

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

<b>In the Matter of</b>	)	
	)	
<b>CERTAIN ENCAPSULATED</b>	)	<b>Inv. No. 337-TA-501</b>
<b>INTEGRATED CIRCUIT DEVICES AND</b>	)	
<b>PRODUCTS CONTAINING SAME</b>	)	
	)	
	)	

**NOTICE OF COMMISSION DETERMINATION TO REVIEW A SUPPLEMENTAL  
INITIAL DETERMINATION AND SET A SCHEDULE FOR FILING WRITTEN  
SUBMISSIONS ON THE ISSUES UNDER REVIEW**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review the supplemental initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on October 30, 2009, in the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:** Michael Liberman, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-3112. 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 (<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 under section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337 (“section 337”), on December 19, 2003, based on a complaint filed by Amkor Technology, Inc. (“Amkor”) alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain encapsulated integrated circuit devices and products containing same in connection with several claims of three U.S. patents owned by Amkor. The complainant named Carsem (M) Sdn Bhd; Carsem Semiconductor Sdn Bhd; and Carsem, Inc. (collectively, “Carsem”) as respondents.

On November 9, 2005, the ALJ issued a remand initial determination and a recommended determination on remedy and bond. He found a violation of section 337 with regard to four claims of one asserted patent but found no violation in connection with the claims of the two other asserted patents. Completion of this investigation has been delayed because Carsem has had difficulty obtaining from third-party ASAT, Inc. (“ASAT”) certain documents that Carsem asserts are critical for certain affirmative defenses. The Commission’s efforts to enforce a February 11, 2004, subpoena *duces tecum* and *ad testificandum* directed to ASAT resulted in a July 1, 2008, order and opinion of the U.S. District Court for the District of Columbia granting the Commission’s second enforcement petition.

On July 1, 2009, the Commission issued a Notice and Order remanding this investigation to the ALJ. The target date for completion of this investigation was extended to February 2, 2010. On September 10-11, 2009, a hearing was held to address Carsem’s invalidity defenses for which the subpoena to ASAT was obtained. On October 30, 2009, the ALJ issued a supplemental ID reaffirming his finding of a violation of section 337.

On November 12, 2009, respondent Carsem filed a petition for review of the supplemental ID. On November 19, 2009, complainant Amkor filed its opposition to Carsem’s petition. On the same day, the IA filed a response to Carsem’s petition taking the position that the petition should be denied.

Having examined the record in this investigation, including the ALJ’s supplemental ID, the petition for review, and the responses thereto, the Commission has determined to review the supplemental ID in its entirety.

On review, the Commission requests the parties to brief their positions on the issues under review with reference to the applicable law and the evidentiary record. The Commission is particularly interested in responses to the following questions:

- (1) What is the earliest possible priority date that can be established for the inventions embodied in Amkor’s patents-in-suit based on the ALJ’s finding that the evidence presented by Amkor is sufficient to establish a priority date no earlier than mid-1997 and no later than December 10, 1997, in light of *Oka v. Youssefyeh*, 849 F.2d 581 (Fed. Cir. 1988) and other applicable Federal Circuit and Commission precedent?
- (2) Is the ALJ’s use of an assumed priority date rather than determining an actual priority date to make his validity finding under 35 U.S.C. § 102(g) supported by the Federal Circuit and Commission precedent?

**WRITTEN SUBMISSIONS:** The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be concise and thoroughly referenced to the record in this investigation. The written submissions must be filed no later than the close of business on December 30, 2009. Reply submissions must be filed no later than the close of business on January 8, 2009. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

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

By order of the Commission.

/s/  
Marilyn R. Abbott  
Secretary to the Commission

Issued: December 16, 2009