

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

In the Matter of

CERTAIN FLASH MEMORY
CONTROLLERS, DRIVES, MEMORY
CARDS, AND MEDIA PLAYERS AND
PRODUCTS CONTAINING SAME

Investigation No. 337-TA-619

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 has been no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in this investigation, and has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Esq., 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 December 12, 2007, based on a complaint filed by SanDisk Corporation of Milpitas, CA. 72 *Fed. Reg.* 70610 (Dec. 12, 2007). 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 flash memory controllers, drives, memory cards, media players and products containing the same by reason of infringement of various claims of United States Patent Nos. 6,426,893; 6,763,424 ("the '424 patent"); 5,719,808; 6,947,332; and 7,137,011 ("the '011 patent"). Three patents and several claims were subsequently terminated from the investigation. Claims 17, 24 and 30 of the '424 patent and claim 8 of the '011 patent remain in the investigation. The complaint named nearly

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fifty respondents. Twenty-one respondents were terminated from the investigation based on settlement agreements, consent orders and withdrawal of allegations from the complaint. Five respondents defaulted. The following respondents remain in the investigation: Imation Corporation of Oakdale, MN; Imation Enterprises Corporation of Oakdale, MN; and Memorex Products, Inc. of Cerritos, CA (collectively, "Imation Respondents"); Phison Electronics Corporation of Hsinchu, Taiwan; Silicon Motion Inc. of Taiwan; Silicon Motion, Inc. of Milpitas, CA; Skymedi Corporation of Hsinchu, Taiwan; Power Quotient International Co., Ltd. of Taipei, Taiwan; Power Quotient International (HK) Co., Ltd. of Hong Kong; Syscom Development Co., Ltd. of the British Virgin Islands; PQI Corporation of Fremont, California; Kingston Technology Corporation of Fountain Valley, CA; Kingston Technology Company, Inc. of Fountain Valley, CA ; MemoSun, Inc. of Fountain Valley, CA; Transcend Information Inc. of Taipei, Taiwan; Transcend Information Inc. of Orange, CA; Transcend Information Maryland, Inc. of Linthicum, MD; Apacer Technology Inc. of Taipei Hsien, Taiwan; Apacer Memory America, Inc. of Milpitas, CA; Dane Memory S.A. of Bagnolet, France; Deantusaiocht Dane-Elec TEO of Spiddal, Galway, Ireland; Dane-Elec Corporation USA of Irvine CA; LG Electronics U.S.A., Inc. of Englewood Cliffs, New Jersey; and LG Electronics, Inc. of Seoul, South Korea.

On April 10, 2009, the ALJ issued his final ID finding no violation of section 337 by Respondents. The ALJ issued a corrected version of his final ID on April 16, 2009. The ID included the ALJ's recommended determination on remedy and bonding. In the subject ID, the ALJ found that the accused products do not infringe asserted claims 17, 24 and 30 of the '424 patent. The ALJ also found that none of the asserted claims of the '424 patent were proven to be invalid as anticipated or obvious in view of the prior art. The ALJ further found the Respondents not liable for contributory or induced infringement of the asserted claims of the '424 patent. Likewise, the ALJ found that SanDisk failed to prove that the Imation Respondents, the only respondents accused of infringing claim 8 of the '011 patent, induced or contributed to infringement of the patent. The ALJ also found that SanDisk's rights in the '011 patent were not exhausted and that claim 8 of the '011 patent satisfies the indefiniteness requirement of 35 U.S.C. § 112, second paragraph. The ALJ, however, concluded that the prior art rendered claim 8 of the '011 patent obvious.

On May 4, 2009, SanDisk and the Commission investigative attorney filed petitions for review of the ID. That same day, Respondents filed a collective contingent petition for review of the ID with respect to the '424 patent. Skymedi Corporation and the Imation Respondents, in addition to joining the collective contingent petition for review, filed individual contingent petitions for review. On May 18, 2009, the parties filed responses to the various petitions and contingent petitions for review.

On August 24, 2009, the Commission determined to review the final ID in part and requested briefing on several issues it determined to review, and on remedy, the public interest and bonding. 74 *Fed. Reg.* 44382 (Aug. 28, 2009). The Commission determined to review the claim construction of claims 17, 24 and 30 of the '424 patent; infringement of the asserted claims

of the '424 patent; validity of the '424 patent; and the ALJ's decision not to consider the Sinclair PCT publication as evidence of prior art to claim 17 of the '424 patent. *Id.*

On September 3, 2009, the parties filed written submissions on the issues on review, remedy, the public interest and bonding. On September 14, 2009, the parties filed response submissions on the issues on review, remedy, the public interest and bonding.

Having examined the record of this investigation, including the ALJ's final ID, the Commission has determined to (1) reverse the ALJ's finding that claim 17 of the '424 patent does not cover single-page updates; (2) reverse the ALJ's finding that the claim term "reading and assembling data from the first and second plurality of pages" as recited in claim 20 of the '424 patent excludes the so-called table method as disclosed in Figure 12; (3) affirm the ALJ's finding that the accused products do not infringe the asserted claims of the '424 patent; and (4) affirm the ALJ's finding that none of the asserted claims of the '424 patent were proven to be invalid as anticipated or obvious in view of the prior art considered by the ALJ. Given the Commission's affirmance of the ALJ's determination that SanDisk failed to establish that the accused controllers infringe claim 17 of the '424 patent, the Commission declines to reach the issue of whether the ALJ should have considered the Sinclair PCT publication as evidence of prior art to claim 17 of the '424 patent.

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 and 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42-46 and 210.50).

By order of the Commission.



Marilyn R. Abbott
Secretary to the Commission


Issued: October 23, 2009

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CONTAINING SAME**

337-TA-619

CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **NOTICE OF COMMISSION FINAL DETERMINATION OF NO VIOLATION OF SECTION 337; TERMINATION OF INVESTIGATION** has been served by hand upon the Commission Investigative Attorney, Christopher G. Paulraj, Esq., and the following parties as indicated, on October 23, 2009.


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