

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

**In the Matter of**

**CERTAIN FLASH MEMORY  
CONTROLLERS, DRIVES, MEMORY  
CARDS, AND MEDIA PLAYERS AND  
PRODUCTS CONTAINING SAME**

**Investigation No. 337-TA-619**

**NOTICE OF COMMISSION DETERMINATION TO REVIEW IN PART A FINAL  
DETERMINATION FINDING NO 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 April 10, 2009 (a corrected version was issued on April 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 A. 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 December 12, 2007, based on a complaint filed by SanDisk Corporation of Milpitas, CA. 72 *Fed. Reg.* 70610 (Dec. 12, 2007). The complaint alleged 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 flash memory controllers, drives, memory cards, media players and products containing the same by reason of

infringement of various claims of United States Patent Nos. 6,426,893; 6,763,424 (“the ’424 patent”); 5,719,808; 6,947,332; and 7,137,011 (“the ’011 patent”). Three patents and several claims were subsequently terminated from the investigation. Claims 24 and 30 of the ’424 patent and claim 8 of the ’011 patent remain in the investigation. The complaint named nearly fifty respondents. Twenty-one of these respondents were terminated from the investigation based on settlement agreements, consent orders and withdrawal of allegations from the complaint. Five respondents defaulted. The following respondents remain in the investigation: Phison Electronics Corporation of Hsinchu, Taiwan; Silicon Motion Technology Corporation of Hsinchu, Taiwan; Silicon Motion, Inc. of Milpitas, CA; Skymedi Corporation of Hsinchu, Taiwan; Power Quotient International Co., Ltd. of Taipei, Taiwan; Power Quotient International (HK) Co., Ltd. of Hong Kong; Syscom Development Co., Ltd. of the British Virgin Islands; PQI Corporation of Fremont, California; Kingston Technology Corporation of Fountain Valley, CA; MemoSun, Inc. of Fountain Valley, CA; Transcend Information Inc. of Taipei, Taiwan; Transcend Information Inc. of Orange, CA; Transcend Information Maryland, Inc. of Linthicum, MD; Imation Corporation of Oakdale, MN; Imation Enterprises Corporation of Oakdale, MN; Memorex Products, Inc. of Cerritos, CA; Apacer Technology Inc. of Taipei Hsien, Taiwan; Apacer Memory America, Inc. of Milpitas, CA; Dane Memory S.A. of Bagnolet, France; Deantusaiocht Dane-Elec TEO of Spiddal, Galway, Ireland; Dane-Elec Corporation USA of Irvine CA; LG Electronics U.S.A., Inc. of Englewood Cliffs, New Jersey; and LG Electronics, Inc. of Seoul, South Korea.

On April 10, 2009, the ALJ issued his final ID finding no violation of section 337 by Respondents. The ALJ issued a corrected version of his final ID on April 16, 2009. The ID included the ALJ’s recommended determination on remedy and bonding. In the subject ID, the ALJ found that the accused products do not infringe asserted claims, 17, 24 and 30, of the ’424 patent. The ALJ also found that none of the cited references anticipated the asserted claims and that none of the cited references rendered the asserted claims obvious. The ALJ further found the Respondents not liable for contributory or induced infringement of the asserted claims of the ’424 patent. Likewise, the ALJ found that SanDisk failed to prove that the sole respondent accused of infringing claim 8 of the ’011 patent, Imation, induced or contributed to infringement of the patent. The ALJ also found that SanDisk’s rights in the ’011 patent were not exhausted and that claim 8 of the ’011 patent satisfies the indefiniteness requirement of 35 U.S.C. § 112, second paragraph. The ALJ, however, concluded that the prior art rendered claim 8 of the ’011 patent obvious.

On May 4, 2009, SanDisk and the Commission investigative attorney filed petitions for review of the ID. That same day, Respondents filed a collective contingent petition for review of the ID with respect to the ’424 patent. Skymedi Corporation and Imation Respondents, in addition to joining the collective contingent petition for review, filed individual contingent petitions for review. On May 18, 2009, the parties filed responses to the various petitions and contingent petitions for review.

On April 21, 2009, the Commission extended the date by which to determine whether to review the ALJ’s initial ID from June 9, 2009, to June 22, 2009, and on May 28, 2009, the

Commission extended the date for determining whether to review the ID from June 22, 2009, to August 24, 2009. The Commission also extended the target date for completion of the investigation from August 10, 2009 to October 23, 2009.

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. The Commission has determined to review the claim construction of claims 17, 24 and 30 of the '424 patent; infringement of the asserted claims of the '424 patent; validity of the '424 patent; and the ALJ's decision not to consider the Sinclair PCT publication as evidence of prior art to claim 17 of the '424 patent. The Commission has determined not to review any other issues.

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 questions:

1. Address whether the accused products would infringe claim 17 of the '424 patent if construction of the claim term "updating pages of original data within any of the metablock component blocks less than all the pages within the block" is construed to cover single-page updates. Please cite record evidence and/or relevant legal precedent to support your position.
2. Address whether the claim term "reading and assembling data from the first and second plurality of pages" as recited in claim 20 of the '424 patent should be construed to cover the so-called "table method," and whether the accused products would infringe claims 24 and 30 of the '424 patent as a result. *See* '424 patent (JX-2) at column 10, lines 44-59; FIG. 12. Please cite record evidence and relevant legal authority to support your position.
3. Address why the Sinclair PCT publication was not listed on any notice of prior art as required by Ground Rule No. 5, and having violated the ground rule, why none of the parties availed itself of its remedy to submit a timely written motion showing good cause why the reference was not listed. *See* Order No. 2 at 9-10.
4. Address under what circumstances, if any, the Commission should consider a reference that was not submitted in accordance with an ALJ's ground rule.
5. Address the similarities and differences, if any, between U.S. Patent No. 6,725,321 to Alan Welsh Sinclair *et al.* (RX-628) and its corresponding Patent Cooperation Treaty publication, WO 00/49488 ("the Sinclair PCT publication") (RX-1038 – rejected by ALJ) and whether the Sinclair PCT publication invalidates claim 17 of the '424 patent. Please cite record evidence and any relevant legal authority to support your position.

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. 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 recommended determination by the ALJ on remedy and bonding. 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 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 Thursday, September 3, 2009. Reply submissions must be filed no later than the close of business on Friday, September 12, 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

William R. Bishop  
Acting Secretary to the Commission

Issued: August 24, 2009