

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

In the Matter of

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

Investigation No. 337-TA-559

**NOTICE OF COMMISSION DECISION TO REVIEW IN PART AN INITIAL
DETERMINATION AND ON REVIEW TO AFFIRM THE ADMINISTRATIVE LAW
JUDGE'S DETERMINATION THAT THERE IS NO VIOLATION OF SECTION 337**

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 an initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) determining that there is no violation of section 337 of the Tariff Act of 1930. Specifically, the Commission has determined to review the portions of the ALJ’s determination relating to (1) the interpretation of 19 U.S.C. § 1337(a)(1)(B)(i); (2) new matter and written description (including infringement relating to the “processor elements” limitation); and (3) enforceability. On review, the Commission has determined to take no position with respect to these issues, but to affirm the ALJ’s determination of no violation of section 337.

FOR FURTHER INFORMATION CONTACT: Michelle Walters, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5468. 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’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 17, 2006, based on a complaint filed by Biax Corporation (“Biax”), alleging a violation of section 337 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 various claims of United States Patent Nos. 5,021,945 (“the ‘945 patent”), 5,517,628, and 6,253,313. The complaint, as subsequently amended, named five respondents: Philips Semiconductors B.V., Philips Electronics North America Corp., NXP B.V., and Philips Consumer Electronics B.V. (collectively, “Philips”), and 2Wire, Inc. The ‘945 patent is the sole patent remaining in the investigation.

On May 11, 2007, the ALJ issued his final ID, finding no violation, because, inter alia, the accused processors do not infringe the asserted claims of the ‘945 patent. The ALJ also found that the claims were invalid, because Biax had added new matter to the specification during prosecution. Further, the ALJ determined that the claims of the ‘945 patent were unenforceable for inequitable conduct stemming from the amendments made to the specification. The ALJ concluded that Biax had shown that there was a domestic industry with regard to the ‘945 patent. The ALJ also determined that the term “infringe” in 19 U.S.C. § 1337(a)(1)(B)(i) is not defined by 35 U.S.C. § 271(a) and that Biax’s decision to bring and maintain this investigation did not warrant sanctions. On May 24, 2007, Biax, Philips, and the Commission Investigative Attorney filed petitions for review, and on June 6, 2007, they filed responses.

Having examined the record of this investigation, including the ALJ’s final ID and the submissions of the parties, the Commission has determined to review the portions of the ALJ’s determination relating to (1) the interpretation of 19 U.S.C. § 1337(a)(1)(B)(i); (2) new matter and written description (including infringement relating to the “processor elements” limitation); and (3) enforceability. On review, the Commission has determined to take no position with respect to these issues, but to affirm the ALJ’s determination of no violation of section 337.

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 section 210.42-45 of the Commission’s Rules of Practice and Procedure (19 C.F.R. § 210.42-45).

By order of the Commission.

/s/
Marilyn R. Abbott
Secretary to the Commission

Issued: August 6, 2007