

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN BASEBAND PROCESSOR
CHIPS AND CHIPSETS, TRANSMITTER
AND RECEIVER (RADIO) CHIPS,
POWER CONTROL CHIPS, AND
PRODUCTS CONTAINING SAME,
INCLUDING CELLULAR TELEPHONE
HANDSETS**

Inv. No. 337-TA-543

**COMMISSION DETERMINATION ON THE ISSUES OF REMEDY, THE PUBLIC
INTEREST, AND BONDING;
TERMINATION OF THE INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order and a cease and desist order in the above-captioned investigation directed against certain products of respondent Qualcomm Incorporated of San Diego, California ("Qualcomm") and certain downstream products that contain them. The Commission has terminated the investigation.

FOR FURTHER INFORMATION: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-3152. Copies of the ID and all other nonconfidential 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. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. 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>.

SUPPLEMENTARY INFORMATION: On June 21, 2005, the Commission instituted an investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, based on a complaint filed by Broadcom Corporation of Irvine, California, alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain baseband processor chips and chipsets, transmitter and receiver (radio) chips, power control chips, and products containing same, including cellular telephone handsets by reason of infringement of certain claims of U.S. Patent Nos. 6,374,311; 6,714,983 (“the ‘983 patent”); 5,682,379 (“the ‘379 patent”); 6,359,872 (“the ‘872 patent”); and 6,583,675. 70 Fed. Reg. 35707 (June 21, 2005). The complainant named Qualcomm Incorporated of San Diego, California (“Qualcomm”) as the only respondent. The ‘379 and ‘872 patents were terminated from this investigation.

On October 19, 2006, the presiding administrative law judge (“ALJ”) issued an Initial Determination on Violation of Section 337 and a Recommended Determination on Remedy and Bond (collectively, “ID”), finding a violation of section 337. On December 8, 2006, the Commission issued a notice of its decision to review and modify in part the ALJ’s final ID. The modification made by the Commission did not affect the finding of violation. The Commission also requested the parties to the investigation, interested government agencies, and any other interested persons to file written submissions on the issues of remedy, the public interest, and bonding.

On January 25, 2007, respondent Qualcomm moved, *inter alia*, for oral argument and hearing on the issues of remedy and the public interest. On March 21-22, 2007, the Commission held a public hearing on the issues of remedy and the public interest. Subsequently, the Commission extended the target date for completion of this investigation to June 7, 2007.

Having reviewed the record in this investigation, including the written submissions of the parties and the testimony at the Commission public hearing, the Commission has made the following determinations on the issues of remedy, the public interest, and bonding.

The Commission has determined that the appropriate form of relief is, *inter alia*, a limited exclusion order prohibiting the unlicensed entry of baseband processor chips or chipsets, including chips or chipsets incorporated into circuit board modules and carriers, manufactured abroad by or on behalf of Qualcomm or any of its affiliated companies, parents, subsidiaries, contractors, or other related business entities, or their successors or assigns, that are programmed to enable the power saving features covered by claims 1, 4, 8, 9, or 11 of the ‘983 patent, as well as handheld wireless communications devices, including cellular telephone handsets and PDAs, containing Qualcomm baseband processor chips or chipsets that are programmed to enable the power saving features covered by claims 1, 4, 8, 9, or 11 of the ‘983 patent. The Commission limited exclusion order does not apply to computer data cards. Also exempted from the Commission limited exclusion order are handheld_wireless communications devices that are of the same models as handheld_wireless

communications devices that were being imported into the United States for sale to the general public on or before the date of the Commission limited exclusion order. The exempted models must be identifiable by specific and verifiable model numbers, denoting model-specific product specifications, features, and functions. Importers will be able to certify to the Bureau of Customs and Border Protection (“Customs”) that their products are exempted. This exemption will not apply to handheld wireless communications devices that differ in terms of model number, product specifications, features, or functions from wireless handheld communications devices that were being imported into the United States for sale to the general public on or before the date of the Commission limited exclusion order.

To assist enforcement of the exclusion order, and to aid importers seeking a good faith basis on which to certify that products are exempted as pre-existing models, we encourage importers and parties that sell downstream devices to members of the general public to supply Customs, as soon as practicable, information and supporting documentation as to those handset models that contain the infringing chips and that were being imported for sale to the general public on or before the date of the limited exclusion order. That submission should include a complete list of the product specifications, features, and functions associated with each exempted model number. Imports of prototypes, or downstream devices for use in testing, for limited-scale distribution for marketing or other purposes, or any purpose other than widespread sales to end use consumers, do not constitute imports for sale to the general public.

The Commission has also determined to issue a cease and desist order that prevents Qualcomm from engaging in certain activities in the United States related to the infringing chips.

The Commission found that, while exclusion of all downstream products could adversely affect the public interest as enumerated in section 337(d)(1) (19 U.S.C. § 1337(d)(1)), the exemption for previously imported models sufficiently ameliorates this impact such that the limited exclusion and cease and desist orders should be issued. Finally, the Commission determined that the amount of bond to permit temporary importation during the Presidential review period (19 U.S.C. § 1337(j)) shall be in the amount of one hundred (100) percent of entered value for infringing chips or chipsets imported separately, or five (5) percent of entered value per handheld wireless communications device containing infringing chips or chipsets. Pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337(j), from the day after this Order is received by the United States Trade Representative (70 *Fed. Reg.* 43251 (July 21, 2005)), this bond will be in effect until such time as the United States Trade Representative notifies the Commission that she approves or disapproves this action but, in any event, not later than sixty (60) days after the date of receipt of this action.

Vice Chairman Shara L. Aranoff, Commissioner Deanna Tanner Okun, Commissioner Charlotte R. Lane, and Commissioner Irving A. Williamson voted in favor

of the remedial orders. They provide their supporting analysis in two separate opinions. Chairman Daniel R. Pearson and Commissioner Dean A. Pinkert dissented and provide additional and dissenting views.

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

By order of the Commission.

Secretary to the Commission

Marilyn R. Abbott

Issued: June 7, 2007