

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

ORDER

The Commission instituted this investigation, based on a complaint filed with the Commission by InterVideo, alleging 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 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”). 71 *Fed. Reg.* 363 (Jan. 4, 2006). The complaint named four respondents: Dell, Inc. of Texas, WinBook Computer Corporation of Ohio, Cyberlink Corporation of Taiwan, and Cyberlink.com Corporation of California. The administrative law judge issued an initial determination (“ID”) on April 20, 2006, terminating WinBook from the investigation on the basis of a settlement agreement. This ID was not reviewed by the Commission.

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 (“PTO”). Complaint, ¶ 58, p. 14, Exh. 19. On June 27, 2006, after considering the petition and the patent holder’s response, the PTO examiner mailed a Notice of Intent to Issue Ex Parte

Reexamination Certificate, finding claims 1-10, 12, 14-17, and 19-22 patentable, as amended.

On February 7, 2006, the administrative law judge stayed the investigation until April 19, 2006, because of the reexamination, and then on April 21, 2006, after receiving briefing and oral argument on the issue, extended the stay until July 19, 2006.

On July 14, 2006, Respondents filed a joint motion to terminate the investigation arguing that the patent holder no longer possessed a property right because the original claims had been canceled in reexamination proceedings and therefore the Commission no longer possessed jurisdiction to conduct an investigation. The administrative law judge denied Respondents' motion in a well-reasoned order on August 23, 2006 (Order 16), and extended the stay that had been imposed on the investigation pending Commission consideration of any request for interlocutory appeal. On September 5, 2006, Respondents requested that the administrative law judge authorize an application to the Commission for interlocutory appeal of Order No. 16. On September 8, 2006, the administrative law judge granted this request. Order 17. On September 15, 2006, Respondents applied for interlocutory review by the Commission of Order No. 16. Complainant and the Commission investigative attorney opposed the application. On October 12, 2006, Respondents filed a motion for leave to file a reply. InterVideo opposed this motion.

Commission Rule 210.24 states that:

Rulings by the administrative law judge on motions may not be appealed to the Commission prior to the administrative law judge's issuance of an initial determination except in the following circumstances:

...

[A]pplications for review of a ruling by an administrative law judge may be allowed only upon request made to the administrative law judge and upon determination by the administrative law judge in writing, with justification in support thereof, that the ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion, and that either an immediate appeal from the ruling may materially advance the ultimate completion of the investigation or subsequent review will be an inadequate remedy.

...
Thereupon, the Commission may, in its discretion, permit an appeal.

19 C.F.R. Sec. 210.24(b).

Having considered the record and the parties' submissions in this investigation, we find there is no controlling question of law or policy as to which there is a substantial ground for difference of opinion and refuse to permit an interlocutory appeal of Order 16. It remains within the administrative law judge's continued discretion whether to continue the stay of the proceedings.

It is hereby Ordered that:

- (1) Respondents' Application for Interlocutory Review by the Commission of Order No. 16 is DENIED.
- (2) Respondents' Joint Motion for Leave to File a Reply to InterVideo's Opposition to Respondents' Application for Review by the Commission of Order No. 16 is DENIED.
- (3) The administrative law judge will determine in the first instance whether to continue the stay of this investigation.

By order of the Commission.

/s/
Marilyn R. Abbott
Secretary to the Commission

Issued: November 6, 2006