-0364, RX-0365 *even though* the ITU Guidelines stated that “[m]ultiple [declaration] forms are appropriate if the patent holder...classifies different claim of a complex patent in different options of the licensing declaration.” RX-0074.0004.

Consistent with its declarations, Nokia’s [REDACTED] licensing practice [REDACTED]

[REDACTED]. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

[REDACTED]. Nokia’s contention that encoding claims are not standard essential is a litigation fiction created to avoid its RAND obligation.

2. The ID's Findings on Implied Waiver Directly Contradict Governing Precedent and Were Based on Clearly Erroneous Conclusions of Fact

a. The ID's Finding of No Duty of Disclosure Directly Contradicts the Federal Circuit's Holding in *Qualcomm*

The ID's finding on implied waiver directly contradicts the Federal Circuit holding in *Qualcomm. Qualcomm Inc. v. Broadcom Corp.*, 548 F.3d 1004, 1018–19 (Fed. Cir. 2008). In an SSO-context, implied waiver occurs when “(1) the patentee had a duty of disclosure to the standard setting organization, and (2) the patentee breached that duty.” *Barnes & Noble, Inc. v. LSI Corp.*, 849 F. Supp. 2d 925, 942 (N.D. Cal. 2012) (citation omitted); *Core Wireless Licensing S.a.r.l. v. Apple, Inc.*, 899 F.3d 1356, 1365 (Fed. Cir. 2018). Nevertheless, the ID absolved Nokia of implied waiver here by concluding that under the ITU's disclosure policies, Nokia did not have “an obligation to disclose specific patent information,” that Patent Declarations can satisfy disclosure obligations, and that there is no “timing requirement for submission of the Patent Declarations.” ID at 110–11. The ID appeared to believe that Nokia's submission of “Patent Declarations,” even after the H.264 standard's adoption, precluded a breach of the ITU's patent disclosure requirements and therefore that implied waiver had not occurred. The ID also stated that the only time a standard-setting participant was required to disclose “actual patents” was “the third option” on the Patent Declaration form—“if a participant is not willing to license essential claims.” *Id.* at 111. The ID's conclusions are erroneous, both legally and factually.

The ID's interpretations of the ITU's disclosure policies directly contradict binding precedent. The Federal Circuit held in *Qualcomm* that the ITU Patent Policy “unambiguously” required JVT participants “to disclose patents [that reasonably might be necessary to practice the H.264 standard] prior to final approval of [that] standard.” *Qualcomm Inc. v. Broadcom Corp.*, 548 F.3d 1004, 1018–19 (Fed. Cir. 2008). The Federal Circuit held *Qualcomm* breached that

[REDACTED]

disclosure duty because Qualcomm failed to disclose patents before final approval of H.264, even though Qualcomm had submitted an IPR licensing declaration, committing to license on RAND terms. *Id.* at 1018; *see also Certain UMTS and LTE Cellular Commc'n Modules and Prods. Containing the Same*, Inv. No. 337-TA-1240, Initial Deter. at 281 (Apr. 28, 2022)(“*UMTS Modules*”) (“[D]eliberate non-disclosure, like Nokia’s in *Conversant*, demonstrates inequitable benefit”)¹⁰ (affirmed on other grounds with statement that “Commissioner Kearns would affirm the ID’s finding that the ’271 patent is unenforceable under the doctrine of implied waiver”). The ID forgave this exact same behavior from Nokia, setting itself in direct conflict with binding Federal Circuit precedent.

The ID made this error because it conflated and confused the ITU’s patent disclosure obligations with the ITU’s obligation to submit licensing declarations. These are separate requirements serving different objectives. Tr. (Simcoe) 1548:5–25, 1551:3–15, 1567:12–1570:17, 1573:7–20. The ITU’s disclosure obligations find their source in the ITU and JVT’s IPR policies, not the Licensing Declaration Form. RX-0074.0003 (“Such information should be provided on a ‘best effort’ basis but there is no requirement for patent searches.”); RX-0074.0007 (“[A]ny ITU-T member organization putting forward a standardization proposal should, from the outset, draw the attention of the TSB to any known patent or to any known pending application....”); RX-0074.0007 (“[I]t is desirable that the fullest available information should be disclosed.”); RX-1692.0004 (“JVT’s rules for the implementation of the IPR policy are contained in Annex 3”);

¹⁰ Prior Nokia breaches of disclosure obligations have rendered its SEPs unenforceable. *Core Wireless Licensing S.A.R.L. v. Apple, Inc.*, 899 F.3d 1356, 1365–69 (Fed. Cir. 2018) (affirming Nokia breached duty of disclosure); *Conversant Wireless Licensing S.A.R.L. v. Apple, Inc.*, No. 15-cv-05008-NC, 2019 WL 4038419, at *6 (N.D. Cal. May 10, 2019) (on remand rendering patents unenforceable due to “Nokia’s failure to disclose its IPR [which] allowed Nokia and Conversant to inequitably benefit from that misconduct”).

[REDACTED]

RX-1692.0009 (Members should “disclose as soon as possible IPR information (of their own or of anyone else’s) associated with any standardization proposal.... Such information should be provided on a best effort basis.”); RX-1692.0009 (Submission of “final IPR declaration to the ITU TSB...must be done in the approval process for the ITU-T Recommendation....”). As the Federal Circuit has recognized, the ITU’s disclosure obligations applicable to H.264 required standard-setting participants to disclose known patent rights on a best effort basis prior to final approval of the standard. *Qualcomm*, 548 F.3d at 1012–15 (Fed. Cir. 2008) (ITU’s and JVT’s “IPR disclosure obligations” “at least incorporate[] a best effort standard” and require disclosure “prior to final approval of the standard”).

Amazon’s expert Dr. Simcoe explained how disclosure obligations allow the standards-body to be informed about patenting activity on a standard under development and to exert oversight into its development. Tr. (Simcoe) 1548:5–17; RX-0074.0005 (“It is the view of the ITU that early disclosure of asserted patent rights is desirable, it being acknowledged that early disclosure will contribute to the efficiency of the process by which Recommendations are established and will tend to minimize any possible disagreements with respect to such rights or their applicability to proposed Recommendations. Therefore, each Study Group...shall request the disclosure of known patent rights....”); *Qualcomm*, 548 F.3d at 1013 (“[I]dentification of IPR by JVT participants is critical to the development of an effective industry standard”). The ID’s conclusion that generic licensing declarations can satisfy the ITU’s patent disclosure obligations—including declarations made after a standard’s approval—is not only in direct conflict with *Qualcomm*, but also nullifies the ITU’s express provisions requiring patent disclosure, thereby completely undermining the purposes served by those provisions.

[REDACTED]

b. Having Mischaracterized Nokia's Duty, the ID Also Clearly Erred in Assessing Nokia's Lack of Compliance

By misapplying *Qualcomm* and mischaracterizing Nokia's duty of disclosure, the ID further erred in failing to address whether Nokia used best efforts despite acknowledging that *Qualcomm* focused on the ITU's "best efforts" disclosure requirement. ID at 110. Notably, the ID did not take issue with Dr. Simcoe's uncontroverted testimony that Nokia's inventors [REDACTED]; that the inventors authored those technical contributions (including one submitted on the very same day as a priority-patent-filing in the case of the '134 patent) and knew those contributions were incorporated into the standards; and yet they and Nokia failed to disclose any of the relevant patent filings until four years *after* H.264's approval. RIB 77–81; RDX-0014C.0032–.0033; Tr. (Simcoe) 1570:18–1573:20; CX-0594.0003 ("Please submit corrected or updated forms if your knowledge or situation changes."); CX-2543.0010 (same); *UMTS Modules*, Initial Deter. at 248 (Apr. 1, 2022) ("Submitting a technical proposal to [the SSO] and filing a patent application on the same day, yet waiting for years after that to inform [the SSO], is evidence of 'intentional nondisclosure.'").

Rather than assess whether Nokia had used *best efforts* to disclose *known* patent rights, the ID erroneously concluded that Nokia's mere submission of JVT technical contribution forms absolved its failure to abide by the ITU and JVT's disclosure obligations. This conclusion does not follow because, among other things, those forms contained no disclosure of patent information other than, at most, that Nokia had "plan[s]" to obtain patents. ID at 110 (citing testimony from Nokia's expert, Mr. Levin, CX-0594, and CX-2543). If anything, the forms demonstrate Nokia's failure to comport with the best effort standard. It is undisputed that Nokia failed to provide *known* patent information on those forms and delayed doing so until *four years after the final approval of the H.264 standard*. The ID also ignored Nokia's admission that it [REDACTED]

[REDACTED], further demonstrating a lack of “best efforts.” RIB 80 (citations omitted). The ID’s reliance on Mr. Levin’s testimony was also misplaced. He is a former ITU attorney who was not involved in the drafting of the ITU or JVT IPR policies and who testified in direct conflict with *Qualcomm*. Tr. (Levin) 1825:7–1826:16, 1827:8–22. Moreover, he did not dispute the relevant timeline and offered no opinions regarding whether Nokia complied with the “best efforts” requirement. *Id.* at 1832:25–1833:5.

In light of all these legal and factual errors, the ID’s rejection of Amazon’s implied waiver defense must be reviewed and reversed.¹¹

3. The ID Erred in Concluding Amazon Had Not Shown Nokia Breached Its Duty to Negotiate in Good Faith

The ID’s cursory analysis of the duty of good faith—which is largely identical to Staff’s Initial Post Hearing Brief, *compare* ID at 106–09, *with* SIB at 67–70—failed to engage with the law and evidence resulting in erroneous conclusions. First, without any supporting caselaw or evidence, the ID fashions a completely new test that effectively requires only a bare “willingness” to license. ID at 107 (SEP owner breaches “if its behavior revealed: (1) its unwillingness to license its patents at all; or (2) an unwillingness to license its patent[s] on RAND terms and conditions”). But the duty of good faith requires more. It requires conduct “comport[ing] with the implied duty of good faith and fair dealing” and “honesty in fact.” *Microsoft Corp. v. Motorola, Inc.*, 864 F. Supp. 2d 1023, 1038–39 (W.D. Wash. 2012). The ID’s conclusions were thus premised on legal error from the outset.

