

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN INTEGRATED CIRCUITS,
COMPONENTS THEREOF, AND
PRODUCTS CONTAINING THE SAME**

Investigation No. 337-TA-1350

**NOTICE OF COMMISSION DETERMINATION TO REVIEW IN PART A FINAL
INITIAL DETERMINATION; REQUEST FOR WRITTEN SUBMISSIONS ON THE
ISSUES UNDER REVIEW, REMEDY, BOND, AND THE PUBLIC INTEREST**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined to review in part the final initial determination (“FID”) issued by the presiding administrative law judge (“ALJ”) in the above-captioned investigation. The Commission is soliciting briefing from the parties on the issues under review, as well as briefing from the parties, interested government agencies, and interested persons on remedy, bonding, and the public interest.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-2382. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.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: On January 24, 2023, the Commission instituted the present section 337 investigation based on a complaint filed by Realtek Semiconductor Corporation of Hsinchu, Taiwan (“Realtek”). *See* 88 FR 4205-06 (Jan. 24, 2023). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C § 1337), due to the importation into the United States, sale for importation, or sale within the United States after importation of certain integrated circuits, components thereof, and products containing the same that infringe one or more asserted claims of U.S. Patent Nos. 7,936,245 (“the ’245 patent”); 8,006,218 (“the ’218 patent”); or 9,590,582 (“the ’582 patent”) (collectively, the “Asserted Patents”). *Id.* The complaint alleges that a domestic industry exists. *Id.* The notice of investigation names Advanced Micro Devices, Inc. of Santa Clara, CA (“AMD”) as the respondent. *Id.* The Office of Unfair Import Investigations is not

participating in this investigation. *Id.*

The presiding ALJ held a claim construction (*Markman*) hearing on June 5, 2023. The ALJ issued the claim construction order on July 25, 2023. Order No. 21 (July 25, 2023).

On June 20, 2023, AMD moved to preclude Mr. Steve Baik, Realtek's outside counsel, from testifying as a fact witness in the evidentiary hearing. On July 7, 2023, the ALJ issued Order No. 19, ordering AMD to show cause why Winston & Strawn ("Winston") should not be disqualified in this investigation due to an alleged conflict of interest. Order No. 19 at 2 (July 7, 2023).

On August 4, 2023, the ALJ held a teleconference with the parties regarding Mr. Baik and Winston. On August 17, 2023, the ALJ issued Order No. 23, which granted AMD's motion to preclude Mr. Baik from testifying on behalf of Realtek but did not disqualify Winston. Order No. 23 at 1 (Aug. 17, 2023). On August 24, 2023, the ALJ denied Realtek's motions for reconsideration and for interlocutory review of Order No. 23. Order No. 24 (Aug. 24, 2023). On September 6, 2023, Realtek filed a petition in the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit") seeking a writ of mandamus to order the ALJ to vacate the ruling striking Mr. Baik. The Federal Circuit denied the petition on September 25, 2023. *In re Realtek Semiconductor Corp.*, Appeal No. 2023-147, On Petition and Motion (Sept. 25, 2023).

On October 16, 2023, the ALJ issued an order regarding AMD's motion to sanction Realtek for failing to accurately answer certain interrogatories and produce relevant documents regarding Realtek's earlier litigations against Avago Techns. General IP (Singapore) Pte., Ltd and Broadcom Corp. in the U.S. District Court for the District of Delaware. Order No. 39 at 1-6 (Oct. 16, 2023). Order No. 39 determined Realtek had engaged in sanctionable acts during discovery, but otherwise deferred ruling on the motion until after the evidentiary hearing. *Id.*

The ALJ proceeded to hold an evidentiary hearing from October 16-20, 2023.

On November 14, 2023, the Commission terminated the investigation as to claim 9 of the '582 patent and claim 14 of the '218 patent, based on Realtek's withdrawal of those claims. Order No. 40 (Oct. 20, 2023), *unreviewed by* Comm'n Notice (Nov. 14, 2023).

