

**PUBLIC VERSION**

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

**In the Matter of**

**CERTAIN MOBILE TELEPHONES AND  
WIRELESS COMMUNICATION  
DEVICES FEATURING DIGITAL  
CAMERAS, AND COMPONENTS  
THEREOF**

**Investigation No. 337-TA-703**

**COMMISSION OPINION**

**I. INTRODUCTION**

On July 20, 2012, the Commission determined to affirm on modified grounds the final Initial Determination on Remand (the “remand ID” or “RID”) of the presiding administrative law judge (“ALJ”) in the above-captioned investigation. This opinion sets out the reasons for the Commission’s action.

The Commission instituted this investigation on February 23, 2010, based upon a complaint filed on behalf of Eastman Kodak Company of Rochester, New York (“Kodak”) on January 14, 2010, and supplemented on February 4, 2010. *75 Fed. Reg.* 8,112. The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain mobile telephones and wireless communication devices featuring digital cameras, and components thereof, that infringe certain claims of U.S. Patent No. 6,292,218 to Parulski (“the ’218 patent” or “the asserted patent”). The complaint named as respondents Apple Inc., of Cupertino, California (“Apple”); Research in Motion, Ltd., of Ontario, Canada; and Research in Motion Corp., of Irving, Texas (collectively, “RIM”).

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On January 24, 2011, then Chief Judge Luckern, who originally presided over this investigation, issued a final Initial Determination (the “final ID” or “FID”) finding no violation of section 337. Chief Judge Luckern found that none of the accused products<sup>1</sup> of Apple or RIM infringes asserted claim 15 of the '218 patent, the only asserted claim remaining in the investigation. In addition, Chief Judge Luckern found claim 15 invalid for obviousness under 35 U.S.C. § 103(a). Chief Judge Luckern found, however, that Kodak satisfied section 337’s domestic industry requirement. With respect to remedy, Chief Judge Luckern recommended that, if the Commission disagreed with the finding of no violation, the Commission should issue a limited exclusion order, an appropriate cease and desist order directed to Apple, and an appropriate cease and desist order directed to RIM. Chief Judge Luckern recommended, in the event that a violation is found, that no bond be required during the Presidential review period.

On February 7, 2011, Kodak, Apple, RIM, and the Commission investigative attorney (“IA”) each filed a petition for review of the final ID. The parties each filed responsive submissions on February 15, 2011. On March 25, 2011, the Commission determined to review the final ID in its entirety. *76 Fed. Reg.* 17,965-66 (Mar. 31, 2011). The Commission’s notice invited the parties to brief the issues under review and specifically requested that the briefing address five questions. The parties filed their opening briefs on April 8, 2011, and their responsive briefs on April 15, 2011. *Id.*

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<sup>1</sup> Chief Judge Luckern and Judge Pender defined the accused Apple products and the accused RIM products in the final and remand IDs. FID 20-22; RID at 7-8.

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On June 30, 2011, the Commission affirmed in part, reversed in part, and remanded in part Chief Judge Luckern's finding of no violation of section 337.<sup>2</sup> An opinion in support of the Commission's determination issued on July 8, 2011 ("2011 Comm'n Op."). Kodak and RIM both filed requests for reconsideration, which the Commission denied.

The Commission ordered the ALJ on remand to consider (1) infringement under the Commission's construction of the "still processor" claim limitation; (2) infringement under the Commission's construction of the "motion processor" claim limitation; (3) whether Kodak waived the argument that the iPhone 3GS and iPhone 4 in their non-flash-photography mode practice the "initiating capture" limitation under the doctrine of equivalents and if not, whether the iPhone 3GS and iPhone 4 practice this limitation under the doctrine of equivalents; and (4) further proceedings regarding validity in light of the Commission's claim constructions, including (i) the pertinence of the *ex parte* reexaminations of the '218 patent, (ii) further analysis of objective indicia of nonobviousness, and (iii) why the ALJ relied on combinations of prior art not presented by the parties. 2011 Comm'n Op. at 44-45.

Following the Commission's remand, Chief Judge Luckern retired and on October 24, 2011, the investigation was reassigned to Judge Pender. On remand, Apple and RIM chose not to pursue the combinations of prior art relied upon by Chief Judge Luckern which the parties themselves had not offered.

On May 21, 2012, Judge Pender issued the remand ID finding no violation of section 337. Judge Pender found that the Apple iPhone 3G and the accused RIM products infringe

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<sup>2</sup> *Notice of Commission Determination to Affirm in Part and Reverse in Part a Determination of No Violation of Section 337; Remand of the Investigation For Further Proceedings*, Inv. 337-TA-703 (June 30, 2011).

