

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

In the Matter of

**CERTAIN AUDIO DIGITAL-TO-
ANALOG CONVERTERS AND
PRODUCTS CONTAINING SAME**

Inv. No. 337-TA-499

**NOTICE OF COMMISSION DETERMINATION TO RESCIND A LIMITED
EXCLUSION ORDER**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to rescind the limited exclusion order in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-3152. 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. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. 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>.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 14, 2003, based on a complaint filed on behalf of Cirrus Logic, Inc. of Austin, TX ("Cirrus"). 68 *Fed. Reg.* 64641 (Nov. 14, 2003). The complaint, as supplemented, alleged violations of section 337 in the importation into the United States, sale for importation, and sale within the United States after importation of certain audio digital-to-analog converters and products containing same by reason of infringement of claims 1 and 11 of U.S. Patent No. 6,492,928 ("the '928 patent"). The notice of investigation named Wolfson Microelectronics, PLC of Edinburgh, United Kingdom; and Wolfson Microelectronics, Inc. of San Diego, CA (collectively "Wolfson") as respondents.

On December 29, 2003, the ALJ issued an ID (Order No. 5) granting complainant's motion to amend the complaint and notice of investigation to add allegations of infringement of claims 2, 3, 5, 6, and 15 of the '928 patent, and of claims 9, 12, and 19 of U.S. Patent No. 6,011,501 ("the '501 patent"). 69 *Fed. Reg.* 4177 (Jan. 28, 2004). On July 1, 2004, the ALJ issued an ID (Order No. 16) granting complainant's motion to terminate the investigation as to claims 1 and 2 of the '928 patent. On July 27, 2004, the ALJ issued an ID (Order No. 24) granting complainant's motion to terminate the investigation in part as to claim 11 of the '928 patent. Orders Nos. 5, 16, and 24 were not reviewed by the Commission.

The ALJ held an evidentiary hearing in the investigation from August 3, 2004, to August 11, 2004, and on November 15, 2004, he issued his final ID finding a violation of section 337 based on his findings that the asserted claims of the '501 patent are infringed, that they are not invalid in view of any prior art, and that claims 9 and 12 of the '501 patent are not invalid because of failure to provide an enabling written description of the claimed invention. The ALJ found the '928 patent to be unenforceable because the inventors intentionally withheld highly material prior art from the examiner during the prosecution of the '928 patent application at the United States Patent and Trademark Office ("USPTO"). As an independent ground for unenforceability, the ALJ found that the '928 patent is unenforceable because one person was mistakenly listed on the patent as an inventor. The ALJ found that the accused devices infringe the asserted claims of the '928 patent, if enforceable, that the asserted claims of the '928 patent are not invalid in view of any prior art, or because of a failure to provide an enabling written description of the claimed invention, or for failure to disclose the best mode.

On November 23, 2004, the USPTO issued a certificate correcting the inventorship of the '928 patent thereby curing one ground on which the Commission had found the patent unenforceable. On December 30, 2004, the Commission determined to review and reverse the ID's finding that the '928 patent is unenforceable due to incorrect inventorship in view of the issued certificate of correction by the USPTO. 70 *Fed. Reg.* 1275 (Jan. 6, 2005). It further determined not to review the remainder of the ID, thereby finding a violation of section 337. *Id.*

On February 16, 2005, the Commission determined that the appropriate form of relief is a limited exclusion order prohibiting the importation of Wolfson's audio digital-to-analog converters that infringe claims 9, 12 and 19 of the '501 patent. The limited exclusion order applies to any of the affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or their successors or assigns, of Wolfson.

Complainants Cirrus and respondents Wolfson report that they have now settled all outstanding patent disputes and related actions. Accordingly, on April 4, 2005, pursuant to Commission rule 210.76(a)(1), Cirrus and Wolfson filed a joint petition for rescission of the limited exclusion order issued in the investigation.

Having reviewed the parties' submissions, the Commission has determined that the settlement agreement satisfies the requirement of Commission rule 210.76(a)(1), 19 C.F.R. § 210.76(a)(1), for changed conditions of fact or law. The Commission therefore has issued an

order rescinding the limited exclusion order previously issued in this investigation.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and section 210.76(a)(1) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76(a)(1)).

By order of the Commission.

/s/
Marilyn R. Abbott
Secretary to the Commission

Issued: May 3, 2005