



INTERNATIONAL TRADE COMMISSION

Investigation No. 337-TA-941

Certain Graphics Processing Chips, Systems on a Chip, and Products Containing the Same Commission Determination to Review in Part a Final Initial Determination Finding a Violation of Section 337; Schedule for Filing Written Submissions on the Issues Under Review and on 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 the final initial determination (ID) issued by the presiding administrative law judge (ALJ) on December 22, 2015, finding a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), as to certain asserted patent claims in this investigation.

FOR FURTHER INFORMATION, CONTACT: Ron Traud, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3427. 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 December 30, 2014 based on a complaint filed by Samsung Electronics Co., Ltd. of Gyeonggi-do, Republic of Korea; and Samsung Austin Semiconductor, LLC of Austin, Texas (collectively, Complainants). 79 Fed. Reg. 78477-78 (Dec. 30, 2014). 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 graphics processing chips (GPUs), systems on a chip (SoCs), and products containing the same by reason of infringement of one or more of claims 1-4, 6, and 19-21 of U.S. Patent No. 6,147,385 (the ‘385 patent); claim 10 of U.S. Patent No. 6,173,349 (the ‘349 patent); claims 1, 2, 4, 19, 20, and 22 of U.S. Patent No. 7,056,776 (the ‘776 patent); and claims 1-3, 7-9, 12-15, 17, and 19 of U.S. Patent No. 7,804,734 (the ‘734 patent), and whether an industry in the United States exists as required by subsection (a)(2) of section 337. *Id.* The notice of investigation named the following respondents: NVIDIA Corporation (NVIDIA) of Santa Clara, California; Biostar Microtech International Corp. of New Taipei, Taiwan; Biostar Microtech U.S.A. Corp. of City of Industry, California; Elitegroup Computer Systems Co. Ltd. of Taipei, Taiwan; Elitegroup Computer Systems, Inc. of Newark, California; EVGA Corp. of Brea, California; Fuhu, Inc. of El Segundo, California; Jaton Corp. of Fremont, California; Mad Catz, Inc. of San Diego, California; OUYA, Inc. of Santa Monica, California; Sparkle Computer Co., Ltd. of New Taipei City, Taiwan; Toradex, Inc. of Seattle, Washington; Wikipad, Inc. of Westlake Village, California; ZOTAC International (MCO) Ltd of New Territories, Hong Kong; and ZOTAC USA, Inc. of Chino, California (collectively, Respondents). *Id.* The Office of Unfair Import Investigations (OUII) is also a party to this investigation. *Id.*

On May 1, 2015, the Commission determined not to review an initial determination terminating the investigation as to respondent Wikipad, Inc. *See* Notice of Commission Determination Not to Review an Initial Determination Terminating the Investigation as to Respondent Wikipad, Inc. Based on a Consent Order Stipulation, Consent Order, and Settlement Agreement; Issuance of Consent Order (May 1, 2015). On May 13, 2015, the Commission determined not to review an initial determination granting intervention by Taiwan Semiconductor Manufacturing Co., Ltd. for a limited purpose. *See* Notice of Commission Determination Not to Review an Initial Determination Granting Intervention by Taiwan Semiconductor Manufacturing Co., Ltd. for a Limited Purpose (May 13, 2015). On September 17, 2015, the Commission determined not to review an initial determination terminating the investigation as to respondent ZOTAC International (MCO) Ltd. *See* Notice of Commission Decision Not to Review Two Initial Determinations That Terminated the Investigation as to Certain Asserted Patent Claims and as to One Respondent (Sept. 17, 2015).

On July 1, 2015, the Commission determined not to review an initial determination terminating the investigation as to the '776 patent. *See* Notice of Commission Determination Not to Review an Initial Determination Terminating the Investigation with Respect to U.S. Patent No. 7,056,776 (July 1, 2015). On August 13, 2015, the Commission determined not to review an initial determination finding that the economic prong of the domestic industry requirement has been satisfied. *See* Notice of a Commission Determination Not to Review an Initial Determination That the Economic Prong of the Domestic Industry Requirement Has Been Satisfied (Aug. 13, 2015). On September 17, 2015, the Commission determined not to review an initial determination terminating claims 19-21 of the '385 patent and claims 7-9, 12-15, 17, and 19 of the '734 patent. *See* Notice of Commission Decision Not to Review Two Initial Determinations

That Terminated the Investigation as to Certain Asserted Patent Claims and as to One Respondent (Sept. 17, 2015).

