UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of **CERTAIN GRAPHICS SYSTEMS, COMPONENTS THEREOF, AND CONSUMER PRODUCTS CONTAINING THE SAME**	**Investigation No. 337-TA-1044**

NOTICE OF COMMISSION DETERMINATION TO REVIEW IN PART A FINAL INITIAL DETERMINATION FINDING A SECTION 337 VIOLATION; TARGET DATE EXTENSION AND SCHEDULE FOR FILING WRITTEN SUBMISSIONS

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to: (1) review in part a final initial determination ("FID") of the presiding administrative law judge ("ALJ") finding a violation of section 337 the Tariff Act of 1930, as amended; and (2) extend the target date by five business days from August 15, 2018, to August 22, 2018.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708-4716. 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 *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://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 Investigation No. 337-TA-1044 on March 22, 2017, based on a complaint filed by Complainants Advanced Micro Devices, Inc. of Sunnyvale, California and ATI Technologies ULC of Canada (collectively, "AMD" or "Complainants"). *See* 82 FR 14748 (Mar. 22, 2017). The complaint, as amended, alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain graphics systems, components thereof, and consumer products containing the same, by reason of infringement of certain claims of U.S. Patent No.

7,633,506 ("the '506 patent"); U.S. Patent No. 7,796,133 ("the '133 patent"); U.S. Patent No. 8,760,454 ("the '454 patent"); and U.S. Patent No. 9,582,846 ("the '846 patent"). *Id.* The notice of investigation identified LG Electronics, Inc. of Seoul, Republic of Korea, LG Electronics U.S.A., Inc. of Englewood Cliffs, New Jersey, and LG Electronics MobileComm U.S.A. Inc. of San Diego, California (collectively, "LG"), VIZIO, Inc. ("VIZIO") of Irvine, California, MediaTek Inc. of Hsinchu City, Taiwan and Media Tek USA Inc. of San Jose, California (collectively, "MediaTek"), and Sigma Designs, Inc. ("SDI") of Fremont, California, as respondents in this investigation. *See id.* The Office of Unfair Import Investigations (OUII) is also a party to the investigation.

On October 20, 2017, the ALJ issued an initial determination terminating the investigation as to LG based on settlement. *See* Order No. 48 (Oct. 20, 2017), *unreviewed*, Comm'n Notice (Nov. 13, 2017). The remaining respondents in this investigation are VIZIO, MediaTek, and SDI (hereinafter, "the Remaining Respondents"). The ALJ also terminated the investigation with respect to all asserted claims of the '454 and '846 patents; claims 6, 7, and 9 of the '506 patent; and claims 2, 4-13, and 40 of the '133 patent. *See* Order No. 33 (Aug. 15, 2017), *unreviewed*, Comm'n Notice (Sept. 5, 2017); Order No. 43 (Oct. 5, 2017), *unreviewed*, Comm'n Notice (Oct. 31, 2017); Order No. 49 (Oct. 20, 2017), *unreviewed*, Comm'n Notice (Nov. 13, 2017); Order No. 53 (Oct. 31, 2017), *unreviewed*, Comm'n Notice (Nov. 28, 2017). Claims 1-5 and 8 of the '506 patent and claims 1 and 3 of the '133 patent (hereinafter, "the asserted claims") remain pending in this investigation.

On April 13, 2018, the ALJ issued her FID finding a violation of section 337 with respect to the '506 patent but not the '133 patent. Specifically, the FID finds that: (1) certain accused products infringe the asserted claims of the '506 patent but not the '133 patent; (2) the asserted claims are not invalid; and (3) Complainants satisfy the economic and technical prongs of the domestic industry requirement with respect to both asserted patents. In addition, the ALJ recommended that the Commission issue: (1) a Limited Exclusion Order against the infringing accused products; and (2) Cease and Desist Orders against Respondents VIZIO and SDI. The ALJ further recommended against setting a bond during Presidential review.

