

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

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**In the Matter of** )

**CERTAIN SILICON MICROPHONE PACKAGES )  
AND PRODUCTS CONTAINING THE SAME )**

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**Inv. No. 337-TA-695**

**NOTICE OF COMMISSION DETERMINATION  
TO REVIEW IN PART AN INITIAL DETERMINATION;  
ON REVIEW TAKING NO POSITION ON TWO ISSUES AND  
VACATING THE CONCLUSION OF NO DOMESTIC INDUSTRY;  
TERMINATION OF THE INVESTIGATION WITH  
A FINDING OF NO VIOLATION**

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

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review in part the initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on November 22, 2010, finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in this investigation. On review, the Commission has determined to take no position on two issues, to vacate the finding of no domestic industry, and to terminate this investigation with a finding of no violation.

**FOR FURTHER INFORMATION CONTACT:** Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2532. 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 (<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 voted to institute this investigation on December 16, 2009, based on a complaint filed by Knowles Electronics LLC of Itasca, Illinois (“Knowles”). 74 *Fed. Reg.* 68,077 (Dec. 22, 2009). The complaint named as the sole respondent Analog Devices Inc. of Norwood, Massachusetts (“Analog”). The accused products

are certain microphone packages. Knowles asserts claim 1 of U.S. Patent No. 6,781,231, and claims 1, 2, 7, 16-18, and 20 of U.S. Patent No. 7,242,089.

Knowles filed with its complaint in this investigation a motion for temporary relief that requested that the Commission issue a temporary limited exclusion order and temporary cease and desist order. The ALJ denied Knowles' request for temporary relief in an initial determination ("TEO ID"). Initial Determination on Complainant's Motion for Temporary Relief (Mar. 24, 2010). In the TEO ID, the ALJ found that all but one of the asserted patent claims were likely anticipated by U.S. Patent No. 6,324,907 to Halteren. (Some of these same claims were also found to be likely anticipated by U.S. Patent No. 6,594,369 to Une.) The remaining claim, while not invalid, was held not likely infringed. For these reasons, there was no patent claim for which Knowles demonstrated a likelihood of success on the merits (i.e., as to both validity and infringement).

The TEO ID also found that Knowles had not demonstrated irreparable harm. In particular, the ID found that Analog's sales of accused microphone packages had not caused Knowles lost sales, had not damaged Knowles' relationships with its customers, and otherwise had no proven detrimental effect on Knowles. The ALJ found, *inter alia*, that these two factors (likelihood of success and irreparable harm) precluded temporary relief here.

On review of the TEO ID to the Commission, the Commission noted that the absence of irreparable harm was dispositive, and determined to review the TEO ID in order simultaneously to take no position on the ALJ's findings of likelihood of success. 75 *Fed. Reg.* 30,430 (June 1, 2010). The Commission's decision enabled "the ALJ to assess the merits" at the final ID stage "unburdened by Commission impressions that may have been formed on a limited temporary-relief record." *Id.* at 30,431.

On November 22, 2010, the ALJ issued his final Initial Determination ("ID"). The ID found that all of the asserted patent claims are invalid under 35 U.S.C. §§ 102 and 103. More specifically, the ID found claim 1 of the '231 patent to be anticipated under 35 U.S.C. § 102(a) by Halteren. In the alternative, the ID found claim 1 of the '231 patent to be obvious under 35 U.S.C. § 103(a) over Halteren in view of U.S. Patent No. 7,003,127 (Sjursen), or in the alternative over U.S. Patent No. 4,533,795 (Baumhauer) in view of Sjursen. The ALJ found claims 1, 2, 7, 16, 17, 18 and 20 of the '089 patent to be obvious over Halteren in view of Une, or in the alternative over Halteren in view of U.S. Patent No. 7,080,442 (Kawamura).

The ID found that Analog infringed all of the asserted patent claims. The ID further found that if any of the patent claims had been valid that Knowles had demonstrated the existence of a domestic industry relating to the articles protected by the patents. 19 U.S.C. § 1337(a)(1)(B), (a)(2). However, the ID concluded that because Knowles had not demonstrated the existence of a valid patent claim that there could be no domestic industry.

On December 6, 2010, Knowles petitioned for review of the ID. The petition challenged certain

of the ALJ's claim constructions, and based substantially on those claim constructions argued, *inter alia*, that the prior art did not anticipate or render obvious any of the asserted patent claims. That same day, Analog filed a contingent petition for review. Analog's petition raised theories of anticipation and obviousness that the ALJ rejected, and made, *inter alia*, noninfringement arguments based on disputed claim constructions. The Commission investigative attorney filed a response in support of the ID, and each of the private parties opposed the other's petition in its entirety.

Having examined the record of this investigation, including the ALJ's ID, the petitions for review, and the responses thereto, the Commission has determined to review the ID in part. In particular the Commission has determined to review and take no position on the construction of the term "attached" in claims 1 and 7 of the '089 patent. The only dispute, raised by Knowles in its petition, is whether the ALJ was correct to find that the prosecution history requires a certain meaning for "attached" and whether that meaning is narrower than the ordinary meaning of the term. Construction of the term is not now necessary because the infringement, invalidity, and domestic industry arguments do not turn on the difference between the ALJ's construction and Knowles' proposed construction.

The Commission also has determined to review and take no position on whether a certain journal article by Premachandran, *Si-based Microphone Testing Methodology & Noise Reduction*, Proceedings of SPIE, vol. 4019, at 588-92 (2000), is prior art under 35 U.S.C. § 102 for either of the asserted patents. The ID did not rule any patent claim invalid as a result of this article.

The Commission has determined to review and vacate the ID's conclusion that the technical prong of the domestic industry requirement, 19 U.S.C. § 1337(a)(2) & (a)(3), is not met where all the asserted patent claims are found invalid. It is Commission practice not to couple an analysis of domestic industry to a validity analysis. *See, e.g., Certain Removable Electronic Cards and Electronic Card Reader Devices and Products Containing Same*, Inv. No. 337-TA-396, Comm'n Op. at 17 (Aug. 13, 1998) ("before considering the validity of claim 8 of the '464 patent and possible infringement of it, we address whether the required domestic industry exists or is in the process of being established"); *Certain Encapsulated Integrated Circuit Devices and Products Containing Same*, Inv. No. 337-TA-501 (remand), Initial Determination at 104-105 (Nov. 9, 2005), *review denied*, Notice, 75 Fed. Reg. 43553, 43554 (July 26, 2010). The only instance in which the Commission has recognized such a connection involved invalidity for indefiniteness, 35 U.S.C. § 112 ¶ 2, and the Commission did so in that context because indefiniteness there made it impossible for the complainant to demonstrate whether a patent claim was practiced. Notice, *Certain Video Graphics Display Controllers and Products Containing Same*, Inv. No. 337-TA-412, 64 Fed. Reg. 40042, 40043 (July 23, 1999). There is no such difficulty with regard to invalidity under 35 U.S.C. §§ 102 and 103. Thus, under the technical prong, the complainant bears the burden of proving that its domestic industry practices a claim of each asserted patent. The Commission has determined not to review the remainder of the ID's domestic industry analysis, which found the existence of a domestic industry without regard to the validity of the asserted patent claims.

The Commission has determined not to review the remainder of the ID. Accordingly, the Commission has terminated this investigation with a finding of no violation.

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 sections 210.42-46 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42-46).

By order of the Commission.

/s/

Marilyn R. Abbott  
Secretary to the Commission

Issued: January 21, 2011