

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

In the Matter of)

CERTAIN AUDIO PROCESSING INTEGRATED)
CIRCUITS AND PRODUCTS CONTAINING SAME)

Inv. No. 337-TA-538

**NOTICE OF COMMISSION DECISION TO REVIEW PORTIONS
OF AN INITIAL DETERMINATION FINDING A VIOLATION OF SECTION 337 OF
THE TARIFF ACT OF 1930 AND TO DENY RESPONDENT’S MOTION FOR LEAVE
TO FILE A REPLY TO THE RESPONSES TO RESPONDENT’S PETITION FOR
REVIEW**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review certain portions of a final initial determination (“ID”) of the presiding administrative law judge (“ALJ”) finding a violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation. The Commission has also denied respondent’s motion for leave to file a reply in support of its petition for review.

FOR FURTHER INFORMATION CONTACT: Steven W. Crabb, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5432. Copies of the public version of the ALJ’s ID and all other nonconfidential 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 (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 18, 2005, based on a complaint filed on behalf of SigmaTel, Inc. (“complainant”) of Austin, Texas. *70 Fed. Reg.* 20172. The complaint alleged violations of section 337 in the importation into the United States, sale for importation, and sale within the United States after importation of certain audio processing integrated circuits and products containing same by reason of infringement of claim 10 of U.S. Patent No. 6,137,279 (“the ‘279 patent”) and claim 13 of U.S. Patent No. 6,633,187 (“the ‘187 patent”). *Id.* The notice of investigation named Actions Semiconductor Co. of Guangdong, China (“Actions”) as the only respondent.

On June 9, 2005, the ALJ issued an ID (Order No. 5) granting complainant’s motion to amend the complaint and notice of investigation to add allegations of infringement of the previously asserted patents and to add an allegation of a violation of section 337 by reason of infringement of claims 1, 6, 9, and 13 of U.S. Patent No. 6,366,522 (“the ‘522 patent”). That ID was not reviewed by the Commission.

On October 13, 2005, the ALJ issued an ID (Order No. 9) granting complainant’s motion to terminate the investigation as to the ‘279 patent. On October 31, 2005, the Commission determined not to review the ID.

On October 31, 2005, the ALJ issued an ID (Order No. 14) granting complainant’s motion for summary determination that the importation requirement of section 337 has been satisfied. On November 1, 2005, the ALJ issued an ID (Order No. 15) granting complainant’s motion for summary determination that complainant has satisfied the economic prong of the domestic industry requirement of section 337 for the patents in issue. Those IDs were not reviewed by the Commission.

A five-day evidentiary hearing was held from November 29, 2005, through December 3, 2005. On March 20, 2006, the ALJ issued his final ID and recommended determination on remedy and bonding. The ALJ concluded that there was a violation of section 337. Specifically, he found that claim 13 of the ‘187 patent was valid and infringed by Actions’ accused product families 207X, 208X, and 209X. The ALJ also determined that claims 1, 6, 9, and 13 of the ‘522 patent were valid and infringed by Actions’ accused product families 208X and 209X.

On April 3, 2006, respondent Actions petitioned for review of portions of the final ID. On April 10, 2006, complainant SigmaTel and the Commission investigative attorney (“IA”) filed responses in opposition to the petition for review.

On April 17, 2006, respondent Actions filed a motion for leave to file a reply to complainant SigmaTel’s response to Actions’ petition for review. On April 19, 2006, complainant SigmaTel filed a motion in opposition to Actions’ motion. The Commission has determined to deny Actions’ motion for leave to file a reply.

Having examined the record in this investigation, including the ID, the petitions for review, and the responses thereto, the Commission has determined to review the ID in part:

(1) With respect to the '187 patent, the Commission has determined to review the ALJ's construction of the claim term "memory" in claim 13 to remove the apparent inadvertent inclusion of the word "firmware" from his claim construction.

(2) With respect to the '522 patent, the Commission has determined to review the ALJ's construction of the following limitation of claims 1 and 9: "produce the system clock control signal and power supply control signal based on a processing transfer characteristic of the computation engine." The Commission has also determined to review the ALJ's findings of fact and conclusions of law concerning infringement of claims 1, 6, 9, and 13 of the '522 patent by the accused Actions chips, and to review the ALJ's findings of fact and conclusions of law concerning whether SigmaTel's chips satisfy the technical prong of the domestic industry requirement of section 337 in regard to the '522 patent.

The Commission has determined not to review the remainder of the ID.

On review, the Commission requests briefing based on the evidentiary record on all issues under review. In particular, the Commission requests that the parties brief the following questions, with all answers supported by citations to legal authority and the evidentiary record:

1. Does Federal Circuit case law support reference to the specification of the patent to vary the plain meaning of a claim term that is a simple English word such as "and?" See e.g. *Phillips v. AWH Corporation*, 415 F.3d 1303, 1314 (Fed. Cir. 2005); *Chef America, Inc. v. Lamb-Weston, Inc.*, 358 F.3d 1371, 1373 (Fed. Cir. 2004).

2. Please discuss the impact on the ALJ's infringement analysis if the claim term "produce the system clock control signal and power supply control signal based on a processing transfer characteristic of the computation engine" in claims 1 and 9 of the '522 patent is interpreted to require that both the frequency and voltage must be adjusted.

3. Please discuss the impact on the ALJ's analysis of the technical prong of the domestic industry requirement in this investigation if the claim term "produce the system clock control signal and power supply control signal based on a processing transfer characteristic of the computation engine" in claim 1 of the '522 patent is interpreted to mean that both the frequency and voltage must be adjusted.

In connection with the final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly,

the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background information, see the Commission Opinion, *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount to be determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issues under review. The submission should be concise and thoroughly referenced to the record in this investigation, including references to exhibits and testimony. Additionally, the parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the ALJ's March 20, 2006, recommended determination on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is requested to supply the expiration dates of the patents at issue and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than the close of business on May 15, 2006. Reply submissions must be filed no later than the close of business on May 22, 2006. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original and 12 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R § 201.6. Documents for which confidential treatment is granted by the Commission will

be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in sections 210.42 - .46 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42 - .46).

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: May 5, 2006