On January 19, 2024, the presiding ALJ issued the combined FID and Recommended Determination on Remedy and Bond ("RD"). The FID finds no violation of section 337 for any of the three patents at issue because: (i) asserted claims 1, 2, and 8 of the '245 patent are infringed but invalid as anticipated; (ii) asserted claims 12, 13, and 15-18 of the '218 patent are infringed but invalid as obvious; (iii) regarding the '582 patent, asserted claims 1-4 are not infringed and claims 1-3 (but not claim 4) are invalid as anticipated; and (iv) Realtek failed to satisfy the economic prong of the domestic industry requirement for any of the three asserted patents. FID at 252. The FID also finds that Realtek has satisfied the technical prong of the domestic industry requirement for each asserted patent. *Id.*

The RD recommends, if the Commission finds a violation, issuing a limited exclusion order barring entry of AMD products that infringe any of the asserted claims of the '218, '582, or '245 patents. *Id.* at 254-256. The RD also recommends issuing a cease and desist order

directed to AMD. *Id.* at 256. The RD further recommends issuing no (0%) bond against any covered products imported during the period of Presidential review. *Id.* at 256-257.

On January 30, 2024, the Commission issued a notice requesting submissions on the public interest, if a violation is found. 89 FR 5933 (Jan. 30, 2024). The Commission did not receive any public interest submission from the public or any other agency in response to this notice. *Id.* On February 20, 2024, AMD filed its public interest statement, pursuant to Commission Rule 210.50(a)(4). 19 CFR 210.50(a)(4). On February 26, 2024, Realtek filed a motion for leave to file its public interest statement out of time. The Commission denied Realtek's motion on the same date.

On February 2, 2024, Realtek filed a petition for review of the FID's findings regarding: (i) invalidity of the '218 patent claims; (ii) regarding the '582 patent, non-infringement of the asserted claims and invalidity of asserted claims 1-3; (iii) failure to satisfy the economic prong of the domestic industry requirement, including the ALJ's decision to preclude Mr. Baik from testifying but not disqualify Winston; and (iv) the sanction levied against Realtek for discovery misconduct. Realtek is not seeking review of the '245 patent.

Also on February 2, 2024, AMD filed a contingent petition for review of the FID's findings regarding: (i) for the '218 patent, claim construction, infringement, the technical prong of the domestic industry requirement, the asserted claims are not invalid for lack of written description or enablement, and that a certain cited reference (Jiang3) is not prior art; and (ii) for the '582 patent, that claims 1-4 are not invalid as anticipated by the Qualcomm RFR6122 chip, that claim 4 is not anticipated by the Qualcomm RBR1000 chip, and that asserted claims 1-4 of the '582 patent are not obvious over certain cited prior art references (including Muh); and (iii) certain findings relating to the economic prong of the domestic industry requirement.

On February 12, 2024, Realtek and AMD filed their respective responses to the opposing petitions for review.

Having reviewed the record in this investigation, including the final ID, the parties' petitions, and responses thereto, the Commission has determined to review the FID in part with respect to the following issues:

- (A) The Commission has determined not to review, and thereby adopts, the FID's findings that the asserted claims the '245 patent are invalid and thus there is no violation of section 337 with respect to that patent.
- (B) With respect to the '218 patent, the Commission has determined to review claim construction, infringement, the technical prong of domestic industry, and invalidity with respect to the so-named Jiang, Jiang2, and Li prior art references. The Commission has also determined to review whether Jiang3 is prior art to the '218 patent. The Commission has determined not to review the FID's finding that the asserted claims are not invalid for lack of written description or lack of enablement.
- (C) With respect to the '582 patent, the Commission has determined to review the

FID's construction of "capacitor component[] arranged corresponding to a first region," and its findings that asserted claims 1-4 are not infringed. The Commission has also determined to review the FID's findings that claims 1-3 are anticipated by the prior art Qualcomm RBR1000 semiconductor device, but that claim 4 is not anticipated by the same device. The Commission has also determined to review the FID's findings that claims 1-4 are not anticipated by the Qualcomm RFR6122 device. The Commission has also determined to review the FID's findings that the Muh reference is not prior art. The Commission has determined not to review the FID's findings that claims 1-4 are not invalid for lack of adequate written description.

- (D) The Commission has determined not to review the presiding ALJ's decisions: (i) to preclude Mr. Baik, outside trial counsel for Realtek, from testifying as a fact witness at the evidentiary hearing; and (ii) not to disqualify Winston & Strawn.
- (E) The Commission has determined to review the FID's findings that Realtek has failed to satisfy the economic prong of the domestic industry requirement.
- (F) The Commission has determined to review the sanction award against Realtek.

