

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

In the Matter of

**CERTAIN STATIC RANDOM ACCESS
MEMORIES AND PRODUCTS
CONTAINING SAME**

Investigation No. 337-TA-792

**NOTICE OF COMMISSION DETERMINATION TO REVIEW A FINAL INITIAL
DETERMINATION FINDING NO VIOLATION OF SECTION 337; REMAND-IN-PART
OF THE INVESTIGATION TO THE ADMINISTRATIVE LAW JUDGE**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on October 25, 2012, finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in this investigation. The Commission has also determined to remand-in-part the investigation to the ALJ.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, 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 July 28, 2011, based on a complaint filed by Cypress Semiconductor Corporation of San Jose, California (“Cypress”). *76 Fed. Reg.* 45295 (July 28, 2011). 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 static random access memories and products containing the same by reason of infringement of various claims of United States Patent Nos. 6,534,805; 6,651,134; 6,262,937 and 7,142,477. The notice of investigation named the following entities as respondents: GSI Technology, Inc. of Sunnyvale, California (“GSI”); Alcatel-Lucent of Paris, France (“Alcatel-Lucent”);

Alcatel-Lucent USA, Inc. of Murray Hill, New Jersey (“Alcatel-Lucent USA”); Telefonaktiebolaget LM Ericsson of Stockholm, Sweden (“Ericsson LM”); Ericsson, Inc. of Plano, Texas (“Ericsson”); Motorola Solutions, Inc. of Schaumburg, Illinois (“Motorola”); Motorola Mobility, Inc. of Libertyville, Illinois (“MMI”); Arrow Electronics, Inc. of Melville, New York (“Arrow”); Nu Horizons Electronics Corp. of Melville, New York (“Nu Horizons”); Cisco Systems, Inc. of San Jose, California (“Cisco”); Hewlett Packard Company/Tipping Point of Palo Alto, California (“HP”); Avnet, Inc. of Phoenix, Arizona (“Avnet”); Nokia Siemens Networks US, LLC of Irving, Texas (“Nokia US”); Nokia Siemens Networks B.V. of Zoetermeer, Netherlands (“Nokia”); and Tellabs of Naperville, Illinois (“Tellabs”). The Office of Unfair Import Investigations is not a party to this investigation.

The following respondents were terminated from the investigation based on settlement agreements, consent orders, or withdrawal of allegations from the complaint: Alcatel-Lucent, Alcatel-Lucent USA, Ericsson, Arrow, Nu Horizons, Nokia US, and Nokia. The following respondents were terminated from the investigation based upon grant of summary determination of no violation of section 337: MMI, HP, Motorola, Tellabs, and Ericsson LM. The following respondents remain in the investigation: GSI, Cisco, and Avnet (collectively, “Respondents”).

On October 25, 2012, the ALJ issued his final ID, finding no violation of section 337 by the remaining Respondents. Specifically, the ALJ found that the Commission has subject matter jurisdiction, *in rem* jurisdiction over the accused products, and *in personam* jurisdiction over the respondents. ID at 8. The ALJ also found that the importation requirement of section 337 (19 U.S.C. § 1337(a)(1)(B)) has been satisfied. *Id.* The ALJ, however, found that the accused products do not infringe the asserted patent claims. *See* ID at 16, 24, 39, and 55. The ALJ also found that Cypress failed to establish the existence of a domestic industry that practices the asserted patents under 19 U.S.C. § 1337(a)(2) for failure to establish the technical prong of the domestic industry requirement. *See* ID at 20, 31, 45, and 58. The ALJ did not consider the validity or enforceability of the asserted patents despite Respondents’ assertion in both their pre-hearing and post-hearing briefs that the asserted patents are invalid and unenforceable. *See* ID at 20, 31, 45-46, and 59.

On November 7, 2012, Cypress filed a petition for review of the ID. That same day, Respondents filed a contingent petition for review. On November 15, 2012, the parties filed responses to the petition and contingent petition for review.

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 its entirety. The Commission does not seek further briefing at this time. The Commission remands the investigation to the ALJ to consider the parties’ invalidity and unenforceability arguments and make appropriate findings.¹ In light of the remand, the ALJ shall set a new target date within thirty days of this notice consistent with the Remand Order.

¹ The ALJ should have resolved these issues given the procedural posture of this investigation (*i.e.*, post-hearing), and the absence of an extraordinary fact situation that would weigh heavily against resolving these material issues presented in the record. *See Certain Video Game Systems*

Briefing, if any, on remanded and reviewed issues will await Commission consideration of the remand ID. The current target date for this investigation is February 25, 2013.

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 of the Commission's Rules of Practice and Procedure (19 C.F.R. §210.42-46).

By order of the Commission.

/s/
Lisa R. Barton
Acting Secretary to the Commission

Issued: December 21, 2012