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

In the Matter of **CERTAIN SEMICONDUCTOR INTEGRATION CIRCUITS USING TUNGSTEN METALLIZATION AND PRODUCTS CONTAINING SAME**	**Investigation No. 337-TA-648**

NOTICE OF COMMISSION DETERMINATION TO REVIEW-IN-PART A FINAL INITIAL DETERMINATION FINDING NO VIOLATION OF SECTION 337 AND TO REMAND A PORTION OF THE INVESTIGATION; SCHEDULE FOR WRITTEN SUBMISSIONS RELATING TO REMAND, AND TO 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 a final initial determination ("ID") of the presiding administrative law judge ("ALJ") finding no violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the above-captioned investigation, and has determined to remand a portion of the investigation to the ALJ.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2310. 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 this investigation on May 21, 2008 based on a complaint filed on April 18, 2008, by LSI Corporation of Milpitas, California and Agere Systems Inc. of Allentown, Pennsylvania (collectively "complainants"). The complaint, as amended, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductor integrated

circuits using tungsten metallization and products containing same by reason of infringement of one or more of claims 1, 3, and 4 of U.S. Patent No. 5,227,335. The amended complaint named numerous respondents. Several respondents have been terminated from the investigation due to settlement. The following seven respondents remain in the investigation: Tower Semiconductor, Ltd. ("Tower") of Israel; Jazz Semiconductor ("Jazz") of Newport Beach, California; Powership Semiconductor Corporation ("Powerchip") of Taiwan; Grace Semiconductor Manufacturing Corporation ("Grace") of China; Integrated Device Technology, Inc. ("IDT") of San Jose, California; Spansion, Inc. ("Spansion") of Sunnyvale, California; and Nanya Technology Corporation ("Nanya") of Taiwan. The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337.

On September 21, 2009, the ALJ issued his final ID finding no violation of section 337 by the remaining respondents. He concluded that each accused process was covered by one or more of asserted claims 1, 3, and 4 of the '335 patent, but also that all asserted claims were anticipated under 35 U.S.C. § 102(g) in view of the IBM Process A prior art. On October 5, 2009, complainants, respondents, and the Commission investigative attorney ("IA") filed petitions for review of the final ID. Also, four separate petitions for review were filed on the same date by respondents Grace, IDT, Tower/Jazz, and Nanya/Powerchip/Spansion. The IA, complainants, and respondents filed responses to the other parties' petitions on October 13, 2009.

Upon considering the parties' filings, the Commission has determined to review-in-part the ID. Specifically, the Commission has determined to review: (1) invalidity of claims 1, 3, and 4 of the '335 patent under 35 U.S.C. §§ 102(g) & 103 with respect to the IBM Process A, IBM Process B, and AMD prior art; and (2) Jazz's stipulation regarding whether its process meets the complete, third recited step of claim 1, *i.e.*, "depositing a tungsten layer by chemical vapor deposition, said tungsten layer covering said glue layer on said dielectric and said exposed material." The Commission has determined not to review the remainder of the ID.

In addition, the Commission has determined to issue an order remanding the investigation to the ALJ for further proceedings relating to whether claim 4 is rendered obvious by IBM Process A in light of the other prior art asserted by respondents.

The Commission has instructed the ALJ to make his determination on remand at the earliest practicable time, and to extend the target date of the above-captioned investigation as he deems necessary to accommodate the remand proceedings. The parties are invited to file written submissions on the ALJ's remand determination within fourteen days after service of the ALJ's determination and to file responses to the written submissions within seven days after service of the written submissions. The Commission also requests briefing on remedy, the public interest, and bonding from the parties, consistent with these submission dates, as described in detail below.

In connection with the final disposition of this investigation, the Commission may issue an order that results in the exclusion of the subject articles from entry into the United States. 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).

When 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.

When 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* section 337(j), 19 U.S.C. § 1337(j) and the 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. 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: 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, and such submissions should address the recommended determination by the ALJ on remedy and bonding. The complainant and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the date that the patent at issue expires and the HTSUS numbers under which the accused articles are imported. The written submissions and proposed remedial orders, and any reply submissions, must be filed consistent with the dates stated above relating to the remand ID. 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.

§ 210.6. 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 210.42-46 of the Commission's Rules of Practice and Procedure, 19 C.F.R. §§ 210.42-46.

By order of the Commission.

/s/
William R. Bishop
Acting Secretary to the Commission

Issued: November 23, 2009