

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN COMPUTER PRODUCTS,
COMPUTER COMPONENTS AND
PRODUCTS CONTAINING SAME**

Investigation No. 337-TA-628

**NOTICE OF COMMISSION DECISION NOT TO REVIEW THE ALJ's FINAL
INITIAL DETERMINATION FINDING NO VIOLATION OF SECTION 337;
TERMINATION OF INVESTIGATION**

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") final initial determination ("ID") issued on March 16, 2009, finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337 in this investigation.

FOR FURTHER INFORMATION CONTACT: Panyin Hughes, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3042. 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 14, 2008, based on a complaint filed by International Business Machines Corporation of Armonk, New York ("IBM"). *73 Fed. Reg.* 2275 (Jan. 14, 2008). The complaint alleged violations of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain computer products, computer components and products containing same by reason of infringement of certain claims of United States Patent Nos. 5,008,829 ("the '829 patent"); 5,249,741 ("the '741 patent"); and 5,371,852

(“the ’852 patent”). The complaint named as respondent ASUSTek Computer, Inc. of Taipei, Taiwan and ASUS Computer International of Fremont, California. On January 21, 2008, IBM amended the complaint and notice of investigation to add Respondents Pegatron Technology Corporation of Taipei, Taiwan and Unihan Technology Corporation, of Taipei, Taiwan, wholly owned subsidiaries of ASUSTek. The respondents are referred to collectively as “ASUS.”

On August 4, 2008, the ALJ issued an ID that extended the target date for completion of the investigation to July 14, 2009. The Commission determined not to review the ID.

On March 16, 2009, the ALJ issued his final ID finding no violation of section 337 by ASUS. The ID included the ALJ’s recommended determination on remedy and bonding. In the subject ID, the ALJ found that ASUS’s products do not infringe asserted claims 1 and 2 of the ’829 patent. The ALJ also found that none of the cited references anticipated claims 1 and 2 of the ’829 patent or rendered them obvious. Likewise, the ALJ found that ASUS’s products do not infringe asserted claim 1 of the ’741 patent. The ALJ further found that none of the cited references anticipated claim 1 or rendered claim 1 of the ’741 patent obvious. The ALJ also found that the ’741 patent satisfied the written description and enablement requirements of 35 U.S.C. § 112, first paragraph, for claim 1. Similarly, the ALJ found that ASUS’s accused products do not infringe asserted claims 1, 8, 13, 14, 22 and 23 of the ’852 patent. The ALJ also found that none of the cited references anticipate the asserted claims of the ’852 patent. The ALJ further found that IBM met the domestic industry requirement because a sufficient nexus existed between IBM’s licensing activities and each of the asserted patents.

On March 30, 2009, IBM filed a petition, seeking review of the ALJ’s ID with regards to infringement of all the patents-in-issue. That same day, ASUS filed a contingent petition, seeking review of the ALJ’s findings that the ’829 and ’741 patents are not invalid. On April 7, 2009, ASUS filed an opposition to IBM’s petition for review, and IBM filed a response to ASUS’s contingent petition for review. Also on April 7, 2009, the Commission investigative attorney filed a response to both IBM’s petition and ASUS’s contingent petition.

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 not to review the subject ID.

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

By order of the Commission.

/s/

Marilyn R. Abbott
Secretary to the Commission

Issued: July 13, 2009