

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

In the Matter of

**CERTAIN MOBILE ELECTRONIC
DEVICES AND RADIO FREQUENCY
AND PROCESSING COMPONENTS
THEREOF (II)**

Investigation No. 337-TA-1093

**JOINT MOTION TO SUPPLEMENT THE PARTIES' AMENDED JOINT MOTION TO
TERMINATE THE INVESTIGATION PURSUANT TO SETTLEMENT AGREEMENT
(MOT. NO. 1093-049C)**

Pursuant to 19 C.F.R. § 210.21(b), Complainant Qualcomm Inc. (“Qualcomm”) and Respondent Apple, Inc. (“Apple”) hereby submit this joint supplement to their amended joint motion to terminate this Investigation based on the Settlement and Release Agreement. The Office of Unfair Import Investigations has indicated that it will take a position on the motion to supplement the amended joint motion to terminate after it is filed.

**I. SUPPLEMENTAL SUBMISSION OF OTHER AGREEMENTS AND
ACCOMPANYING PUBLIC VERSIONS**

An investigation may be terminated as to one or more respondents based on a licensing or other settlement agreement. 19 C.F.R. §210.21(b). If an investigation is terminated based on a settlement agreement, the Rule requires that “[t]he motion for termination by settlement shall contain copies of the licensing or other settlement agreements,” specifically, “any supplemental agreements, any documents referenced in the motion or attached agreements, and a statement that there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation.” *Id.*

Qualcomm and Apple executed a Settlement and Release Agreement in order to terminate this Investigation, as well as to resolve other pending legal disputes. Specifically, pursuant to the

PUBLIC VERSION

Settlement and Release Agreement (Amended Jt. Mot. Ex. 1), Qualcomm and Apple have agreed to terms settling the dispute that forms the subject matter of this Investigation. For the reasons set forth in the Amended Joint Motion to Terminate, Qualcomm and Apple also included the Global Patent License Agreement and Letter Agreement (Amended Jt. Mot. Exs. 2 and 3). Finally, there are Other Agreements¹ between Qualcomm and Apple referenced in Exhibit 1 to the Amended Joint Motion to Terminate. *See* Amended Jt. Mot. Ex. 1 at 3, Recitals ¶ F. Redacted versions of the Settlement and Release Agreement, the Global Patent License Agreement, and Letter Agreement were attached to the Amended Joint Motion to Terminate as Exhibits 4-6, respectively, and were publicly filed. For the reasons set forth in the Amended Joint Motion to Terminate, Qualcomm and Apple provided, as Appendix A attached thereto, a summary of the Other Agreements referenced in Exhibit 1.

Qualcomm and Apple submit this Joint Supplement to include the Other Agreements attached hereto as Exhibits A through D. While the parties do not view the Other Agreements as relevant to the settlement of the subject matter of this Investigation, the Parties understand that because these Other Agreements were referenced in the Settlement and Release Agreement, and for avoidance of doubt, Qualcomm and Apple are including them with this Joint Supplement. *See* Amended Jt. Mot. Ex. 1 at 3, Recitals ¶ F. Redacted versions of the Other Agreements are attached hereto as Exhibits E through H, respectively, and will be filed publicly. Apart from the Amended Joint Motion Exhibits 1-3 and the Other Agreements, there are no agreements, written or oral, express or implied between the Parties concerning the subject matter of the Investigation.

¹ The “Other Agreements” include: 2019 Software Agreement (“MSA”) attached hereto as Exhibit A; Second Amended and Restated Strategic Terms Agreement (“ASTA”) attached hereto as Exhibit B; Statement of Work for Qualcomm Chipsets (“SOW”) attached hereto as Exhibit C; and Assignment and Guaranty Letter Agreement (“Assignment and Guaranty”) attached hereto as Exhibit D.

PUBLIC VERSION

The Other Agreements contain confidential business information within the meaning of 19 C.F.R. § 210.5. Accordingly, Qualcomm and Apple request permission to redact information confidential to Qualcomm and/or Apple, and further request that the un-redacted version of the Other Agreements be treated as Confidential Business Information under the Protective Order in this Investigation (Order No. 1) and not publicly disclosed.

