

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN INTEGRATED CIRCUITS,
COMPONENTS THEREOF, AND
PRODUCTS CONTAINING THE SAME**

Investigation No. 337-TA-1350

**NOTICE OF COMMISSION DETERMINATION TO GRANT IN PART A JOINT
MOTION TO TERMINATE THE INVESTIGATION DUE TO SETTLEMENT; DENIAL
OF REQUEST TO TAKE NO POSITION WITH RESPECT TO UNREVIEWED ISSUES
ADDRESSED IN INITIAL DETERMINATION; TERMINATION OF INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined to grant in part a joint motion to terminate this investigation in view of a settlement agreement. Specifically, the Commission has determined to grant the motion to terminate but denies the request to reconsider its previous determination not to review and take no position with respect to the unreviewed issues addressed in the final initial determination (“FID”). This investigation is hereby terminated in its entirety.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-2382. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.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: On January 24, 2023, the Commission instituted the above-captioned investigation based on a complaint, as supplemented, filed by Realtek Semiconductor Corporation of Hsinchu, Taiwan (“Realtek”). 88 FR 4205-06 (Jan. 24, 2023). The complaint, as supplemented, alleges that respondent Advanced Micro Devices, Inc. of Santa Clara, California (“AMD”) violated section 337 of the Tariff Act of 1930, as amended, 19 U.S.C 1337, by importing into the United States, selling for importation, or selling within the United States after importation certain integrated circuits, components thereof, and products containing the same that infringe one or more asserted claims of U.S. Patent Nos. 7,936,245 (“the ’245 patent”); 8,006,218 (“the ’218 patent”); or 9,590,582 (“the ’582 patent”). The complaint alleges that a domestic industry exists. The Office of Unfair Import Investigations is not participating

in this investigation.

The presiding administrative law judge (“ALJ”) held a claim construction (*Markman*) hearing on June 5, 2023. The ALJ issued the claim construction order on July 25, 2023. Order No. 21 (July 25, 2023).

On June 20, 2023, AMD moved to preclude Mr. Steve Baik, Realtek’s outside counsel, from testifying as a fact witness in the evidentiary hearing. On July 7, 2023, the ALJ issued Order No. 19, ordering AMD to show cause why Winston & Strawn (“Winston”), AMD’s counsel, should not be disqualified due to an alleged conflict of interest. Order No. 19 at 2 (July 7, 2023).

On August 4, 2023, the ALJ held a teleconference with the parties regarding Mr. Baik and Winston. On August 17, 2023, the ALJ issued Order No. 23, which granted AMD’s motion to preclude Mr. Baik from testifying on behalf of Realtek but did not disqualify Winston. Order No. 23 at 1 (Aug. 17, 2023). On August 24, 2023, the ALJ denied Realtek’s motions for reconsideration and for interlocutory review of Order No. 23. Order No. 24 (Aug. 24, 2023). On September 6, 2023, Realtek filed a petition in the U.S. Court of Appeals for the Federal Circuit (“Federal Circuit”) seeking a writ of mandamus to order the ALJ to vacate the ruling striking Mr. Baik. The Federal Circuit denied the petition on September 25, 2023. *In re Realtek Semiconductor Corp.*, Appeal No. 2023-147, On Petition and Motion (Sept. 25, 2023).

On October 16, 2023, the ALJ issued an order regarding AMD’s motion to sanction Realtek for failing to accurately answer certain interrogatories and produce relevant documents regarding Realtek’s earlier litigations against Avago Technologies General IP (Singapore) Pte., Ltd and Broadcom Corp. in the U.S. District Court for the District of Delaware. Order No. 39 (Oct. 16, 2023). Order No. 39 determined Realtek had engaged in sanctionable acts during discovery, but deferred ruling on AMD’s sanctions motion until after the hearing. The ALJ ultimately sanctioned Realtek for discovery misconduct.

The ALJ held an evidentiary hearing from October 16-20, 2023.

