

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

In the Matter of

**CERTAIN GRAPHICS PROCESSORS
AND PRODUCTS CONTAINING THE
SAME**

Investigation No. 337-TA-1099

**NOTICE OF COMMISSION DETERMINATION AFFIRMING ON MODIFIED
GROUNDS AN INITIAL DETERMINATION TERMINATING ONE PATENT**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm on modified grounds an initial determination (“ID”) (Order No. 18) issued by the presiding administrative law judge (“ALJ”) on May 10, 2018, terminating the investigation with respect to one patent.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., 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, SW., 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 February 5, 2018, based on a complaint filed by ZiiLabs Inc., Ltd. of Hamilton, Bermuda (“Complainant”). 83 FR 5141-42. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 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 graphics processors and products containing the same that infringe certain claims of U.S. Patent Nos. 6,181,355 (“the ’355 patent”); 6,900,800; 8,144, 156; and 8,643,659. *Id.* at 5141. The Commission’s notice of investigation named as respondents ASUSTeK Computer Inc. of Taipei, Taiwan; ASUS Computer International

of Fremont, California; EVGA Corporation of Brea, California; Gigabyte Technology Co., Ltd. of New Taipei City, Taiwan; G.B.T. Inc. of City of Industry, California; Micro-Star International Co., Ltd. of New Taipei City, Taiwan; MSI Computer Corp. of City of Industry, California; Nintendo Co., Ltd. of Kyoto, Japan; Nintendo of America, Inc. of Redmond, Washington; Nvidia Corporation of Santa Clara, California; PNY Technologies Inc. of Parsippany, New Jersey; Zotac International (MCO) Ltd. of Macau, China; and Zotac USA Inc. of Duarte, California. *Id.* at 5142. The Office of Unfair Import Investigations is not participating in this investigation. *Id.*

On April 25, 2018, the respondents moved to terminate the investigation with respect to the '355 patent because the patent will expire two months prior to the target date for the completion of the investigation. On May 7, 2018, Complainant opposed the motion, arguing that it could possibly receive six days of bond forfeiture proceeds before the patent expired.

On May 10, 2018, the ALJ issued the subject initial determination (“ID”) (Order No. 18), granting respondents’ motion to terminate the investigation with respect to the '355 patent. No petitions for review of the ID were received. On June 11, 2018, the Commission determined to review the subject ID on its own motion.

The Commission has determined to affirm on modified grounds the ID’s termination of the '355 patent. The Commission finds that, under the facts and procedural posture of this investigation, respondents established that Complainant could not obtain relief as to the '355 patent prior to its expiration. It is undisputed that the '355 patent expires nearly two months prior to the target date for the completion of this investigation. Complainant acknowledges that it could not receive relief for the '355 patent under the standard Commission investigation schedule, as its position on the availability of relief is predicated on: (1) the ALJ issuing a final initial determination finding a violation with respect to the '355 patent; (2) the Commission not reviewing that decision; and (3) the Commission not following its long-standing procedures for determining the appropriate remedy, bonding, and consideration of the public interest. Additionally, although Complainant argued that it could prevail on all violation issues on summary determination under Commission Rule 210.18, that argument is belied by the record, as the ALJ has already denied Complainant’s motion for summary determination on the economic prong of the domestic industry requirement. Order. No. 16 (Apr. 30, 2017). The Commission also notes that Complainant did not petition for review of the ID, and that three other patents remain in this investigation on which relief may be granted.

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

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton
Secretary to the Commission

Issued: July 17, 2018