

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN MEMS DEVICES AND
PRODUCTS CONTAINING SAME**

Investigation No. 337-TA-700

**NOTICE OF COMMISSION DECISION TO AFFIRM-IN-PART AND
REVERSE-IN-PART A FINAL INITIAL DETERMINATION FINDING A VIOLATION
OF SECTION 337; ISSUANCE OF A LIMITED EXCLUSION ORDER; AND
TERMINATION OF THE INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm-in-part and reverse-in-part a final initial determination ("ID") of the presiding administrative law judge ("ALJ") finding a violation of section 337 by respondents in the above-captioned investigation, and has issued a limited exclusion order directed against products of respondents Knowles Electronics LLC ("Knowles") of Itasca, Illinois and Mouser Electronics, Inc. ("Mouser") of Mansfield, Texas.

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) 708-5468. 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 January 5, 2010, based on a complaint filed on December 1, 2009, by Analog Devices, Inc. ("Analog Devices") of Norwood, Massachusetts. 75 *Fed. Reg.* 449-50 (January 5, 2010). The complaint, as supplemented, 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 microelectromechanical systems

("MEMS") devices and products containing the same by reason of infringement of certain claims of U.S. Patent Nos. 7,220,614 ("the '614 patent") and 7,364,942 ("the '942 patent"). The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337. The complaint named as respondents Knowles and Mouser.

On December 23, 2010, the ALJ issued his final ID finding a violation of section 337 by respondents as to the '942 patent only, and issued his recommended determinations on remedy and bonding. On January 18, 2011, respondents, Analog Devices, and the Commission investigative attorney ("IA") each filed a petition for review of the final ID, and each party filed a response on January 27, 2011.

On March 7, 2011, the Commission determined to review: (1) the ALJ's construction of the claim term "oven" relating to both the '614 and '942 patents; (2) the ALJ's construction of the claim term "sawing" relating to both the '614 and '942 patents; (3) the ALJ's determination that the accused process does not infringe, either literally or under the doctrine of equivalents, claims 12, 15, 31-32, 34-35, and 38-39 of the '614 patent or claim 1 of the '942 patent; (4) the ALJ's finding that U.S. Patent No. 5,597,767 ("the '767 patent") does not incorporate by reference U.S. Patent Nos. 5,331,454 ("the '454 patent") and 5,512,374 ("the '374 patent"); (5) the ALJ's finding that claims 2-6 and 8 are infringed by the accused process; (6) the ALJ's findings that claims 34-35 and 38-39 of the '614 patent, and claims 2-6 and 8 of the '942 patent, are not anticipated, under 35 U.S.C. § 102(a), by the '767 patent or the '374 patent; (7) the ALJ's findings that claims 34-35 and 38-39 of the '614 patent are not obvious, under 35 U.S.C. § 103, in view of the '767 patent and the Sakata et al. ("Sakata") prior art reference; and (8) the ALJ's finding that the technical prong of the domestic industry requirement is satisfied as to both the '614 and '942 patents. The determinations made in the final ID that were not reviewed became final determinations of the Commission by operation of rule. See 19 U.S.C. § 210.42(h).

The Commission requested the parties to respond to certain questions concerning the issues under review and requested written submissions on the issues of remedy, the public interest, and bonding from the parties and interested non-parties. 74 *Fed. Reg.* 13433-34 (March 11, 2011).

On March 18 and March 25, 2011, respectively, complainant Analog Devices, respondents, and the IA each filed a brief and a reply brief on the issues for which the Commission requested written submissions. Also, on March 21, 2011, respondents filed a motion for leave to file a corrected submission that clarified that the March 18, 2011 submission was filed on behalf of both Knowles and Mouser. On March 29, 2011, respondents filed a motion for leave to file a corrected submission that strikes a portion of their initial brief. On March 31, 2011, respondents filed notice of their withdrawal of their March 29, 2011 motion. The Commission has determined to grant respondents' remaining motion of March 21, 2011.

Having reviewed the record in this investigation, including the final ID and the parties' written submissions, the Commission has determined to affirm-in-part and reverse-in-part the

ID's findings under review. Particularly, the Commission has reversed the ALJ's finding and has determined that the '767 patent incorporates by reference the '374 and '454 patents.