¹¹ Amazon not only established that Nokia breached the ITU’s and JVT’s disclosure obligations, but also that unenforceability is an appropriate remedy for Nokia’s breach, including because Nokia reversed licensing positions it vocally advocated for when H.264 was under development, such as a “royalty free” baseline profile and [REDACTED]. RIB 81–82. The ID did not find unenforceability would be inappropriate if a breach of the ITU’s and JVT’s disclosure obligations were found.

[REDACTED]

The ID continued to err when it downplayed Nokia's negotiating conduct. That conduct, however, demonstrated Nokia's intent to force a supra-RAND rate. Notably, the ID ignored Amazon's unconditional commitment to take a RAND license as set by the U.K. High Court, Amazon's request to expedite the U.K. rate-setting proceedings, and Nokia's efforts to thwart those proceedings. RX-1698C; Tr. (Hayden) 1031:14–19, (Braun) 196:6–197:5. Because Nokia is entitled only to a RAND license, no reason exists to oppose the U.K. proceedings unless one's purpose is to leverage injunctive threats to force a higher royalty rate. Indeed, the U.K. Court found that Nokia acted "*prima facie* in conflict with its RAND obligations" and agreed to expedite rate-setting proceedings, given "the continuing and increasing risk of harm by reason of Nokia's campaign of enforcement." RX-5320C.0025, ¶¶ 139, 141, 151–52.

The ID also ignored or found irrelevant myriad of other conduct by Nokia contrary to good faith and honesty in fact, including:

- Nokia made [REDACTED]. Tr. (Hayden) 1013:7–16, 1016:5–7, (Braun) 134:8–24, 164:4–13; RX-0058C.

- Nokia refused to [REDACTED].¹²

- Nokia refused to [REDACTED]

[REDACTED]

[REDACTED]. Tr. (Hayden) 1015:16–1016:4.

¹² Nokia provides potential licensees with [REDACTED]. These [REDACTED] Tr. (Hayden) 1016:9–1018:13, 1032:1–8; CX-8710C.101–102 (Hayden); RX-0163C, CX-3247C; CX-3344C; RX-0105C.0026–.0028, .0036; RX-1686C.0001; RX-1986C.0118–.0127, .0235–.0237 (Braun). The ID disregarded Nokia's refusal [REDACTED], but the problem could be solved in any number of ways, such as by exchange under Attorneys' Eyes Only Conditions. Nokia's obfuscation in this regard continues, as it has withheld its agreement with now-terminated Respondent HP, despite having been ordered to produce all H.264/H.265 licenses. EDIS Doc. 837793 at 1–2.

- [REDACTED]
- Nokia [REDACTED]

[REDACTED]. Tr. (Hayden) 1019:18–1020:1, 1029:22–1030:7, 1078:9–16, (Braun) 184:21–186:7 ([REDACTED]); RX-0411C.0001 [REDACTED].0002; RX-0405.0006 (Nokia most litigious SEP holder). The ID found these threats “irrelevant” because threats to sue “are common statements made during [SEP] negotiations,” yet the ID cited no evidence or support for this proposition except “that Amazon is [now] facing litigation.” ID at 109. It is widely acknowledged, however, that injunction threats result in hold-up and anticompetitive conduct, and thus are inconsistent with F/RAND behavior. *See, e.g., Doris Johnson Hines et al., Un-FRAND-ly Behavior*, <https://www.finnegan.com/en/insights/articles/un-frand-ly-behavior.html> (Jan. 17, 2014) (“[T]he threat of injunction can lead to royalty demands by an SEP owner in excess of the value of the patented technology itself”); Tr. (Simcoe) 1562:2–1564:11.

- Nokia sued Amazon all over the world, [REDACTED]

[REDACTED]. Tr. (Hayden) 1031:1–16. Nokia previously told Amazon [REDACTED]. RIB 66–67 (citations omitted); Tr. (Hayden) 1031:1–4. Yet Nokia sued [REDACTED] later. The ID ignored Nokia’s action because it found that “[i]f anything, [the offer] supports that Nokia was trying to get the deal done.” ID at 108. Nokia’s post-filing conduct demonstrates this finding is clearly erroneous. If Nokia wanted “to get [a RAND] deal done,” it would not be making every effort to “thwart” a RAND-rate determination to which Amazon has unconditionally committed to be bound, while continuing to pursue injunctions all over the world.

[REDACTED]

○ The ID discounted the prior license between Amazon and Alcatel-Lucent, finding “ [REDACTED],” ID at 108, even though Nokia acquired ALU in 2015 and therefore controlled it as its 100% owner. RIB at 61 n. 22 (citing RX-0064). The ID also found that “[t]here is no evidence that the asserted patents ever fell under [REDACTED],” ID at 108, but [REDACTED]. RIB at 61 (citing RX-0118C.0003, .0022, .0023). [REDACTED]

[REDACTED]

[REDACTED].

○ Overall, Nokia’s behavior was highly inconsistent with ordinary SEP-license negotiations. [REDACTED]

[REDACTED] Tr. (Hayden) 986:10–12, 998:1–14, 1015:7–15.

Beyond the foregoing, the ID’s conclusion that Amazon had not shown a breach of the duty of good faith was premised three factual findings, each erroneous. First, the ID found that Amazon and Nokia “engaged in years of negotiations before Nokia filed the complaint in this investigation.” ID at 107. This ignores, among other things, that Nokia’s license-offer [REDACTED] before Nokia sued.¹³ Second, the ID found that “ [REDACTED].” ID at 107. But [REDACTED]. RIB at 63–66 (quoting [REDACTED]). Finally, the ID concluded Amazon’s offers “ [REDACTED]

¹³ The ID’s finding also ignored [REDACTED]. Tr. (Hayden) 1010:3–9, (Braun) 191:6–192:16; RX-2080C.0001; RX-2085C.0016.

[REDACTED]

[REDACTED].” ID at 107. But that is irrelevant to whether Nokia’s breached its duty to negotiate with Amazon in good faith. It also overlooks that (a) [REDACTED]

[REDACTED]

[REDACTED] Tr. (Hayden) 1030:10–23; (b) Amazon’s [REDACTED]

[REDACTED], RIB at 56-57 (citing RDX-0015C.0020); and (c) as part of its 2024 offer, Amazon unconditionally committed to take a RAND license on terms as set by the U.K. court [REDACTED]

[REDACTED] RX-1698C.

In addition to being erroneous, the ID’s findings should be reviewed and reversed for their impact on Commission policy. “[M]itigat[ion] against [standard-essential] patent hold-up” is an important trade policy, as the USTR articulated in the 794 Investigation. Consequently, the USTR has required the Commission to thoroughly examine public interest issues regarding FRAND commitments, including the “presence or absence of patent hold-up.” RX-1684.0002–.0003 (“The Policy Statement expresses substantial concerns, which I strongly share, about the potential harms that can result from...‘patent hold-up’”); *see also* RX-1532.0003–.0004 (“Standards, particularly voluntary consensus standards set by standards developing organizations (SDO), play a vital role in the economy....Opportunistic conduct by SEP holders...can deter investment in and delay introduction of standardized products, raise prices, and ultimately harm consumers and small businesses.”). By embracing Nokia’s conduct, however, the ID effectively encourages hold-up. ID at 106–109. And it simultaneously ignored Dr. Simcoe’s lengthy, un rebutted testimony on the existence of hold-up and the harms resulting from it. Tr. (Simcoe) 1538:22–1548:25, 1550:14–1551:2, 1562:2–1564:11. The ID is irreconcilable with the USTR Disapproval and should be reversed.

[REDACTED]

[REDACTED]

4. The ID Erred in Concluding That Amazon Had Not Shown Nokia Breached RAND

a. The ID Clearly Erred by Ignoring Material Evidence Demonstrating Nokia’s “Program Rates” Are Unreasonable

Although the ID correctly noted that Nokia has a “contractual obligation to license its essential...claims on RAND terms,” ID at 102, the ID made multiple errors regarding its assessment of whether Nokia’s offers are unreasonable.

The ID concluded, based on the mere existence of Nokia’s H.264 licenses, “There was no credible evidence showing that Nokia’s “program” rates are not RAND.” ID at 103–05. The ID premised its conclusion on findings that [REDACTED]

[REDACTED]s” and that “[REDACTED]

[REDACTED] *Id.* at 103–04. As described below, the ID’s conclusions overlook the great weight of evidence showing Nokia’s “program” rates are excessive, that its license agreements were entered long after the industry became “locked-in” to H.264, and that those agreements were [REDACTED] the appearance of “market acceptance.”

Nokia’s H.264 licenses—entered after H.264 lock-in—were [REDACTED]

[REDACTED],¹⁴ [REDACTED]

[REDACTED] Tr. (Lopez) 1680:25–1683:5, (Braun) 184:21–186:7; RX-1986C.0172, .0230 (Braun). As part of its efforts [REDACTED], Nokia conjured a target rate of €0.60/unit [REDACTED], years after the industry became “locked-in” to that standard, and

¹⁴ Nokia refuses to provide [REDACTED]
[REDACTED]. Tr. (Brunelle) 283:6–284:23, (Hayden) 1017:14–1018:13.

[REDACTED]

[REDACTED] after Nokia pivoted to “maximizing” SEP royalties. RX-1981C (Gray Dep.) 53:15-55:16; RX-1039.0007 (“Patent Licensing: Maximize value of standard essential...patents.”; Tr. (Braun) 168:1-8 ([REDACTED])).¹⁵ This rate is more than three times MPEG LA’s H.264 royalty structure—having per-unit rates no higher than \$0.20—that Nokia helped establish.¹⁶ It is also larger than the [REDACTED] Nokia advocated for when H.264 was adopted. RIB 46, 56, 90 (citing RX-1278C.0056; RX-1034.0086).

Nokia then used [REDACTED]

[REDACTED] e. For example, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Tr. (Lopez) 1676:21–1680:1; RX-1986C.0230 (Braun); RIB 48–53 (citations omitted). Nokia’s longtime Head of North American licensing (Robert Braun) admitted [REDACTED]. Tr. (Braun) 172:13–174:2.

