

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

In the Matter of

**CERTAIN BASEBAND PROCESSOR
CHIPS AND CHIPSETS,
TRANSMITTER AND RECEIVER
(RADIO) CHIPS, POWER CONTROL
CHIPS, AND PRODUCTS CONTAINING
SAME, INCLUDING CELLULAR
TELEPHONE HANDSETS**

Inv. No. 337-TA-543

**NOTICE OF COMMISSION DECISION TO REVIEW AND MODIFY IN PART A
FINAL INITIAL 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 and modify in part the final initial determination ("ID") issued by the presiding administrative law judge ("ALJ") on October 19, 2006, 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: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-3152. Copies of the ID and all other nonconfidential 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. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. 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>.

SUPPLEMENTARY INFORMATION: On June 21, 2005, the Commission instituted an investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. §1337, based on a complaint

filed by Broadcom Corporation of Irvine, California ("Broadcom"), alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain baseband processor chips and chipsets, transmitter and receiver (radio) chips, power control chips, and products containing same, including cellular telephone handsets by reason of infringement of certain claims of U.S. Patent Nos. 6,374,311, 6,714,983, 5,682,379 ("the 379 patent"), 6,359,872 ("the '872 patent"), and 6,583,675. 70 *Fed. Reg.* 35707 (June 21, 2005). The complainant named Qualcomm Incorporated ("Qualcomm") of San Diego, California as the only respondent. The '379 patent and '872 patent were terminated from this investigation.

On February 21, 2006, the ALJ issued an ID (Order No. 27) which granted the motions of Cellco Partnership d/b/a Verizon Wireless; LG Electronics Mobilecomm U.S.A., Inc.; Motorola, Inc.; Kyocera Wireless Corp.; Sprint Nextel Corporation; and Samsung Electronics Co. to intervene for the limited purpose of presenting evidence related to remedy and bonding. Order No. 27 also bifurcated the case into liability and remedy phases and extended the target date for completion of the investigation from September 21, 2006, to December 21, 2006. On August 15, 2006, the ALJ issued an ID (Order No. 53) extending the target date by fifty (50) days to February 9, 2007. The Commission determined not to review either of these IDs.

An evidentiary hearing on liability was held on February 14-22, March 1, and March 13-21, 2006. An evidentiary hearing on remedy was held on July 6-11, 2006.

On October 19, 2006, the ALJ issued his final ID in which he found that there was a violation of section 337. Both complainant and respondent filed timely petitions for review of various portions of the final ID. All of the parties participating at the violation stage of the investigation, including the Commission investigative attorney ("IA") filed timely responses to the petitions. The Commission determined to extend the 45-day deadline for determining whether to review the final ID by 14 days, *i.e.*, from Friday, November 24, 2006, until Friday, December 8, 2006.

Having examined the record in this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined:

- (1) to review the ALJ's construction of the phrase "reducing the frequency of processing . . . increasing the frequency of the processing" in claim 24 of the '983 patent and, simultaneously upon review to modify the ALJ's construction of the above-referenced claim limitation to mean "decreasing how often the payload data received from the wireless communication circuitry is processed . . . increasing how often the payload data received from the wireless communication circuitry is processed." This modification does not affect any other finding in the ID.
- (2) to further modify the ID by striking the first sentence in the second

paragraph on page 132 of the ID, which states as follows:

There does not appear to be much dispute from the parties regarding this claim term, as all parties agree that “frequency of processing” refers to a change in the processing rate.

- (3) not to review the remainder of the ID.

In connection with the final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) one or more cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair action 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 that either are adversely affecting it or are 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 President has 60 days to approve or disapprove the Commission’s action. During this period, the subject articles would be entitled to enter the United States under a 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.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issues under review. The submission should be concise and thoroughly referenced to the record in this investigation. Parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the October 19, 2006, recommended determination by the ALJ on remedy and bonding. Complainant and the Commission investigative attorneys are also requested to submit proposed remedial orders for the Commission’s consideration. The written submissions and proposed remedial orders must be filed no later than close of business on December 22, 2006. Reply submissions must be filed no later than the close of business on January 3, 2007. No further submissions on these issues will

be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) 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* section 201.6 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 201.6. 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 210.42-210.45 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42-210.45).

By order of the Commission.

/s/
Marilyn R. Abbott
Secretary to the Commission

Issued: December 8, 2006