

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

In the Matter of

**CERTAIN TELEVISION SETS,
TELEVISION RECEIVERS,
TELEVISION TUNERS, AND
COMPONENTS THEREOF**

Inv. No. 337-TA-910

**NOTICE OF COMMISSION DETERMINATION TO REVIEW IN PART
A FINAL INITIAL DETERMINATION FINDING NO VIOLATION OF SECTION 337;
SCHEDULE FOR FILING WRITTEN SUBMISSIONS ON THE ISSUES UNDER
REVIEW AND ON REMEDY, THE PUBLIC INTEREST, AND BONDING; AND
DENIAL OF A MOTION TO REOPEN THE RECORD**

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 final initial determination (“final ID”) issued by the presiding administrative law judge (“ALJ”) on February 27, 2015, finding no violation of section 337 of the Tariff Act of 1930, in the above-captioned investigation. The Commission has also determined to deny the motion filed on March 16, 2015, by certain respondents to reopen the record of the investigation. The Commission requests certain briefing from the parties on the issues under review, as indicated in this notice. The Commission also requests briefing from the parties and interested persons on the issues of remedy, the public interest, and bonding.

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 instituted this investigation on March 5, 2014, based on a complaint filed by Cresta Technology Corporation, of Santa Clara, California (“Cresta”). 79 *Fed. Reg.* 12526 (Mar. 5, 2014). The complaint alleged violations of

section 337 of the Tariff Act of 1930, as amended 19 U.S.C. § 1337, by reason of the infringement of certain claims from three United States patents. The notice of institution named ten respondents: Silicon Laboratories, Inc. of Austin, Texas (“Silicon Labs”); MaxLinear, Inc. of Carlsbad, California (“MaxLinear”); Samsung Electronics Co, Ltd. of Suwon, Republic of Korea and Samsung Electronics America, Inc. of Ridgefield Park, New Jersey (collectively, “Samsung”); VIZIO, Inc. of Irvine, California (“Vizio”); LG Electronics, Inc. of Seoul, Republic of Korea and LG Electronics U.S.A., Inc. of Englewood Cliffs, New Jersey (collectively, “LG”); and Sharp Corporation of Osaka, Japan and Sharp Electronics Corporation of Mahwah, New Jersey (collectively, “Sharp”). The Office of Unfair Import Investigations was also named as a party.

On May 16, 2014, the ALJ issued an initial determination granting Cresta’s motion to amend the complaint and notice of investigation to add six additional respondents: SIO International Inc. of Brea, California and Hon Hai Precision Industry Co., Ltd. of New Taipei City, Taiwan (collectively, “SIO/Hon Hai”); Top Victory Investments, Ltd. of Hong Kong and TPV International (USA), Inc. of Austin, Texas (collectively, “TPV”); and Wistron Corporation of New Taipei City, Taiwan and Wistron Infocomm Technology (America) Corporation of Flower Mound, Texas (collectively, “Wistron”). Order No. 12 (May 16, 2014), *not reviewed*, Notice (June 9, 2014).

On November 3, 2014, the ALJ granted-in-part Samsung and Vizio’s motion for summary determination of noninfringement as to certain televisions containing tuners made by a third party, NXP Semiconductors N.V. Order No. 46 at 27-30 (Nov. 3, 2014), *not reviewed*, Notice (Dec. 3, 2014). On November 21, 2014, the ALJ issued granted Samsung’s and Vizio’s motion for summary determination that Cresta had not shown that certain Samsung televisions with NXP tuners had been imported. Order No. 58 at 4-5 (Nov. 21, 2014), *not reviewed*, Notice (Dec. 8, 2014).

On November 12, 2014, the ALJ granted Cresta’s motion to partially terminate the investigation as to one asserted patent and certain asserted claims of the two other asserted patents. Order No. 50 (Nov. 12, 2014), *not reviewed*, Notice (Dec. 3, 2014). The two asserted patents still at issue in the investigation are U.S. Patent No. 7,075,585 (“the ’585 patent”) and U.S. Patent No. 7,265,792 (“the ’792 patent”). Claims 1-3, 10, and 12-13 of the ’585 patent, and claims 1-4, 7-8, and 25-27 of the ’792 patent, remain at issue in the investigation.

The presiding ALJ conducted a hearing from December 1-5, 2014. On February 27, 2015, the ALJ issued the final ID. The final ID finds that Cresta failed to satisfy the economic prong of the domestic industry requirement, 19 U.S.C. § 1337(a)(2), (a)(3), for both asserted patents. To satisfy the economic prong of the domestic industry requirement, Cresta relied upon claims 1-3, 5-6, 10, 13-14, 16-19, and 21 of the ’585 patent; and claims 1-4, 7, 10-12, 18-19, and 26-27 of the ’792 patent. The ID finds that certain Cresta products—on their own, or combined with certain televisions into which Cresta’s tuners are incorporated—practice all of the domestic-industry claims of the ’585 patent, except for claim 14; as well as all of the domestic-industry claims of the ’792 patent except for claim 27.