The ID never engages with this evidence, tossing it aside with a cursory assertion: “Nokia starting with smaller players, however, supports companies with less exposure were willing to

¹⁵ [REDACTED]. See RX-1981C (Gray Dep.) 47:5–49:14, 49:9–52:5, 52:15–60:17; RX-1982C (Martikainen Dep.) 66:15–67:13.

¹⁶ RX-0383.0002 (MPEG LA, LLC, Press Release, Nov. 2003) (“Owners of patents or patent applications determined by MPEG LA’s patent experts to be essential to the AVC Standard and who have cooperated in the above terms include...Nokia.”).

The [REDACTED] of Nokia's H.264 licensees have [REDACTED]

Nokia's later agreements with larger companies do not support its "program" rates either.

[REDACTED]

168:22; Tr. (Lopez) 1733:10–13,¹⁷ and its expert could only unpack [REDACTED]
[REDACTED]. Tr. (Akemann) 843:12–844:10 (“[REDACTED]
[REDACTED]
[REDACTED]”). These [REDACTED] do not support Nokia’s “program” rates. [REDACTED]
[REDACTED]
[REDACTED]. Tr. (Lopez) 1678:12–1679:3, 1683:8–1686:15; CX-3058C ([REDACTED]); CX-
3077C ([REDACTED]).

The ID also dismissed evidence of “holdup” in view of the “large number of sophisticated companies that have taken a license at Nokia’s program rates.” ID at 104. This was error. As shown above, Nokia’s running royalty agreements involved [REDACTED], while [REDACTED]
[REDACTED]. Additionally, [REDACTED]
[REDACTED]
[REDACTED]. Tr. (Braun) 174:5–175:9 (“[REDACTED]
[REDACTED]
[REDACTED]”), 177:3–11, 178:16–22, (Brunelle) 267:14–17; RX-0218C. This strongly suggests that [REDACTED]
[REDACTED].
And Nokia’s use of [REDACTED].
[REDACTED]
[REDACTED]. RIB 48–53. Even now, Nokia maintains
its worldwide pursuit of injunctions against Amazon, rather than agree to expedited rate-setting

¹⁷ [REDACTED]
[REDACTED] Tr. (Lopez) 1717:17–1718:20; [REDACTED]
[REDACTED].

[REDACTED]

proceedings. RX-5320C ¶¶ 139, 141, 151–52. Nokia’s licenses do not justify dismissing the clear evidence of “holdup” established on this record.

The ID also concluded that evidence of “holdup” is “belied by” the fact that Nokia’s €0.60/unit H.264 rate stayed the same from [REDACTED] to present, even though H.264’s adoption has fluctuated somewhat over time. ID at 104 (citing RDX-0105C.0022). This conclusion is erroneous and logically flawed. The industry was “locked in” to the H.264 standard by 2010. Tr. (Lopez) 1629:15–1630:19; *Microsoft Corp. v. Motorola, Inc.*, No. C10–1823JLR, 2013 WL 2111217, at *82 (W.D. Wash. Apr. 25 2013). That the rate of adoption later fluctuated *above* 2010 levels does nothing to negate that lock in and attendant hold-up power.

The ID further erred by failing to assess whether Nokia’s “program” rates comport with the apportionment principles in *Ericsson*, and the economic consensus that SEPs royalties should be predicated on the *ex ante* value of the patented technology. *Ericsson, Inc. v. D-Link Systems, Inc.*, 773 F.3d 1201, 1232 (Fed. Cir. 2014) (“When dealing with SEPs there are two special apportionment issues that arise....”); Tr. (Simcoe) 1553:12–1556:22. The ID suggested “negotiations” determine what is RAND based on a quote from the 2018 Guidelines on the Implementation of the ITU’s Patent Policy: “Negotiations are left to the parties concerned and performed outside of the ITU-T, ITU-R, ISO, or IEC.” ID at 105. But this quote merely means that the ITU will play no role in license negotiations—to avoid getting embroiled in disputes with its members and to avoid antitrust issues. RX-1618.0016 (concluding bilateral *ex ante* negotiations “outside the auspices of the SSO are unlikely (without more) to require any special antitrust scrutiny”). It does not mean adjudicatory bodies are unable to determine rates, and it certainly does not permit failing to comply with *D-Link*’s mandate that RAND rates must be based on the *ex ante* value of the patented technology rather than the value of the standard. Moreover, Nokia’s expert

[REDACTED]

never attempted to ensure that a RAND royalty for Nokia’s portfolio did not improperly include value from the standard’s adoption of the patented technology. Tr. (Akemann) 828:2–829:5, 831:18–832:17, 835:23–836:20. Amazon’s expert did, and his analysis showed Nokia’s “program” rates far exceed the apportioned, *ex ante* value of Nokia’s patented technology. *E.g.*, Tr. (Lopez) 1628:20–1630:19, 1642:23–1643:18, 1670:24–1686:16.

Additionally, the ID erred in rejecting evidence of patent pool rates and licenses. The ID presuming that the relevant pools only have “weaker” patents based on nothing but a citation to a case dealing with a different standard (*In re Innovatio*). ID at 104-05. MPEG LA’s H.264 pool contains around 90% of all H.264 patents, from a broad and diverse set of licensors, and covers all aspects of the standard. RDX-0015C.0009; Tr. (Lopez) 1635:3–16, 1638:1–18, 1641:3–13. On this basis alone, the ID’s finding makes no sense—it suggests that 90% of the standard’s patents are weak, including patents from one entity (Fraunhofer) that has been credited as making fundamental contributions to the standard. *Microsoft*, 2013 WL 2111217, at *27. Even Nokia’s own expert, Dr. Orchard, testified that the patents in MPEG LA’s H.264 pool are “broad, covering all fundamental aspects [of the standard], and rich.” Tr. (Orchard) 1877:4–1878:4. In contrast, Nokia’s patents—less than 9% of H.264 patents—were shown to be of marginal technological value and described as “bug fixes” or “minor.” Tr. (Lopez) 1641:14–24, 1643:14–18, 1699:1–14, (Akemann) 851:3–855:25, (Acton) 1373:8-1374:5, (Orchard) 1873:2–15 (JVT-0027, related to ’808 patent, was characterized by JVT as “bug-fix/cleanup”). Thus, the ID erred in finding that there was “no evidence” that “the patents that are part of the patent pools are valuable, such that their value equates to the value of Nokia’s patents.” ID at 104.

The ID also erred in relying on Nokia’s conclusory testimony that “patent pools [] set sub-RAND rates.” ID at 104. The ID’s conclusion directly contradicted *Microsoft v. Motorola*, which

[REDACTED]

held that the MPEG LA H.264 pool “*is* a strong indicator of a RAND royalty rate for” an H.264 portfolio and contains “immense and significant technology.” 2013 WL 2111217, at *64, *83 (emphasis added). MPEG LA set its H.264 rates—with Nokia’s cooperation—in view of market dynamics existing at time H.264 was adopted, including alternative codecs such as Windows Media Player 9, long before lock-in to the standard. Tr. (Lopez) 1628:20–1632:19. The MPEG LA pool has gone on to become the world’s most successful pool, able to attract a large and diverse set of licensors, including many known research institutes and patent monetizers (Columbia University, Fraunhofer, ETRI, IP Bridge, Dolby, Ericsson, etc.), and ultimately signing over 1600 licenses. Tr. (Lopez) 1635:3–16, 1638:1–13; RX-1334; RX-1030. The ID’s finding is further undermined by Nokia’s recent, public declaration that “announcements on royalties by...patent pools” provide “guidance on whether a license offer is FRAND.” RX-1688.0010.

In sum, the MPEG LA H.264 pool has over 1600 licenses covering around 90% of all H.264 patents, while Nokia has [REDACTED] licenses covering less than 9% of H.264 patents. Nokia’s “program rates” are many multiples of what MPEG LA charges for the vast majority of H.264 patents, and their purported acceptance by a [REDACTED] licensees is dubious given Nokia’s use of [REDACTED] to obtain those licenses. Nokia’s offers to Amazon are *upwards of* [REDACTED] greater than the range implied by the pools, even though MPEG LA licenses 10 times more patents. RDX.0015C.20. To justify this disparity, Nokia’s patents would have to be vastly more valuable than MPEG LA’s, but the evidence in the record showed that Nokia’s patents cover minor features and are of negligible value, at best. Tr. (Lopez) 1640:20–1643:18, 1699:1–14. MPEG LA’s agreements are a far better indicator of a RAND rate for H.264 patents than Nokia’s [REDACTED] number of strategically generated licenses at its say-so rates.

[REDACTED]

For all these reasons, the Commission should review and reverse the ID on the reasonableness aspect of RAND.

b. The ID Clearly Erred in Not Finding Nokia's Offers Were Discriminatory

The non-discrimination requirement forbids Nokia from providing similarly-situated companies with more favorable terms than those offered to Amazon. *See, e.g., TCL Commc'n Tech. Holdings, Ltd. v. Telefonaktiebolaget LM Ericsson*, No. SACV 14-341, 2018 WL 4488286, at *29 (C.D. Cal. Sept. 14, 2018), *rev'd on other grounds* 943 F.3d 1360 (Fed. Cir. 2019). Amazon showed discrimination based on [REDACTED] agreements, which have effective rates of [REDACTED]. Tr. (Lopez) 1683:6–1686:15; RDX-0015C.0034–.0035 (citations omitted). The ID erred in finding no discrimination.

The sole basis for the ID's determination of no discrimination was a bare conclusion that "Amazon does not argue, let alone provide evidence, that it is similarly situated to [REDACTED]." ID at 105. The issue, however, was *undisputed*, with both sides agreeing these companies are similarly situated, and with Amazon explicitly arguing that all three sell [REDACTED]. Indeed, Nokia's expert expressly testified that [REDACTED]. Tr. (Akemann) 864:18–24, (Lopez) 1686:3–9 (non-discrimination "requires Nokia to offer similarly situated companies similar royalty rates. And so at a minimum, the [REDACTED] licenses are [REDACTED], which makes them discriminatory."), (Braun) 118:11–13, 122:21–123:8; RIB 58 ("Nokia makes no effort to explain why [REDACTED] were provided [REDACTED] when, for example, they sell [REDACTED], like Amazon does."); CRB 68–69. Amazon demonstrated that it, [REDACTED] are similarly situated, and the ID clearly erred in rejecting Amazon's showing.

