

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN PERSONAL COMPUTER/
CONSUMER ELECTRONIC
CONVERGENT DEVICES,
COMPONENTS THEREOF, AND
PRODUCTS CONTAINING SAME**

Investigation No. 337-TA-558

**NOTICE OF DECISION NOT TO REVIEW AN INITIAL DETERMINATION
ORDERING A TEMPORARY STAY**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ") initial determination ("ID") ordering a temporary stay.

FOR FURTHER INFORMATION CONTACT: Michelle Walters, 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: On December 29, 2005, the Commission instituted this investigation, based on a complaint filed by InterVideo Technology Corporation ("InterVideo") of Taiwan, alleging 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 personal computer/consumer electronic convergent devices, components thereof, and products containing the same by reason of infringement of claims 1-10 of United States Patent No. 6,765,788 ("the '788 patent"). The complaint named four respondents: Dell, Inc. of

Texas (“Dell”), WinBook Computer Corporation of Ohio (“WinBook”), Cyberlink Corporation of Taiwan (“Cyberlink”), and Cyberlink.com Corporation of California (“Cyberlink.com”). WinBook recently entered into a settlement agreement with InterVideo that is the subject of a motion to terminate the investigation with regard to WinBook.

More than a year prior to institution of this investigation, a third party filed a petition for *ex parte* reexamination of the ‘788 patent with the United States Patent and Trademark Office (“USPTO”). The USPTO granted the petition on February 9, 2005, reasoning that several prior art references not previously considered by the examiner raised substantial new questions of patentability with regard to all of the claims in the ‘788 patent. On November 30, 2005, the USPTO issued its first office action rejecting all ten claims in the patent as anticipated and/or obvious in light of various prior art references. InterVideo filed a response to the rejection on January 30, 2006, amending both independent claims, adding twelve new independent and dependent claims, and arguing the novelty and non-obviousness of the claims. The Commission notes in addition that, on February 24, 2006, two and a half weeks after the ALJ issued his ID, a final office action issued in the reexamination of the ‘788 patent rejecting all twenty-two claims as anticipated and/or obvious in light of various prior art references.

In its notice of institution, the Commission directed the ALJ to consider whether this investigation should be stayed pending completion of the reexamination of the ‘788 patent. The ALJ requested submissions from the parties relating to proposed procedural schedules and, on February 1, 2006, held a pre-hearing conference to discuss a stay. During the conference, the ALJ set a fifteen (15) month target date for the investigation.

On February 7, 2006, the ALJ issued an ID staying the investigation until April 19, 2006. The ALJ requested that the parties update him on the status of the reexamination proceeding on April 12, 2006 and that they have a teleconference regarding the stay on April 19, 2006.

On February 14, 2006, InterVideo filed a petition for review, seeking to overturn the ALJ’s determination to stay the investigation or, alternatively, to limit all stays to April 19, 2006. On February 22, 2006, respondents Dell, Cyberlink, Cyberlink.com, and the Commission’s Investigative Attorney filed responses to the petition for review, asserting that the ALJ properly stayed the investigation.

Having examined the ALJ’s ID and the submissions of the parties, the Commission has determined not to review the ALJ’s ID ordering a temporary stay until April 19, 2006. The Commission has also determined to deny InterVideo’s request that it “limit all stays to the stay to April 19, 2006.”

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 210.42 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42).

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: March 10, 2006