

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 DENY
COMPLAINANT’S PETITION FOR RECONSIDERATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined to deny Complainant Realtek Semiconductor Corporation’s Petition for Reconsideration of the Commission Determination Denying the Parties’ Joint Motion to Take No Position on Settled Claims in its entirety.

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 above-captioned investigation based on a complaint, as supplemented, filed by Realtek Semiconductor Corporation of Hsinchu, Taiwan (“Realtek”). 88 FR 4205-06 (Jan. 24, 2023). The complaint, as supplemented, alleges that respondent Advanced Micro Devices, Inc. of Santa Clara, California (“AMD”) violated section 337 of the Tariff Act of 1930, as amended, 19 U.S.C 1337, by importing into the United States, selling for importation, or selling within the United States after importation 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”). The complaint alleges that a domestic industry exists. The Office of Unfair Import Investigations did not participate in this investigation.

The presiding administrative law judge (“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”), AMD’s counsel, should not be disqualified 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 Corp. in the U.S. District Court for the District of Delaware. Order No. 39 (Oct. 16, 2023). Order No. 39 determined Realtek had engaged in sanctionable acts during discovery, but deferred ruling on AMD’s sanctions motion until after the hearing. The ALJ ultimately sanctioned Realtek for discovery misconduct.

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 ALJ issued a final initial determination (“FID”), finding 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) asserted claims 1-4 of the ’582 patent are not infringed, while claims 1-3 (but not claim 4) are also invalid as obvious; and (iv) Realtek failed to satisfy the economic prong of the domestic industry requirement for any of the three asserted patents.

On June 11, 2024, the Commission determined to review the FID in part. 89 FR 51366-70 (June 17, 2024) (“WTR Notice”). 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. The Commission did not review, and thus adopted, the FID’s findings that the asserted claims of the ’245 patent are invalid (for which Realtek did not request review), that the claims of the ’218 patent are not invalid for lack of written description or enablement, that the claims of the ’582 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. The Commission included a briefing schedule for the issues under review and remedy, bond, and the public interest.

On June 19, 2024, the parties filed a joint motion to terminate the investigation due to a settlement agreement and to suspend the Commission’s briefing schedule. The parties also requested that the Commission reconsider its previous determination not to review certain findings in the FID and, on review, take no position on any findings.

On July 23, 2024, Realtek submitted a notice of supplemental authority to inform the Commission of a recent Federal Circuit decision, *Koss Corp. v. Bose Corp.*, 107 F.4th 1363 (Fed. Cir. 2024), that Realtek contends is relevant to the parties’ request to take no position on all findings in the FID.

On August 6, 2024, the Commission issued its notice granting the parties’ joint motion in part by terminating the investigation in view of settlement. 89 Fed. Reg. 65670-71 (Aug. 12, 2024). The Commission, however, denied the parties’ motion in part by not vacating its adoption of certain findings by the ALJ, including the ALJ’s decision to preclude Mr. Baik from testifying as a witness or its decision not to disqualify Winston & Strawn from representing AMD. *Id.*

On August 20, 2024, Realtek filed its present petition seeking reconsideration of the Commission’s determination not to vacate its previous determination and take no position on certain findings by the ALJ. The petition states that AMD does not oppose the petition.

Upon review of Realtek’s petition, the Commission has determined to deny the petition in its entirety based on Realtek’s failure to identify a “new question” that would warrant reconsideration under Commission Rule 210.47, 19 C.F.R. § 210.47.

The Commission vote for this determination took place on September 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.



Lisa R. Barton
Secretary to the Commission

Issued: September 27, 2024