

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

In the Matter of)
)
)

CERTAIN DISPLAY CONTROLLERS)
WITH UPSCALING FUNCTIONALITY)
AND PRODUCTS CONTAINING SAME)

Inv. No. 337-TA-481

**NOTICE OF COMMISSION DECISION TO REVIEW IN PART A FINAL INITIAL
DETERMINATION FINDING NO VIOLATION OF SECTION 337; SCHEDULE FOR
FILING WRITTEN SUBMISSIONS ON THE ISSUES UNDER REVIEW AND ON
REMEDY, THE PUBLIC INTEREST, AND BONDING**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the final initial determination (“ID”) issued by the presiding administrative law judge (ALJ) on October 20, 2003, finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3115. Copies 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. 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 October 18, 2002, based on a complaint filed by Genesis Microchip (Delaware) Inc. (“Genesis”) of Alviso, California, against Media Reality Technologies, Inc. of Sunnyvale, California; Trumpton Microelectronics, Inc. of Taipei, Taiwan; and SmartASIC, Inc. (“SmartASIC”) of San Jose, California. 67 Fed. Reg. 64411 (October 18, 2002). The complaint alleges violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain display controllers with upscaling functionality and products containing same by reason of infringement of certain claims of U.S. Patent No. 5,738,867 (“’867 patent”).

On January 14, 2003, the ALJ issued an ID (Order No. 6) terminating respondent SmartASIC from the investigation on the basis of a settlement agreement. On February 12, 2003, the Commission issued a notice of its decision not to review that ID (Order No. 6).

The evidentiary hearing in this investigation was held from July 14, 2003, through July 25, 2003. On October 20, 2003, the ALJ issued his final ID in which he found that there was no violation of section 337. All the parties to the investigation, including the Commission investigative attorneys filed timely petitions for review of various portions of the final ID, and all of them filed timely responses to the petitions.

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

- (1) the ALJ’s construction of the claim term “pixel data”;
- (2) the ALJ’s construction of the “wherein” clause;
- (3) the ALJ’s construction of the claim limitation “receiving means”;
- (4) all of the ALJ’s non-infringement findings;
- (5) the ALJ’s finding that complainant Genesis does not practice any claims of the ‘867 patent;
- (6) the ALJ’s finding that the Spartan reference does not anticipate (*i.e.*, invalidate) the asserted claims of the ‘867 patent; and
- (7) the ALJ’s finding that the ACUITY Application Note does not anticipate the asserted claims of the ‘867 patent.

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

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

1. What intrinsic and, to the extent it is applicable, extrinsic evidence supports your position on the issue of whether “the time to provide said plurality of destination pixel data” in the “wherein” clause includes the time to provide inactive pixels in a destination image frame?

2. What intrinsic and, to the extent it is applicable, extrinsic evidence supports your position on the issue of whether “a period to receive said source pixel data” in the “wherein” clause includes a period to receive inactive pixels in a source image frame?

3. What intrinsic and, to the extent it is applicable, extrinsic evidence supports your position on the issue of whether the analog-to-digital converter depicted in Figure 13 is a structure that corresponds to the “receiving means” in claim 12?

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) one or more cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair action 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 likely to do so. For background, see *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

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 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. 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 October 20, 2003, recommended determination by the ALJ on remedy and bonding. Complainant and the Commission investigative attorneys 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 close of business on December 19, 2003. Reply submissions must be filed no later than the close of business on December 26, 2003. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document 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* section 201.6 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 201.6.

Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

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 sections 210.42-210.45 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42-210.45).

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: December 9, 2003