On December 22, 2015, the ALJ issued his ID. Regarding the '385 patent, the ID concludes: (1) the accused products infringe claims 1-4 and 6, ID at 61-91; (2) there is a domestic industry, ID at 93-108; (3) claims 1-4 and 6 are not invalid for anticipation, obviousness, or lack of written description, ID at 114-64; and (4) NVIDIA's Tegra X1 chip is outside the scope of the investigation. ID at 91-93. Regarding the '349 patent, the ID concludes: (1) certain accused products infringe claim 10, ID at 198-235; (2) there is a domestic industry, ID at 235-52; and (3) claim 10 is not invalid for anticipation, obviousness, or lack of written description, ID at 253-74. Regarding the '734 patent, the ID concludes: (1) certain accused products infringe claims 1 and 3, ID at 307-35; (2) there is a domestic industry, ID at 336-48; and (3) claims 1 and 3 are not invalid for anticipation or obviousness. ID at 348-77.

On January 4, 2016, Respondents and OUII filed petitions for review of the ID. On January 5, 2016, the ALJ issued his recommended determination on remedy and bonding. On January 12, 2016, Complainants and OUII filed responses to the petitions.

Having examined the record of this investigation, including the ALJ's 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 (1) the ID's construction of "mode" and "the receiver further configured" of claim 1 of the '734 patent; (2) the ID's conclusion that the accused products infringe the '734 patent; (3) the ID's conclusion that there is a domestic industry for the '734 patent; (4) the ID's conclusion that claim 1 of the '734 patent is not invalid for anticipation by U.S. Patent No. 7,032,092 (Lai); (5) the ID's conclusion that claim 3 of the

'734 patent is not invalid for obviousness over Lai in view of U.S. Patent No. 6,853,213 (Funaba); (6) whether the accused Tegra X1 products are within the scope of the investigation; and (7) whether Complainants proved that the AP20 products infringe the '349 patent.

The parties are requested to brief their positions 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:

1. With regard to the construction of “mode” in claim 1 of the '734 patent, please discuss the significance of the repeated use of the permissive term “may” in the specification. *E.g.*, col. 4, lns. 28-29, 37-39, 48-51.
2. With regard to the construction of “mode” in claim 1 of the '734 patent, please discuss the significance of the recent Federal Circuit decision in *The Trustees of Columbia University in the City of New York v. Symantec Corporation*, No. 2015-1146 (Fed. Cir. Feb. 2, 2016).
3. With regard to the interpretation of Figure 4 of the '734 patent, please discuss the significance of the use of the term “mode signal” in the specification. Col. 5, lns. 13-16, 28-30.
4. With regard to the construction of “the receiver further configured” in claim 1 of the '734 patent, please discuss the significance of the cases cited in the ID at pages 302-04, and any other relevant case law.
5. With respect to the '734 patent, if the Commission were (1) to construe the claim term “mode” in claim 1 to mean “a configuration required by the memory-device type”; and (2) to interpret the phrase “the receiver further configured” in claim 1 to require the capability of the receiver to operate in one mode or the other, but not both, when

connected to a particular memory device; please discuss any impact this construction may have on the ID's findings and conclusions.

6. What portion of the accused devices is allegedly covered by the asserted claims? Do the patents in question relate to relatively minor features of the accused devices?
7. How would remedial orders barring the entry and further distribution of the products alleged to infringe the asserted claims of the '385, '349 and/or '734 patents affect the public interest as identified in 19 U.S.C. §§ 1337(d)(1) and (f)(1)? The Commission is particularly interested in the commercial availability of alternatives to the potentially excluded products as well as any differences, including qualitative differences, between those alternatives and the potentially excluded products.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. 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 *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If 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.

If 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* Presidential Memorandum of July 21, 2005. 70 FR 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 and prescribed by the Secretary of the Treasury. 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: The parties to the investigation are requested to file written submissions on the issues identified in this notice. 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. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainants are requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the date that the patents expire and the HTSUS numbers under which the accused products are imported. Complainants are further requested to supply the names of known importers of the products at issue in this investigation. The written submissions and

proposed remedial orders must be filed no later than close of business on March 7, 2016. Reply submissions must be filed no later than the close of business on March 14, 2016. Such submissions should address the ALJ's recommended determinations on remedy and bonding. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit eight true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-941") in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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 CFR part 210).

By order of the Commission.

Lisa R. Barton
Secretary to the Commission

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