

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

In the Matter of

**CERTAIN BASEBAND PROCESSOR
CHIPS AND CHIPSETS, TRANSMITTER
AND RECEIVER (RADIO) CHIPS,
POWER CONTROL CHIPS, AND
PRODUCTS CONTAINING SAME,
INCLUDING CELLULAR TELEPHONE
HANDSETS**

Inv. No. 337-TA-

543

LIMITED EXCLUSION ORDER

The Commission has determined that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the unlawful importation, sale for importation, and sale after importation of baseband processor chips and chipsets produced by or on behalf of Qualcomm Incorporated that are programmed to enable the power saving features covered by claims 1, 4, 8, 9, or 11 of U.S. Patent No. 6,714,983 (“infringing chips and chipsets”).

Having reviewed the record in this investigation, including the written submissions of the parties and hearing testimony, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry of

infringing chips and chipsets manufactured by or on behalf of Qualcomm and circuit board modules or carriers containing such infringing chips or chipsets, and certain handheld wireless communications devices that contain an infringing chip. Such devices include cellular telephone handsets and personal digital assistants (“PDAs”). This exclusion order does not apply to computer data cards. This exclusion order also does not apply to handheld wireless communications devices that are of the same models as handheld wireless communications devices that were being imported for sale to the general public on or before the date of this order. The Commission has also determined to issue a cease and desist order directed to Qualcomm.

The Commission reached this decision after assessing the appropriateness of an order excluding downstream products. In particular, the Commission found that the exemption for previously imported models is necessary to reduce the burdens imposed on third parties and consumers particularly in light of the limited availability of alternative devices that do not contain the infringing chips or chipsets.

The Commission has determined that the public interest factors enumerated in 19 U.S.C. § 1337 (d) and (f) do not preclude issuance of the limited exclusion order or the cease and desist order. The Commission found that, while exclusion of handheld wireless communications devices would have some impact on the public interest,

particularly the public health and welfare, competitive conditions in the U.S. economy, and U.S. consumers, the exemption for previously imported models sufficiently reduced this impact such that the exclusion order should issue.

The Commission has further determined that the bond during the Presidential review period shall be in the amount of one hundred (100) percent of the entered value for any infringing chips or chipsets imported separately or within circuit board modules or carriers and five (5) percent of the entered value for any handheld wireless communications devices that are subject to this order and which contain infringing chips or chipsets.

Accordingly, the Commission hereby **ORDERS** that:

1. Baseband processor chips or chipsets, including chips or chipsets incorporated into circuit board modules and carriers, manufactured abroad by or on behalf of Qualcomm Incorporated or any of its affiliated companies, parents, subsidiaries, contractors, or other related business entities, or their successors or assigns, that are programmed to enable the power saving features covered by claims 1, 4, 8, 9, or 11 of U.S. Patent No. 6,714,983 are excluded from entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, for the remaining term of the patent except under license of the patent owner or as provided by law.

2. Handheld wireless communications devices, including cellular telephone handsets and PDAs, containing Qualcomm baseband processor chips or chipsets that are programmed to enable the power saving features covered by claims 1, 4, 8, 9, or 11 of U.S. Patent No. 6,714,983, wherein the chips or chipsets are manufactured abroad by or on behalf of Qualcomm Incorporated or any of its affiliated companies, parents, subsidiaries, contractors, or other related business entities, or their successors or assigns, are excluded from entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, for the remaining term of the patent unless under license of the patent owner, as provided by law, or as exempted below. This order does not apply to computer data cards. Also exempted from this order are handheld wireless communications devices that are of the same models as handheld wireless communications devices that were being imported into the United States for sale to the general public on or before the date of this Order. The exempted models must be identifiable by specific and verifiable model numbers, denoting model-specific product specifications, features, and functions. This exemption will not apply to handheld wireless communications devices that differ in terms of model number, product specifications, features, or functions from handheld wireless

communications devices that were being imported into the United States for sale to the general public on or before the date of this Order.

3. Chips, chipsets, and handheld wireless communications devices otherwise excluded from entry or withdrawal for consumption under paragraphs 1 and 2 of this Order are entitled to entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, under bond in the amount of one hundred (100) percent of entered value for infringing chips or chipsets imported separately, or five (5) percent of entered value per handheld wireless communications device containing infringing chips or chipsets, pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337(j), from the day after this Order is received by the United States Trade Representative (70 *Fed. Reg.* 43251 (July 21, 2005)), until such time as the United States Trade Representative notifies the Commission that she approves or disapproves this action but, in any event, not later than sixty (60) days after the date of receipt of this action.

4. Pursuant to procedures to be specified by the Bureau of Customs and Border Protection ("Customs"), as Customs deems necessary, persons seeking to import chips, chipsets, or handheld wireless communications devices that are potentially subject to this Order may certify that they are familiar with the terms of this Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the products being imported are not

excluded from entry under paragraphs 1 or 2 of this Order. At its discretion, Customs may require persons who have provided the certification described in this paragraph to furnish such records or analyses as are necessary to substantiate the certification.

5. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to chips, chipsets, or handheld wireless communications devices containing same that are imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.

6. The Commission may modify this Order in accordance with the procedures described in Rule 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.

7. The Secretary shall serve copies of this Order upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and Customs.

8. Notice of this Order shall be published in the *Federal Register*.

By Order of the Commission.

Marilyn R. Abbott
Secretary to the Commission