

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN SEMICONDUCTOR DEVICES,
SEMICONDUCTOR DEVICE PACKAGES,
AND PRODUCTS CONTAINING SAME**

Inv. No. 337-TA-1010

**ORDER NO. 70: INITIAL DETERMINATION GRANTING MOTION FOR
SUMMARY DETERMINATION OF NO VIOLATION OF
SECTION 337 BY RESPONDENTS AVAGO TECHNOLOGIES
LIMITED AND AVAGO TECHNOLOGIES U.S. INC.**

(February 27, 2017)

On January 26, 2017, Respondents Avago Technologies Limited and Avago Technologies U.S. Inc. (the “Avago Respondents”) filed a motion for summary determination of no violation of section 337 (Motion Docket No. 1010-072). Complainants Tessera Technologies, Inc., Tessera, Inc., and Invensas Corporation (“Tessera”) filed a response in opposition on February 6, 2017. The Avago Respondents filed a reply brief on February 9, 2017.

Commission Rule 210.18 governing summary determination states, in part:

The determination sought by the moving party shall 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).

As identified in Tessera’s amended complaint, Avago Technologies Limited is a wholly-owned subsidiary of Broadcom Limited, and Avago Technologies U.S. Inc. is a wholly-owned subsidiary of Avago Technologies Limited. Amended Complaint ¶ 17. The amended complaint

does not allege any infringing activity by the Avago Respondents but alleges that Broadcom Corporation, another wholly-owned subsidiary of Broadcom Limited, designs, develops, manufactures, imports, sells for importation, and/or sells after importation certain products that infringe the asserted patents. *Id.* ¶¶ 18, 54-63. Tessera’s contention interrogatory responses and expert reports are similarly limited to Broadcom products and the activities of Broadcom Corporation. *See* Mot. Exs. L, M.

There are no facts in dispute on this motion, and Tessera concedes that it does not accuse the Avago Respondents of any unfair acts in violation of section 337. Tessera argues, however, that the Avago Respondents should remain part of this investigation to ensure an effective remedy, citing a concern that Broadcom Corporation or Broadcom Limited may shift certain infringing activities to the Avago Respondents. Tessera Opp. at 4-5.

Tessera points to *Certain Integrated Repeaters, Switches, Transceivers and Products Containing Same* (“*Integrated Repeaters*”), where an exclusion order included “affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns.” Inv. No. 337-TA-435, Comm’n Op. (Aug. 16, 2002). Tessera also cites *Certain Zero-Mercury-Added Alkaline Batteries, Parts Thereof, and Products Containing Same* (“*Alkaline Batteries*”), where the Administrative Law Judge granted a motion to add a parent company as a respondent. Inv. No. 337-TA-493, Order No. 17 (Aug. 20, 2003). These cases do not justify keeping the Avago Respondents in this investigation. The exclusion order language in *Integrated Repeaters* obviates Tessera’s concerns regarding the possibility of a future transfer of operations from Broadcom entities to Avago entities. If such a transfer were to occur after the close of this investigation, an exclusion order with this language, which is common in the

Commission's remedial orders,¹ could likely be enforced against any successor to Broadcom's allegedly infringing activities. Tessera's analogy to *Alkaline Batteries* is also unfounded, because Tessera has not identified any evidence that will require the Avago Respondents' participation at the hearing, and the parent entity, Broadcom Limited, will remain as a respondent in the investigation.

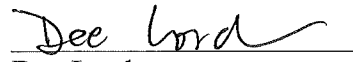
The Avago Respondents are not accused of any violation of section 337, and accordingly, these respondents must be terminated from the investigation.

I. CONCLUSION

For the reasons discussed above, Motion Docket No. 1010-072 is hereby GRANTED. There is no violation of section 337 by Respondents Avago Technologies Limited and Avago Technologies U.S. Inc., and they are hereby terminated from the investigation.

This Initial Determination, along with supporting documentation, is hereby certified to the Commission. Pursuant to Commission Rule 210.42(h), this Initial Determination shall become the determination of the Commission unless a party files a petition for review of the Initial Determination pursuant to Commission Rule 210.43(a), or the Commission, pursuant to Commission Rule 210.44, orders, on its own motion, a review of the Initial Determination or certain issues contained herein. 19 C.F.R. § 210.42(d).

SO ORDERED.



Dee Lord
Administrative Law Judge

¹ See, e.g., *Certain Table Saws Incorporating Active Injury Mitigation Technology and Components Thereof*, Inv. No. 337-TA-965, Limited Exclusion Order (Jan. 27, 2017) (exclusion order directed to "affiliated companies, parents, subsidiaries, contractors or other related business entities, or their successors or assigns").

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PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served by hand upon the following parties as indicated, on **February 27, 2017**



Lisa R. Barton, Secretary
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On Behalf of Respondents Broadcom Limited, Broadcom Corporation, Avago Technologies Limited, Avago Technologies U.S. Inc., ARRIS International plc, ARRIS Group, Inc., ARRIS Technology, Inc., ARRIS Enterprises Inc., ARRIS Solutions, Inc., Pace Ltd., Pace Americas, LLC, Pace USA, LLC, HTC Corporation, HTC America, Inc., NETGEAR, Inc., Arista Networks, Inc., Technicolor S.A., Technicolor USA, Inc., Technicolor Connected Home USA LLC, Comcast Cable Communications, LLC, Comcast Cable Communications Management, LLC, and Comcast Business Communications, LLC:

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