The parties are asked to provide additional briefing on the following issues under review:

A. The '218 patent

- (1) With respect to claim 12, limitations 12[e] and [f] of the '218 patent, explain whether these limitations allow both horizontal power supply wires and vertical power supply wires of the claimed "global power mesh" to be on the same metal layer and identify the intrinsic evidence in support. With respect to each of the accused AMD products, the asserted domestic industry products, and the asserted prior art references, explain whether the "global power mesh" includes: (i) at least one metal layer in which all of the power supply wires on that metal layer are horizontal; and (ii) at least a second, different metal layer in which all of the power supply wires on that layer are vertical.
- (2) With respect to limitations 12[a]-[c], explain how the intrinsic evidence distinguishes a "first [partial] local power mesh" from a "second [partial] local power mesh," and how it distinguishes a "global power mesh" from two local power meshes, *e.g.*, whether those different local power meshes must be insulated from each other, comprise different wire networks, or have different power levels. With respect to each accused AMD product, asserted domestic industry product, and asserted prior art reference, explain whether that product or reference discloses two or more local power meshes and how it distinguishes a "global power mesh" from two local power meshes. In particular, explain on what basis the images relied upon in the final initial determination identify two partial meshes vs. a single global power mesh. *See* FID at 109-10; *see also id.* at 117-18.

- (3) With respect to limitations 12[a]-[c], explain how the intrinsic evidence distinguishes a “first power domain” from a “second power domain,” *e.g.*, whether those different power domains must be insulated from each other or have different power requirements, either temporarily or at all times. With respect to each accused AMD product, asserted domestic industry product, and asserted prior art reference, explain whether that product or reference discloses two or more power domains that are distinguished by that feature.
- (4) Explain whether the intrinsic evidence supports or precludes reading the limitation “provide the power needed” recited in limitation 12[c] to include zero power, or zero voltage. Assuming *arguendo* that “power” could include zero power or zero voltage, explain whether this construction impacts the FID’s findings on infringement, the technical prong of domestic industry, or invalidity.
- (5) Explain whether or how claims 15-18 of the ’582 patent can be invalid over Li with Jiang (as defined in the FID) but not over Jiang with Li.
- (6) Explain whether there is any evidence to rebut Dr. Hall-Ellis’ testimony that the so-called Jiang3 reference was publicly available prior to November 15, 2007, or that Jiang3 is not prior art to the ’218 patent. Explain how Jiang3 relates to Jiang and Jiang2 and whether it contributes to the issue of obviousness.
- (7) Explain whether Complainant has challenged the prior art status of Jiang3 in the currently pending proceeding concerning the ’218 patent before the Patent Trial and Appeal Board (“PTAB”), IPR2023-00920.

B. The ’582 patent

- (8) With respect to the arrangement of the “capacitor component” relative to the “inductor component” in claim 1 of the ’582 patent, explain whether “a capacitor component” requires that substantially all of the capacitor components lie between the “extension-conductor segments” that define the “first region,” or whether there may be additional capacitor components outside those “extension-conductor segments” (but not under the “coil-conductor segment”), provided there is at least one “capacitor component” in the “first region.” Explain whether the intrinsic or extrinsic evidence indicates that the presence of capacitors outside the “extension-conductor segments” (but not under the “coil-conductor segment”) will tend to increase unwanted phase noise, parasitic circuits, or otherwise degrade the invention or impair the effectiveness of the claimed LC resonant circuit. Explain whether each of the accused products and the asserted prior art Qualcomm RFR1000 and RBR6122 contains at least one “capacitor component” substantially within the “first region,” as defined by claim 1, regardless of whether there are additional capacitors outside the extension-conductor segments.
- (9) With respect to the ’582 patent, explain whether there is any difference in claim construction or scope between “wherein a first region is *defined* by the two

extension-conductor segments,” as recited in claim 1, limitation 1[c] and “wherein the first region is *defined between* the two extension-conductor segments,” as recited in dependent claim 4. Explain whether, or how, the prior art Qualcomm RBR1000 reads on claim 1 but not claim 4, based on this difference, if any.