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claim 15 of the '218 patent, the only asserted claim remaining in the investigation, and that the Apple iPhone 3GS and iPhone 4 do not infringe claim 15 of the '218 patent under the doctrine of equivalents. In addition, Judge Pender found that claim 15 is invalid for obviousness under 35 U.S.C. § 103(a), relying in part upon Chief Judge Luckern's analysis.

Kodak and the IA petitioned for review of Judge Pender's finding that claim 15 of the '218 patent is invalid and his finding of no objective indicia of nonobviousness. RIM petitioned for review of Judge Pender's finding that the accused RIM products infringe claim 15, his decision to exclude discovery on newly introduced RIM products, and his finding that claim 15 is not invalid under 35 U.S.C. §103(a) in view of U.S. Patent No. 4,887,161 ("Watanabe"), Sharp ViewCam, and U.S. Patent No. 3,971,065 ("Bayer"). Apple petitioned for review of Judge Pender's finding that the iPhone 3G infringes claim 15, and Apple joined in RIM's petition on invalidity. The IA, Apple, and RIM filed responses to Kodak's petition. The IA and Kodak filed responses to RIM's and Apple's petitions.

After consideration of the final ID, remand ID, and extensive briefing in this investigation, the Commission has determined to grant each party's petition for review in part, and on review to affirm Judge Pender's finding of no violation of section 337, for the reasons set forth herein.

## II. ANALYSIS

### A. Relevant Background

The '218 patent discloses a digital camera with an LCD screen that enables images to be previewed in real-time. Claim 15 is the only claim of the '218 patent remaining in this investigation. It reads in full:

15. An electronic still camera for initiating capture of a still image while previewing motion images on a display, comprising:

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- (a) an image sensor having a two-dimensional array of photosites covered by a mosaic pattern of color filters including at least three different colors for capturing images of a scene, each captured image having a first number of color pixel values provided in a first color pattern;
- (b) a motion processor for generating from the captured images, a second number of color pixel values provided in a second color pattern having at least three different colors and representative of a series of motion images to be previewed, the second number of color pixel values being less than the first number of color pixel values, and the second color pattern being different from the first color pattern;
- (c) a color display for presenting at least some of the motion images of the series of motion images corresponding to the captured images of the scene, the color display having an arrangement of color display pixels including at least three different colors in a pattern different from the first color pattern;
- (d) a capture button for initiating capture of a still image while previewing the motion images presented on the color display;
- (e) a still processor for generating a third number of color pixel values including at least three different colors representative of a captured still image; and
- (f) a digital memory for storing the processed captured still image.

The limitations at issue with respect to infringement of the '218 patent are elements (b) and (e). The motion processor of element (b) generates from the captured images, “a second number of color pixel values provided in a second color pattern having at least three different colors and representative of a series of motion images to be previewed,” with fewer pixels than those sensed by the image sensor, and in a color pattern different from that of the image sensor’s. *See* '218 patent at 12:49-52. The captured images processed by the motion processor are eventually displayed on an LCD display. Unlike the image sensor, which is a Bayer checkerboard, commercial LCD screens generally have equal numbers of red, green, and blue pixels. *See id.* at 8:1-12. As a result, the image captured by a sensor with a Bayer

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checkerboard needs to be converted into a pattern with equal red, green, and blue pixels, through interpolation or other means. In addition to changing the ratio of red, green, and blue pixels, the image must also be downsampled to a lower number of pixels, reflecting the fact that the LCD screen can display fewer pixels than the image sensor can capture.

The principal dispute involving this claim construction is more fully discussed in our previous review of the final ID in this investigation. Specifically, the parties disputed whether the “at least three different colors” acted upon by the motion processor excludes luminance and chrominance values. The accused products convert the output of the image sensor to a YCbCr (or “YCC”) format, where Y represents the luminance of the signal (*i.e.*, the blend of 59% green, 30% red, and 11% blue that represents grayscale). Cb is a chrominance, or “chroma,” signal that adds blue and subtracts green and red, and Cr is a chroma signal that adds red and subtracts green and blue. In its earlier opinion, the Commission held that the YCC format has “at least three different colors.” *See* 2011 Comm’n Op. at 33-34.

The parties’ dispute involving the construction of “motion processor” was also addressed in our previous review, in which we construed this term to mean “a processor that processes a series of motion images using digital image processing’ subject to the remaining functional limitations of part (b) of claim 15.” 2011 Comm’n Op. at 24-25.

