

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

In the Matter of)
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)
CERTAIN INTEGRATED CIRCUITS, PROCESSES) Inv. No. 337-TA-450
FOR MAKING SAME, AND PRODUCTS)
CONTAINING SAME)

**NOTICE OF COMMISSION DECISION TO REVIEW PORTIONS OF AN INITIAL
DETERMINATION FINDING NO VIOLATION OF SECTION 337
OF THE TARIFF ACT OF 1930**

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.

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. 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>).

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.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation by notice published in the *Federal Register* on March 6, 2001. 66 *Fed. Reg.* 13567 (2001). The complainants are United Microelectronics Corporation, Hsinchu City, Taiwan; UMC Group (USA), Sunnyvale, CA; and United Foundry Service, Inc., Hopewell Junction, NY. *Id.* The Commission named two

respondents, Silicon Integrated Systems Corp., Hsinchu City, Taiwan, and Silicon Integrated Systems Corporation, Sunnyvale, CA (collectively, "SiS"). *Id.* The complaint, as supplemented, alleged violations of section 337 in the importation, the sale for importation, and the sale within the United States after importation of certain integrated circuits and products containing same by reason of infringement of claims 1, 2, and 8 of U.S. Letters Patent 5,559,352 ("the '352 patent") and claims 1, 3-16, and 19-21 of U.S. Letters Patent 6,117,345 ("the '345 patent"). *Id.*

On November 2, 2001, the presiding ALJ issued an ID (ALJ Order No. 15) granting complainants' motion for summary determination on the issue of importation and denying respondents' motion for summary determination of lack of importation. That ID was not reviewed by the Commission. A tutorial session was held on November 5, 2001, and an evidentiary hearing was held from November 7, 2001, through November 16, 2001, and from December 10, 2001, through December 12, 2001.

The ALJ issued his final ID on May 6, 2002, concluding that there was no violation of section 337. With respect to the '352 patent, the ALJ found that: complainants have not established that the domestic industry requirement is met; none of respondents' accused devices practice any asserted claim of the '352 patent literally or under the doctrine of equivalents; and claims 1 and 2 of the '352 patent are invalid as anticipated under 35 U.S.C. § 102 and claim 8 of the '352 patent is invalid for obviousness under 35 U.S.C. § 103. The ALJ found each of the '345 patent claims listed in the notice of investigation, *i.e.*, claims 1, 3-16, 19-20, and 21, invalid as anticipated by and made obvious by certain prior art. The ALJ stated that, in their post-hearing filings, complainants asserted only claims 1, 3-5, 9, 11-13, and 20-21 of the '345 patent against respondents. He found that, if valid, each of the asserted claims of the '345 patent, *i.e.*, claims 1, 3-5, 9, 11-13, and 20-21, is literally infringed by SiS's existing (or old) SiON manufacturing process, but that respondents' new N₂O process does not infringe any asserted claim of the '345 patent. The ALJ further found that a domestic industry exists with respect to the '345 patent. On May 13, 2002, the ALJ issued his recommended determination on remedy and bonding.

On May 17, 2002, complainants and the Commission investigative attorney ("IA") petitioned for review of the subject ID, and respondents filed a contingent petition for review. On May 24, 2002, complainants, the IA, and respondents filed responses.

Having examined the record in this investigation, including the ID, the petitions for review, and the responses thereto, the Commission has determined to review and clarify that the ALJ found claim 13 of the '345 patent made obvious, but not anticipated, by the Tobben patent. The Commission has also determined to review:

- (1) the ALJ's findings and conclusions of law regarding the '352 patent with respect to infringement of the asserted claims and domestic industry under the doctrine of equivalents;
- (2) the ALJ's finding that respondents' old E5 model ESD transistor does not infringe any

asserted claim of the '352 patent, either literally or equivalently;

(3) the ALJ's claim construction of the limitations “an ESD protection device” (claims 1, 2, and 8 of the '352 patent), “a gate” (claims 1 and 2), “gates” (claim 8), and “source/drain regions . . . with each source/drain region comprising” (claims 1, 2, and 8), and the ALJ's invalidity, domestic injury, and infringement findings and conclusions of law with respect to those limitations;

(4) the ALJ's finding that claim 8 of the '352 patent is invalid as made obvious by a combination of prior art references;

(5) whether the economic prong of the domestic industry requirement is met with respect to the '352 patent;

(6) the ALJ's findings that the “second antireflective coating” (claim 1 and asserted dependent claims 3-8 of the '345 patent) and “cap layer” (claims 9-16, 19-20, and 21 of the '345 patent) are disclosed in the Tobben patent, and consequently (a) the ALJ's findings with respect to etching the second antireflective coating or cap layer (claims 4 and 12), (b) the ALJ's ultimate finding that the Tobben patent anticipates claims 1, 3-16, 19-20, and 21 of the '345 patent, and (c) the ALJ's conclusion that claim 13 is made obvious by the Tobben patent and other prior art;

(7) the ALJ's conclusion that claim 13 of the '345 patent is invalid as obvious in light of the Tobben patent; and

(8) the ALJ's conclusion that claims 1, 3-16, 19-20, and 21 of the '345 patent are invalid as made obvious by the Abernathy patent in combination with the Pan, Yagi, and/or Yota publications.

