UNITED STATES INTERNATIONAL TRADE COMMISSION Washington, DC 20436

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In the Matter of

CERTAIN BASEBAND PROCESSOR CHIPS AND CHIPSETS, TRANSMITTER AND RECEIVER (RADIO) CHIPS, POWER CONTROL CHIPS, AND PRODUCTS CONTAINING SAME, INCLUDING CELLULAR TELEPHONE HANDSETS

Inv. No. 337-TA-543

NOTICE OF INSTITUTION OF FORMAL ENFORCEMENT PROCEEDING

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has instituted a formal enforcement proceeding relating to a cease and desist order issued at the conclusion of the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clint A. Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436, telephone (202) 205-3061. Copies of all nonconfidential 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 SW., 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 <u>http://edis.usitc.gov/</u>. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: On June 21, 2005, the Commission instituted an investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, based on a complaint filed by Broadcom Corporation ("Broadcom") of Irvine, California, alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain baseband processor chips and chipsets, transmitter and receiver (radio) chips, power control chips, and products containing same, including cellular telephone handsets by reason of infringement of certain claims of U.S. Patent Nos. 6,374,311; 6,714,983 ("the '983 patent"); 5,682,379 ("the '379 patent"); 6,359,872 ("the '872 patent"); and 6,583,675. 70 *Fed. Reg.* 35707 (June 21, 2005). The complainant named Qualcomm Incorporated ("Qualcomm") of San Diego, California as the only respondent. The '379 patent and '872 patent

were terminated from this investigation.

On October 19, 2006, the presiding administrative law judge ("ALJ") issued an Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond ("ID"), finding a violation of section 337 as to the '983 patent only. On December 8, 2006, the Commission issued a notice of its decision to review and modify in part the ALJ's final ID. The modification made by the Commission did not affect the finding of violation.

On March 21-22, 2007, the Commission held a public hearing on the issues of remedy and the public interest. Subsequently, the Commission extended the target date for completion of this investigation to June 7, 2007.

On June 7, 2007, the Commission issued a limited exclusion order, with certain exemptions, prohibiting the importation of Qualcomm's baseband processor chips or chipsets, including chips or chipsets incorporated into circuit board modules and carriers, that are programmed to enable the power saving features covered by claims 1, 4, 8, 9, or 11 of the '983 patent, as well as handheld wireless communication devices, including cellular telephone handsets and PDAs, containing Qualcomm baseband processor chips or chipsets that are programmed to enable the power saving features covered by these claims. The Commission also issued a cease and desist order that prohibits Qualcomm from engaging in certain activities in the United States related to the infringing chips.

On November 9, 2007, complainant Broadcom filed a complaint for enforcement proceedings under Commission Rule 210.75. Broadcom asserts that respondent Qualcomm has violated the Commission's cease and desist order by continued marketing of infringing, imported baseband processor chips and chipsets, and continued testing and programming of imported baseband processor chips and chipsets to transform them into infringing products. On December 5 and 7, 2007, respectively, Qualcomm filed a letter opposing institution of Broadcom's complaint, and Broadcom filed a letter in response to Qualcomm's opposition.

Having examined the complaint seeking a formal enforcement proceeding, and having found that the complaint complies with the requirements for institution of a formal enforcement proceeding contained in Commission rule 210.75, the Commission has determined to institute formal enforcement proceedings to determine whether Qualcomm is in violation of the Commission's cease and desist order issued in the investigation, and what, if any, enforcement measures are appropriate. The following entities are named as parties to the formal enforcement proceeding: (1) complainant Broadcom, (2) respondent Qualcomm, and (3) a Commission investigative attorney to be designated by the Director, Office of Unfair Import Investigations.

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 section 210.75 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.75).

By order of the Commission.

/s/ Marilyn R. Abbott Secretary to the Commission

Issued: December 20, 2007