A related term appears in part (e) of the claim, which recites a “still processor for generating a third number of color pixel values including at least three different colors representative of a captured still image.” The patent, which claims priority to an application filed in 1994, explains the benefits of offloading the still-image processing to a slower processor. ’218 patent at 2:40-53, 4:35-42, 4:61- 5:19. In the course of our previous review,

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we addressed the respondents' contention that the motion processor and the still processor cannot share circuitry. Specifically, relying on *Linear Technology Corp. v. ITC*, 566 F.3d 1049 (Fed. Cir. 2009), the Commission held that the two processors could share circuitry, provided that there was not total overlap. 2011 Comm'n Op. at 24-25.

**B. Infringement**

Judge Pender found that the Apple iPhone 3G and all of the accused RIM products infringe claim 15. Notably, Judge Pender's infringement analysis includes a finding that the motion processor and still processor of the accused RIM products and the iPhone 3G share [ ] RID at 20, 36, 39.

Judge Pender further found that the accused motion processor is distinct from the still processor because it includes [

] and that the accused still processor is distinct from the accused motion processor because it includes [ ] *Id.*

The respondents petitioned for review of Judge Pender's infringement findings on the aforementioned products. RIM also petitioned for review of Judge Pender's determination to exclude discovery on newly introduced RIM products. As discussed below, the Commission has determined to review Judge Pender's finding of infringement of the accused RIM products and the Apple iPhone 3G. On review, the Commission affirms Judge Pender's finding of infringement on modified grounds.

**1. Infringement By the Accused RIM Products**

For the RIM products, the Commission addresses the [

] components below. For the other components of the motion and still processors not discussed below, the Commission affirms Judge Pender's findings.

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a) [ ]

Judge Pender found that the [ ] of the accused RIM products was included in both the motion and still processors. RID 36, 39. We adopt Judge Pender's findings with respect to the [ ] *Id.* However, in addition to evidence relied upon by Judge Pender as it relates to this component, the Commission finds that additional testimony from Dr. Ramchandran supports Judge Pender's determination. Tr. at 1563:7-1564:20 (testifying that the blue path [ ] illustrated in CDX-3C-153 can be part of both the motion and still processors for the accused Apple and RIM products); *see* CDX-3C-153.

b) [ ]

Judge Pender found that the [ ] in the accused RIM products is used only in the motion processor. RID at 37. There is no dispute between the parties that [ ] is used for the motion processing. With respect to the use of [ ] in still processing, Judge Pender found that because the [ ] *Id.* We disagree with this aspect of Judge Pender's analysis.

It is undisputed that [ ] is sometimes used for still image processing. Specifically, Dr. Villasenor testified that when the device is either in [ ] Tr. 2727:4-18; 2728:12-25; 2729:5-21; 2729:22-2730:12; 2730:13-24; 2730:25-2731:14. [ ]

[ ] meets the limitation of "generating a third number of pixel values generating a third number of color pixel values



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including at least three different colors representative of a captured still image.” Therefore, we find that [ ] is not distinct to the motion processor. Rather, [ ] is shared by the motion processor and still processor.

### c) [ ]

Judge Pender found that the [ ] is part of the still processor (and not the motion processor). RID at 22, 38. We adopt Judge Pender’s findings that the [

] is part of the claimed still processor. However, in addition to evidence relied upon by Judge Pender as it relates to this component, the Commission finds that Figure 10 of the specification further supports Judge Pender’s finding that the [ ] is part of the still processor. *See* ’218 patent at 3:12-13, 9:26-29, FIG. 10.

### d) Summary

Based on our determinations above and the findings of Judge Pender that have been affirmed by the Commission, the still and motion processors of the accused RIM products are sufficiently distinct for purposes of claim 15. Specifically, although the motion and still processors both include the [ ] the motion processor also includes a [ ] that is unique to the motion processor and the still processor includes the [ ] that is unique to the still processor. Therefore, we affirm Judge Pender’s finding that the accused RIM products satisfy the still and motion processor limitations of claim 15, and the corresponding finding of infringement as it relates to these products.

## 2. Infringement By the Apple iPhone 3G

Turning to the accused Apple products, Judge Pender also found that the iPhone 3G’s motion and still processor are sufficiently distinct for purposes of claim 15 despite sharing

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interpolation circuitry. Specifically, Judge Pender found that the motion processor (but not the still processor) includes [

] and the still processor (but not the motion processor) includes a [

] RID at 17-22. Apple sought review as to each of these components. For the Apple iPhone 3G, the Commission addresses the distinctness of the [ ] and the [ ] below. For the other components of the motion and still processors not discussed below, the Commission affirms Judge Pender's findings.

