

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

In the Matter of

**CERTAIN SILICON MICROPHONE
PACKAGES AND PRODUCTS
CONTAINING THE SAME**

Investigation No. 337-TA-629

**NOTICE OF COMMISSION FINAL DETERMINATION OF VIOLATION OF
SECTION 337; ISSUANCE OF A LIMITED EXCLUSION ORDER; 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 that there is a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337) by respondent MEMS Technology Berhad of Malaysia (“MemsTech”) in the above-captioned investigation. The Commission has issued a limited exclusion order against the respondent and has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone (202) 205-3116. 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, SW, 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 the complaint of Knowles Electronics, LLC of Itasca, Illinois (“Knowles”). 73 *Fed. Reg.* 2277 (Jan. 14, 2008). The complaint alleges 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 silicon

microphone packages or products containing same by reason of infringement of one or more of claims 1 and 2 of U.S. Patent No. 6,781,231 (“the ‘231 patent”), and claims 1, 2, 9, 10, 15, 17, 20, 28, and 29 of U.S. Patent No. 7,242,089 (“the ‘089 patent”). The only named respondent is Memstech.

The evidentiary hearing in this investigation was held on September 22-25, 2008. On January 12, 2009, the presiding administrative law judge (“ALJ”) issued an Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond, finding a violation of section 337. All parties to this investigation, including the Commission investigative attorney, filed timely petitions for review of various portions of the final ID, as well as timely responses to the petitions.

The Commission determined to review various portions of the final ID and issued a Notice to that effect dated March 13, 2009. 74 *Fed. Reg.* 11748 (Mar. 19, 2009). In the Notice, the Commission also set a schedule for the filing of written submissions on the issues under review, including certain questions posed by the Commission, and on remedy, the public interest, and bonding. The parties have briefed, with initial and reply submissions, the issues under review and the issues of remedy, the public interest, and bonding.

On review, the Commission has determined as follows.

(1) With respect to the ‘231 patent:

(a) to affirm with modifications the ALJ’s finding that Memstech’s accused products infringe claims 1 and 2 of the ‘231 patent;

(b) to affirm with modifications the ALJ’s determination that claims 1 and 2 of the ‘231 patent are not invalid due to anticipation or obviousness;

(2) With respect to the ‘089 patent:

(a) to affirm the ALJ’s construction of the term “electrically coupled”;

(b) to affirm with modifications the ALJ’s construction of the term “volume;”

(c) to affirm with modifications the ALJ’s finding that Memstech accused products infringe the asserted claims of the ‘089 patent;

(d) to affirm the ALJ’s determination that Knowles SiSonic products practice claim 1 of the ‘089 patent;

(e) to affirm with modifications the ALJ’s determination that the asserted claims of the ‘089 patent are not invalid due to anticipation or obviousness;

(f) to affirm the ALJ’s determination that evidence shows that the commercial success of the SiSonic products is attributable to the ‘089 patent.

(3) to affirm the ALJ on any other findings under review except insofar as they are inconsistent with the opinion of the Commission.

The Commission determined that the appropriate form of relief in this investigation is a limited exclusion order prohibiting the unlicensed entry of silicon microphone packages and products containing same that infringe claims 1 and 2 of U.S. Patent No. 6,781,231 and claims 1, 2, 9, 10, 15, 17, 20, 28, and 29 of U.S. Patent No. 7,242,089, and that are manufactured abroad by or on behalf of, or imported by or on behalf of, Memstech.

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 there should be no bond during the period of Presidential review. The Commission's order was delivered to the President and the United States Trade Representative on the day of its issuance.

The Commission has therefore 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 sections 210.41-.42, 210.50 of the Commission's Rules of Practice and Procedure (19 CFR § 210.41-.42, 210.50).

By order of the Commission.

/s/
Marilyn R. Abbott
Secretary to the Commission

Issued: June 12, 2009