

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN AUDIOVISUAL
COMPONENTS AND PRODUCTS
CONTAINING THE SAME**

Inv. No. 337-TA-837

**NOTICE OF COMMISSION DETERMINATION TO GRANT THE MOTIONS TO
PARTIALLY TERMINATE THE INVESTIGATION AS TO ALL CLAIMS RELATING
TO U.S. PATENT NOS. 5,780,087, 6,982,663, AND 6,707,867; FINAL DETERMINATION
OF NO VIOLATION WITH RESPECT TO U.S. PATENT NO. 6,452,958;
TERMINATION OF THE INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to grant the joint motion to partially terminate the investigation as to U.S. Patent Nos. 5,780,087 (“the ’087 patent”) and 6,982,663 (“the ’663 patent”) based upon a settlement agreement. The Commission has also determined to terminate the investigation as to expired U.S. Patent No. 6,707,867 (“the ’867 patent”) and to take no position on the findings as to the same. The Commission has further determined that no violation of section 337 has been proven with respect to U.S. Patent No. 6,452,958 (“the ’958 patent”). The investigation is terminated.

FOR FURTHER INFORMATION: Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2392. 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 instituted this investigation on April 11, 2012, based on a complaint filed by complainants LSI Corporation of Milpitas, California, and Agere Systems Inc. of Allentown, Pennsylvania (collectively, “LSI”). *77 Fed. Reg.* 22803 (Apr. 11, 2012). The complaint, as amended, alleged violations of section 337 of the

Tariff Act of 1930, as amended (19 U.S.C. § 1337), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain audiovisual components and products containing the same by reason of infringement of certain claims of the '087, '958, '867, and '663 patents. The Commission's notice of investigation named several respondents, including Realtek Semiconductor Corporation of Hsinchu, Taiwan ("Realtek"); Funai Corporation, Inc. of Rutherford, New Jersey; Funai Electric Co., Ltd. of Osaka, Japan; P&F USA, Inc. of Alpharetta, Georgia; and Funai Service Corporation of Groveport, Ohio (collectively, "Funai"). Other respondents and certain patent claims were terminated from the investigation previously. No Commission investigative attorney is participating in the investigation.

The ALJ issued his final initial determination ("ID") with respect to the remaining respondents and claims on July 18, 2013. The ALJ found that a violation of section 337 had been proven with respect to claims 1, 5, 7-11, and 16 of the '087 patent. The ALJ found no violation of section 337 had been proven with respect to any asserted claims of the '958, '867, and '663 patents. On July 31, 2013, the ALJ issued a recommended determination ("RD") on remedy and bonding.

On October 17, 2013, the Commission determined to review the final ID in its entirety and requested additional briefing from the parties on certain issues. The Commission also solicited briefing from the parties and from the public on the issues of remedy, the public interest, and bonding. On November 1, 2013, the parties filed briefs addressing the Commission's questions and the issues of remedy, the public interest, and bonding. Also on November 1, 2013, non-parties Barnes & Noble, Inc.; InterDigital, Inc.; Intel Corporation; and Cisco Systems, Inc. filed comments on the public interest. On November 12, 2013, the parties filed reply briefs in connection with the Commission's notice.

On January 17, 2014, complainants and respondent Funai jointly filed a motion to partially terminate the investigation as to all claims relating to the '087 and the '663 patents based on a settlement agreement. Respondent Realtek, which was not accused of violating section 337 in regard to the '087 and the '663 patents, did not file a response.

On February 6, 2014, complainants filed a motion to partially terminate the investigation as to the '867 patent and to vacate the ALJ's determination as to same due to the imminent expiration of that patent on February 23, 2014. Respondents opposed vacatur on February 12, 2014.

Having examined the record of this investigation, the Commission has determined to grant the joint motion to partially terminate the investigation as to the '087 and the '663 patents based on a settlement agreement. We find no indication that termination of the investigation with respect to these patents based on settlement will adversely impact the public interest.

With respect to the '867 patent, because the Commission grants prospective relief only, when the '867 patent expired on February 23, 2014, the investigation concerning the '867 patent became moot. Therefore, the Commission has determined to take no position on the final ID's findings pertaining to the '867 patent. *See Beloit Corp. v. Valmet Oy*, 742 F.2d 1421, 1423 (Fed. Cir. 1984).

With respect to the remaining asserted patent—the '958 patent—the Commission has determined that no violation of section 337 has been proven based on the record of this investigation. Specifically, the Commission affirms the ID's finding that the accused articles were not proven to infringe the asserted claims of the '958 patent. In addition, the Commission reverses the ALJ's determination that the asserted '958 claims were not proven invalid. The Commission has also determined to take no position on the ALJ's determination with respect to the Respondents' RAND and equitable defenses. *See Beloit Corp.*, 742 F.2d at 1423.

Furthermore, the Commission has determined that complainants have not proven the existence of a domestic industry with respect to the '958 patent. The Commission affirms the ALJ's finding that the Nokia domestic industry articles were not shown to practice the claims of the '958 patent and, therefore, complainants did not prove a domestic industry under 19 U.S.C. § 1337(a)(3)(A)-(B). Because complainants have not demonstrated the existence of an article protected by the '958 patent, the Commission has also determined to reverse the ALJ's finding that a domestic industry exists pursuant to 19 U.S.C. § 1337(a)(3)(C) through complainants' licensing activities. *See Certain Computers and Computer Peripheral Devices, and Components Thereof, and Products Containing Same*, Inv. No. 337-TA-841, Comm'n Op. at 32 (Jan. 9, 2014).

A Commission opinion will be forthcoming.

The Commission has terminated this 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 Part 210 of the Commission's Rules of Practice and Procedure (19 C.F.R. Part 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', with a stylized flourish at the end.

Lisa R. Barton
Acting Secretary to the Commission

Issued: March 4, 2014