[REDACTED]

The ID did not otherwise disagree with Dr. Lopez’s unpacking calculations of [REDACTED]
[REDACTED]. ID at 104–05; *see also* Tr. (Lopez) 1683:6–1686:15; RDX-
0015C.0034–.0035. Nokia offered no explanation for the [REDACTED]—
[REDACTED]—demonstrating
discrimination. RIB at 58. [REDACTED] also reveal an inherent contradiction in the
ID’s RAND findings, further showing why those findings are clearly erroneous. On the one hand,
the ID points to Nokia’s licenses with “smaller players” [REDACTED] as supporting
Nokia’s “program”-rate offers to Amazon, while on the other, it ignores [REDACTED]
[REDACTED]
[REDACTED]. The ID erred in failing to assess and find
discrimination.

D. The ID Erred in its Public Interest Determinations

The Commission ordered the ALJ to take evidence regarding public interest and to
“provide the Commission with findings of fact and a recommended determination on this issue.”
Notice of Investigation, 88 Fed. Reg. 84832 (Dec. 6, 2023). The ID’s discussion on public interest,
however, did not even address Amazon’s main arguments—set out in over twenty-five pages of
post-hearing briefing—that the public interest is harmed by exclusionary relief against a willing
licensee on SEPs. Harm to the public interest was shown *inter alia* by nearly four hours of
testimony from Amazon’s expert, Dr. Simcoe, who remained fully un rebutted. The ID’s public
interest discussion nowhere even acknowledges that testimony or the most important fact
underscoring Amazon’s arguments: Amazon is a willing licensee that has committed to be bound
by a RAND rate set in expedited proceedings of the U.K. High Court. RX-5320 (setting expedited
action at Amazon’s request); RX-1698C (Amazon undertaking to accept rate unconditionally).

[REDACTED]

The ALJ was charged with making findings and issuing recommendations but erred in wholly ignoring critical evidence and argument and in crediting testimony that is demonstrably erroneous.

The Commission must ultimately make its own determination on remedy and the public interest. 19 C.F.R. § 210.42(h)(2). It should do so with a full review of the record and not adopt the ID's cursory conclusions. Indeed, in disapproving an exclusion order based on "the effect on competitive conditions in the U.S. economy and the effect on U.S. consumers," the USTR has "underscore[d] that in any future cases involving SEPs that are subject to voluntary FRAND commitments, the Commission should be certain to (1) examine thoroughly and carefully on its own initiative the public interest issues presented both at the outset of its proceeding and when determining whether a particular remedy is in the public interest; and (2) seek proactively to have the parties develop a comprehensive factual record related to these issues in the proceedings before the [ALJ] and during the formal remedy phase of the investigation before the Commission." RX-1684 (USTR Disapproval in *Certain Electronic Devices, Including Wireless Commc'n Devices, Portable Music and Data Processing Devices, and Tablet Computers*, Inv. No. 337-TA-794 (Aug. 5, 2013)(*"Electronic Devices"*)). "In addition, the Commission should make explicit findings on these issues to the maximum extent possible." *Id.*

Three public interest factors counsel against a remedy. The ID misapplied legal standards and failed to properly consider record evidence such that its recommendations should not be adopted, and the Commission should make its own determinations on the record evidence.

1. Nokia Threatens Harm to Competitive Conditions in the U.S. Economy

With respect to this first factor, the ID did not acknowledge—let alone address—the most significant concerns, while its factual findings on the concerns it does address are erroneous.

a. Nokia's Requested Relief on RAND-Encumbered SEPs Would Harm Competitive Conditions

The USTR, FTC, FTC commissioners, and even *Nokia itself* have all cautioned against harm to competitive conditions from exclusion orders for SEPs. Analyzing economic research and consensus principles, Amazon's expert Dr. Simcoe demonstrated the economic and competition principles underlying these concerns. Dr. Simcoe, an economist whose expertise involves the economics of innovation, focuses his research on the impacts of standards and standard setting. Tr. (Simcoe) 1536:1–22. His testimony—the only testimony to address competitive conditions—was unrebutted and unchallenged. The ID failed to address or even acknowledge it in addressing the public interest.

The USTR previously vetoed an exclusion order against F/RAND-encumbered SEPs, recognizing “the potential harms that can result from owners...who have made a voluntary commitment to offer to license SEPs on terms that are [RAND] gaining undue leverage and engaging in ‘patent hold-up.’” RX-1684 (USTR Disapproval Letter) at 2. Injunctive relief on RAND-encumbered patents in the circumstances presented here undermines the public interest by reducing investment in standard-compliant products, raising prices, reducing choice, and decreasing investment. *See id.*; *Certain Wireless Commc’n Devices, Portable Music and Data Processing Devices, Computers and Components Thereof*, Inv. No. 337-TA-745, Third Party U.S. FTC’s Statement on Public Interest at 1 (June 6, 2012). FTC members urged the ITC not to exclude standardized products on FRAND-encumbered SEPs due to public interest concerns, particularly where the respondent is willing to accept a neutral adjudication of a RAND rate. *UMTS Modules*, FTC Khan and Slaughter’s Written Submission on Public Interest at 6 (May 16, 2022) (“1240 FTC Commissioner Statement”).

Nokia itself repeatedly argued that allowing RAND-encumbered SEP owners to seek

[REDACTED]

exclusion would “irreparably undermine the enforceability of RAND commitments and allow holders of essential patents to repudiate RAND commitments at will when it suits their purpose to utilize the leverage of an ITC action.” *Certain Gaming and Ent. Consoles, Related Software, and Components Thereof*, Inv. No. 337-TA-752, Nokia Public Interest Statement at 1 (June 8, 2012). Nokia also argued to the Commission, Federal Circuit, and the Supreme Court that SEPs “raise particular risks and threaten critical harm to important U.S. markets” and “FRAND commitments [are] antithetical to a patent holder...attempt[ing] to leverage an exclusion order based on its declared-essential patents.” 868 Nokia PI Statement at 2; RX-1393; RX-1696; RX-1396.0004; RX-1298.0002; RX-1295, *Nokia Corp. v. Qualcomm Inc.*, C.A.-2330, Nokia Opening Pre-Trial Brief (Del. Ch. 2008) (attached as Dkt. 86-1 to *Apple Inc.*, 1:05-cv-00791 (D. Del. Aug. 16, 2020)). Indeed, the ALJ “agree[d] with Amazon that Nokia has made many prior statements calling into question Nokia’s position in this investigation...” ID at 113.

Dr. Simcoe demonstrated that RAND obligations are critical to the creation and proliferation of standards to promote competition and innovation. Tr. (Simcoe) 1539:18–1556:22. Exclusionary relief here would undermine those benefits on which innovators like Amazon rely. *Id.*; Tr. (Hayden) 997:8–25; 1240 FTC Commissioner Statement at 3; 868 Nokia PI Statement at 3. Nokia’s requested relief creates anticompetitive risks and would harm competitive conditions in view of the economic rationale for standardization, the purpose of SSO intellectual property policies, and the economic role of disclosure rules and RAND obligations, all of which enhance competitive conditions and benefit consumers. Tr. (Simcoe) 1535:3–1618:25; RIB 103–12.

b. Amazon is a Willing Licensee, Making an Exclusion Order Against It Improper

The harm to competitive conditions is especially acute against Amazon because it is a willing licensee and has committed to a judicial rate-setting. When rate-setting litigation is

[REDACTED]

pending, “under no circumstances should Section 337 remedies...take effect before...the Court has had the opportunity to render a decision.” 1240 FTC Commissioner Statement at 6. This is because the consensus economic view of what RAND means confirms that the appropriate way to ensure RAND commitments are met is to have a neutral third party determine what the rate would be before exclusionary relief can be used. Tr. (Simcoe) 1566:20–1567:11.

Nokia conceded in its Complaint that it can only obtain relief if Amazon is an unwilling licensee. Compl. ¶¶ 265, 267. This is consistent with Nokia’s repeated position that exclusion orders are not available against willing licensees. RX-1632 (“A RAND Commitment Preludes a Party from Seeking an Exclusion Order Against Willing Licensees”); Tr. (Simcoe) 1564:12–1565:9. Yet, Amazon is a *willing* licensee. At Amazon’s request, the U.K. High Court has expedited proceedings to set a rate, to which Amazon has agreed unconditionally to be bound. RX-5320C (expediting action); RX-1698C (undertaking unconditionally to accept rate). Amazon is indisputably willing to commit to a RAND license, which is the only thing Nokia can obtain under its RAND commitments. In contrast, Nokia has not agreed to a RAND rate-setting anywhere in the world and has attempted to thwart these efforts. Tr. (Braun) 196:12–197:2, (Simcoe) 1565:18–18, (Hayden) 1005:20–23. This critical fact was never addressed or even acknowledged in the ID. The public interest is harmed by seeking remedies against a willing licensee. Tr. (Simcoe) 1550:16–1551:2, 1564:25–1567:11.

Despite hours of testimony and hundreds of combined pages presented on these issues, the ID addressed them in only two sentences and errs on two grounds. First, the ID’s finding that “section 337 does not specifically preclude a remedy when standard essential patents are asserted” is beside the point and merely addressed Nokia’s argument that no *per se* rule against exclusionary relief for SEPs exist. Amazon never made such an argument. RRB at 73–76 (Section VI.A.2. Nokia

[REDACTED]

and Staff Attack a Strawman). Rather, Amazon demonstrated that exclusion against Amazon harms U.S. competitive conditions and consumers where Amazon has committed unconditionally to an imminent RAND rate-setting, which is all Nokia may command for any SEPs. But the ID nowhere addressed the enumerated harms to the public interest and does not even acknowledge the U.K. action and Amazon’s unconditional commitment to license on RAND terms.

