

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington D.C. 20436

In the Matter of

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

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) **Inv. No. 337-TA-695**
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**NOTICE OF COMMISSION DETERMINATION
TO REVIEW IN PART AN INITIAL DETERMINATION
DENYING TEMPORARY RELIEF AND ON REVIEW
TO TAKE NO POSITION ON
LIKELIHOOD OF SUCCESS ON THE MERITS.**

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 initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on March 24, 2010, denying complainant’s motion for temporary relief. On review, the Commission has determined to take no position on the likelihood of success on the merits. The Commission has determined not to review the remainder of the ID, namely the ID’s denial of temporary relief, and its analyses of irreparable harm, the balance of hardships and the public interest.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2532. 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 voted to institute this investigation on December 16, 2009, based on a complaint filed by Knowles Electronics LLC of Itasca, Illinois (“Knowles”). 74 *Fed. Reg.* 68077 (Dec. 22, 2009). The complaint named as the sole respondent Analog Devices Inc. of Norwood, Massachusetts (“Analog”). The accused products are microphone packages. Knowles’ complaint asserts one claim of U.S. Patent No. 6,781,231, and numerous claims of U.S. Patent No. 7,242,089.

Knowles also filed with its complaint a motion for temporary relief that requested that the Commission issue a temporary limited exclusion order and temporary cease and desist order. The ID at issue is the ALJ’s denial of Knowles’ motion. In that ID, the ALJ analyzed the four factors for preliminary relief: likelihood of success on the merits, irreparable harm, balance of hardships, and public interest.

On the likelihood of success on the merits, the ALJ found that all but one of the asserted patent claims were likely anticipated by U.S. Patent No. 6,324,907 to Halteren. Some of these same claims were also likely anticipated by U.S. Patent No. 6,594,369 to Une. The remaining claim, while not invalid, was not likely infringed. There was no patent claim for which Knowles demonstrated a likelihood of success on the merits (*i.e.*, as to both validity and infringement).

The ID also found that Knowles had not demonstrated irreparable harm. In particular, the ID found that Analog’s sales of accused microphone packages had not caused Knowles lost sales, had not damaged Knowles’ relationships with its customers, and otherwise had no proven detrimental effect on Knowles. The ALJ found that these two factors (likelihood of success and irreparable harm) precluded temporary relief here. Nonetheless, the ALJ considered the remaining two factors (balance of hardships and the public interest). As to these remaining two factors, the ID found that the balance of hardships favored Knowles, and the ID also found that the public interest would not preclude preliminary relief.

On review to the Commission, the parties filed opening and reply comments, as authorized by 19 C.F.R. § 210.66© & (e)(1). These comments do not take issue with the ALJ’s findings regarding the balance of hardships or the public interest. Instead, the comments principally deal with Knowles’ likelihood of success on the merits, challenging various aspects of the ALJ’s analyses of validity and infringement. The private parties also dispute whether the Commission should address at all the likelihood of success, as Knowles now concedes to the Commission that it has not suffered irreparable harm. Thus, Knowles believes that the question of likelihood of success is moot and urges the Commission not to reach likelihood of success. Analog has taken the position that Knowles’ concession is inappropriate and that the Commission should decide likelihood of success.

Having examined the record of this investigation, including the ALJ’s ID and the subsequent comments and reply comments, the Commission finds that even absent Knowles’ concession, irreparable harm has not been demonstrated. It was Knowles’ burden to demonstrate that such

harm was likely absent temporary relief, and it failed to meet that burden. *Winter v. Natural Res. Defense Council, Inc.*, 129 S. Ct. 365, 375 (2008). The Commission notes, in addition to the reasons discussed in the ID, that Knowles did not seek temporary relief to exclude the only product it has identified that allegedly contains the accused microphone package. See Complaint of Knowles Elecs. LLC Under Section 337 of the Tariff Act of 1930, As Amended ¶¶ 6, 18, 48-49 (Nov. 12, 2009). The Commission has therefore determined not to review the ID's finding of lack of irreparable harm and the ID's denial of temporary relief. The parties have not sought the Commission's review as to the balance of hardships and public interest analyses, and the Commission has determined not to review the ID's findings on those issues.

Because irreparable harm is dispositive here, the Commission need not evaluate the likelihood of success on the merits, and therefore, the Commission has determined to review the ID's finding on likelihood of success and to take no position on it. See *Beloit Corp. v. Valmet Oy*, 742 F.2d 1421 (Fed. Cir. 1984). The Commission's decision enables the ALJ to assess the merits unburdened by Commission impressions that may have been formed on a limited temporary-relief record.

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 210.52 and 210.66 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.52, 210.66).

By order of the Commission.

/s/

William R. Bishop
Acting Secretary to the Commission

Issued: May 21, 2010