

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN AUDIO PROCESSING
HARDWARE, SOFTWARE, AND
PRODUCTS CONTAINING THE SAME**

Investigation No. 337-TA-1026

**NOTICE OF COMMISSION DECISION TO REVIEW AN INITIAL DETERMINATION
GRANTING A MOTION FOR PARTIAL TERMINATION OF THE INVESTIGATION;
TERMINATION OF THE INVESTIGATION AS TO ONE ASSERTED PATENT**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that in the above-captioned investigation the U.S. International Trade Commission has determined to review the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 37), and on review, the Commission terminates the investigation as to one asserted patent. As a result of the Commission's determination, Order No. 35 is moot.

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 (<https://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://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 October 25, 2016, based on a complaint filed by Andrea Electronics Corp. of Bohemia, New York ("Andrea"). 81 *Fed. Reg.* 73418 (Oct. 25, 2016). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 by reason of infringement of claims 1-12 and 25-37 of U.S. Patent No. 6,049,607 ("the '607 patent"); claims 1-25, 38-40, and 42-47 of U.S. Patent No. 6,363,345; and claims 1-14 of U.S. Patent No. 6,377,637 ("the '637 patent"). The Commission's notice of investigation named the following respondents: Apple Inc. of Cupertino, California ("Apple"); Samsung Electronics Co., Ltd. of Gyeonggi-do, Korea;

and Samsung Electronics America, Inc. of Ridgefield Park, New Jersey (collectively, “Samsung”). The Office of Unfair Import Investigations is also a party in this investigation. On May 25, 2017, the Commission issued a notice terminating the investigation as to the ’637 patent based upon Andrea’s motion to withdraw that patent from the investigation.

On April 24, 2017, the respondents filed a motion for summary determination that claims 1-4 and 8-11 of the ’607 patent are indefinite. *See* 35 U.S.C. § 112 ¶ 2 (indefiniteness); 19 CFR 210.18 (summary determination). The motion stated that “Andrea has informed Respondents that it is only asserting claims 1-4 and 8-11 of the ’607 patent.” Mot. 26 n.9. Andrea and the Commission investigative attorney (“IA”) opposed the motion. On June 1, 2017, the ALJ granted the motion in part as an ID (Order No. 35). In particular, the ALJ found claim 1 to be not indefinite, but found claims 2-4 and 8-11 to be indefinite and thereby invalid. ID at 11-17. The ALJ terminated the investigation as to the indefinite patent claims. *Id.* at 17.

On June 8, 2017, Andrea moved for partial termination of the investigation based upon the withdrawal of its allegations as to the ’607 patent. The respondents did not oppose the motion and the IA supported it. On June 13, 2017, the ALJ issued an ID granting the motion, but stating that only “[c]laim 1 remains pending before the Administrative Law Judge” for termination. Order No. 37 at 1 n.1.

No petitions for review of either ID were filed. On June 27, 2017, the Commission determined to extend the deadline for review of Order No. 35 to July 13, 2017, in order to coincide with the Commission’s deadline for review of Order No. 37. *See* Notice (June 28, 2017).

The Commission has determined to review Order No. 37. The notice of investigation encompasses claims 1-12 and 25-37 of the ’607 patent. Although Andrea chose later not to pursue its allegations as to claims 5-7, 12, and 25-37, the investigation has not yet been terminated as to those claims. The Commission has determined to grant Andrea’s June 8, 2017, motion to terminate the investigation as to all allegations of infringement relating to the ’607 patent, thereby terminating the investigation as to claims 1-12 and 25-37.

In view of the Commission’s determination to terminate the investigation as to the ’607 patent, Order No. 35 is moot, and the Commission declines to reach it.

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 Part 210 of the Commission’s Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: June 30, 2017