

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

In the Matter of

**CERTAIN SEMICONDUCTOR
INTEGRATION CIRCUITS USING
TUNGSTEN METALLIZATION AND
PRODUCTS CONTAINING SAME**

Investigation No. 337-TA-648

**NOTICE OF COMMISSION DECISION TO REVIEW-IN-PART AN INITIAL
DETERMINATION DENYING A JOINT MOTION FOR SUMMARY
DETERMINATION THAT COMPLAINANTS ARE PRECLUDED FROM RE-
LITIGATING U.S. PATENT NO. 5,227,335; AND ON REVIEW, TO MODIFY THE
INITIAL DETERMINATION BUT AFFIRM ITS FINDING THAT COMPLAINANTS
ARE NOT PRECLUDED**

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 an initial determination (“ID”) (Order No. 26) of the presiding administrative law judge (“ALJ”) denying a joint motion for summary determination that complainants are precluded from re-litigating U.S. Patent No. 5,227,335 (“the ‘335 patent”). On review, the Commission has determined to modify the ID, but affirm its finding that complainants are not precluded. An opinion explaining the Commission’s modification will follow.

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”). *73 Fed. Reg.* 29534-35 (May 21, 2008). The complaint alleges 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 claim 1 of the ‘335 patent. The complaint, as amended, names numerous respondents including Cypress Semiconductor Corp. (“Cypress”) of San Jose, California, NXP B.V. of the Netherlands, and Micronas Semiconductor Holding AG (“Micronas AG”) of Switzerland. The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337.

On September 2, 2008, the Commission issued notice of its determination not to review an ID granting the motion of complainants, respondent NXP B.V., and proposed respondent NXP Semiconductors USA, Inc. (“NXP Semiconductors”) of San Jose, California to amend the complaint and notice of investigation to substitute NXP Semiconductors for NXP B.V. *73 Fed. Reg.* 52064-65 (Sept. 9, 2008). On October 8, 2008, the Commission issued notice of its determination not to review an ID granting the motion of complainants, respondent Micronas AG, and proposed respondent Micronas GmbH (“Micronas”) of Germany to amend the complaint and notice of investigation to substitute Micronas GmbH for Micronas AG. *73 Fed. Reg.* 61168-69 (Oct. 15, 2008). On October 17, 2008, the Commission issued notice of its determination not to review an ID granting the motion of complainants to amend the complaint to add five additional respondents: (1) Dongbu HiTek Semiconductor Business of Korea; (2) Jazz Semiconductor (“Jazz”) of Newport Beach, California; (3) Magnachip Semiconductor of Korea; (4) Qimonda AG of Germany; and (5) Tower Semiconductor, Ltd. (“Tower”) of Israel. *73 Fed. Reg.* 63195 (Oct. 23, 2008).

On November 19, 2008, the Commission issued notice of its determination not to review an ID granting, in-part, the motion of complainants to amend the complaint and notice of investigation to add two patent claims - dependent claims 3 and 4 - to the investigation and make new infringement allegations against the following respondents: (1) Freescale Semiconductor, Inc. (“Freescale”); (2) United Microelectronics Corp. (“UMC”); (3) Integrated Device Technology, Inc. (“IDT”); (4) AMIC Technology Corp. (“AMIC”); (5) Cypress; (6) Grace Semiconductor Manufacturing Corp. (“Grace”); (7) Microchip Technology, Inc. (“Microchip”); (8) Micronas; (9) Nanya Technology Corp. (“Nanya”); (10) NXP Semiconductors; (11) Powerchip Semiconductor (“Powerchip”); (12) ProMOS Technologies, Inc. (“ProMOS”); (13) Spansion, Inc. (“Spansion”); and (14) Vanguard International Semiconductor Corp. (“Vanguard”). The ALJ denied the motion as to respondents UMC, AMIC, Microchip, Micronas, Nanya, NXP, Powerchip, ProMOS, and Spansion regarding claim 3, and as to respondents UMC, IDT, AMIC, Cypress, Freescale, Grace, Microchip, Micronas, NXP, Powerchip, ProMOS, Spansion, and Vanguard regarding claim 4. *73 Fed. Reg.* 71044-45 (November 24, 2008). On December 8 and 22, 2008, respectively, the Commission issued notice of its determination not to review an ID extending the target date for completion of the

investigation to January 21, 2010, and notice of its determination not to review an ID terminating the investigation as to Freescale on the basis of a settlement agreement.

On June 5, 2008, Cypress, joined by thirteen other respondents, filed a joint motion for summary determination that complainants are precluded from re-litigating the '335 patent due to a previous, vacated judgment of invalidity by the Eastern District Court of Pennsylvania. *See* Doc. No. 433, Order, *Agere Systems Inc. v. Atmel Corp.*, 2:02-cv-00864-LDD (E.D. Pa. June 19, 2006). On June 16, 2008, the Commission investigative attorney ("IA") and complainants filed responses in opposition to Cypress' motion.

On December 11, 2008, the ALJ issued the subject ID (Order No. 26) denying Cypress' motion. On December 24, 2008, Cypress petitioned for review of the ID, and Tower and Jazz filed a submission joining in Cypress' petition. On January 5, 2009, the IA and complainants filed briefs in opposition to Cypress' petition.

The Commission has determined to review the subject ID in-part. On review, the Commission has determined to modify the ID, but affirm its finding that complainants are not precluded from re-litigating the '335 patent. An opinion explaining the Commission's modification will follow.

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 210.45 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.45.

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: January 26, 2009