

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1001]

Certain Digital Video Receivers and Hardware and Software Components Thereof Notice of the Commission's Final Determination Finding a Violation of Section 337; Issuance of a Limited Exclusion Order and Cease and Desist Orders; Denial of Petition Requesting Reconsideration of Commission Determination Finding Petition of Certain Issues To Be Waived; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (the "Commission") has found a violation of section 337 in this investigation and has issued a limited exclusion order ("LEO") prohibiting importation of certain digital video receivers and hardware and software components thereof, and has issued cease and desist orders ("CDOs") directed to the Comcast respondents. This investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Ron Traud, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-205-3427. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket ("EDIS") at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 26, 2016, based on a complaint filed on behalf of Rovi Corporation and Rovi Guides, Inc. (collectively, "Rovi"), both of San Carlos, California. 81 FR 33547-48 (May 26, 2016). The complaint, as amended, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337"), by reason of infringement of certain claims of U.S.

Patent Nos. 8,006,263 ("the '263 patent"); 8,578,413 ("the '413 patent"); 8,046,801 ("the '801 patent"); 8,621,512 ("the '512 patent"); 8,768,147 ("the '147 patent"); 8,566,871 ("the '871 patent"); and 6,418,556 ("the '556 patent"). The complaint further alleges that a domestic industry exists. *Id.* at 33548.

The Commission's notice of investigation named sixteen respondents (collectively, "Respondents"). The respondents are Comcast Corporation of Philadelphia, PA; Comcast Cable Communications, LLC of Philadelphia, PA; Comcast Cable Communications Management, LLC of Philadelphia, PA; Comcast Business Communications, LLC of Philadelphia, PA; Comcast Holdings Corporation of Philadelphia, PA; Comcast Shared Services, LLC of Chicago, IL (collectively, "Comcast"); Technicolor SA of Issy-les-Moulineaux, France; Technicolor USA, Inc. of Indianapolis, IN; Technicolor Connected Home USA LLC of Indianapolis, IN (collectively, "Technicolor"); Pace Ltd. of Saltaire, England (now ARRIS Global Ltd.); Pace Americas, LLC of Boca Raton, FL; ARRIS International plc of Suwanee, GA; ARRIS Group Inc. of Suwanee, GA; ARRIS Technology, Inc. of Horsham, PA; ARRIS Enterprises Inc. of Suwanee, GA (now ARRIS Enterprises LLC); and ARRIS Solutions, Inc. of Suwanee, GA (collectively, "ARRIS"). 81 FR at 33548; *see also* 82 FR 38934 (Aug. 16, 2017). The Office of Unfair Import Investigations is not a party to this investigation. 81 FR at 33548.

Prior to the evidentiary hearing, Rovi withdrew its allegations as to certain patent claims. *See* Order No. 17 (Sept. 23, 2016), *unreviewed*, Comm'n Notice (Oct. 21, 2016); Order No. 25 (Nov. 14, 2016), *unreviewed*, Comm'n Notice (Dec. 2, 2016); Order No. 27 (Dec. 5, 2016), *unreviewed*, Comm'n Notice (Dec. 28, 2016). Rovi proceeded at the evidentiary hearing on the following patents and claims: Claims 7, 18, and 40 of the '556 patent; claims 1, 2, 14, and 17 of the '263 patent; claims 1, 5, 10, and 15 of the '801 patent; claims 12, 17, and 18 of the '871 patent; claims 1, 3, 5, 9, 10, 14, and 18 of the '413 patent; and claims 1, 10, 13, and 22 of the '512 patent.

On May 26, 2017, the administrative law judge (the "ALJ") issued the final initial determination (the "Final ID"), which finds a violation of section 337 by Respondents in connection with the asserted claims of the '263 and '413 patents. The Final ID finds no violation of section 337 in connection with the asserted claims of the '556, '801, '871, and '512 patents. The ALJ recommended that, subject to any

public interest determinations of the Commission, the Commission should issue an LEO directed to certain accused products, that CDOs issue to Respondents, and that the Commission should not require any bond during the Presidential review period (*see* 19 U.S.C. 1337(j)).

