

**UNITED STATES INTERNATIONAL TRADE COMMISSION**  
**Washington, D.C. 20436**

In the Matter of

**CERTAIN PERSONAL COMPUTERS,  
SERVER COMPUTERS, AND  
COMPONENTS  
THEREOF**

**Inv. No. 337-TA-509**

**NOTICE OF COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL  
DETERMINATION GRANTING COMPLAINANT'S MOTION FOR SUMMARY  
DETERMINATION THAT IT SATISFIES THE ECONOMIC PRONG OF THE  
DOMESTIC INDUSTRY REQUIREMENT**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") granting complainant's motion for summary determination that it satisfies the economic prong of the domestic industry requirement of 19 U.S.C. § 1337(a)(3).

**FOR FURTHER INFORMATION CONTACT:** Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-3152. Copies of the public version of the ID and all nonconfidential 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. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<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>.

**SUPPLEMENTARY INFORMATION:** On June 7, 2004, the Commission instituted an investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. §1337, based on a complaint

filed by Hewlett-Packard Development Company, L.P. of Houston, Texas, and Hewlett-Packard Company of Palo Alto, California (collectively, Hewlett-Packard) alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain personal computers, server computers, and components thereof by reason of infringement of claims 1, 2, 9, 10, 16-18, and 24 of U.S. Patent No. 5, 185,691; claims 1, 2, 7, 8, 10, 11, 14, 18, and 22 of U.S. Patent No. 5,258,888; claim 1 of U.S. Patent No. 5,727,213 (the '213 patent); claims 1, 6-8, and 30-32 of U.S. Patent No. 6,085,318; claim 1 of U.S. Patent No. 5,737,604; claims 1, 2, 3, 5 and 8-10 of U.S. Patent No. 5,892,976; and claims 1, 3, 4, 6-8, 18, 20, 21, 23-25, 35, 37, 38, and 40-42 of U.S. Patent No. 6,138,184. 69 *Fed. Reg.* 31844 (June 7, 2004). The complainant named Gateway, Inc. of Poway, California, as respondent.

On January 21, 2005, complainant Hewlett-Packard moved to terminate the investigation as to the '213 patent. No party opposed the motion. On January 24, 2005, the presiding ALJ issued an ID granting complainant's motion. No party petitioned for review of the ID, and on February 23, 2005, the Commission determined not to review the ID.

On February 11, 2005, complainant Hewlett-Packard moved to terminate the investigation in part as to the '691 and the '888 patents. No party opposed the motion. On February 14, 2005, the presiding ALJ issued an ID granting complainant's motion. On March 2, 2005, complainant Hewlett-Packard moved to terminate the investigation in part as to claims 6-8 and 30-32 of the '318 patent, and claims 1-3, 5, 8, and 10 of the '976 patent. No party opposed the motion. On March 3, 2005, the presiding ALJ issued an ID granting complainant's motion. No party petitioned for review of either of these IDs, and they became the Commission's final determinations.

On February 17, 2005, Hewlett-Packard filed a motion for summary determination that it has satisfied the economic prong of the domestic industry requirement under 19 U.S.C. § 1337 (a)(3)(A)(B) and (C) ("section 337(a)(3)(A)(B) and (C)") with respect to the asserted patents in this investigation. The Commission investigative attorney ("IA") filed a response in support of HP's motion. Gateway did not oppose the motion.

On March 7, 2005, the ALJ issued the subject ID, Order No. 36, granting complainant's motion for summary determination that it satisfies the economic prong of the domestic industry requirement.

On March 15, 2005, the IA petitioned for review of Order No. 36. The IA agrees with the ALJ's conclusion that Hewlett-Packard's domestic activities satisfy the economic criteria set forth in section 337(a)(3). However, the IA sought review of the ALJ's determination that, when the product at issue is made wholly or partially abroad, a comparative analysis is required to determine whether a complainant's domestic activities satisfy criteria (A) and (B) of section 337(a)(3). It is not clear that the ALJ made such a determination, or that his findings in this investigation rested on a comparative analysis. Rather, he focused almost exclusively on the absolute level of Hewlett Packard's domestic activities in finding that they were sufficient to satisfy the economic prong requirement. In deciding not to review the ID, the Commission

determines that the facts as found by the ALJ are sufficient to demonstrate the existence of a domestic industry under 337(a)(3).

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 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42).

By order of the Commission.

/s/

Marilyn R. Abbott

Secretary to the Commission

Issued: April 6, 2005