The Commission has determined to review the FID in part. In particular, the Commission has determined to review the claim constructions of the terms: "unified shader" (recited in the '506 and '133 patent claims), "packet" (recited in the '133 patent claims), and "ALU/memory pair" (recited in the '133 patent claims). In view of the Commission's claim construction review, the Commission will also review the relevant FID's findings with respect to infringement, validity, and technical prong of the domestic industry requirement. Furthermore, the Commission has determined to review whether the importation requirement is satisfied with respect to Respondents MediaTek and SDI. The Commission has determined not to review the remainder of the FID. The Commission has also determined to extend the target date by five business days from August 15, 2018, to August 22, 2018.

In connection with the review, the parties are requested to brief their positions with reference to the applicable law and the evidentiary record regarding the questions provided below:

1. Consistent with the specification of the ’506 patent (JX-1) and with the patentee’s statements during the prosecution of the ’506 patent (JX-2) distinguishing Zhu U.S. Patent No. 6,697,063 at JX-2.387-388, the Commission proposes to construe the term “unified shader” to mean “a single shader circuit capable of performing color shading and texture coordinate shading, wherein the single shader circuit may not include separate dedicated hardware blocks that perform separate color and texture operations, and wherein texture coordinate shading may include texture address operations, indirect texturing, and bump mapping performed by the unified shader to modify texture coordinates.” In view of the Commission’s proposed construction, please explain: (1) whether and why you agree or disagree with the Commission’s proposed construction; and (2) whether and why the Commission’s proposed construction affects the FID’s infringement and invalidity analyses with respect to the ’506 patent.

2. Consistent with the specification of the ’133 patent (JX-2) and with the patentee’s statements during the prosecution of the ’133 patent (JX-4) distinguishing Donham U.S. Patent No. 6,980,209 at JX-4.240-41 and JX-4.272, the Commission proposes to construe the term “unified shader” to mean “a single shader circuit capable of performing color shading and texture coordinate shading, wherein the single shader circuit may not include separate dedicated hardware blocks that perform separate color and texture operations, and wherein texture coordinate shading may include texture address operations, indirect texturing, and bump mapping performed by the unified shader to modify texture coordinates.” In view of the Commission’s proposed construction, please explain: (1) whether and why you agree or disagree with the Commission’s proposed construction; and (2) whether and why the Commission’s proposed construction affects the FID’s infringement and invalidity analyses with respect to the ’133 patent.

3. Consistent with the specification of the ’133 patent (JX-3) and with the patentee’s statements during the prosecution of the ’133 patent (JX-4) distinguishing Morgan U.S. Patent No. 6,384,824 at JX-4.89, the Commission proposes to construe the term “packet” to mean “data bundle containing texture coordinate and color value information for one or more pixels, wherein said information is received simultaneously by the unified shader,” *i.e.*, in the same packet rather than serially as suggested by Complainants. In view of the Commission’s proposed construction, please explain: (1) whether and why you agree or disagree with the Commission’s proposed construction; and (2) whether and why the Commission’s

proposed construction affects the FID's infringement and invalidity analyses with respect to the '133 patent.

4. Consistent with the specification of the '133 patent (JX-3), the Commission proposes to modify the FID's interpretation with respect to the scope of the term "ALU/memory pair" to clarify that it does not exclude control logic or circuitry. In view of the Commission's proposed interpretation, please explain: (1) whether and why you agree or disagree with the Commission's proposed interpretation; and (2) whether and why the Commission's proposed interpretation affects the FID's infringement and invalidity analyses with respect to the '133 patent.

In addition, 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 Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (Dec. 1994) (Comm'n Op.).

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 FR 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 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 if a remedy is ordered.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the questions 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 OUII are

also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the date that the asserted patents expire and the HTSUS numbers under which the accused products are imported. Complainants are further requested to supply the names of known importers of the products at issue in this investigation.

Written submissions and proposed remedial orders must be filed no later than close of business on June 28, 2018. Reply submissions must be filed no later than the close of business on July 6, 2018. Initial written submissions may not exceed 50 pages in length, exclusive of any exhibits, while reply submissions may not exceed 25 pages in length, exclusive of any exhibits. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1044") in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel[1], solely for cybersecurity purposes. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

[1] All contract personnel will sign appropriate nondisclosure agreements.

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 part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Lisa R. Barton
Secretary to the Commission

Issued: June 14, 2018