

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

**In the Matter of**

**CERTAIN DIGITAL TELEVISIONS AND  
CERTAIN PRODUCTS CONTAINING SAME  
AND METHODS OF USING SAME**

**Investigation No. 337-TA-617**

**NOTICE OF COMMISSION DETERMINATION TO REVIEW IN PART A FINAL  
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 November 17, 2008, finding a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:** Daniel E. Valencia, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-1999. 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 November 15, 2007, based on a complaint filed by Funai Electric Co., Ltd. of Japan and Funai Corporation of Rutherford, NJ (collectively “Funai”), 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 digital televisions and certain products containing the same and methods of using the same by reason of infringement of certain claims of United States Patent Nos. 5,329,369 (“the ‘369 patent”) and 6,115,074 (“the ‘074 patent”). 72 *Fed. Reg.* 64240 (November 15, 2007). The complaint named

fourteen respondents. Subsequent to institution, three respondents were terminated from the investigation based on settlement agreements.

On November 17, 2008, the ALJ issued his final ID, finding that a violation of section 337 has occurred in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain digital televisions and certain products containing the same and methods of using the same by reason of infringement of certain claims of the '074 patent. The ALJ found that no violation exists with respect to the '369 patent. On November 25, 2008, the ALJ issued a recommended determination on remedy and bonding ("RD"). The respondents, the Commission investigative attorney ("IA"), and complainant Funai filed petitions for review of the ID on December 1, 2008. The IA, the respondents, and complainant Funai each filed responses to the petitions for review on December 9, 2008.

On December 4, 2008, the respondents filed a motion requesting judicial notice of Funai's response to an office action in the pending U.S. Patent and Trademark Office ("USPTO") reexamination proceedings concerning the '074 patent. In the alternative, the respondents requested that the evidentiary record be reopened to allow Funai's response to the USPTO to be admitted. On December 15, 2008, the IA and Funai replied to the respondents' motion. On December 17, 2008, the respondents filed a motion for leave to reply and, thereafter, corrected its submission on December 18, 2008. On December 18, 2008 and December 29, 2008, respectively, Funai and the IA replied to respondents' motion for leave.

The Commission notes that the ALJ took notice of the ongoing reexamination proceedings. The Commission has determined to deny Respondents' motion to take judicial notice of specific documents filed in that proceeding. The Commission has also determined to deny Respondents' alternative request for reopening of the record as well as Respondents' motion for leave to reply.

Having examined the record of this investigation, including the ALJ's final 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 ALJ's finding that the respondents infringe claim 23 of the '074 patent [CONFIDENTIAL INFORMATION DELETED]; and (2) the ALJ's finding that the respondents induce their customers to infringe claim 23 of the '074 patent. The Commission has determined not to review any other issue decided in the ID.

The parties are requested to brief their positions on the issues under review 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:

[CONFIDENTIAL INFORMATION DELETED]

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(s) 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 In the Matter of 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 *Fed. Reg.* 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 ALJ's recommendation on remedy and bonding set forth in the RD. Complainants and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the dates that the patents at issue expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on Tuesday, February 24, 2009. Reply submissions must be filed no later than the close of business on Tuesday, March 3, 2009. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 210.6.

Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

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 210.42-46 and 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42-46 and 210.50).

By order of the Commission.

Marilyn R. Abbott  
Secretary to the Commission

Issued: February 11, 2009