

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN FLASH MEMORY AND
PRODUCTS CONTAINING SAME

Inv. No. 337-TA-685

**Order 44: INITIAL DETERMINATION Granting
Complainant's Motion For Summary Determination That The
Alpine Respondents Have Met The Importation Requirement
Of 19 U.S.C. § 1337**

Complainant Samsung Electronics, Co., Ltd. ("Samsung") moves for summary determination, pursuant to Commission Rule 210.18, that respondents Alpine Electronics, Inc. and Alpine Electronics of America, Inc. (collectively, "Alpine") have met the importation requirement of 19 U.S.C. § 1337(a)(1)(B). (Motion No. 685-38).¹ Alpine opposes Samsung's motion for summary determination.² The Commission Investigative Staff supports the motion. For the reasons explained below, the motion is granted.

By publication of a notice in the *Federal Register* on September 2, 2009, pursuant to section 337(b) of the Tariff Act of 1930, as amended, the Commission instituted this

¹ Commission Rule 210.18(b) provides that summary determination may be rendered "if pleadings and any depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a summary determination as a matter of law." 19 C.F.R. 210.18(b).

² Alpine concedes, however, "To the extent Samsung's motion seeks to establish that the Commission has jurisdiction over certain Alpine downstream products containing Spansion chips that are imported into the United States, Alpine does not oppose the Motion." Opp. at 1.

investigation to determine:

[W]hether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain flash memory or products containing same by reason of infringement of one or more of claims 1, 19, 31, and 35 of U.S. Patent No. 6,930,050 and claims 1-8, 11, and 12 of U.S. Patent No. 5,740,065, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

74 Fed. Reg. 45468 (2009). Pursuant to Orders 22 and 31, only claims 8 and 12 of the '065 patent are now asserted for infringement in this investigation.

Samsung alleges that Alpine infringes the '065 patent. Section 337(a)(B)(i) makes unlawful, "[t]he importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of articles that – (i) infringe a valid and enforceable United States patent." 19 U.S.C. § 1337(a)(B)(i).

In its complaint, Samsung identifies the accused products that infringe the '065 patent as including, but not limited to, Spansion S29GL128P11TFI010, AL008D08F102, S29GL256N11TFI010, S26GL064A90TFIR3, NS032J0LBJW0Q, S29AL032D90FT103, and S29GL256P10FI010. Compl., ¶ 2.

At the outset, as noted, Alpine concedes that "the Commission has jurisdiction over certain Alpine downstream products containing Spansion chips that are imported into the United States." Opp. at 1. Therefore, there is no real dispute in substance.

Moreover, in its Response to the Complaint, Alpine admitted that it has sold for importation and sold after importation products in the United States. Alpine's Resp. to Complaint, ¶¶ 2, 44. (

) See *e.g.*, *id.* at Nos.

56-57, 59-60, 62-63, 65-66, 68-69, 71-72, 74-75, 77-78, 80-81, 83-99, 101-108, 110-111, 113-114, 116-117, 119-120.

(

) Ex. 1, 9/1/10 Alpine's Responses and Objections

to Samsung's First Set of Interrogatories, No. 13. Alpine sells its finished products to automotive manufacturers for inclusion in automobiles and also sells stand-alone, aftermarket parts to distributors. See Ex. 2, Nagasaki Tr. at 17-20. (

) *Id.* at 30-31.

Alpine Electronics of America, Inc. is the importer of record for products that Alpine imports into the United States. *Id.* at 46-47. (

) *Id.* at 44-45.

Accordingly, in light of Alpine's admission that (

) Samsung's motion

for summary determination pursuant to Commission Rule 210.18 is granted. It is the Initial Determination that Samsung has satisfied the importation requirement of section 337 with respect to Alpine.

Within seven days of the date of this document, each party shall submit to the Office of Administrative Law Judges a statement as to whether or not it seeks to have any portion of the document redacted from the public version. The parties' submissions may be made by facsimile and, or, by hard copy. Any party seeking to have a portion of this document redacted from the public version must submit to this office a copy of this document with red brackets indicating the portion, or portions, asserted to contain confidential business information.

So Ordered.



Carl C. Charneski
Administrative Law Judge

Issued: November 30, 2010

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PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **ORDER 44** has been served by hand upon the Commission Investigative Attorney, Juan S. Cockburn, Esq., and the following parties as indicated, on DEC 22 2010.



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