

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN INTEGRATED CIRCUITS,
COMPONENTS THEREOF, AND
PRODUCTS CONTAINING THE SAME**

Investigation No. 337-TA-1350

NOTICE OF COMMISSION DETERMINATION TO STAY BRIEFING SCHEDULE

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined to grant the parties’ joint motion to stay the briefing schedule, as set forth in the Commission’s Notice of June 11, 2024.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-2382. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.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: On January 24, 2023, the Commission instituted the present section 337 investigation based on a complaint filed by Realtek Semiconductor Corporation of Hsinchu, Taiwan (“Realtek”). *See* 88 FR 4205-06 (Jan. 24, 2023). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), due to the importation into the United States, sale for importation, or sale within the United States after importation of certain integrated circuits, components thereof, and products containing the same that infringe one or more asserted claims of U.S. Patent Nos. 7,936,245 (“the ’245 patent”); 8,006,218 (“the ’218 patent”); or 9,590,582 (“the ’582 patent”) (collectively, the “Asserted Patents”). *Id.* The complaint alleges that a domestic industry exists. *Id.* The notice of investigation names Advanced Micro Devices, Inc. of Santa Clara, CA (“AMD”) as the respondent. *Id.* The Office of Unfair Import Investigations is not participating in this investigation. *Id.*

The presiding ALJ held a claim construction (*Markman*) hearing on June 5, 2023. The ALJ issued the claim construction order on July 25, 2023. Order No. 21 (July 25, 2023).

On June 20, 2023, AMD moved to preclude Mr. Steve Baik, Realtek’s outside counsel, from testifying as a fact witness in the evidentiary hearing. On July 7, 2023, the ALJ issued Order No. 19, ordering AMD to show cause why Winston & Strawn (“Winston”) should not be disqualified in this investigation due to an alleged conflict of interest. Order No. 19 at 2 (July 7, 2023).

On August 4, 2023, the ALJ held a teleconference with the parties regarding Mr. Baik and Winston. On August 17, 2023, the ALJ issued Order No. 23, which granted AMD’s motion to preclude Mr. Baik from testifying on behalf of Realtek but did not disqualify Winston. Order No. 23 at 1 (Aug. 17, 2023). On August 24, 2023, the ALJ denied Realtek’s motions for reconsideration and for interlocutory review of Order No. 23. Order No. 24 (Aug. 24, 2023). On September 6, 2023, Realtek filed a petition in the U.S. Court of Appeals for the Federal Circuit (“Federal Circuit”) seeking a writ of mandamus to order the ALJ to vacate the ruling striking Mr. Baik. The Federal Circuit denied the petition on September 25, 2023. *In re Realtek Semiconductor Corp.*, Appeal No. 2023-147, On Petition and Motion (Sept. 25, 2023).

On October 16, 2023, the ALJ issued an order regarding AMD’s motion to sanction Realtek for failing to accurately answer certain interrogatories and produce relevant documents regarding Realtek’s earlier litigations against Avago Technologies General IP (Singapore) Pte., Ltd and Broadcom Corporation in the U.S. District Court for the District of Delaware. Order No. 39 at 1-6 (Oct. 16, 2023). Order No. 39 determined Realtek had engaged in sanctionable acts during discovery, but otherwise deferred ruling on the motion until after the evidentiary hearing. *Id.*

The ALJ held an evidentiary hearing from October 16-20, 2023.

On November 14, 2023, the Commission terminated the investigation as to claim 9 of the ’582 patent and claim 14 of the ’218 patent, based on Realtek’s withdrawal of those claims. Order No. 40 (Oct. 20, 2023), *unreviewed by* Comm’n Notice (Nov. 14, 2023).

On January 19, 2024, the presiding ALJ issued a final Initial Determination on Violation of Section 337 (“FID”) and Recommended Determination on Remedy and Bond (“RD”). The FID finds no violation of section 337 for any of the three patents at issue because: (i) asserted claims 1, 2, and 8 of the ’245 patent are infringed but invalid as anticipated; (ii) asserted claims 12, 13, and 15-18 of the ’218 patent are infringed but invalid as obvious; (iii) regarding the ’582 patent, asserted claims 1-4 are not infringed and claims 1-3 (but not claim 4) are invalid as anticipated; and (iv) Realtek failed to satisfy the economic prong of the domestic industry requirement for any of the three asserted patents. The FID also finds that Realtek has satisfied the technical prong of the domestic industry requirement for each asserted patent.

