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

In the Matter of	)	
CERTAIN OPTICAL DISK CONTROLLER CHIPS AND CHIPSETS AND PRODUCTS CONTAINING SAME, INCLUDING DVD PLAYERS AND PC OPTICAL STORAGE DEVICES II	)	**Inv. No. 337-TA-523**

NOTICE OF COMMISSION DECISION TO REVIEW PORTIONS OF AN INITIAL DETERMINATION FINDING NO VIOLATION OF SECTION 337 OF THE TARIFF ACT OF 1930; GRANT OF MOTION TO FILE CORRECTED PETITION FOR REVIEW; DENIAL OF MOTION TO FILE REPLY BRIEF; EXTENSION OF TARGET DATE FOR COMPLETION OF INVESTIGATION

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review certain portions of a final initial determination ("ID") of the presiding administrative law judge ("ALJ") finding no violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation. The Commission has also granted a motion for leave to file a corrected petition, denied a motion for leave to file a reply brief, and has extended the target date for completion of the investigation by 30 days, *i.e.*, until March 1, 2006.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3012. Copies of the public version of the ALJ's ID and all other 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, 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-ON-LINE) 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 August 31, 2004, based on a complaint filed on behalf of MediaTek Corporation ("complainant") of Hsin-Chu City, Taiwan. 69 *Fed. Reg.* 53089 (Aug. 31, 2004). 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 optical disk controller chips and chipsets by reason of infringement of claims 1, 3-6, 8-9, and 10 of U.S. Patent No. 5,970,031 ("the '031 patent") and claims 1-4 of U.S. Patent No. 6,229,773 ("the '773 patent"). *Id*. The notice of investigation named two respondents: Zoran Corporation ("Zoran") of Sunnyvale, CA and Oak Technology, Inc. ("Oak") of Sunnyvale, CA. *Id.*

On October 7, 2004, the ALJ issued an ID (Order No. 5) granting complainant's motion to amend the complaint and notice of investigation to add Sunext Technology Co., Ltd. ("Sunext") of Hsin-Chu City, Taiwan, as a respondent and to add another patent, *viz.*, claims 1-2, 5-6, 15-19, 21, and 22 of U.S. Patent No. 6,170,043 ("the '043 patent") to the scope of the investigation. 69 *Fed. Reg.* 64588. That ID was not reviewed by the Commission. *Id.*

A tutorial was held on June 24, 2005, and an eight-day evidentiary hearing was held from June 27, 2005, through July 7, 2005.

On September 30, 2005, the ALJ issued his final ID and recommended determination on remedy and bonding. The ALJ concluded that there was no violation of section 337. Although he found that respondent Oak infringes claims 1, 2, and 3 of the '773 patent, he found that those claims are invalid as anticipated by Japanese patent application number 08-015834 (RX-518) ("the Okuda prior art reference"). He found no infringement of claim 4 of the '773 patent, and no infringement of any asserted claim of the '031 or '043 patents. The ALJ concluded that the asserted claims of the '031 patent are invalid for lack of enablement, the asserted claims of the '043 patent are not invalid, and the asserted claims of the '043 patent are not unenforceable. He also found that complainants did not establish the technical or economic prong of the domestic industry requirement for any of the three patents in issue.

On October 12, 2005, complainant MediaTek, the Commission investigative attorney ("IA"), respondent Sunext, and respondents Oak and Zoran petitioned for review of portions of the final ID. On October 14, 2005, complainant MediaTek moved for leave to file a corrected petition with attached petition. Also on October 14, 2005, respondents Zoran and Oak filed a letter requesting a two-day extension of time for filing their response in the event that the Commission accepted MediaTek's corrected petition. On October 18, 2005, the Chairman granted respondents' October 14, 2005, request for a two-day extension, and extended the due date for all responses to all petitions for review by two days, or until Friday, October 21, 2005.

On October 21, 2005, all parties filed responses to the petitions for review.

On November 17, 2005, complainant MediaTek filed a motion for leave to reply in support of its petition for review with an attached reply. On November 18, 2005, respondent Sunext filed an opposition to MediaTek's motion, and on November 21, 2005, respondents Zoran and Oak filed an opposition to MediaTek's motion. On November 22, 2005, MediaTek

filed a response to Sunext's opposition. On November 23, 2005, the IA filed a response opposing MediaTek's motion, and on December 5, 2005, MediaTek filed a reply to the IA's response.

The Commission has granted complainant MediaTek's October 14, 2005, motion for leave to file a corrected petition, and denied complainant MediaTek's November 17, 2005, motion for leave to file a reply in support of its petition for review.

Having examined the record in this investigation, including the ID, the petitions for review, and the responses thereto, the Commission has determined to review the ID in part:

(1) The Commission has determined to review the ALJ's analysis of the technical and economic prongs of the domestic industry requirement in its entirety.

(2) With respect to the '773 patent, the Commission has determined to review the following portions of the ALJ's infringement analysis: (a) the findings and analysis under the doctrine of equivalents concerning the SC series chips relating to the "radio frequency (RF) amplifier chip" limitation of claims 1 and 3 of the '773 patent (ID at 89-93, 97); (b) the finding that Sunext's reference designs incorporating the SC series controller chips do not infringe claim 4 under the doctrine of equivalents (ID at 99-100); (c) the finding that the "working optical drives" of Sunext's customers that incorporate the accused OTI-9510 and SC series controller chips infringe claims 1-3 of the '773 patent (ID at 79, 89,100); and (d) the finding that Sunext does not indirectly infringe the asserted claims of the '773 patent (ID at 102-04). As to invalidity, the Commission has determined to review the ALJ's finding that the Okuda reference anticipates claims 1, 2, and 3 of the '773 patent (ID at 104-06), and his conclusion that respondents failed to establish that claims 1, 2, or 3 of the '773 patent are made obvious by certain prior art (ID at 109-111).

(3) With respect to the '043 patent, the Commission has determined to review the ALJ's finding that PCT Publication No. W097/38367 (Hagiwara) does not anticipate claims 15, 16, 17, 19, 21, or 22 of the '043 patent. The Commission has also determined to review portions of the ALJ's determination that the '043 patent is not unenforceable for inequitable conduct before the PTO, specifically sections X.E.1 and X.E.2 of the ID (ID at 154-56).

The Commission has determined not to review the remainder of the ID.

On review, the Commission requests briefing based on the evidentiary record on all issues under review. Specific briefing questions that refer to confidential business information under the protective order issued in this investigation have been provided to the parties.

In connection with the final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents 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 are likely to do so. For background information, see the Commission Opinion, *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360.

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 President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount to be 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.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issues under review. The submission should be concise and thoroughly referenced to the record in this investigation, including references to exhibits and testimony. Additionally, the parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the ALJ's September 30, 2005, recommended determination on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is requested to supply the expiration dates of the patents at issue and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than the close of business on January 9, 2006. Reply submissions must be filed no later than the close of business on January 16, 2006. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original and 12 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of 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 is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The Commission has extended the target date for completion of this investigation by 30

days, *i.e.*, until March 1, 2006.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in sections 210.42 - .46 and section 210.51 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42 - .46, 51).

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: December 16, 2005