

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

In the Matter of

**CERTAIN SEMICONDUCTOR CHIPS
HAVING SYNCHRONOUS DYNAMIC
RANDOM ACCESS MEMORY
CONTROLLERS AND PRODUCTS
CONTAINING SAME**

Investigation No. 337-TA-661

**NOTICE OF COMMISSION DETERMINATION TO REVIEW IN PART AN INITIAL
DETERMINATION FINDING RESPONDENTS IN VIOLATION OF SECTION 337;
DENIAL OF RESPONDENTS' JOINT MOTION TO EXTEND TARGET DATE;
SCHEDULE FOR BRIEFING ON THE ISSUES ON REVIEW AND ON REMEDY,
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 presiding administrative law judge's ("ALJ") Initial Determination on Violation of Section 337 ("ID") and Recommended Determination on Remedy and Bond finding that Respondents violated section 337 of the Tariff Act of 1930 by importation into the United States, the sale for importation, or the sale within the United States after importation, of certain semiconductor chips having synchronous dynamic random access memory controllers and products containing same by reason of infringement of one or more claims of U.S. Patent Nos. 6,470,405 ("the '405 patent"), 6,591,353 ("the '353 patent"), and 7,287,109 ("the '109 patent").

FOR FURTHER INFORMATION CONTACT: Paul M. Bartkowski, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5432. Copies of non-confidential 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 at <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>. 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 Inv. No. 337-TA-661 on December 10, 2008, based on a complaint filed by Rambus, Inc. of Los Altos, California (“Rambus”). 73 *Fed. Reg.* 75131-2. The complaint, as amended and supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“section 337”), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic devices by reason of infringement of certain claims of the ‘353 patent, the ‘405 patent, the ‘109 patent, as well as certain claims of U.S. Patent Nos. 7,117,998 (“the ‘998 patent”); 7,210,016 (“the ‘016 patent”); 7,287,119 (“the ‘119 patent”); 7,330,952 (“the ‘952 patent”); 7,330,953 (“the ‘953 patent”); and 7,360,050 (“the ‘050 patent”). The Commission’s notice of investigation named the following respondents: NVIDIA Corporation of Santa Clara, California; Asustek Computer, Inc. of Taipei, Taiwan; ASUS Computer International, Inc. of Fremont, California; BFG Technologies, Inc. of Lake Forest, Illinois; Biostar Microtech (USA) Corp. of City of Industry, California; Biostar Microtech International Corp. of Hsin Ten, Taiwan; Diablotek Inc. of Alhambra, California; EVGA Corp. of Brea, California; G.B.T. Inc. of City of Industry, California; Giga-byte Technology Co., Ltd. of Taipei, Taiwan; Hewlett-Packard Co. of Palo Alto, California; MSI Computer Corp. of City of Industry, California; Micro-star International Co., Ltd. of Taipei, Taiwan; Palit Multimedia Inc. of San Jose, California; Palit Microsystems Ltd. of Taipei, Taiwan; Pine Technology Holdings, Ltd. of Hong Kong and Sparkle Computer Co. of Taipei, Taiwan (referred to collectively as “Respondents”).

On July 13, 2009, the Commission issued a notice terminating the ‘119, ‘952, ‘953, and ‘050 patents and certain claims of the ‘109 patent from the investigation.

On January 22, 2010, the ALJ issued his ID on Violation of Section 337 and Recommended Determination on Remedy and Bond. The ALJ found that Respondents violated section 337 by importing certain semiconductor chips having synchronous dynamic random access memory controllers and products containing same with respect to various claims of the ‘405, ‘353, and ‘109 patents. The ALJ determined that there was no violation of section 337 with respect to the asserted ‘016 and ‘998 patent claims.

Having examined the record of this investigation, including the ALJ’s final ID and the submissions of the parties, the Commission has determined to review the final ID in part, to reject Rambus’s petition to vacate Order No. 15, and to deny Respondents’ motion to extend the target date. Specifically, the Commission has determined to review (1) the ID’s anticipation and obviousness findings with respect to the Ware patents; (2) the ID’s obviousness-type double patenting analysis regarding the asserted Barth I claims; and (3) the ID’s analysis of the alleged obviousness of the asserted Barth I claims. The Commission requests briefing based on the evidentiary record on these issues. The Commission is particularly interested in concise responses to the following questions:

Regarding the Ware patents:

- (1) What are the differences between the scope and content of the Coteus patent and the asserted Ware claims?
- (2) What is the appropriate skill level of one of ordinary skill in the art?
- (3) In light of the underlying facts, would the asserted claims of the Ware patents have been obvious to one of ordinary skill in the art at the time of invention? In your answer, please identify which claim element(s), if any, are not disclosed in the Coteus reference but would have been obvious to one of ordinary skill in the art.

Regarding the issue of obviousness-type double patenting of the Barth I claims:

Under the facts as found by the ALJ, do the differences in scope of the asserted Barth I patent claims and the claims of the Farmwald '037 patent render the asserted Barth I claims patentably distinct?

Regarding obviousness with respect to the asserted Barth I claims:

- (1) What are the differences between the scope and content of the asserted prior art and the asserted Barth I claims?
- (2) What is the appropriate skill level of one of ordinary skill in the art?
- (3) In light of the underlying facts, would the asserted claims of the Barth I patents have been obvious to one of ordinary skill in the art at the time of invention?

Please address only those only those references and combinations of references that were properly preserved under the ALJ's Ground Rule 11.1.

Furthermore, in connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease-and-desist orders 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 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 U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 *Fed. Reg.* 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 under review. The submissions should be *concise* and *thoroughly referenced to the record in this investigation, including references to exhibits and testimony*. Additionally, 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. Further, regarding the potential issuance of a general exclusion order, the Commission requests briefing specific to whether the statutory criteria set forth in section 337(d)(2) are met in this investigation. Complainants and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the dates that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on April 6, 2010. Reply submissions must be filed no later than the close of business on April 15, 2010. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document 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 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 section 210.42-43 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42-43).

By order of the Commission.

/s/

Marilyn R. Abbott
Secretary to the Commission

Issued: March 25, 2010