The redacted information in the Other Agreements, and in agreements previously submitted, is considered “confidential business information” under Commission Rule 201.6, as it is “information which concerns or relates to the trade secrets, processes, operations, style of works, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, or other information of commercial value, the disclosure of which is likely to have the effect of ... causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained.” The information sought to be redacted includes:

- 2019 Software Agreement: the agreement sets forth the terms and conditions for Apple’s access to certain proprietary Qualcomm software, including terms regarding the processes and operations for Apple’s access to this confidential and proprietary material. Accordingly, this agreement’s terms are heavily redacted, consistent with Commission Rule 201.6’s recognition that information concerning or relating to such trade secrets, processes, or operations is confidential business information. Moreover, the redacted information includes non-public information regarding specific Qualcomm software, processes, and operations, including information related to various aspects of Qualcomm software; non-public information regarding Apple’s current and future products, processes, and operations; and non-standard provisions, terms, and definitions that were heavily negotiated between Qualcomm and Apple and which deviate from terms Qualcomm and/or Apple have used in other similar agreements, the disclosure of which would cause harm to Qualcomm and/or Apple by adversely impacting the competitive position of Qualcomm and/or Apple in ongoing and future commercial negotiations with third parties.

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- ASTA: the redacted information includes non-public information regarding Qualcomm and/or Apple product development processes; Qualcomm and/or Apple operations, supply chain, supply constraint procedures, and product support; information related to product inventories and product forecasts; processes and operations involving Apple contract manufacturers; and non-standard provisions, terms, and definitions that were heavily negotiated between Qualcomm and Apple and which deviate from terms Qualcomm and/or Apple have used in other similar agreements, the disclosure of which would cause harm to Qualcomm and/or Apple by adversely impacting the competitive position of Qualcomm and/or Apple in ongoing and future commercial negotiations with third parties.
- SOW: the redacted information includes information related to sales forecasting; information on Qualcomm and/or Apple processes and operations for future product development; information on unreleased chipsets and product components; and information on pricing, sourcing, and delivery of components for future products.
- Assignment and Guaranty: the redacted information includes references to non-public commercial arrangements and operations, including information related to current and future Qualcomm and/or Apple products, information which is of commercial value and could harm the competitive position of Qualcomm and/or Apple if revealed.

The treatment requested is further consistent with the public interest, which favors settlement. *See* Amended Joint Motion to Terminate the Investigation Based on Settlement, Mot. No. 1093-049C.

II. SUPPLEMENTAL SUBMISSION OF REVISED PUBLIC VERSION OF GLOBAL PATENT LICENSING AGREEMENT

In response to the Commission Investigative Staff's Response to the Amended Joint Motion to Terminate, Qualcomm and Apple submit this Joint Supplement to include a revised redacted version of the Global Patent License Agreement, attached hereto as Exhibit I and will be filed publicly. *See* Staff Response at 5.

The Global Patent License Agreement contains confidential business information within the meaning of 19 C.F.R. § 210.5. Specifically, the redacted information includes commercial terms of the license, including royalty rates, royalty calculations, and payment terms; information

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on future products and product categories; information regarding internal Apple and Qualcomm supply, sales, and distribution processes and operations; and a number of non-standard provisions, terms, and definitions that were heavily negotiated between Qualcomm and Apple and which deviate from terms Qualcomm and/or Apple have used in other licensing agreements, the disclosure of which would cause harm to Qualcomm and/or Apple by adversely impacting the competitive position of Qualcomm and/or Apple in ongoing and future commercial negotiations and licensing agreements with third parties.

Accordingly, Qualcomm and Apple request permission to redact information confidential to Qualcomm and/or Apple, and further request that the un-redacted version of the Global Patent and License Agreement be treated as Confidential Business Information under the Protective Order in this Investigation (Order No. 1) and not publicly disclosed. The treatment requested is consistent with the public interest, which favors settlement. *See* Amended Joint Motion to Terminate the Investigation Based on Settlement, Mot. No. 1093-049C.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW IN *FEDERAL TRADE COMMISSION V. QUALCOMM INC.* DO NOT EFFECT THE COMMISSION'S STATUTORY OBLIGATION TO CONSIDER THE PUBLIC INTEREST FACTORS

In response to a recommendation from the Office of General Counsel, Qualcomm and Apple would also like to address Judge Koh's Findings of Fact and Conclusions of Law dated May 21, 2019 in *Federal Trade Commission v. Qualcomm Inc.*, Case No. 17-CV-00220-LHK ("the May 21 Order") and the Commission's statutory obligation to consider the effect of the settlement agreement and other referenced agreements submitted to the Commission as part of our Joint Motion to Terminate on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States and U.S. consumers. 19 C.F.R. §210.50(b)(2).

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