

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

In the Matter of

**CERTAIN FLASH MEMORY AND
PRODUCTS CONTAINING SAME**

Inv. No. 337-TA-685

**NOTICE OF COMMISSION DETERMINATION TO GRANT THE
CONSENT MOTION TO TERMINATE THE INVESTIGATION ON THE BASIS OF
SETTLEMENT; TERMINATION OF INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to GRANT the consent motion to terminate the above-captioned investigation based upon settlement. The investigation is terminated.

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 Inv. No. 337-TA-685 on September 2, 2009, based on a complaint filed by Samsung Electronics Co. ("Samsung") of Suwon City, South Korea on July 31, 2009. 74 *Fed. Reg.* 45469 (Sept. 2, 2009). The complaint, as amended, alleged violations of Section 337 of the Tariff Act of 1930 (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 flash memory and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 6,930,050 ("the '050 patent") and 5,740,065 ("the '065 patent"). The '050 patent was subsequently terminated from the investigation. The Commission's notice of investigation named Spansion Japan Limited of Kanagawa, Japan ("Spansion Japan"); Alpine Electronics, Inc. of Fukushima, Japan and Alpine Electronic of America, Inc. of Torrance, California; Slacker, Inc. of San Diego, California; Synology Inc. of Taipei, Taiwan and Synology North America Corp. of Redmond, Washington; Egreat USA of Fairfax, California; Appro International, Inc. of Milpitas, California; Shenzhen Egreat Co., Ltd.

of Shenzhen, China (“Shenzhen Egreat”); and Spansion and D-Link as respondents. Many of these respondents were later terminated from the investigation based on consent orders, for cause, or withdrawal of the complaint. Shenzhen Egreat was found in default. Comm’n Notice (Jan. 31, 2011). Spansion and D-Link, hereinafter “Respondents,” are the only remaining participating respondents.

On February 28, 2008, the ALJ issued his final ID finding a violation of Section 337 by Respondents. On March 14, 2011, Respondents and the Commission investigative attorney (“IA”) filed separate petitions seeking review of the ALJ’s determination concerning the ALJ’s findings on claim construction, infringement, invalidity, and domestic industry. On April 29, 2011, the Commission issued a Notice of its determination to review several aspects of the final ID and to pose certain questions to the parties. 76 *Fed. Reg.* 25707-9 (May 5, 2011).

On June 16, 2011, Samsung filed a consent motion for termination of the investigation in its entirety based on a settlement agreement. On June 20, 2011, Samsung filed a corrected motion, clarifying that the settlement agreement, which is between it and Spansion, is intended to terminate the investigation also with respect to D-Link and Shenzhen Egreat. On June 22, 2011, the Commission extended the target date of the investigation by one month to July 28, 2011, to accommodate the schedule for addressing the motion for termination.

Having examined the record of this investigation, the Commission has determined to grant the consent motion to terminate the investigation. Section 337(c) provides, in relevant part, that the Commission may terminate an investigation “on the basis of an agreement between the private parties to the investigation.” When the investigation is before the Commission, as is the case here, the Commission may act on a motion to terminate on the basis of settlement. *See Certain Insect Traps*, Inv. No. 337-TA-498, Notice of Commission Determination to Terminate the Investigation in its Entirety on the Basis of a Settlement Agreement, 69 *Fed. Reg.* 63176 (Oct. 29, 2004). Commission Rule 210.21(b), which implements Section 337(c), requires that a motion for termination based upon a settlement contain a copy of that settlement agreement, as well as a statement that there are no other agreements, written or oral, express or implied, between the parties concerning the subject matter of the investigation. The corrected motion complies with these requirements.

The Commission also considers the public interest when terminating an investigation based upon a settlement agreement. 19 C.F.R. § 210.50(b)(2). We find no evidence that termination of the investigation will prejudice the public interest or that settlement will adversely impact the public health and welfare, competitive conditions in the United States economy, the products of like or directly competitive articles in the United States, or United States consumers. Moreover, the public interest favors settlement to avoid needless litigation and to conserve public and private resources.

Accordingly, the Commission hereby GRANTS the consent motion to terminate this investigation on the basis of a settlement agreement.

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 210.21 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.21).

By order of the Commission.

/s/
James R. Holbein
Secretary to the Commission

Issued: July 7, 2011