On November 14, 2023, the Commission terminated the investigation as to claim 9 of the ’582 patent and claim 14 of the ’218 patent, based on Realtek’s withdrawal of those claims. Order No. 40 (Oct. 20, 2023), *unreviewed by Comm’n Notice* (Nov. 14, 2023).

On January 19, 2024, the presiding ALJ issued a combined FID and Recommended Determination on Remedy and Bond (“RD”). The FID finds no violation of section 337 for any of the three patents at issue because: (i) asserted claims 1, 2, and 8 of the ’245 patent are infringed but invalid as anticipated; (ii) asserted claims 12, 13, and 15-18 of the ’218 patent are infringed but invalid as obvious; (iii) asserted claims 1-4 of the ’582 patent are not infringed, while claims 1-3 (but not claim 4) are also invalid as obvious; and (iv) Realtek failed to satisfy the economic prong of the domestic industry requirement for any of the three asserted patents. FID at 252. The FID also finds that Realtek satisfied the technical prong of the domestic industry requirement for each patent. *Id.*

On February 2, 2024, Realtek and AMD each filed petitions for review of certain adverse findings in the FID. Realtek, however, did not petition for review of the FID's finding that the asserted claims of the '245 patent are invalid. On February 12, 2024, Realtek and AMD filed their respective responses to the opposing petitions for review.

On June 11, 2024, the Commission determined to review the FID in part. 89 FR 51366-70 (June 17, 2024) ("WTR Notice"). In particular, the Commission determined to review the FID's findings on claim construction, infringement, and anticipation or obviousness of the asserted claims of the '218 patent and '582 patent, the economic prong of the domestic industry requirement, and the sanction against Realtek. The Commission did not review, and thus adopted, the FID's findings that the asserted claims of the '245 patent are invalid, that the claims of the '218 patent are not invalid for lack of written description or enablement, that the claims of the '518 patent are not invalid for lack of written description, that Mr. Baik was properly precluded from testifying as a fact witness at the evidentiary hearing, and that Winston should not be disqualified from representing AMD. The Commission included a briefing schedule for the issues under review and remedy, bond, and the public interest.

On June 19, 2024, the parties filed a joint motion to terminate the investigation due to a settlement agreement and to suspend the Commission's briefing schedule. The parties also requested that the Commission reconsider its previous determination not to review certain findings in the FID and, on review, take no position on any findings.

On June 27, 2024, the Commission determined to suspend briefing on the issues under review and on remedy, bond, and the public interest, pending resolution of the parties' motion to terminate. *See* Comm'n Notice (June 27, 2024).

On July 26, 2024, the parties corrected their joint motion by replacing the original, overly redacted public version of their term sheet with a version that was properly redacted in compliance with Commission Rules 201.6(a), 210.21(b), 19 CFR 201.6(a), 210.21(b).

Upon review of the parties' submissions, the Commission has determined to terminate the investigation due to the settlement agreement, in accordance with Commission Rule 210.21(b), 19 CFR 210.21(b). The Commission finds that the parties have represented that their settlement agreement resolves all issues in this and other litigations, and that there are no other agreements, written or oral, express or implied, between the parties concerning the subject matter of this investigation, in satisfaction of Commission Rule 210.21(b), 19 CFR 210.21(b). The Commission denies the request to reconsider its previous determinations not to review certain findings in the FID, as set forth in the Commission's WTR Notice, and on review to take no position with respect to the unreviewed issues addressed in the FID. Pursuant to Commission Rule 210.42(h), 19 CFR 210.42(h), unreviewed initial determinations become the final determinations of the Commission. While the Commission may reconsider its prior determination on whether to review an initial determination under Rule 210.47, 19 CFR 210.47, the parties have presented no good cause or other justification for doing so here. *See* Corrected Joint Mot. at 2-4.

This investigation is hereby terminated in its entirety.

The Commission vote for this determination took place on August 6, 2024.

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.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', enclosed within a large, loopy oval flourish.

Lisa R. Barton
Secretary to the Commission

Issued: August 6, 2024