

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN AUTOMATED TELLER MACHINES
AND POINT OF SALE DEVICES AND
ASSOCIATED SOFTWARE THEREOF**

Investigation No. 337-TA-958

**NOTICE OF COMMISSION DECISION TO REVIEW AN INITIAL
DETERMINATION GRANTING A MOTION FOR SUMMARY
DETERMINATION OF INVALIDITY OF THE ASSERTED
PATENT CLAIMS, AND ON REVIEW AFFIRMING
THE INITIAL DETERMINATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 17), which granted a motion for summary determination of invalidity as to the asserted claims of U.S. Patent No. 6,081,792, and on review to affirm the ID's finding of invalidity.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2532. 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, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 9, 2015, based on a complaint filed by Global Cash Access, Inc. of Las Vegas, Nevada, alleging a violation of section 337 by virtue of the infringement of claims 1-3, 5-7 and 9 of U.S. Patent No. 6,081,792 ("the '792 patent"). 80 *Fed. Reg.* 32,605. The notice of investigation named as respondents NRT Technology Corp. of Toronto, Ontario, Canada; and NRT Technologies, Inc. of Las Vegas, Nevada (collectively, "NRT"). *Id.* at 32,606. On October 9, 2015, the Commission

determined not to review an initial determination (Order No. 9) granting the complainant's motion to amend the complaint to change the complainant's name to Everi Payments Inc. ("Everi"), in view of a corporate name change.

On October 6, 2015, the ALJ conducted a *Markman* hearing. On December 22, 2015, he issued his claim construction order based upon the hearing. Order No. 15. In that order, the ALJ found that "one of ordinary skill in the art would have at least a Bachelor of Science degree in Electrical Engineering, Computer Science, or Computer Engineering, or equivalent, with a focus on computer networks, and about two years of relevant experience working with computer architectures or networks and familiarity with electronic financial transactions and/or ATM or POS processing." Order No. 15 at 6. Later in that order, the ALJ agreed with NRT that the claim term "processor" in each of the asserted claims is indefinite. *Id.* at 10-12.

On February 29, 2016, NRT moved for summary determination of invalidity of the asserted patent claims. The Commission investigative attorney ("IA") responded in support of the motion. Everi responded in opposition to the motion. On March 22, 2016, the ALJ granted the motion as an initial determination ("ID") (Order No. 17). On March 30, 2016, Everi petitioned for Commission review of Order No. 17. On April 6, 2016, NRT and the IA filed oppositions to the petition.

Upon consideration of the petition for review, responses thereto, Order Nos. 15 and 17, and the intrinsic record of the '792 patent, among other portions of the administrative record, the Commission has determined to review the ID.

On review, the Commission notes that Everi has not argued any error in the ALJ's determination of the level of skill in the art including the ALJ's finding (Order No. 15 at 6) that the person of ordinary skill is "familiar[] with electronic financial transactions and/or ATM or POS processing." *See* 19 C.F.R. § 210.43(b)(2) (waiver). The Commission finds that NRT demonstrated by clear and convincing evidence that the claim language, when read in light of the specification and prosecution history, fails to inform, with reasonable certainty, those skilled in the art about the scope of the invention. In particular, as discussed on pages 10-12 of Order No. 15, the patent is ambiguous as to whether the claimed "processor" is a payment processor (using the meaning of the term in connection with financial transactions) or a computer processor (as Everi contends), or both. While the Commission views it as unnecessary to rely upon extrinsic evidence to reach this conclusion, should the extrinsic evidence be considered, the Commission finds NRT's expert testimony credible, *see* Rebuttal Expert Report of Michael Shamos Regarding Claim Construction ¶¶ 52-58, and that Everi's expert's testimony is not credible, *see* Corrected Claim Construction Report of Sigurd Meldal ¶¶ 121-31. Thus, the Commission finds, that to the extent extrinsic evidence is considered, it supports a finding that the term "processor" is indefinite as used in patent.

To the extent that Order No. 15 suggests that Everi's list of exemplary "processors" for its proposed construction of the term "processor" further demonstrates the indefiniteness of that term

in the computer arts, the Commission does not adopt such reasoning. Had “processor” been used in its ordinary sense in the computer arts in the ’792 patent, the fact that there are different types of exemplary processors would likely not serve to make the term “processor” indefinite. However, as the ALJ correctly noted, the intrinsic evidence shows that the term “processor” is not used in that sense (or exclusively in that sense) in the ’792 patent. *See* Order No. 15 at 11-12. The patent specification is vague, and uses the term “processor” in a manner at odds with the computer arts (*e.g.*, ’792 patent col. 4 lines 5-10; col. 6 lines 31-35). The claims are similarly vague, and the drawings are nothing more than black-box diagrams. The Commission further finds that neither the file history of the ’792 patent nor the histories of later-filed applications support either the definiteness of the term “processor” or Everi’s proposed construction.

The Commission rejects Everi’s allegations of procedural irregularities in the issuance of Order Nos. 15 and 17. In addition, the Commission disagrees with Everi that the ALJ overlooked any pertinent evidence of record in his orders—the ALJ is presumed to have reviewed the evidence of record—and, as discussed above, the Commission’s review of the record affirms the ALJ’s determination that the asserted patent claims are indefinite.

For the foregoing reasons, the Commission has determined to affirm the ID’s finding of invalidity.

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 C.F.R. Part 210).

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: May 16, 2016