Second, rather than address harm to competitive conditions or Amazon’s willingness, the ID improperly conflated the public interest with the RAND-related affirmative defenses by requiring a showing of a breach of RAND as a predicate to public interest concerns. ID at 124 (“Amazon has not demonstrated such a breach [of a RAND obligation] here”). Such a test—that Amazon needed to have prevailed on its RAND defense to demonstrate public interest harm—has no support. Whether a remedy harms the public interest depends on the statutory public interest factors and is not conditioned on success of an affirmative defense. Indeed, success on a defense would result in a finding of no violation and moot the need to address public interest at all.

c. Nokia Threatens Non-SEP Harm to Competitive Conditions

Even setting aside concerns regarding SEPs, the ID erred in finding “evidence supports that competition in the U.S. will continue,” that existing inventory could supply the market for at least two months, or that such evidence (even if true) precludes a finding of harm to competitive conditions. ID at 121. The ID ignored the statute’s language requiring consideration of the impact on “competitive conditions in the U.S. economy” and Section 337’s purpose “to enhance the competitiveness of *American industry*.” H.R. Conf. Rep. 100-576, 1988 WL 170253, 100th Cong. 2nd Sess. (1988). And even then, the ID’s factual findings contradicted the record evidence.

First, while the ID acknowledged the importance of “the more holistic question of whether a competing product is a potential substitute,” Nokia’s expert, Mr. Dastmalchi, did not provide a

[REDACTED]

holistic analysis of whether potential substitutes are reasonable. Indeed, the ALJ in the 1380 Investigation on the same testimony presented here¹⁸ found “Nokia’s expert...did not provide a holistic analysis of whether any potential substitutes are reasonable.” 1380 RD at 179. Mr. Dastmalchi admitted he did not “provide any opinions as to whether the competing products are reasonable substitutes for the accused products.” Tr. (Dastmalchi) 953:4-8. That Nokia *never* identified competitive articles that Nokia, its licensees, or third parties make which could replace Amazon’s products is dispositive. Tr. (Mody) 1252:16–1256:4; RDX-0013C.0039–.0045. It is undisputed that Nokia does not make competitive products and Samsung and Microsoft do not supply the relevant markets or have adequate products to fulfill consumer demand. Tr. (Mody) 1249:24–1250:12; 1251:6–25.

Second, to minimize harm to competitive conditions and consumers, the ID concluded that “Amazon’s market share of tablets is 15%, though it may be as low as 9%, of streaming devices is 13%, and of cameras is 15%.” ID at 121. That finding is clear error. Tr. (Mody) 1246:7–18; RDX-0013C.0025; RX-0972.0019; RX-0958.0011. Nokia’s expert, Mr. Dastmalchi, admitted his alleged “market share” data was not market share data at all, but was data based on *internet usage* and *advertising spend*. Tr. (Dastmalchi) 953:9–20; Tr. (Mody) 1243:3–1244:8, 1245:11–21; RDX-0013C.0029, .31; CX-0416; CX-0420. The actual data for market share presented in the record conclusively show that Amazon’s Accused Products are *first* in the market segments for smart displays (65%), value-priced tablets (45%), digital media streaming devices (45%), and video doorbells (15%). RPX-0243C; CX-5866C.0079–.0080, .0097–.0098; RX-1470C.0001; RX-1469C.0001; RPX-0030C; Tr. (Mody) 1252:3–1256:18. Amazon’s products are the leading, most-

¹⁸ Mr. Dastmalchi only testified in this Investigation and his testimony was admitted in the 1380 Investigation.

[REDACTED]

preferred products of U.S. consumers because of their unique offerings in terms of features and price points, and no suitable alternatives were shown. Tr. (Dastmalchi) 953:5–8 (admitting he did not “provide any opinions as to whether the competing products are reasonable substitutes for the accused products”).

Third, the ID did not even acknowledge Amazon’s argument that excluding complex, multi-function consumer-leading and innovative products of U.S. companies based on minor non-party components practicing a standard harms the public interest. “When the patented invention is but a small component of the product the companies seek to produce and the threat of an injunction is employed simply for undue leverage in negotiations, an injunction may not serve the public interest.” *eBay Inc. v. MercExchange, LLC*, 547 U.S. 388, 396–97 (2006). The FTC agrees the statutory public interest factors should consider whether an exclusion order based on a minor patented component of a complex product can unduly harm consumers by causing hold-up, distorting competition, raising prices, and deterring innovation. RX-0389.0029–.0030. This concern is exacerbated because Nokia relies on non-party chips ([REDACTED], RX-1982C.0076–.0077, .0080–.0081) for both domestic industry and infringement.

The Commission should reject the ID’s conclusion of no harm to competitive conditions that was based on testimony of Nokia’s expert who admits he did not consider reasonable substitutes and that his supposed market share data was not market share data at all. And the Commission should heed the Supreme Court and FTC’s warnings here where exclusion of products based on a small, standardized components of non-parties is against the public interest.

2. Nokia Threatens Harm to U.S. Consumers

The USTR disapproval of the exclusion order in *Electronic Devices* was also based on harm to U.S. consumers. RX-1684.0003. The ID did not acknowledge or address these issues.

[REDACTED]

Amazon presented evidence that enforcement of RAND-encumbered SEPs harms U.S. consumers by denying the advantages of greater competition and innovation associated with industry standards backed by enforceable RAND obligations. RX-1684; Tr. (Simcoe) 1573:21–1576:5. Consumers face losing access to products and services that rely on standardized technology. *Id.*

Even apart from the impact on consumers based on SEPs, Nokia’s requested remedy would harm U.S. consumers because of the products themselves. The ID improperly dismissed the impact of excluding the highest-selling products among consumers. First, it relied on “numerous competitive alternatives to the accused products available today in the United States,” but none of the ID, Nokia, or Staff identified any such alternatives, and as noted above, Nokia’s expert admitted he never provided opinions as to whether competing products are reasonable substitutes. Tr. (Dastmalchi) 953:4–8. Second, after Amazon identified a host of unique features, functionality, and uses of its products, and Nokia failed to identify that such critical uses were found in any alternatives and, indeed, its expert admitted he never attempted to, the ID improperly faulted Amazon for not proving a negative. ID at 123 (“[A]lthough Amazon describes the accused products as having ‘unique’ features, Amazon does not identify any that cannot be obtained with other devices.”). And in fact, Amazon *did* present evidence of dozens of unique features that make the Accused Products leaders in their respective market segments and the most-preferred products among consumers, many of which are discussed in the following section. RIB at 4–8, 94–101; RIB 76–81. And then Nokia admittedly failed to identify competing products that are reasonable substitutes. Tr. (Dastmalchi) 953:4–8.

3. Nokia Threatens Harm to the Public Health & Welfare

With respect to the public health and welfare factor, the ID cited evidence that exclusion “would impact the employees that are working on those” Accused Products, that Amazon “would

[REDACTED]

have less R&D money to invest into the next innovations,” that Amazon has over 20,000 U.S. patents, including 4,500 on the accused products, and that Amazon’s research and development takes place in the United States, and that thousands of people work on the accused products. But then the ID found that “while Amazon contends that it is ‘the largest job creator and the second largest private employer in the U.S.’ and that it invested \$46.5 billion in the U.S. in 2023,...Amazon provided no specific evidence regarding how its operations in the United States or anyone else’s operations, let alone any manufacturing operations, would be impacted.” ID at 120. But this statutory factor does not require showing that manufacturing operations would be impacted. It is incomprehensible that the impact on jobs and welfare of thousands and investment in the U.S. economy of billions would be deemed irrelevant to the public welfare. This is especially concerning when, for domestic industry, the ID accepted Nokia’s undifferentiated reliance on basic R&D costs for Microsoft & Samsung but deemed irrelevant Amazon’s significant U.S. employment and innovative R&D on the accused products. Public welfare, of course, also encompasses employment and economic growth. *Certain Microprocessors, Components Thereof and Prods. Containing Same*, Inv. No. 337-TA-781, Initial Deter. at 366–69 (Dec. 14, 2012). Amazon showed that exclusion would have a direct impact on U.S. investments, jobs, and innovation. RIB at 223–25. Based in Washington and Arlington, Virginia, Amazon employs nearly one million Americans, making it the largest job creator and second largest private employer in the United States. *Id.* Amazon has invested more than any other company in the U.S. economy for at least four consecutive years. *Id.* In contrast, Nokia is a foreign PAE that would receive no benefit from an exclusion order. RIB at 92. Nokia’s alleged work on the Asserted Patents occurred in Finland. Nokia does not sell or develop any relevant products and admits it comes to the ITC only to “force” a license, exerting leverage for supra-RAND licensing terms. Tr. 9:5–17 (Nokia

[REDACTED]

Opening Statement).

The ID also found that the Accused Products “are not themselves medical devices or specialized for use in medical-related contexts, and any medical or health-related features are available through other alternative means” so no public health and welfare concerns arise. ID at 121. The ID erred on multiple counts. First, the test is not whether the products themselves are medical devices—they are in fact used and specialized for use in medical-related contexts. Indeed, the ALJ in the 1380 Investigation, assessing the same products except for cameras, found that the Accused Products are “used in health applications, telemedicine, hospitals, senior living centers, and various other clinical settings (among many other contexts), and...have vision, hearing, and speech accessibility features (among many other features and applications).” 1380 RD at 178. Second, the conclusion that “any medical or health-related features are available through other alternative means” is erroneous; Amazon pointed to dozens of critical health, accessibility, and welfare uses and Nokia and Staff addressed only one. RRB at 77; RIB (citing uses in telemedicine, in hospitals and senior living environments, by clinicians, urgent-response, pharmacy, accessibility aid for intellectual and physical disabilities, health and physical well-being, education, safety monitoring, and communication and safety of people and pets). No evidence was presented against the numerous other health, telemedicine, accessibility, educational, and safety uses.

* * *

Amazon demonstrated that exclusionary relief against it on RAND-encumbered SEPs—particularly regarding trivial functionality in feature-rich consumer products, where Amazon is indisputably a willing licensee and rate-setting is imminent—harms U.S. consumers, competitive conditions, and the public health and welfare.