The Commission has determined not to review the remainder of the ID, including the ID's conclusions and findings of fact with respect to whether the Tobben patent is prior art to the '345 patent, infringement of the asserted claims of the '345 patent, domestic industry concerning the '345 patent, and failure to disclose the best mode of practicing the invention of the '345 patent.

On review, the Commission requests briefing based on the evidentiary record on all issues under review and is particularly interested in receiving answers to the following questions, with all answers cited to the evidentiary record:

1. Have complainants established the economic prong of the domestic industry requirement with respect to the '352 patent?

2. Should the term “an ESD protection device” in claims 1, 2, and 8 of the '352 patent be construed to require a protection device that is separate and apart from the circuit it protects?

3. Assuming that the term “a gate” refers to a single, particular gate for a specific FET (but without excluding multiple-FET ESD protection devices) (ID at 14-15), should the limitation “source/drain regions . . . with each source/drain region comprising” be construed as excluding from the claimed ESD protection device source/drain regions that lack one or more of the three implants (*i.e.*, the “first lightly implanted region,” “heavier implanted region,” and “second lightly implanted region”)? In responding to this question please address the “open” transition in claim 1 of the '352 patent (“An ESD protection device . . . *comprising*”).

4. In light of your answers to questions 2 and 3, are claims 1, 2, or 8 of the '352 patent

infringed (literally or under the doctrine of equivalents)? Have complainants established the

technical prong of the domestic industry requirement with respect to the '352 patent? In your response, please address *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 122 S.Ct. 1831 (2002).

5. Does respondents' old E5 model ESD transistor infringe any asserted claim of the '352 patent? In your response, please address *Symbol Technologies, Inc. v. Opticon, Inc.*, 935 F.2d 1569 (Fed. Cir. 1991).

6. In light of your answers to questions 2 and 3, are claims 1, 2, or 8 of the '352 patent invalid?

7. In light of the ALJ's construction of the term "antireflective coating" to require, *inter alia*, "an antireflective effect . . . whether through absorption or interference . . . significant to the purposes of the invention" (ID at 79), does the Tobben patent's planarization layer disclose the "second antireflective coating" of claim 1 (and dependent claims 3-8) of the '345 patent?

8. In light of the ALJ's construction of the term "cap layer" of independent claims 9 and 21 of the '345 patent (ID at 119-20), does the Tobben patent disclose a cap layer that acts as either (a) an "antireflective coating" or (b) a protector for the top corners of metal wiring lines during the HDPCVD process? With respect to (a), above, please address column 3, lines 6-20 of the Tobben patent.

9. Assuming that claim 9 of the '345 patent is anticipated by the Tobben patent, is claim 13 obvious?

10. For purposes of obviousness under 35 U.S.C. § 103, does the Abernathey patent teach one of ordinary skill in the relevant art a barrier layer that serves as an "antireflective coating"? In your response please address how one of ordinary skill in the art would understand the thickness of the silicon dioxide barrier layer disclosed in the Abernathey patent.

11. Was the issue of the publication dates of the Yota, Pan, and Yagi references (*see* complainants' petition for review at 77) raised before the ALJ?

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 that 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.

On May 6, 2002, the ALJ issued Order No. 24 granting in part complainants' September 13, 2001, motion for sanctions. Pursuant to rule 210.25(d) of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.25(d), the Commission has specified below the schedule for the filing of any petitions appealing Order No. 96 and the responses thereto.

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 May 13, 2002, 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. The written submissions and proposed remedial orders must be filed no later than the close of business on July 5, 2002. Reply submissions must be filed no later than the close of business on July 12, 2002. No further submissions will be permitted unless otherwise ordered by the Commission.

Any petitions appealing Order No. 24 must be filed no later than close of business on July 26, 2002. Reply submissions must be filed no later than the close of business on August 2, 2002.

Persons filing written submissions must file with the Office of the Secretary the original and 14 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.

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 210.25 and 210.42 - .45 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.25, 210.42 - .45).

By order of the Commission.

Marilyn R. Abbott
Secretary

Issued: June 21, 2002

