

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

**In the Matter of**

**CERTAIN NAND FLASH MEMORY  
CIRCUITS AND PRODUCTS  
CONTAINING SAME**

**Investigation No. 337-TA-526**

**NOTICE OF COMMISSION DECISION TO REVIEW IN PART AN INITIAL  
DETERMINATION, AND ON REVIEW, TO TAKE NO POSITION CONCERNING  
CERTAIN VALIDITY ISSUES AND TO AFFIRM THE ADMINISTRATIVE LAW  
JUDGE'S DETERMINATION THAT THERE IS NO VIOLATION OF SECTION 337;  
TERMINATION OF INVESTIGATION**

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

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the United States International Trade Commission has determined to review in part an initial determination ("ID") issued by the presiding administrative law judge ("ALJ") finding no violation of section 337 of the Tariff Act of 1930. Specifically, the Commission has determined to review the portion of the ALJ's determination relating to anticipation and obviousness. On review, the Commission has determined to take no position with respect to these issues, but to affirm the ALJ's determination of no violation of section 337 and to terminate the investigation.

**FOR FURTHER INFORMATION CONTACT:** Steven Crabb, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5432. 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 at <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>. 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 15, 2004, based on a complaint filed by SanDisk Corporation ("SanDisk") under section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) against respondents, STMicroelectronics N.V. of Geneva, Switzerland and STMicroelectronics, Inc. of Carrollton, Texas (collectively referred to as "ST").

SanDisk's complaint alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain NAND Flash Memory circuits and products containing the same by reason of infringement of claims 27, 28, and 32 of United States Patent No. 5,172,338 (the "338 patent").

The ALJ held a hearing from August 1, 2005 to August 8, 2005, and on October 19, 2005, the ALJ issued his final ID, including his recommended determination on remedy and bonding. The ALJ determined that there was no violation of section 337, because respondents' products do not infringe the asserted claims of the '338 patent and because complainant failed to satisfy the technical prong of the domestic industry requirement. The ALJ rejected arguments by ST that the '338 patent is invalid as anticipated and as obvious. The ALJ further rejected arguments by ST and the Commission's investigative attorney ("IA") that the '338 patent is invalid for failing to meet the written description requirement and/or the indefiniteness requirement under 35 U.S.C. § 112, ¶¶ 1 and 2. The ALJ also rejected ST's arguments that the '338 patent is unenforceable based on inequitable conduct and improper inventorship.

On October 31, 2005, SanDisk filed a petition for review, arguing that the ALJ improperly construed the claims and concluded that there was no infringement and no domestic industry. On the same day, ST filed a contingent petition for review, requesting that the Commission review the ALJ's claim construction and determination that the patent was not invalid and not unenforceable, in the event that the Commission decided to grant SanDisk's petition. On November 7, 2005, SanDisk and the IA filed responses to the petitions, arguing that the invalidity and unenforceability issues do not warrant review. On the same day, ST filed a response, supported by the IA, arguing that the infringement and domestic industry issues should not be reviewed.

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review in part the ALJ's ID. Specifically, the Commission has determined to review the portion of the ALJ's determination relating to anticipation and obviousness. On review, the Commission has determined to take no position with respect to those issues, but to affirm the ALJ's determination of no violation of section 337 based on his findings of no infringement and no domestic industry, thereby terminating the investigation.

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 - 45 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42-45).

By order of the Commission.

Marilyn R. Abbott  
Secretary to the Commission

Issued: December 5, 2005