- (10) With respect to the asserted prior art Qualcomm RFR6122 chip, explain whether claim 1, limitations 1[e], [f] covers an arrangement in which the “electrode segments” can comprise the metal plates of one set of capacitors while the claimed “connecting segments” belong to a different set of capacitors. Explain whether the RFR6122 discloses a single set of capacitors (or “capacitor component”) that satisfies both the “electrode segments” and the “connecting segments” of limitations 1[e], [f].
- (11) Address the arguments and evidence presented before PTAB concerning the prior art status of Muh in IPR2023-00788. How is the evidence presented before the PTAB different from the evidence of record in this investigation? Should the Commission consider any additional arguments and evidence presented before PTAB at this stage? Based on the record in this proceeding, and the different evidentiary standards involved, can the Commission reach a different conclusion than PTAB on the prior art status of Muh? *See Nobel Biocare Servs. AG v. Instradent USA, Inc.*, 903 F.3d 1365, 1375 (Fed. Cir. 2018).
- (12) If the Commission determines that Muh qualifies as prior art, is a remand appropriate to allow the ALJ to consider the obviousness argument based on Muh in the first instance?

C. Economic prong

- (13) With respect to Broadcom Corporation’s asserted labor and capital investments under 19 U.S.C. 1337(a)(3)(B) and (C) (*see* FID at 240-42), what evidence of record supports a finding that these investments were properly allocated to the asserted domestic industry products (*i.e.*, the Broadcom BCM4387 and BCM 4389 chips) (“DI products”) and limited to investments in the United States that were directed to the asserted DI products?
- (14) Identify the evidence of record in support of Realtek’s contention that the requisite nexus exists between its asserted investments under 19 U.S.C. 1337(a)(3)(C) and the asserted patents.
- (15) Identify the evidence of record with respect to whether Realtek has shown that the investments upon which it relies are significant or substantial. *See* 19 U.S.C. 1337(a)(3)(B), (C).
- (16) Please address the meaning of articles “protected by the patent” in subsections 337(a)(2) and (a)(3) and whether that language requires that Broadcom hold a license to the asserted patents, or that the Broadcom BCM4387 and BCM 4389 chips are otherwise protected by the asserted patents, for Realtek to be able to rely

on Broadcom's domestic investments to establish a domestic industry.

D. Sanction

- (17) Assuming the Commission determines to affirm the imposition of the monetary sanction but decides to impose it on Realtek's "outside counsel" consistent with the argument made in Realtek's petition for review (Realtek Pet. at 100), identify which "outside counsel" would be subject to the sanction.

The parties are invited to brief only the discrete issues requested above. The parties are not to brief other issues on review, which are adequately presented in the parties' existing filings.

In connection with the final disposition of this investigation, the statute authorizes issuance of, inter alia, (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States; and/or (2) a cease and desist order that could result in the respondent 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. at 7-10 (Dec. 1994).

Assuming AMD is requesting that the remedial orders contain an exemption related to service or repair, please address: (i) with reference to any factual evidence in support, including any not currently on record, the rationale for providing such an exemption, including under the public interest factors as stated in section 337(d) (19 U.S.C. 137(d)); (ii) the warranty terms, if any, for the merchandise in question; (iii) whether the exemption should apply only to merchandise under warranty, or to all needed service and repair; and (iv) what should be the temporal cutoff for the exemption, e.g., should the operative date be the issuance of the Commission's final determination or the end of the Presidential review period, and should it apply to merchandise sold or imported prior to such date.

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and 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, disapprove, or take no action on the Commission's determination. See Presidential Memorandum of July 21, 2005, 70 FR 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 and prescribed by the Secretary of the Treasury. 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 identified in this notice. 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.

In its initial submission, Complainant is also requested to identify the remedy sought and to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to state the dates that the asserted patents expire, to provide the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on **June 28, 2024**. Reply submissions must be filed no later than the close of business on **July 8, 2024**. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Opening submissions are limited to **100** pages. Reply submissions are limited to **50** pages. No further submissions on any of 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. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1350) in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.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 by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed with the Commission and served on any parties to the investigation within two business days of any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes.

All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on June 11, 2024.

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 CFR Part 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', enclosed within a large, loopy oval flourish.

Lisa R. Barton
Secretary to the Commission

Issued: June 11, 2024