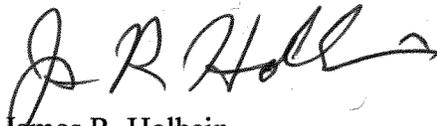
The Commission has affirmed all other issues under review including the following: (1) the ALJ's construction of the claim term "oven" relating to both the '614 and '942 patents; (2) the ALJ's construction of the claim term "sawing" relating to both the '614 and '942 patents; (3) the ALJ's determination that the accused process does not infringe, either literally or under the doctrine of equivalents, claims 12, 15, 31-32, 34-35, and 38-39 of the '614 patent or claim 1 of the '942 patent; (4) the ALJ's finding that claims 2-6 and 8 of the '942 patent are infringed by the accused process; (5) the ALJ's findings that claims 34-35 and 38-39 of the '614 patent, and claims 2-6 and 8 of the '942 patent, are not anticipated, under 35 U.S.C. § 102(a), by the '767 patent or the '374 patent; (6) the ALJ's findings that claims 34-35 and 38-39 of the '614 patent are not obvious, under 35 U.S.C. § 103, in view of the '767 patent and Sakata; and (7) the ALJ's finding that Analog Devices satisfies the technical prong of the domestic industry requirement with respect to the '614 and '942 patents, based on his finding that respondents' argument based on *NTP, Inc. v. Research In Motion, Ltd.*, 418 F.3d 1282, 1313-1321 (Fed. Cir. 2005), is waived. The Commission has taken no position on the ALJ's finding that the domestic industry is satisfied even if respondents' argument based on *NTP* is not waived. These actions result in a finding of a violation of section 337 with respect to claims 2-6 and 8 of the '942 patent.

Further, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry of MEMS devices and products containing the same that infringe claims 2-6 and 8 of the '942 patent that are manufactured abroad by or on behalf of, or are imported by or on behalf of, Knowles or Mouser, or any of their affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or successors or assigns.

The Commission further determined that the public interest factors enumerated in section 337(d)(1) (19 U.S.C. § 1337(d)(1)) do not preclude issuance of the limited exclusion order. Finally, the Commission determined that no bond is required to permit temporary importation during the period of Presidential review (19 U.S.C. § 1337(j)). The Commission's order and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

The Commission has terminated this investigation. 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, 210.45, and 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42, 210.45, 210.50).

By order of the Commission.

A handwritten signature in black ink, appearing to read "J R Holbein", with a stylized flourish at the end.

James R. Holbein
Acting Secretary to the Commission

Issued: May 10, 2011

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN MEMS DEVICES AND
PRODUCTS CONTAINING SAME**

Inv. No. 337-TA-700

LIMITED EXCLUSION ORDER

The Commission has determined that there is a violation of section 337 of the Tariff Act of 1930, as amended, §19 U.S.C. 1337, in the unlawful importation, sale for importation, and sale after importation by Respondents Knowles Electronics LLC and Mouser Electronics, Inc. of certain microelectromechanical systems (“MEMS”) devices and products containing the same by reason of infringement of claims 2-6 and 8 of U.S. Patent No. 7,364,942.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is a limited exclusion order prohibiting entry of infringing MEMS devices and products containing the same that are manufactured abroad by or on behalf of, or imported by or on behalf of Respondents.

The Commission has further determined that the public interest factors enumerated in 19 U.S.C. § 1337(d) do not preclude issuance of the limited exclusion order, and that respondents may import without posting bond during the period of Presidential review.

Accordingly, the Commission hereby **ORDERS** that:

1. MEMS devices and products containing the same that infringe one or more of claims 2-6 and 8 of U.S. Patent No. 7,364,942, and that are manufactured abroad by or on behalf

of, or imported by or on behalf of Respondents or any of their affiliated companies, parents, subsidiaries, successors, assigns, or other related business entities are excluded from entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, for the remaining term of the patent, except under license of the patent's owner or as provided by law.

2. Products that are excluded by paragraph 1 of this Order are entitled to entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, without posting bond pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337(j), and the Presidential Memorandum for the United States Trade Representative of July 21, 2005 (*70 Fed. Reg.* 43251), from the day after this Order is received by the United States Trade Representative until such time as the United States Trade Representative notifies the Commission that this action is approved or disapproved but, in any event, not later than 60 days after the date of receipt of this action.

3. At the discretion of U.S. Customs and Border Protection ("CBP") and pursuant to procedures it establishes, persons seeking to import MEMS devices and products containing the same that are potentially subject to this Order may be required to certify that they are familiar with the terms of this Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the products being imported are not excluded from entry under paragraph 1 of this Order. At its discretion, CBP may require persons who have provided the certification described in this paragraph to furnish such records or analyses as are necessary to substantiate the certification.

4. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not

apply to MEMS devices and products containing the same that are imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.

5. The Commission may modify this Order in accordance with the procedures described in section 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.

6. The Secretary shall serve copies of this Order upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and CBP.

7. Notice of this Order shall be published in the *Federal Register*.

By Order of the Commission.



James R. Holbein
Acting Secretary to the Commission

Issued: May 10, 2011

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PRODUCTS CONTAINING THE SAME**

337-TA-700

CERTIFICATE OF SERVICE

I, James R. Holbein, hereby certify that the attached **NOTICE** has been served by hand upon the Commission Investigative Attorney, Kecia J. Reynolds, Esq., and the following parties as indicated, on May 10, 2011.


James R. Holbein, Acting Secretary
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

On Behalf of Complainant Analog Devices, Inc.:

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- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- Other: _____

**On Behalf of Respondents Knowles Electronics LLC and
Mouser Electronics, Inc.:**

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COVINGTON & BURLING LLP
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- Other: _____