The ID took no note of Amazon’s citation to the USTR, legislative history, economic

[REDACTED]

principles, forceful advocacy of other U.S. government agencies (charged with competition and consumer protection), and Nokia’s own prior admissions about U.S. competitive conditions and harm to consumers. But “public health and welfare and the assurance of competitive conditions in the U.S. economy must be the *overriding considerations* in the administration of this statute.” *Trade Reform Act of 1974*, Report of the Committee on Finance U.S. Senate Together with Additional Views on H.R. 10710, Nov. 26, 1974, at 197; *see also* S. Rep. 93-1298, 1974 WL 11696 (1974) (“[T]he public interest must be paramount in administration of this statute”). Section 337 protects U.S. industries. H. Rep. No. 100-40, pt 1 at 157. The intent is to protect “U.S. productive capacity and jobs” and avoid using the ITC “merely as an expedient alternative forum to the courts for enforcement of intellectual property rights.” Statement of the Honorable Lloyd M. Bentsen at a Hrg. on Intellectual Prop. Protection in Int’l Trade, May 14, 1986. The requested remedy must have an “appreciable benefit” to U.S. industry and may not simply protect “holders of U.S. intellectual property rights who have no contact with the United States other than owning such...rights.” *Id.* If an exclusion order would cause greater adverse impact on the public interest than would be gained by protecting the patent holder, no remedy should issue. *Id.* As demonstrated above, Amazon has exactly the U.S. industry Section 337 should protect, while Nokia is merely a foreign patent holder.

Staff argued the harmful effects of exclusion would not occur because Respondents would simply accede to a license. SIB at 93, 95 (arguing it is unlikely Respondents would abandon the U.S. market and “will take a license”). That argument recognizes that this Investigation is premised on hold-up. The public interest analysis is not based on—and cannot be mooted by—the argument that harm would be *so severe* that a Respondent will simply accede to a complainant’s demands to avoid it. S. Rep. 93-1298 (“[T]he public interest must be paramount in the administration of the

[REDACTED]

statute.”); 19 U.S.C. § 1337(d)(1) (Commission must consider the effect of any remedial order on the public interest.).

VI. CONTINGENT REVIEW SHOULD BE GRANTED ON CERTAIN ISSUES

A. If the Commission Reviews the ID’s Noninfringement Finding for the ’134 Patent, the Commission Should Review the ID’s Finding for on Claim Element 9[c]

The ID correctly found that H.264 contains no “indication informing an intentional discontinuity” of numbering and there is therefore no infringement of the ’134 patent. ID at 69–70. However, it then incorrectly concluded that H.264 infringes claim element 9[c] of the ’134 patent, which requires the video decoder to “configure, in response to *the indication*, the buffer memory to provide a number of image frames.” ID at 71 (emphasis added). This is wrong for two reasons. First, if there is no indication, you cannot configure the buffer based on the nonexistent indication. Second, the uncontested and readily verifiable fact is that H.264 directs decoders to “configure the buffer” (*i.e.* provide image frames) whenever there is a gap in frame numbering. It does not condition this behavior on an indication, much less the “gaps flag” that Nokia identified. Thus, the decoder acts independent of the accused indication and not “in response to” the indication.

After Nokia pointed to H.264 section 8.2.5.2 as the basis of its infringement arguments, CIB at 70–71, the ID cited Nokia’s brief but made no independent review of the evidence. ID at 71. This is inadequate because Respondents demonstrated, without contradiction, that section 8.2.5.2 does not require the decoder to take any action “in response to” the value of the gaps flag. RRB at 40–42. Section 8.2.5.2’s first sentence explicitly describes a process invoked *whenever* a received frame number is not equal to either the previously received reference frame number (“PrevRefFrameNum”) or that previous frame number plus one, which is reset to zero if the

[REDACTED]

number exceeds the maximum frame number. CX-4496.0129. Nothing in the relevant paragraphs from section 8.2.5.2 requires the decoder to examine the value of the gaps flag, much less to alter its response to gaps based on the value of the flag. *See* CX-4496.0129; Tr. (Acton) 1297:10–1298:12.

H.264: Treats All Discontinuities the Same

8.2.5.2 Decoding process for gaps in frame_num

This process is invoked when frame_num is not equal to PrevRefFrameNum and is not equal to (PrevRefFrameNum + 1) % MaxFrameNum.

NOTE 1 – Although this process is specified as a subclause within subclause 8.2.5 (which defines a process that is invoked only when nal_ref_idc is not equal to 0), this process may also be invoked when nal_ref_idc is equal to 0 (as specified in clause 8). The reasons for the location of this subclause within the structure of this Recommendation | International Standard are historical.

NOTE 2 – This process can only be invoked for a conforming bitstream when gaps_in_frame_num_value_allowed_flag is equal to 1. When gaps_in_frame_num_value_allowed_flag is equal to 0 and frame_num is not equal to PrevRefFrameNum and is not equal to (PrevRefFrameNum + 1) % MaxFrameNum, the decoding process should infer an unintentional loss of pictures.

When this process is invoked, a set of values of frame_num pertaining to “non-existing” pictures is derived as all values taken on by UnusedShortTermFrameNum in Equation 7-21, except the value of frame_num for the current picture.

The decoding process generates and marks a frame for each of the values of frame_num pertaining to “non-existing” pictures, in the order in which the values of UnusedShortTermFrameNum are generated by Equation 7-21, using the “sliding window” picture marking process as specified in subclause 8.2.5.3. The generated frames are also marked as

RX-1499

RDX-0012C.27

The gaps flag is mentioned in a “Note 2” in section 8.2.5.2, but there was universal agreement that this was not a prescriptive part of the specification. Tr. (Kia) 714:1–8, (Acton) 1298:16–20. In any event, by its own terms the Note is limited to a “conforming” bitstream, *i.e.* one that has no errors or lost data, and thus is not applicable in the context of the ’134 patent where accidental loss of frame data is possible. Tr. (Kia) 597:4-20; (Acton) 1431:9–20, 1529:21–1531:4.

These facts find further support in the accused [REDACTED]. All parties agreed that [REDACTED] implemented section H.264. Tr. (Kia) 740:5–22, (Acton) 1311:17–19. There was also agreement that [REDACTED] and did not infringe (though Dr. Kia had initially accused it). Tr. (Kia) at 740:23–

743:9. [REDACTED] therefore, is proof by example that implementation of H.264 does not require infringement of element 9[c]. RRB at 41.

Nokia's counterargument for infringement was logically flawed. Nokia argued that, because H.264 only allowed intentional gaps in frame numbers when the gaps flag is set, the standard only required the decoder buffer to provide image frames for the gaps if the gaps flag was set. CIB at 70–71. But this is false: Nokia disregards the fact, which the ID correctly identified, that frame gaps at the decoder could be both “intentional and unintentional.” ID at 66–67. Thus, gaps could occur whether the gaps flag was set or not, and detecting a gap in frame numbers at the decoder did not indicate either way whether the gaps flag was set. RRB at 42. Indeed, if only intentional gaps were possible, a gaps flag meant to distinguish between intentional and accidental gaps would have no use. *Id.*

The “in response” language in element 9[c] should not be treated as extraneous. This is the only place in claim 9—indeed anywhere in the Asserted Claims—where the decoder makes any use of the claimed “indication” that it receives. Respondents demonstrated, *see* RIB at 36, that it was known in the prior art for the decoder to configure the buffer to provide image frames when there were frame gaps. RX-0564.0039; *see also* JX-0004 at 20:27–30. The '134 patent's alleged invention is a decoder that responds to gaps differently when the claimed “indication” is asserted and when it is not. JX-0004 at 20:30–33 (“[I]t is essential that the encoder is capable to inform the decoder that the discontinuities in the image numbering...are intentional”). If claim element 9[c]'s phrase “in response to the indication” is treated as a nullity, then this feature is erased from the claims. In fact, the claims as a whole would no longer contain *any* explanation of the purpose for the supposedly inventive “indication.” That construction cannot be correct.

[REDACTED]

Accordingly, if the Commission reviews the ID's proper conclusion of noninfringement of the '134 patent, it should reexamine the ID's conclusion on element 9[c].

B. If the Commission Reviews the ID's Noninfringement Finding for the '134 Patent, It Should Also Review the ID's Validity Finding

The ID incorrectly found that "TML-9 had no concept of intentional discontinuities" and so TML-9 "uses error concealment for all discontinuities." ID at 73–74. But the '134 did not invent intentional discontinuities (*i.e.*, scalability or dropping frames), or how to respond to them. And TML-9 clearly taught both these features.

First, Amazon showed that TML-9 and the scalable mode indicator from H.262 make element 9[b] obvious. Tr. (Acton) 1346:15–1347:18. Indeed, the '134 patent itself describes how "many" prior art systems included network elements that would intentionally drop frames to dynamically reduce bandwidth when needed. JX-0004 at 3:3–36 (describing scalability generally), 3:3–4 ("[M]any video coding systems employ scalable coding."), 3:26–28 (streaming server can omit B-frames). Nokia's expert Dr. Kia conceded the existence of this prior art. Tr. (Kia) 1931:6–10; *see also* (Kia) 1929:25–1931:1. And TML-9 expressly indicated its intention to enable temporal scaling. RX-0564.0041 ("Temporal scalability is achieved using bi-directionally predicted pictures, or B pictures."). Thus the ID's claim that TML-9 did not contemplate intentional discontinuities is untenable.

The ID claimed that Dr. Acton agreed TML-9 "does not consider intentional discontinuities," ID at 73, but this is false. Dr. Acton testified that he disagreed with the idea that intentional discontinuities were not disclosed in TML-9. Tr. (Acton) 1468:19–24 ("I don't agree."); *see also* Tr. (Acton) 1344:4–14, 1345:14–21, 1519:17–1520:8 (describing TML-9 disclosure of temporal scaling); RX-0564.0041. The testimony the ID cited only concedes that TML-9 does not itself discuss streaming servers, Tr. (Kia) 1464:4–12, but as the '134 patent

[REDACTED]

describes, these were known to be part of the network infrastructure for temporal scaling. JX-0004 at 3:3–36. The ID’s conclusion that no motivation existed to add streaming servers to TML-9 is irrelevant, as the ’134 claims do not require a streaming server. ID at 75.

