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**

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

The ID—like the determination in 337-TA-1380 upon which it relies—suffers 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, the ID committed three independent errors with respect to economic domestic industry. First, the ID erred by incorporating by reference the ID from the separate 1380 Investigation which had additional evidence in its record. Making matters worse, 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. This ID not only adopts that flawed conclusion wholesale without analysis—*the factual basis for which is 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 thus reaches 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. As such, review is imperative to return predictability and conformity to the domestic industry 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

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analysis also stands 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 adopted Nokia's inflated investment figures while failing to hold Nokia to its burden of demonstrating the reliability of those investments and incorrectly determined such investments in the downstream Domestic Industry Products were significant. The ID ignored qualitative significance altogether. The activities underlying the alleged domestic industry investments relate to other aspects of the feature rich downstream Domestic Industry Products—not the minor functionality covered by the Asserted Patents. An examination of the nature of the alleged activities should have resulted in the alleged investments being given little to no weight, demonstrating a lack of qualitative significance. All these errors should be reviewed, and the ID's determination on economic domestic industry should be reversed.

But the ID's problems are not limited to domestic industry. The ID also 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

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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." Thus, Nokia advocated for an interpretation of "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 the construction of "surrounding," the ID also misapplied the motivation to combine requirement to Amazon's other prior art against the '808 patent. 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 MPEG 1/H.263 combination easily renders the patent obvious, and for that independent reason, no violation should be found.

The ID made similar mistakes and omissions regarding Amazon's non-technical defenses. As a threshold matter, 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) 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.

Next, 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

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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 ID only dismissively addressed Amazon's main arguments presented in unrebutted testimony. Most importantly, the ID failed to acknowledge or address the fact that U.S. competitive conditions and U.S. consumers are harmed by exclusionary relief against a willing licensee on SEPs. 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, much less to entities 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 are based on clearly erroneous findings of fact and erroneous conclusions and application of the law, with many negatively affecting Commission

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policy that will result in relief contrary to Section 337, Amazon requests review on the issues identified herein.[1] Reversal on any issue here presented results in reversal of the finding of violation. In addition, if the Commission decides to review issues regarding the '808 or '134 patents, Amazon also asks that it review the contingent issues of whether the ID erred in finding industry praise for the '808 patent, in finding H.264 infringes '134 claim element 9[c], and finding the '134 patent valid in view of TML-9.

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 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

[1] 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.

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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.[2]

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 (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.

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Respectfully submitted,

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[2] 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).

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the **SUMMARY OF 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:

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