

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

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 FINAL DETERMINATION OF VIOLATION OF
SECTION 337; TERMINATION OF INVESTIGATION; ISSUANCE OF LIMITED
EXCLUSION ORDER AND CEASE AND DESIST ORDERS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that there is a violation of 19 U.S.C. § 1337 in the above-captioned investigation by the respondents in the investigation. To remedy the violation it has found, the Commission has determined to issue a limited exclusion order and to issue cease and desist orders to certain respondents. The investigation is terminated.

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, alleged 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 semiconductor chips having synchronous dynamic random access memory controllers and product containing the same by reason of infringement of certain claims of U.S. Patent Nos. 6,470,405 (“the ‘405 patent”); 6,591,353 (“the ‘353 patent”); 7,287,109 (“the ‘109 patent”); 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 Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond (“ID”). 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 Barth I patents”). The ALJ determined that there was no violation of section 337 with respect to the asserted claims of the ‘016 and ‘998 patents (“the Ware patents”).

On March 25, 2010, the Commission 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 patents; and (3) the ID’s analysis of the alleged obviousness of the asserted Barth I patents. The Commission invited briefing on the issues under review and on the issues of remedy, the public interest, and bonding. On May 26, 2010, the Commission requested further briefing on the impact of a license between Rambus and Samsung Electronics Co. on the ALJ’s findings and conclusions. On June 22, 2010, the Commission requested further briefing regarding patent exhaustion in light of *Fujifilm Corp. v. Benun*, which was issued by the United States Court of Appeals for the Federal Circuit on May 27, 2010.

Having examined the record of this investigation and the submissions filed, the Commission has determined to affirm the ALJ’s ID, with certain modifications that are set forth in the Commission’s opinion. Accordingly, the Commission has determined that a violation of section 337 has occurred in the importation into the United States, the sale for importation, or the sale

within the United States after importation of certain synchronous dynamic random access memory controllers and products containing the same by Respondents with respect to the Barth I patents. To remedy this violation, the Commission has determined to issue a limited exclusion order and cease-and-desist orders against respondents NVIDIA Corp.; Hewlett-Packard Co.; ASUS Computer International, Inc.; Palit Multimedia Inc.; Palit Microsystems Ltd.; MSI Computer Corp.; Micro-Star International; EVGA Corp.; DiabloTek, Inc.; Biostar Microtech Corp.; and BFG Technologies, Inc. The Commission has determined that this relief is not precluded by consideration of the factors set forth in 19 U.S.C. § 1337(d), (f). The Commission has determined that the amount of the bond to permit importation during the Presidential review period under 19 U.S.C § 1337(j) is 2.65 percent of the entered value of the subject imports. The investigation is terminated.

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 Part 210 of the Commission's Rules of Practice and Procedure (19 C.F.R. Part 210).

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: July 26, 2010