Second, the ID found that TML-9 “uses error concealment for all discontinuities,” which is wasteful if a frame was dropped intentionally. ID at 73. But this is also wrong. TML-9 describes two responses to detecting a frame number gap. The decoder can adjust the picture indices in the decoder buffer without supplying any data for the missing frame. RX-0564.0071. Alternatively, it can create error concealment frames, which TML-9 identifies as an optional process. RX-0564.0039; *see also* Tr. (Acton) 1291:16–1293:5, 1350:5–23. Because both accidental and intentional frame numbering gaps will be encountered, ID at 66–67, using error concealment will often be the correct response and does not indicate that TML-9 did not contemplate intentional discontinuities. The claim that Dr. Acton agreed TML-9 always performed error concealment is false. ID at 73. When asked if TML-9 constructs error concealment frames, he responded: “Or not.” Tr. (Acton) 1464:13–19; *see also, id.*, 1465:3–8. He conceded that TML-9 “talks about error concealment,” but disagreed that this was TML-9’s only response. Tr. (Acton) 1464:20–23.

Dr. Acton testified that it would be obvious to encode an indication that temporal scaling was possible in a video stream, Tr. (Kia) 1347:6–18, 1351:4–14, and for the decoder to use this indication to determine whether it would respond to a gap in frame numbering only by shifting picture indices, as described on RX-0564.0079, or also to create an error concealment picture, introduced as an option on RX-0564.0039. *See* Tr. (Acton) 1351:4–17. Dr. Kia testified that TML-9 did not explicitly condition either action on the value of a temporal scaling indicator, Tr. (Kia) 1913:5–11, but he did not contest that this was an obvious possibility.

[REDACTED]

The ID rejected Dr. Acton’s testimony because it wrongly contends that a TML-9 decoder “receives all frames” and has no need to configure the decoder to handle intentional gaps. ID at 76. Respondents showed that TML-9 contemplated intentionally discarded B frames. RX-0564.0071. Additionally, there is an evident contradiction between the ID’s assertion that frames could only be dropped at the decoder, not the streaming server, ID at 74, and that the decoder always generates error concealment frames. ID at 73, 77. If the decoder receives all frames, it would be nonsensical to use an error concealment frame in place of the actual frame data.¹⁹

Because TML-9 does contemplate prior art temporal scaling that creates intentional gaps in frame numbering and responding to them, the Commission should reverse the ID’s determination of nonobviousness.

C. If the Commission Reviews Obviousness of the ’808 Patent, It Should Confirm that No Secondary Considerations Save the Patent from Invalidity

The ID correctly found insufficient evidence that the use or adoption of H.264 stems from the ’808 patent. ID at 64. And while the ID correctly found “sparse evidence supporting the required nexus,” the ID erred in asserting that there was “industry praise regarding Nokia’s skip coding mode as an improvement in coding modes.” ID at 63–64.

As Dr. Orchard conceded, and Staff agreed, the two articles presented as purported examples of “praise”—*Overview of the H.264/AVC Video Coding Standard* (CX-2935) and *Video Coding Using the H.264/MPEG-4 AVC Compression Standard* (CX-5620)—list many other features included in H.264, and do not praise any specific feature. ID at 63. Dr. Orchard admitted

¹⁹ The ID also made other incorrect findings. Contrary to the ID, Dr. Kia conceded that TML-9 disclosed the need to insert a placeholder frame, whether the frame number gap was intentional or accidental. *Compare* ID at 76, *with* Tr. (Kia) 1936:6–1937:9. The ID also contended that TML-9’s use of the word “lost” to refer to missing frames, excludes the possibility of intentionally omitted frames. ID at 76 (citing RX-0564.0079). But there is no basis for the ID to conclude that “lost” frames are intentionally lost or dropped.

that he presented no analysis to separate the value of the '808 patent from all the other features that contributed to the H.264 standard.²⁰ Tr. (Orchard) 1871:8–12.

Beyond the lack of nexus, it is hard to understand how the '808 patent could be worthy of “praise.” The JVT categorized this feature as a “bug-fix/clean-up”:

JVT-C027: Assigns Zero/Non-Zero MV Based on 1 of 2 MBs											
16.2.4. The JVT adopted a text of its joint draft for technically-aligned standardization approval by the parent bodies, including in particular approval in ISO/IEC as a Committee Draft [JVT-C167 / N4810]. This includes the adoption of the following changes relative to the editor's draft text JVT-C039 (“JWD2r8”): <table> <tr> <td>Removal of elements not specifying normative video-layer functionality</td><td>Removal of draft RTP payload specification (in Annex A of JWD2r8), reference example encoder (in Annex B), interim file format (Annex C), and reference example error concealment description (Annex D)</td><td>bug-fix/clean-up</td></tr> <tr> <td>Clarification from discussion</td><td>Change “bi-directional” picture → “bi-predictive” picture</td><td>bug-fix/clean-up</td></tr> <tr> <td>Conditional JVT-C056</td><td>Dithered 5-tap Filter for In-loop Deblocking</td><td>quality enhancement</td></tr> </table>			Removal of elements not specifying normative video-layer functionality	Removal of draft RTP payload specification (in Annex A of JWD2r8), reference example encoder (in Annex B), interim file format (Annex C), and reference example error concealment description (Annex D)	bug-fix/clean-up	Clarification from discussion	Change “bi-directional” picture → “bi-predictive” picture	bug-fix/clean-up	Conditional JVT-C056	Dithered 5-tap Filter for In-loop Deblocking	quality enhancement
Removal of elements not specifying normative video-layer functionality	Removal of draft RTP payload specification (in Annex A of JWD2r8), reference example encoder (in Annex B), interim file format (Annex C), and reference example error concealment description (Annex D)	bug-fix/clean-up									
Clarification from discussion	Change “bi-directional” picture → “bi-predictive” picture	bug-fix/clean-up									
Conditional JVT-C056	Dithered 5-tap Filter for In-loop Deblocking	quality enhancement									
JVT-C027	Skip Mode Motion Compensation	bug-fix/clean-up									
JVT-C094 subject to cross-verification	To adopt modification 1 (removal of recursiveness in “default” filter, and modification 3 (simplified switching for B ⁺ 4, which is I-macroblock boundary). Not modification 2 at this time.										
JVT-C027	Skip Mode Motion Compensation	bug-fix/clean-up									
JVT-C028	Context-adaptive VLC (CVLC) coding of coefficients	quality improvement									
Conditional	Bounding the complexity of arithmetic decoding	complexity reduction									

CX-0592 (JVT-C001d3); RX-0548 (JVT-B019); RX-0549 (JVT-B046)

1993	1998	2001	2002	2003
------	------	------	------	------

RDX-0012C.89

Sources: CX-0592; RX-0548; RX-0549; RDX-0012C.0089

Dr. Orchard’s excuse—that this characterization was made by “people who...would not know anything about what they are writing”—rings hollow given that it came from “the three co-chairs of the JVT [development] activity”: Gary Sullivan, Ajay Luthra, and Thomas Wiegand. Tr. (Orchard) 569:13–22, 1866:7–12. Nor was this characterization a “typo” or “error” as Dr. Orchard suggested, but rather an “official term.” Tr. (Orchard) 466:10–24, (Acton) 1373:20–25. As Dr. Orchard conceded, the JVT had a “5%/10% Rule of Thumb” where “[p]roposed changes are not to be adopted unless the change results in average BD-Rate savings of at least approximately 5%

²⁰ Dr. Orchard even acknowledged that one article (Video Coding Using the H.264/MPEG-4 AVC Compression Standard (CX-5620)) incorrectly states that “in prior standards, a ‘skipped’ MB of a predictive picture could not signal motion,” agreeing that MPEG-1’s B-skip could signal motion, a mistake he described as “an oversight” by the author. Tr. (Orchard) 1870:15–1871:6.

[REDACTED]

average...and 10% peak,” and “[v]ery minor changes (like adding one or two sentences to the draft) or (better) bug-fix/clean-up work may also be considered.” CX-0611.0002, Section 2.5 (emphasis added); Tr. (Orchard) 569:23–570:9. Here, the average bit rate savings for JVT-C027 were “2.2%,” which is indeed less than the “5%” threshold. CX-0611.0009, Section 3.6; Tr. (Orchard) 570:10–22, (Acton) 1374:1–5. As corroboration for the trivial nature of the ’808 patent, H.264’s skip mode was not implemented into H.265. Tr. (Orchard) 1871:25–1872:15.

Overall, no secondary considerations favor disturbing the result mandated by the prior art, *i.e.*, that the ’808 patent is invalid over multiple references.

VII. CONCLUSION

For the reasons stated herein, Amazon requests that the Commission review the issues identified above.²¹ Reversal on any issue Amazon has affirmatively presented here results in reversal of the finding of violation. The ID’s conclusions were based on clearly erroneous findings of fact and erroneous conclusions and application of the law, with many negatively affecting Commission policy that will cause the Commission to issue relief contrary to Section 337.

As with the related 1380 Investigation, Nokia’s attempt to twist the domestic industry standards to the point that they are meaningless and its attempt to leverage the ITC in its improper campaign to secure supra-RAND rates should not be countenanced. It is worth noting that in an earlier case in which Nokia itself sought rehearing out of concern for “articles protected” being read out of Section 337, the *en banc* Federal Circuit recounted the legislative history showing Section 337’s purpose to “protect[] American industries” against “foreign firms” “that steal American innovations,” while also cautioning against “convert[ing] the Commission’s mission

²¹ Amazon does not concede the ID’s other conclusions are correct, but chooses here to focus its petition on discrete, critical issues that impact Commission policy and that comprise the most egregious errors of law and fact sufficient to defeat the finding of violation.

