

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN INTEGRATED CIRCUITS,
CHIPSETS, AND PRODUCTS
CONTAINING SAME INCLUDING
TELEVISIONS**

Investigation No. 337-TA-786

**NOTICE OF COMMISSION DETERMINATION TO REVIEW AN INITIAL
DETERMINATION GRANTING-IN-PART RESPONDENTS' MOTION FOR
SUMMARY DETERMINATION THAT COMPLAINANT'S CLAIMS AGAINST
RESPONDENT FUNAI ARE 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 the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 7) granting-in-part respondents' motion for summary determination that complainant's claims against respondents Funai Electric Co., Ltd. of Osaka, Japan and Funai Corporation, Inc. of Rutherford, New Jersey (collectively "Funai") are precluded.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2301. 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 July 14, 2011, based on a complaint filed by Freescale Semiconductor, Inc. of Austin, Texas ("Freescale"). 76 *Fed. Reg.* 41521-2 (July 14, 2011). The complaint 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 integrated circuits, chipsets, and products containing same including televisions by reason of infringement of certain claims of U.S. Patent No. 5,467,455 ("the '455

patent”). The complaint further alleges the existence of a domestic industry. The Commission’s notice of investigation named Funai; MediaTek Inc. of Hsinchu City, Taiwan (“MediaTek”); and Zoran Corporation of Sunnyvale, California (“Zoran”) as respondents.

On July 19, 2011, Funai filed a motion for summary determination that Freescale’s allegations against it in this investigation are precluded under the doctrines of issue preclusion and claim preclusion based on the Commission’s determination of no violation in Inv. No. 337-TA-709, *Certain Integrated Circuits, Chipsets, and Products Containing Same Including Televisions, Media Players, and Cameras (“Integrated Circuits I”)* and that this investigation should be terminated in its entirety. Funai also asked in its motion that Freescale be judicially estopped from arguing that the Funai products at issue in the present investigation are different from those at issue in *Integrated Circuits I*. Funai further requested that the investigation be terminated in its entirety. On July 29, 2011, MediaTek joined in Funai’s motion, and on August 1, 2011, Zoran also joined in the motion. On August 1, 2011, Freescale filed a response opposing Funai’s motion. On July 29, 2011, the Commission investigative attorney (“IA”) filed a response supporting Funai’s motion to terminate the investigation in its entirety.

On August 29, 2011, the ALJ issued the subject ID (Order No. 7) granting-in-part Funai’s motion for summary determination that Freescale’s claims against it in this investigation are precluded with respect to certain of Funai products that contain integrated circuits that were at issue in *Integrated Circuits I*. The ALJ denied Funai’s motion with respect to those accused products that were not at issue in *Integrated Circuits I*, and, thus, denied Funai’s motion to terminate the investigation in its entirety.

On September 7, 2011, Freescale filed a petition for review of the subject ID, arguing that the ALJ’s finding of claim preclusion was erroneous. On September 7, 2011, Respondents Funai and MediaTek also filed petitions, requesting review of the ALJ’s denial of Funai’s motion to terminate the investigation in its entirety.

On September 14, 2011, Respondents Funai and MediaTek each filed a response to Freescale’s petition. MediaTek filed a corrected response on September 15, 2011. Also on September 14, 2011, the IA filed a response to Freescale’s petition. Further on September 14, 2011, Freescale filed responses to each of Funai’s and MediaTek’s petitions for review.

Having examined the record of this investigation, including the subject ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in part. Specifically, the Commission has determined to review the subject ID’s statement that new importations do not create a new cause of action. The Commission has also determined to review the ID to clarify specifically which products were adjudicated in *Integrated Circuits I*. The Commission has further determined to review the subject ID to consider whether the non-Zoran integrated circuits at issue in the present litigation are a part of the same claim or cause of action as the Zoran circuits that were actually adjudicated in *Integrated Circuits I*. The Commission has also determined to review the subject ID as to the aspects of Funai’s motion that concern issue preclusion and judicial estoppel.

The Commission has determined not to review the subject ID's finding of claim preclusion with respect to Funai products containing Zoran integrated circuits identified in *Integrated Circuits I*, Final ID at 55 (Apr. 4, 2011). Moreover, since the portion of Order No. 7 denying the motion to terminate is not part of the subject ID, the Commission declines to consider Funai's and MediaTek's petitions and Freescale's responses to those petitions. *See* Commission Rule 210.42(c) (the ALJ shall issue a grant of summary determination as an ID); Commission Rule 210.43(a) (a party may request review of an ID).

The parties are requested to brief their positions on the issues under review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in responses to the following question:

If the Commission determines that the only products that were adjudicated in *Integrated Circuits I* are those Funai products containing the Zoran integrated circuits identified in the Final ID of that investigation (*see Integrated Circuits I*, Final ID at 55), are any of the remaining products that are at issue in the present investigation (*see* subject ID at 11-14) "essentially the same" as those Zoran integrated circuits? In addressing this question, please discuss the "essentially the same" test articulated in *Acumed LLC v. Stryker Corp.*, 525 F.3d 1319, 1324 (Fed. Cir. 2008) (citing *Foster v. Hallco Mfg. Co.*, 947 F.2d 469, 480 (Fed. Cir. 1991)).

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issues identified in this notice. The written submissions and proposed remedial orders must be filed no later than close of business on Monday, October 24, 2011. Reply submissions must be filed no later than the close of business on Monday, October 31, 2011. 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 section 210.43 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.43).

By order of the Commission.

/s/
James R. Holbein
Secretary to the Commission

Issued: October 13, 2011