

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

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In the Matter of)

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CERTAIN DIGITAL PROCESSORS)
AND DIGITAL PROCESSING SYSTEMS,)
COMPONENTS THEREOF, AND PRODUCTS)
CONTAINING SAME)
_____)

Inv. No. 337-TA-559

**NOTICE OF COMMISSION DECISION TO REVIEW-IN-PART THE PRESIDING
ADMINISTRATIVE LAW JUDGE'S INITIAL DETERMINATION GRANTING
RESPONDENTS' MOTION FOR SUMMARY DETERMINATION OF
NON-INFRINGEMENT OF U.S. PATENT NO. 5,021,945**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the initial determination ("ID") of the presiding administrative law judge ("ALJ") issued on September 6, 2006, in the above-captioned investigation under section 337 of the Tariff Act as amended, 19 U.S.C. § 1337. Specifically, the Commission has determined to review the issues of (1) claim construction of the limitations "logical processor number" and "added to each instruction," (2) whether there are genuine issues of material fact precluding summary determination, and (3) the ALJ's interpretation of the law concerning the doctrine of equivalents.

FOR FURTHER INFORMATION CONTACT: Christal A. Sheppard, Esq., telephone 202-708-2301, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436. Copies of all 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 SW., 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://dockets.usitc.gov/eol.public>. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on January 17, 2006, based on a complaint filed on behalf of Biax Corporation ("Biax") of Boulder, Colorado. 71 Fed. Reg. 2565 (January 17, 2006). The complaint asserts a violation of section 337 of the

Tariff Act of 1930, 19 U.S.C. § 1337, in the importation into the United States, sale for importation, or sale within the United States after importation of certain digital processors and digital processing systems, components thereof, and products containing the same by reason of infringement of one or more claims of three U.S. patents including U.S. Patent No. 5,021,945 (“the ‘945 patent”). 71 *Fed. Reg.* 2565 (January 17, 2006). The notice of investigation named five respondents but was subsequently amended first to remove and then to add respondents. Currently, the named respondents are: Philips Semiconductor, Inc.; Philips Electronics North America Corp.; Philips Consumer Electronics B.V.; Philips Semiconductors B.V. (collectively, “Philips”); and 2Wire, Inc. of San Jose, California.

On August 7, 2006, Philips moved for summary determination of non-infringement of the three patents at issue. On August 11, 2006, respondent 2Wire filed a motion to join Philips’ motion for summary determination. The Commission investigative attorney (“IA”) and Biax opposed the motion for summary determination. On September 6, 2006, the ALJ issued the subject ID granting Philips’ motion as to only one of the three asserted patents, the ‘945 patent. Philips filed a petition for review on September 13, 2006. On September 14, 2006, the IA filed a request to file his petition for review one day past the due date. Neither Biax nor Philips opposes this request. On September 20, 2006, Philips filed combined oppositions to Biax’s and the IA’s petitions. On September 21, 2006, Biax filed a supplement to its petition for review. On September 28, 2006, respondents opposed the supplement. The Commission’s rules do not provide for additional filings unless requested by the Commission. 19 C.F.R § 210.43(d)(2). Therefore, we have not considered the supplement or the response. Whether the additional filings should be admitted into the record is an evidentiary matter that we leave, in the first instance, to the ALJ.

The Commission, having examined the petitions for review, the responses thereto, and the relevant portions of the record has determined to review the following issues: (1) claim construction of the limitations “logical processor number” and “added to each instruction,” (2) whether there are genuine issues of material fact precluding summary determination, and (3) the ALJ’s interpretation of the law concerning the doctrine of equivalents. The Commission has also granted the IA’s request to file his petition out of time.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and sections 210.43 and 210.45(c) of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.43 and 210.45(c)).

By order of the Commission.

/s/
Marilyn R. Abbott
Secretary to the Commission

Issued: October 10, 2006