[REDACTED]

from a trade forum into an intellectual property court [that]...would allow foreign owners of U.S. patents to bring exclusion actions before the Commission even though they had no substantial U.S. connections.” *InterDigital Commc’ns, LLC v. Int’l Trade Comm’n*, 707 F.3d 1295, 1300–01 (Fed. Cir. 2013). This investigation presents exactly the danger the legislative history warned against: Nokia is a foreign firm with no relevant, substantial U.S. connections that seeks to tax and harm American industry and innovation for the admitted purpose of “forcing” a license on its say-so terms. Nokia flips the purpose of Section 337 on its head to pursue injunctive relief it could not obtain in district court, even though it is bound to license its patents at a RAND rate and Amazon has unconditionally agreed to accept a RAND license.²²

Nokia does this after betraying the very RAND principles for which it forcefully advocated when it was a phone manufacturer, before the demise and divestiture of its phone business in 2014. *Nokia Corp. v. Qualcomm Inc.*, No. 1:09-cv-00791-GMS (Del. Ch. 2010), Dkt. No. 86-1 at 1–2 (“An IPR holder who has...voluntarily submitted a FRAND undertaking for such a patent is limited, in the case of infringement of a valid patent, to FRAND compensation for such patent and is not entitled to an injunction or exclusion order that could prevent implementation of the standard.”); *Certain Wireless Devices with 3G Capabilities and Components Thereof*, Inv. No. 337-TA-800, Respondents’ Petition for Review at 2 (July 15, 2013) (“FRAND commitments [are] antithetical to a patent holder...attempt[ing] to leverage an exclusion order based on its declared-essential patents.”). The Commission should reject Nokia’s attempt to flip the language and purpose of Section 337 on its head.

²² In debating the 1988 amendments to Section 337, Chairwoman of the ITC Paula Stern warned against this very scenario of a “foreign owner of a U.S. patent” bringing a complaint against an “American domestic” preventing it from importing its own products and, rather than helping any domestic industry, harming the respondent’s consumers and workers. Statement of Hon. Paula Stern, Chairwoman, ITC, Hearing on S. 1860 and S. 1860 (May 14, 1986).

[REDACTED]

Dated: February 10, 2025

Respectfully submitted,

/s/ Veronica S. Ascarrunz

Veronica S. Ascarrunz
Michelle Yocum
Emily Iroz Rich
Perkins Coie LLP
700 13th Street, NW, Suite 800
Washington, DC 20005-3960
(202) 654-6200

Stefani E. Shanberg
Robin L. Brewer
Karl Johnston
Perkins Coie LLP
505 Howard Street, Suite 1000
San Francisco, California 94105-3204

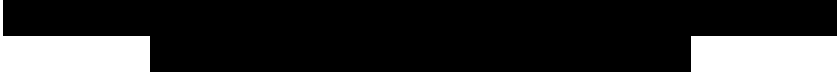
Thomas N. Millikan
Joseph P. Reid
Kyle R. Canavera
Perkins Coie LLP
11452 El Camino Real, Suite 300
San Diego, CA 92130-2080

Andrew Klein
Perkins Coie LLP
3150 Porter Drive
Palo Alto, CA 94304-1212

Kevin A. Zeck
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099

Andrew T. Dufresne
Perkins Coie LLP
33 East Maine St.
Madison, WI 53703-3095

Stephen S. Korniczky
Martin R. Bader
Sheppard, Mullin, Richter & Hampton LLP
12275 El Camino Real, Suite 100



San Diego, CA 92130-4092

Julie S. Goldemberg
Morgan Lewis
222 Market St.
Philadelphia, PA 19103-3007

*Counsel for Respondents Amazon.com, Inc. and
Amazon.com Services LLC*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the **AMAZON RESPONDENTS' PETITION FOR REVIEW OF INITIAL DETERMINATION FINDING VIOLATION OF SECTION 337** has been served on February 10, 2025, as indicated, on the following:

The Honorable Lisa R. Barton Secretary to the Commission U.S. International Trade Commission 500 E. Street, S.W., Room 112A Washington, DC 20436	☐ First Class Mail ☐ Overnight Delivery ☒ EDIS ☐ Email
Honorable Doris Johnson Hines Administrative Law Judge U.S. International Trade Commission 500 E Street, SW Washington, DC 20436 Pyong Yoon, Esq. (Attorney Advisor)	☐ First Class Mail ☐ Overnight Delivery ☒ EDIS ☒ Email ☒ Upload to Box account <i>JohnsonHines1379@usitc.gov</i> <i>Pyong.Yoon@usitc.gov</i>
Marissa Ducca, Esq. Jeffrey Hsu, Esq. Office of Unfair Import Investigations U.S. International Trade Commission 500 E. Street, S.W., Suite 401 Washington, DC 20436 Phone: (202) 205-2044	☐ First Class Mail ☐ Overnight Delivery ☒ Email ☒ Upload to Box account <i>Marissa.Ducca@usitc.gov</i> <i>Jeffrey.Hsu@usitc.gov</i>

Adam D. Swain

Alston & Bird LLP
950 F Street NW
Washington, DC 20004
Telephone: (202) 239-3300

John D. Haynes
Nicholas T. Tsui
Lindsay C. Church
Shawn P. Gannon
Paul Michael Haley
Alston & Bird LLP
1201 West Peachtree Street
Atlanta, GA 30309
Telephone: (404) 881-7000

Theodore Stevenson
Alston & Bird LLP
2200 Ross Avenue, Suite 2300
Dallas, TX 75201
Phone: (214) 922-3400

Caleb J. Bean
Alston & Bird LLP
333 South Hope Street
16th Floor
Los Angeles, CA 90071
Phone: 213-576-1000

August R. Meny
Alston & Bird LLP
90 Park Avenue
New York, NY 10016-1387
Phone: 212-210-9400

Warren Lipschitz
Alexandra F. Easley
MCKOOL SMITH, P.C.
300 Crescent Court Suite 1200
Dallas, TX 75201
Telephone: (214) 978-4000

R. Mitch Verboncoeur
MCKOOL SMITH, P.C.
303 Colorado Street Suite 2100
Austin, TX 78701
Telephone: (512) 692-8700

☐ First Class Mail

☐ Overnight Delivery

☒ Email

NKAmazonITC@alston.com

Nokia_HP_Amazon@mckoolsmith.com

Joshua J. Newcomer MCKOOL SMITH, P.C. 600 Travis Street, Suite 7000 Houston, TX 77002 Telephone: (713) 485-7316 Kevin Burgess MCKOOL SMITH P.C. 104 East Houston St., Suite 300 Marshall, Texas 75670 Telephone: (903) 923-9000 <i>Counsel for Complainants Nokia Technologies Oy and Nokia Corporation</i>	
--	--

/s/ Nelo Keith Lang

Nelo Keith Lang

Paralegal

Perkins Coie LLP

700 13th Street, NW, Sute. 800

Washington, DC 20005-3960

Email: nkeithlang@perkinscoie.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the **PUBLIC VERSION OF SUMMARY OF AMAZON RESPONDENTS' PETITION FOR REVIEW OF INITIAL DETERMINATION FINDING VIOLATION OF SECTION 337** has been served on February 20, 2025, as indicated, on the following:

The Honorable Lisa R. Barton Secretary to the Commission U.S. International Trade Commission 500 E. Street, S.W., Room 112A Washington, DC 20436	☐ First Class Mail ☐ Overnight Delivery ☒ EDIS ☐ Email
Honorable Doris Johnson Hines Administrative Law Judge U.S. International Trade Commission 500 E Street, SW Washington, DC 20436 Pyong Yoon, Esq. (Attorney Advisor)	☐ First Class Mail ☐ Overnight Delivery ☒ EDIS ☒ Email ☒ Upload to Box account <i>JohnsonHines1379@usitc.gov</i> <i>Pyong.Yoon@usitc.gov</i>
Marissa Ducca, Esq. Jeffrey Hsu, Esq. Office of Unfair Import Investigations U.S. International Trade Commission 500 E. Street, S.W., Suite 401 Washington, DC 20436 Phone: (202) 205-2044	☐ First Class Mail ☐ Overnight Delivery ☒ Email ☒ Upload to Box account <i>Marissa.Ducca@usitc.gov</i> <i>Jeffrey.Hsu@usitc.gov</i>

Adam D. Swain

Alston & Bird LLP
950 F Street NW
Washington, DC 20004
Telephone: (202) 239-3300

John D. Haynes
Nicholas T. Tsui
Lindsay C. Church
Shawn P. Gannon
Paul Michael Haley
Alston & Bird LLP
1201 West Peachtree Street
Atlanta, GA 30309
Telephone: (404) 881-7000

Theodore Stevenson
Alston & Bird LLP
2200 Ross Avenue, Suite 2300
Dallas, TX 75201
Phone: (214) 922-3400

Caleb J. Bean
Alston & Bird LLP
333 South Hope Street
16th Floor
Los Angeles, CA 90071
Phone: 213-576-1000

August R. Meny
Alston & Bird LLP
90 Park Avenue
New York, NY 10016-1387
Phone: 212-210-9400

Warren Lipschitz
Alexandra F. Easley
MCKOOL SMITH, P.C.
300 Crescent Court Suite 1200
Dallas, TX 75201
Telephone: (214) 978-4000

R. Mitch Verboncoeur
MCKOOL SMITH, P.C.
303 Colorado Street Suite 2100
Austin, TX 78701
Telephone: (512) 692-8700

☐ First Class Mail

☐ Overnight Delivery

☒ Email

NKAmazonITC@alston.com

Nokia_HP_Amazon@mckoolsmith.com

Joshua J. Newcomer MCKOOL SMITH, P.C. 600 Travis Street, Suite 7000 Houston, TX 77002 Telephone: (713) 485-7316 Kevin Burgess MCKOOL SMITH P.C. 104 East Houston St., Suite 300 Marshall, Texas 75670 Telephone: (903) 923-9000 <i>Counsel for Complainants Nokia Technologies Oy and Nokia Corporation</i>	
--	--

/s/ Nelo Keith Lang

Nelo Keith Lang

Paralegal

Perkins Coie LLP

700 13th Street, NW, Sute. 800

Washington, DC 20005-3960

Email: nkeithlang@perkinscoie.com