The ID finds some Silicon Labs tuners (as well as certain televisions containing them) to infringe

claims 1-3 of the '585 patent, and no other asserted patent claims. The ID further finds some MaxLinear tuners (as well as certain televisions containing them) to infringe claims 1-3, 10, 12, and 13 of the '585 patent and claims 1-3, 7-8, and 25-26 of the '792 patent.

The ID finds claims 1 and 2 of the '585 patent to be invalid pursuant to 35 U.S.C. § 102 (anticipation), and claim 3 of the '585 patent to be invalid pursuant to 35 U.S.C. § 103 (obviousness). The ID finds all of the asserted claims of the '792 patent to be invalid pursuant to 35 U.S.C. §§ 102 or 103.

The ALJ recommended that if a violation of section 337 is found, that a limited exclusion order and cease and desist orders issue. The ALJ recommended, however, that the implementation of such orders be delayed by twelve months in view of public interest considerations. The ALJ also recommended that there be zero bond during the period of Presidential review.

On March 16, 2015, petitions for Commission review were filed by the following parties: the Commission investigative attorney ("IA"); Cresta; the Silicon Labs respondents; and the MaxLinear respondents. On March 24, 2015, OUII and Cresta each filed a reply to the other parties' petitions. That same day, the respondents filed a reply to Cresta's petition.

The Commission's determinations to review are as follows:

1. Infringement

The Commission has determined not to review the ID's claim constructions. ID at 16-49. The Commission has determined to review the ID's infringement analysis concerning the "signal processor" for "processing . . . in accordance with" the "format of" the "input RF signal" limitation of all asserted patent claims. '585 patent col. 6 line 65 – col. 7 line 2 (claim 1); '792 patent col. 10 lines 60-65 (claim 1); ID at 57-60, 72-75, 84-85 & 94. The Commission has also determined to review the ID's infringement analysis concerning the "applies one of a plurality of finite impulse response filters . . . corresponding to a format of" the "input RF signal" limitation of asserted claims 10, 12 and 13 of the '585 patent and all asserted claims of the '792 patent. '585 patent col. 7 lines 36-40; '792 patent col. 10 line 65 – col. 11 line 2 (claim 1); ID at 67-68, 79-80, 85 & 93.

The Commission has also determined to review the ID's determinations concerning contributory infringement of the asserted patent claims.

Notwithstanding the foregoing review, the Commission has determined not to review the ID's exclusion of certain testimony by Alan Hendrickson. Cresta Pet. at 37. The Commission has also determined not to review the ID's findings as to Cresta's lack of evidence regarding allegedly representative products. See ID at 65-66, 78-79.

2. Invalidity

The Commission has determined not to review the ID's finding that that claims 1-4 and 25-26 of the '792 patent are anticipated by the '585 patent; and not to review the ID's

finding that claims 1 and 2 of the '585 patent are anticipated by Boie.

The Commission has determined to review the ID's determinations that that the asserted claims are not obvious in view of the combination of Boie and VDP. The Commission has also determined to review whether claim 3 of the '585 patent is obvious in view of Boie and Kerth; whether claim 25 of the '792 patent is obvious in view of VDP alone; and whether claim 26 of the '792 patent is obvious in view of Boie and Micronas.

The Commission has determined to review the ID's findings concerning an on-sale bar that invalidates claims 1-4, 7-8, and 26-27 of the '792 patent. ID at 142-47.

The Commission has determined to review the ID's finding that claim 1 of the '585 patent is not indefinite under 35 U.S.C. § 112 in view of the plural and singular use of the term "signals." On review, the Commission finds that claim 1 of the '585 patent is not indefinite. The respondents have failed to demonstrate clear and convincing evidence of invalidity. The use the plural and singular for "signal" does not create ambiguity in the claim, and neither side's experts had difficulty ascertaining the scope of the claim.

The Commission has also determined to review the issue of whether the claims of the '792 patent are invalid under the written description requirement of 35 U.S.C. § 112. On review, the Commission finds that the claims are not invalid under the written description requirement for the same reasons provided in the ID as to the '585 patent.

3. Domestic Industry

The Commission has determined to review whether Cresta proved the existence of articles protected by the patents that incorporate the XC5000A series tuner. *See* ID at 195-96. The Commission has determined not to review the ID's remaining findings concerning the technical prong of the domestic industry requirement, including the ID's findings as to tuners other than the XC5000A series.

The Commission has also determined to review the ID's findings on the economic prong of the domestic industry requirement.

4. Other Matters

The ID recommends certain action concerning a breach of the administrative protective order in this investigation. ID at 3 n.1; *see* 19 C.F.R. § 210.34(c)(2). That recommendation is not part of the Commission review of violation of section 337, *see* 19 C.F.R. § 210.42. Accordingly, any action by the Commission will be conducted separately from review of the ID, in accordance with Commission practice concerning possible breaches of administrative protective orders. *See generally* Notice, 80 *Fed. Reg.* 1664 (Jan. 13, 2015).