On June 12, 2017, Rovi and Respondents filed with the Commission petitions for review of the Final ID. Respondents petitioned thirty-two of the Final ID's conclusions, and Rovi petitioned seven of the Final ID's conclusions. On June 20, 2017, the parties filed responsive submissions. On July 11, 2017, Rovi and Respondents filed statements on the public interest. The Commission also received and considered numerous comments on the public interest from non-parties. On July 5, 2017, Rovi and the ARRIS respondents filed a Joint Unopposed Motion for, and Memorandum in Support of, Leave to Amend the Complaint and Notice of Investigation to Correct Corporate Names of Two ARRIS Respondents. The motion indicated that ARRIS Enterprises, Inc. has changed its name to ARRIS Enterprises LLC and that Pace Ltd. has changed its name to ARRIS Global Ltd. And, on July 25, 2017, Comcast submitted with the Office of the Secretary a letter including supplemental disclosure and representations. On July 31, 2017, Rovi submitted with the Office of the Secretary a response thereto. On August 9, 2017, Comcast filed a response to Rovi's submission.

On August 10, 2017, and after having reviewed the record, including the petitions and responses thereto, the Commission determined to review the Final ID in part. 82 FR 38934-36 (Aug. 16, 2017) (the "Notice of Review"). In particular, the Commission determined to review the following:

(1) The Final ID's determination that Comcast is an importer of the accused products (Issue 1 in Respondents' Petition for Review).

(2) The Final ID's determination that Comcast has not sold accused products in the United States after the importation of those products into the United States (the issue discussed in section III of Rovi's Petition for Review).

(3) The Final ID's determination that the accused Legacy products are "articles that infringe" (Issue 2 in Respondents' Petition for Review).

(4) The issue of whether the X1 products are "articles that infringe" (Issue 3 in Respondents' Petition for Review), the issue of direct infringement of the '263 and '413 patents by the X1 accused products (Issue 5 in Respondents' Petition for Review), and the issue of "the nature and scope of the violation found" (the issue discussed in

section X of Respondents' Petition for Review).

(5) The issue of whether Comcast's two alternative designs infringe the '263 and '413 patents (Issue 4 in Respondents' Petition for Review).

(6) The Final ID's claim construction of "cancel a function of the second tuner to permit the second tuner to perform the requested tuning operation" in the '512 patent, and the Final ID's infringement determinations as to that patent (Issue 26 in Respondents' Petition for Review).

(7) The Final ID's conclusion that the asserted claims of the '512 patent are invalid as obvious (the issue discussed in section VI.B.4 of Rovi's Petition for Review).

(8) The issue of whether the ARRIS-Rovi Agreement provides a defense to the allegations against the ARRIS respondents (the issue discussed in section XI of Respondents' Petition for Review).

(9) The Final ID's conclusion that Rovi did not establish the economic prong of the domestic industry requirement based on patent licensing (the issue discussed in section IV of Rovi's Petition for Review).

Id. at 38935. The Commission determined to not review the remainder of the Final ID. *Id.* The Commission additionally concluded that Respondents' petition of certain issues decided in the Final ID was improper, and therefore, those assignments of error were waived. *Id.* In the Notice of Review, the Commission also granted the motion to correct the corporate names of two of the respondents and determined to reopen the evidentiary record and accept the supplemental disclosure, response thereto, and reply to the response. *Id.* at 38934–35. The Commission requested briefing on some of the issues under review and also on remedy, the public interest, and bonding. *Id.* at 38935–36.

On August 23, 2017, Respondents filed a Petition for Reconsideration of the Commission's Determination of Waiver as to Certain Issues Specified in Respondents' Petition for Review or, Alternatively, Application of Waiver to Issues Raised in Rovi's Petition for Review. On August 30, 2017, Rovi filed a response thereto. The Commission has determined to deny that petition.