**a) [ ]**

Similar to his findings regarding the accused RIM products, Judge Pender found that the [ ] of Apple's iPhone 3G is part of the still processor (and not the motion processor). RID at 22. We adopt Judge Pender's findings that the [ ] is part of the claimed still processor. However, in addition to evidence relied upon by Judge Pender, the Commission finds that Figure 10 of the specification further supports Judge Pender's finding that the [ ] is part of the still processor. *See* '218 patent at 3:12-13, 9:26-29, FIG. 10.

**b) [ ]**

The Commission affirms Judge Pender's finding that the [ ] circuitry is only part of the motion processor of the iPhone 3G and finds that the still image data is not processed by the [ ] circuitry within the [

] However, the Commission finds that additional testimony by Dr. Ramchandran supports Judge Pender's determination. Tr. 1888:19-1889:12 (testifying that the [ ] circuitry is bypassed by the still image).

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### c) Summary

The Commission affirms Judge Pender's finding that the still and motion processors of the iPhone 3G are sufficiently distinct for purposes of claim 15. Specifically, we find that the motion and still processors both include the [ ] circuitry. In addition, we find that the motion processor includes the [ ] that are unique to the motion processor and the still processor includes the [ ] that is unique to the still processor. Therefore, we affirm Judge Pender's finding that the iPhone 3G satisfies the still and motion processor limitations of claim 15, and the corresponding finding of infringement as it relates to this product.

### C. Validity

Judge Pender found claim 15 invalid under 35 U.S.C. § 103(a) based on the combination of Japanese Patent Application Laid-Open Disclosure No. H5-122574 ("Mori") and Patent No. 5,493,335 ("Parulski '335"). RID 41-62. Both Chief Judge Luckern and Judge Pender found that there are no objective indicia of nonobviousness. RID at 56-62; FID at 98-99. Judge Pender found that the fact that the reexamination at the PTO did not invalidate the patents based on different art did not affect his result. RID at 41-46. In addition, Judge Pender considered the combination of Watanabe, Sharp ViewCam, and Bayer and found that claim 15 was not obvious in view of this combination. *Id.* at 62-66. The respondents have petitioned for review of the ALJ's determination as to the Watanabe combination. We have determined not to review ALJ's finding of no invalidity based on that combination. Kodak and the IA petitioned for review of the ALJ's findings based on the Mori combination, including the determination that Kodak demonstrated no objective indicia

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of nonobviousness. We have determined to review the ALJ's invalidity analysis as to the Mori combination (including objective indicia of nonobviousness) and on review, we affirm.

As set forth in the remand ID, Judge Pender found that Kodak did not establish a nexus between the '218 patent and its licensing program, and thus failed to show any objective indicia of non-obviousness that must be substantively considered. *Id.* at 61. On review, the Commission reverses this aspect of Judge Pender's analysis. Specifically, the Commission finds that Kodak has shown a nexus between its licensing program and the '218 patent. The Commission has thus considered this limited evidence of objective indicia of nonobviousness along with the other evidence relating to the Mori and Parulski '335 combination. On balance, the Commission agrees with Judge Pender and Chief Judge Luckern that claim 15 is obvious for the reasons set forth in the IDs, even with the objective indicia in mind. The Commission thus affirms the finding that claim 15 is obvious in view of the Mori and Parulski '335 combination.

### III. CONCLUSION

The Commission determined to review certain aspects of the remand ID and on review affirms Judge Pender's finding of infringement of the accused RIM products and the Apple iPhone 3G on modified grounds. The Commission has further determined to review Judge Pender's obviousness findings on the Mori and Parulski '335 combination and on review finds that there are objective indicia of nonobviousness that should have been substantively considered. However, even when considered along with the other obviousness evidence discussed in the remand and final IDs, the Commission agrees that claim 15 is nonetheless obvious in view of the Mori and Parulski '335 combination. The Commission thus affirms the remaining findings of Judge Pender regarding the Mori and Parulski '335

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combination, including his findings regarding the reexamination. The Commission determined not to review Judge Pender's finding that the Watanabe combination does not render claim 15 obvious or his decision to exclude discovery on newly introduced RIM products. Accordingly, the Commission has terminated this investigation with a finding of no violation of section 337.

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton  
Acting Secretary to the Commission

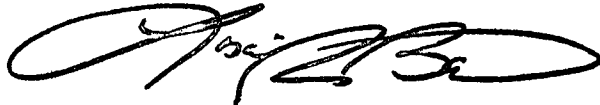
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**CERTAIN MOBILE TELEPHONES AND WIRELESS  
COMMUNICATION DEVICES FEATURING DIGITAL  
CAMERAS, AND COMPONENTS THEREOF**

**337-TA-703**

**CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached has been served by hand upon the Commission Investigative Attorney, Vu Q. Bui, Esq., and the following parties as indicated, on August 10, 2012.



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