

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

In the Matter of

**CERTAIN FLASH MEMORY
CONTROLLERS, DRIVES, MEMORY
CARDS, AND MEDIA PLAYERS AND
PRODUCTS CONTAINING SAME**

Investigation No. 337-TA-619

**NOTICE OF COMMISSION DETERMINATION TO REVIEW AN INITIAL
DETERMINATION BIFURCATING THE INVESTIGATION AND EXTENDING THE
TARGET DATE AS TO THE '808 PATENT**

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. 22) bifurcating the investigation and extending the target date as to the portion of the investigation pertaining to United States Patent No. 5,719,808 ("the '808 patent").

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 December 12, 2007, based on a complaint filed by SanDisk Corporation ("SanDisk"). The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain flash memory controllers, drives, memory cards, media players, and

products containing the same by reason of infringement of various claims of five United States patents. The complaint names nearly fifty respondents.

On February 15, 2008, respondents Phison Electronics Corp., Kingston Technology Co., Kingston Technology Corp., Memosun, Inc., and Payton Technology Corp. (collectively, “respondents”) filed a motion to terminate this investigation as to the ‘808 patent or alternatively to stay the investigation as to that patent. On February 28, 2008, SanDisk and the Commission investigative attorney (“IA”) filed oppositions to the motion. On March 3, 2008, respondents filed a motion for leave to file a reply, which was granted.

On March 12, 2008, the ALJ issued the subject ID, denying respondents’ motion to terminate the case, but granting respondents’ motion to stay the investigation. He also bifurcated the investigation and extended the target date as to the ‘808 patent to eighteen months (18) months after a final judgment that is no longer subject to judicial review is rendered in the California state court case regarding ownership of that patent. On March 19, 2008, complainant SanDisk and the IA each filed a petition for review. On March 26, 2008, respondents filed a combined response to the petitions.

The Commission has determined to review the ID. In connection with its review, the Commission is interested in responses to the following questions:

1. Given the language in section 337(b)(1) that “the Commission shall, within 45 days after an investigation is initiated, establish a target date for its final determination,” does the ALJ or the Commission have the authority to set two target dates in a single investigation?
2. If no such authority exists, state your views on whether the Commission should set a single target date of eighteen (18) months after completion of the California state court ownership action. As part of your discussion, indicate whether the Commission could issue a remedy, should a violation be found, with respect to some of the asserted patents prior to that target date.
3. Does the Commission have authority to separate the investigation into two investigations, each with its own target date, when the complaint was filed more than thirty (30) days ago?

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issues identified in this notice. The written submissions must be filed no later than close of business on Friday, April 25, 2008 and may be no longer than 25 pages. Reply submissions must be filed no later than the close of business on Friday, May 2, 2008 and may be no longer than 15 pages. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document 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. § 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

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 210.42-46 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: April 11, 2008