On March 16, 2015, Silicon Labs moved the Commission to reopen the record to admit as evidence a January 9, 2015, response by Cresta in an *inter partes* review of the '585

patent being conducted by the U.S. Patent & Trademark Office (“PTO”). The IA and MaxLinear responded in support of the motion; Cresta responded in opposition. Silicon Labs, a party to the PTO review proceeding, waited more than two months to present the document to the Commission. Silicon Labs could have timely moved the ALJ to reopen the record. Accordingly, the Commission has determined to deny the motion.

All other issues upon which the parties petitioned for review that are not expressly recited above are not reviewed.

The parties are asked to brief the following issues with reference to the applicable law and the existing evidentiary record. For each argument presented, the parties’ submissions should set forth whether and/or how that argument was presented in the proceedings before the ALJ, with citations to the record. *See* Order No. 2 ¶ 11.1 (Mar. 4, 2014) (Ground Rules).

- a. Cresta alleges that certain accused products practice the claim limitations under review because they can operate to receive signals according to U.S. standards (6 MHz) as well as foreign standards that operate at a bandwidth other than 6 MHz. Please explain whether Cresta demonstrated that the accused products are capable of processing signals conforming to such foreign standards without modification to the accused televisions or tuners (whether by software, firmware or hardware). *See, e.g., Finjan, Inc. v. Secure Computing Corp.*, 626 F.3d 1197, 1204-05 (Fed. Cir. 2010); *Silicon Graphics, Inc. v. ATI Technologies, Inc.*, 607 F.3d 784, 794 (Fed. Cir. 2010).
- b. Please explain whether Cresta demonstrated that Silicon Labs’ non-U and non-V tuners (*i.e.*, those models without a “U” or a “V”) process analog and digital signals differently so as to infringe claims 1-3 of the ’585 patent.
- c. In connection with the Commission’s consideration of the infringement analysis of the two claim limitations on review (“signal processor” and “applies one of a plurality of finite impulse response filters”), please provide a chart that presents the following: the accused product, including its model number(s); and for each of the two claim limitations on review whether and why the accused product does or does not practice that claim limitation under the ID’s claim constructions, including citations to the evidence of record.
- d. Cresta alleges the contributory infringement of certain asserted patent claims by respondents MaxLinear and Silicon Labs. Please explain whether the original and/or amended complaint filed by Cresta provided the requisite knowledge of the patents asserted in this investigation. Parties are to discuss Commission determinations (including those in Commission Inv. Nos. 337-TA-723, -744, and -770) as well as federal caselaw including, for example, *Rembrandt Social Media, LP v. Facebook, Inc.*, 950 F. Supp. 2d 876, 881-82 (E.D. Va. 2013) and cases discussed therein. If one or both complaints provide legally adequate knowledge, please explain whether a finding of contributory infringement requires a showing of the respondents’ continued sale of infringing products after being served with

the complaint, *see, e.g.*, Cresta Post-Trial Br. 53, and whether Cresta made that showing. Please also discuss on what basis, if any, other than the original or amended complaint, the respondents were provided with knowledge of the asserted patents for purposes of contributory infringement.

- e. Please explain whether the accused tuners are capable of substantial noninfringing uses, including whether such accused tuners are embedded in systems on a chip, and whether that embedment prevents substantial noninfringing uses as to those embedded tuners. Please also explain whether and why, legally and factually, the following statement is pertinent to the Commission's analysis of contributory infringement in this investigation: "Cresta is not accusing any cable or satellite TV set-top boxes in this Investigation, and my infringement findings are limited to the SoCs where Cresta has identified [an infringing] 'plurality of demodulators'" ID at 82.
- f. In connection with the Commission's analysis of invalidity of claims 10, 12, and 13 of the '585 patent, and the asserted claims of the '792 patent in view of Boie and VDP, please explain whether a programmable filter meets the limitation of "appl[ying] one of a plurality of finite impulse response filters"
- g. Should the Commission find a violation of section 337, please explain, in view of the facts of this investigation as well as Commission precedent concerning remedies, whether public-interest considerations, 19 U.S.C. § 1337(d)(1), (f)(1), warrant tailoring of any remedial orders, and if so, what that tailoring should be. The parties' discussion of the public interest considerations implicated by this investigation should account for the ID's unreviewed determination that Cresta failed to provide adequate evidence as to allegedly representative products. *See* ID at 65-66, 78-79.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. (December 1994).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers.

The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 *Fed. Reg.* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issues under review. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. The complainants and the IA are also requested to submit proposed remedial orders for the Commission's consideration. The complainants are also requested to state the date that the asserted patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on May 14, 2015, and should not exceed 60 pages. Reply submissions must be filed no later than the close of business on May 23, 2015, and such replies should not exceed 40 pages. The respondents may allocate the page limits amongst themselves as they see fit. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-910") in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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', written in a cursive style.

Lisa R. Barton
Secretary to the Commission

Issued: April 30, 2015