

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

In the Matter of

**CERTAIN PROBE CARD ASSEMBLIES,
COMPONENTS THEREOF AND CERTAIN
TESTED DRAM AND NAND FLASH
MEMORY DEVICES AND PRODUCTS
CONTAINING SAME**

Investigation No. 337-TA-621

**NOTICE OF COMMISSION FINAL DETERMINATION OF 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 that there is no violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), in the above-captioned investigation. The Commission 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: This investigation was instituted on December 19, 2007, based on a complaint filed by FormFactor, Inc. ("FormFactor") of Livermore, California. 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 probe card assemblies, components thereof, and certain tested DRAM and NAND flash memory devices and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 5,994,152 ("the '152 patent"); 6,509,751 ("the '751 patent"); 6,615,485; 6,624,648 ("the '648" patent); 7,168,162 ("the '162 patent"); and

7,225,538. The complaint named Micronics Japan Co., Ltd.; MJC Electronics Corp.; Phicom Corporation; and Phiam Corporation as respondents (collectively, “Respondents”). Subsequently, the ‘162 patent was terminated from the investigation.

On December 5, 2008, respondents Phicom Corp. and Phiam Corp., (collectively, “Phicom”) jointly filed a motion for partial summary determination that claims 20 and 34 of the ‘648 patent are invalid as indefinite under 35 U.S.C. § 112. On February 11, 2009, the ALJ granted the motion in an ID (Order No. 46). The ID determined that claims 20 and 34, and any asserted claims depending therefrom, are invalid. Complainant FormFactor filed a petition for review of Order No. 46, which Respondents and the Commission investigative attorney (“IA”) opposed. On March 11, 2009, the Commission determined to review Order No.46.

The evidentiary hearing in this investigation was held from February 24, 2009, through March 6, 2009. On June 29, 2009, the ALJ issued an Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond, finding no violation of section 337. All parties to this investigation, including the IA, filed timely petitions for review of various portions of the final ID, as well as timely responses to the petitions.

On September 17, 2009, the Commission determined to review the final ID in part, and issued a Notice to that effect. 74 *Fed. Reg.* 47822 (September 17, 2009). In the Notice, the Commission 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 ‘751 patent:

(a) to reverse the ALJ’s determination that Japanese Patent Application Publication H10-31034 to Amamiya et al. (RX-166) does not anticipate the asserted claims of the ‘751 patent under 35 U.S.C. § 102;

(b) to reverse in part the ID’s conclusion that, *inter alia*, Phicom’s accused products do not infringe claims 1-3, 12, 24, and 25 of U.S. Patent No. 6,509,751, *see* ID at 197, and, accordingly, to modify the ID’s conclusion of law at issue by substituting the following: “Respondent Micronics’ accused products do not infringe claims 1-3, 12, 24, and 25 of U.S. Patent No. 6,509,751 in violation of 35 U.S.C. § 271(a). Respondent Phicom’s (old) Type B and Type C accused products infringe claims 1-3, 12, 24, and 25 of U.S. Patent No. 6,509,751 in violation of 35 U.S.C. § 271(a); Phicom’s new Type B and Type C accused products do not infringe.”

(2) With respect to the '152 patent:

(a) to strike the ID's statement "Since three bases for no violation of claim 21 have been determined, no analysis of the invalidity arguments related to anticipation and obviousness of the dependent claims will be made," *see* ID at 191, and to take no position with respect to the validity of the dependent claims of the '152 patent.

(3) to affirm and adopt the ALJ's other findings contained in the final ID under review except insofar as they are inconsistent with the Commission Opinion to be issued later.

The Commission also determined to affirm ALJ Order No. 46 with certain modifications as will be detailed in the Commission's Opinion.

The Commission has determined that there is no violation of section 337 in this investigation, and has terminated the 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: November 12, 2009