

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN AUDIO PROCESSING
HARDWARE, SOFTWARE, AND
PRODUCTS CONTAINING THE SAME**

Investigation No. 337-TA-1026

**NOTICE OF COMMISSION DECISION NOT TO REVIEW AN INITIAL
DETERMINATION GRANTING IN PART A MOTION FOR SUMMARY
DETERMINATION OF NONINFRINGEMENT**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that in the above-captioned investigation the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 47), which granted in part a motion for summary determination of noninfringement.

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 (<https://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://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 25, 2016, based on a complaint filed by Andrea Electronics Corp. of Bohemia, New York ("Andrea"). 81 *Fed. Reg.* 73418 (Oct. 25, 2016). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 by reason of infringement of claims 1-25, 38-40, and 42-47 of U.S. Patent No. 6,363,345 ("the '345 patent"), as well as certain claims from U.S. Patent No. 6,049,607 ("the '607 patent") and U.S. Patent No. 6,377,637 ("the '637 patent"). The Commission's notice of investigation named the following respondents: Apple Inc. of Cupertino, California ("Apple"); Samsung Electronics Co. of Gyeonggi-do, Korea; and Samsung Electronics America, Inc. of Ridgefield Park, New Jersey (collectively,

“Samsung”). The Office of Unfair Import Investigations is also a party in this investigation. On May 25, 2017, the Commission issued a notice terminating the investigation as to the '637 patent, and on June 30, 2017, the Commission issued a notice terminating the investigation as to the '607 patent.

On June 12, 2017, Apple moved for summary determination of noninfringement of the asserted claims of the '345 patent. On June 22, 2017, Andrea and the Commission investigative attorney filed oppositions to the motion. On June 27, 2017, Apple filed a reply.

On July 28, 2017, the ALJ granted the motion in part as the subject ID (Order No. 47). *See* 19 C.F.R. § 210.42(c)(1). The ID finds that Andrea cannot rely on the doctrine of equivalents for infringement of the '345 patent because certain statements in the file history of the patent give rise to prosecution history estoppel. Order No. 47 at 6-7, 10-15. The ID thus granted summary determination of noninfringement under the doctrine of equivalents. *Id.* at 15. Order No. 47 denied summary determination as to literal infringement of the '345 patent. *Id.* at 7-10. That denial of summary determination is an order not now before the Commission. *See* 19 C.F.R. § 210.42(c)(1).

No petitions for review of the ID were filed. The Commission has determined not to review the ID.

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 Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: August 29, 2017