The RD recommends, if the Commission finds a violation, issuing a limited exclusion order barring entry of AMD products that infringe any of the asserted claims of the ’218, ’582, or ’245 patents. *Id.* at 254-256. The RD also recommends issuing a cease and desist order directed to AMD. *Id.* at 256. The RD further recommends issuing no (0%) bond against any covered products imported during the period of Presidential review. *Id.* at 256-257.

On January 30, 2024, the Commission issued a notice requesting submissions on the public interest, if a violation is found. 89 FR 5933 (Jan. 30, 2024). The Commission did not receive any public interest submission from the public or any other agency in response to this notice. *Id.* On February 20, 2024, AMD filed its public interest statement, pursuant to Commission Rule 210.50(a)(4). 19 CFR 210.50(a)(4). On February 26, 2024, Realtek filed a motion for leave to file its public interest statement out of time. The Commission denied Realtek's motion on the same date.

On February 2, 2024, Realtek filed a petition for review of the FID's findings regarding: (i) invalidity of the '218 patent claims; (ii) regarding the '582 patent, non-infringement of the asserted claims and invalidity of asserted claims 1-3; (iii) failure to satisfy the economic prong of the domestic industry requirement, including the ALJ's decision to preclude Mr. Baik from testifying but not disqualify Winston; and (iv) the sanction levied against Realtek for discovery misconduct. Realtek is not seeking review of the '245 patent.

Also on February 2, 2024, AMD filed a contingent petition for review of the FID's findings regarding: (i) for the '218 patent, claim construction, infringement, the technical prong of the domestic industry requirement, the asserted claims are not invalid for lack of written description or enablement, and that a certain cited reference (Jiang3) is not prior art; and (ii) for the '582 patent, that claims 1-4 are not invalid as anticipated by the Qualcomm RFR6122 chip, that claim 4 is not anticipated by the Qualcomm RBR1000 chip, and that asserted claims 1-4 of the '582 patent are not obvious over certain cited prior art references (including Muh); and (iii) certain findings relating to the economic prong of the domestic industry requirement.

On June 11, 2024, the Commission determined to review the FID in part. Comm'n Notice at 3-7 (June 11, 2024). In particular, the Commission determined to review the FID's findings on claim construction, infringement, and anticipation or obviousness of the asserted claims of the '218 patent and '582 patent, the economic prong of the domestic industry requirement, and the sanction against Realtek. *Id.* The Commission did not review, and thus adopted, the FID's findings that the asserted claims of the '245 patent are invalid, that the asserted claims of the '218 patent are not invalid for lack of written description or enablement, that the asserted claims of the '518 patent are not invalid for lack of written description, that Mr. Baik was properly precluded from testifying as a fact witness at the evidentiary hearing, and that Winston should not be disqualified from representing AMD. *Id.* at 3-4. The Commission directed the parties to submit their initial briefs on the issues under review and remedy, bond, and the public interest by June 28, 2024, and to submit their reply briefs by July 8, 2024. *Id.* at 8.

On June 19, 2024, the parties filed a joint motion to terminate the investigation due to a settlement agreement. The parties requested that the Commission grant review and take no position on any of the FID's findings, as well as staying the deadlines for the parties' written submissions on review. The parties contend that their settlement agreement resolves all issues raised in this and other litigations, and that there are no other agreements, written or oral, express or implied, between the parties concerning the subject matter of this investigation, pursuant to Commission Rule 210.21(b), 19 CFR 210.21(b).

Upon review of the parties' submission, the Commission has determined to grant the joint

motion to stay the briefing schedule, as set forth in the Commission's Notice of June 11, 2024, for good cause shown. The briefing schedule is stayed pending a determination on the parties' joint motion to terminate the investigation.

The Commission vote for this determination took place on June 26, 2024.

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', enclosed within a large, loopy oval flourish.

Lisa R. Barton
Secretary to the Commission

Issued: June 27, 2024