On August 24, 2017, Rovi and Respondents filed their written submissions on the issues under review and on remedy, public interest, and bonding, and on August 31, 2017, the parties filed their reply submissions.

Having examined the record in this investigation, the Commission has determined to affirm the Final ID's conclusion that Comcast has violated section 337 in connection with the asserted claims of the '263 and '413 patents.

The Commission has determined to affirm the Final ID in part, affirm the

Final ID with modifications in part, reverse the Final ID in part, vacate the Final ID in part, and take no position as to certain issues under review. More particularly, the Commission affirms the Final ID's determination that Comcast imports the accused X1 set-top boxes ("STBs"), and takes no position as to whether Comcast is an importer of the Legacy STBs. The Commission also takes no position on as to whether Comcast sells the accused products after importation.

The Commission concludes that there is no section 337 violation as to the Legacy STBs. Regarding the X1 STBs, the Commission affirms the Final ID's conclusion that Comcast's customers directly infringe the '263 and '413 patents. Thus, the Commission affirms the Final ID's conclusion that complainant Rovi has established a violation by Comcast as to those patents and the X1 STBs.

The Commission also takes the following actions. The Commission vacates the Final ID's conclusion that Comcast's two alternative designs infringe the '263 and '413 patents and instead concludes that those designs are too hypothetical to adjudicate at this time. The Commission modifies and affirms the Final ID's claim construction of the claim term "cancel a function of the second tuner to permit the second tuner to perform the requested tuning operation" in the '512 patent and affirms the Final ID's infringement determinations as to that patent. The Commission modifies and affirms the Final ID's conclusion that the asserted claims of the '512 patent are invalid as obvious. The Commission takes no position as to whether the ARRIS-Rovi Agreement provides a defense to the allegations against ARRIS, and as to whether Rovi established the economic prong of the domestic industry requirement based on patent licensing. The Commission adopts the remainder of the Final ID to the extent that it does not conflict with the Commission's opinion or to the extent it is not expressly addressed in the Commission's opinion.

Having found a violation of section 337 in this investigation by Comcast with respect to the '263 and '413 patents, the Commission has determined that the appropriate form of relief is (1) a LEO, that subject to certain exceptions provided therein, prohibits the unlicensed entry of certain digital video receivers and hardware and software components thereof that infringe one or more of claims 1, 2, 14, and 17 of the '263 patent and claims 1, 3, 5, 9, 10, 14, and 18 of the '413 patent that are manufactured by, or on behalf

of, or are imported by or on behalf of Comcast or any of its affiliated companies, parents, subsidiaries, agents, or other related business entities, or their successors or assigns; and (2) CDOs that, subject to certain exceptions provided therein, prohibit Comcast from conducting any of the following activities in the United States: importing, selling, offering for sale, leasing, offering for lease, renting, offering for rent, marketing, advertising, distributing, transferring (except for exportation), and soliciting U.S. agents or distributors for imported covered products; and aiding or abetting other entities in the importation, sale for importation, sale after importation, lease after importation, rent after importation, transfer, or distribution of covered products.

The Commission has also determined that the public interest factors enumerated in section 337(d) and (f) (19 U.S.C. 1337(d) and (f)) do not preclude issuance of the LEO or CDOs. Finally, the Commission has determined that the excluded digital video receivers and hardware and software components thereof may be imported and sold in the United States during the period of Presidential review with the posting of a bond in the amount of zero percent of the entered value of the infringing goods (*i.e.*, no bond). The Commission's orders and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: November 21, 2017.

Katherine M. Hiner,
Supervisory Attorney.

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DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Stipulation and Order Under the Comprehensive Environmental Response, Compensation, and Liability Act

On November 20, 2017, the Department of Justice lodged a proposed Stipulation and Order with the United States Bankruptcy Court for the Southern District of New York in the bankruptcy proceedings entitled *In re*