

PUBLIC VERSION

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

In the Matter of

**CERTAIN DC-DC CONTROLLERS AND
PRODUCTS CONTAINING SAME**

**Inv. No. 337-TA-698
(Enforcement Proceeding)**

Order No. 89: INITIAL DETERMINATION

Enforcement complainants Richtek Technology Corp. and Richtek USA, Inc. (collectively, “Richtek”), and enforcement respondent Sapphire Technology Limited (“Sapphire”) filed a motion to terminate this proceeding as to Sapphire on the basis of a settlement agreement, and a memorandum in support thereof. Motion Docket No. 698-154. A copy of their settlement agreement is attached to the motion.¹ The Commission Investigative Staff does not oppose the motion.

Enforcement respondent uPI Semiconductor Corporation (“uPI”) filed a response stating that it is “unable to either oppose or support, or to take any position as to the joint motion to terminate Sapphire.” uPI Resp. at 1. uPI argues that “a decision on the motion to terminate Sapphire should be deferred until a non-redacted version of the settlement agreement is produced to counsel for uPI and counsel is able to review and comment on the full agreement.” *Id.*²

¹ In satisfaction of the Commission’s Rules of Practice and Procedure, movants provide public and confidential versions of the settlement agreement. *See* 19 C.F.R. § 210.21(b)(1) (public versions required for certain filings). Copies of the public and confidential versions of the settlement agreement are attached to the respective public and confidential versions of this initial determination. *See* 19 C.F.R. § 210.21(b)(2) (certain documents must be certified with an initial determination terminating an investigation in whole or in part).

² *See* Order No. 88 (“Denying Motion to Require Full Disclosure of Sapphire Settlement”).

Commission Rule 210.21(b)(1) provides in relevant part that “[a]n investigation before the Commission may be terminated as to one or more respondents pursuant to section 337(c) of the Tariff Act of 1930 on the basis of a licensing or other settlement agreement.” 19 C.F.R. § 210.21(b)(1). The Commission has held that in the absence of extraordinary circumstances, termination of the investigation will be readily granted to a complainant during the prehearing stage of an investigation. *See Certain Ultrafiltration Membrane Sys. and Components Thereof, Including Ultra Membranes*, Inv. No. 337-TA-107, Comm’n Action and Order at 2 (Mar. 11, 1982); *accord Certain GPS Devices and Products Containing Same*, Inv. No. 337-TA-602, Notice of Comm’n Determination Not to Review an Initial Determination (Order No. 6) Terminating the Enforcement Proceeding and an Initial Determination (Order No. 13) Terminating the Modification Proceeding Based on a Settlement Agreement (Feb. 28, 2011). Furthermore, public policy supports termination to conserve public and private resources. *Certain Semiconductor Light Emitting Devices*, Inv. No. 337-TA-444, Order No. 7 (Jun. 27, 2001).

The pending motion complies with Commission Rules, and is in the interest of public policy. The motion was filed in advance of the evidentiary hearing that was held March 1 through March 5, 2012. Additionally, the motion was filed well in advance of the issuance of the enforcement initial determination, which is currently due on June 4, 2012. Pursuant to Commission Rule 210.21(b)(1), movants state that “[t]here are no other agreements, written or oral, express or implied, between the parties concerning the subject matter of this Investigation.” Mem. at 1 (designated page “3” in the filing); 19 C.F.R. § 210.21(b)(1). In addition, there are no extraordinary circumstances that warrant denying the motion.

Accordingly, it is the INITIAL DETERMINATION of the undersigned that Motion No. 698-154 is granted. This enforcement proceeding is terminated as to Sapphire.

Pursuant to 19 C.F.R. § 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 19 C.F.R. § 210.43(a), or the Commission, pursuant to 19 C.F.R. § 210.44, orders on its own motion a review of the initial determination or certain issues contained herein.

A handwritten signature in black ink, appearing to read "David P. Shaw", written over a horizontal line.

David P. Shaw
Administrative Law Judge

Issued: March 20, 2012

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, DC
Before the Honorable David P. Shaw
Administrative Law Judge**

In the Matter of:

**CERTAIN DC-DC CONTROLLERS AND
PRODUCTS CONTAINING THE SAME**

Investigation No. 337-TA-698

(Enforcement Proceeding)

**JOINT [PUBLIC] MOTION FOR TERMINATION OF INVESTIGATION AS TO
RESPONDENT SAPPHIRE TECHNOLOGY LIMITED ON THE BASIS OF A
SETTLEMENT AGREEMENT**

Pursuant to 19 C.F.R. § 210.21(b) Complainants Richtek Technology Corp. and Richtek USA, Inc. ("Richtek") and Respondent Sapphire Technology Limited ("Sapphire") (collectively, "Moving Parties") jointly move to terminate this Enforcement Proceeding as to Sapphire on the basis of a settlement agreement. The Moving Parties also request that the procedural schedule be stayed as to Sapphire until the ALJ determines whether to grant this Motion to Terminate.

For the reasons set forth in the supporting memorandum, the Moving Parties respectfully request that the motion be granted and that the Enforcement Proceeding be terminated with respect to the Sapphire. Granting the Moving Parties' Joint Motion to Terminate will resolve all disputes between Richtek and Sapphire.

Dated: February 29, 2012

Respectfully submitted,

/s/

Yitai Hu
Attorney for Enforcement Complainants
Richtek Technology Corp and Richtek USA

ALSTON & BIRD LLP
275 Middlefield Road, Suite 150
Menlo Park, CA 94025
Telephone: (650) 838-2000
Fax: (650) 838-2001

/s/

Bryan G. Harrison
Attorney for Enforcement Respondent
Sapphire Technology Ltd.

MORRIS, MANNING & MARTIN, LLP
1600 Atlanta Financial Center
3343 Peachtree Road, N.E.
Telephone: (404) 233-7000
Fax: (404) 365-9532

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, DC
Before the Honorable David P. Shaw
Administrative Law Judge**

In the Matter of:

**CERTAIN DC-DC CONTROLLERS AND
PRODUCTS CONTAINING THE SAME**

Investigation No. 337-TA-698

(Enforcement Proceeding)

**MEMORANDUM IN SUPPORT OF JOINT [PUBLIC] MOTION FOR TERMINATION
OF INVESTIGATION AS TO RESPONDENT SAPPHIRE TECHNOLOGY LIMITED
ON THE BASIS OF A SETTLEMENT AGREEMENT**

Complainants Richtek Technology Corp. and Richtek USA, Inc. ("Richtek") and Respondent Sapphire Technology Limited ("Sapphire") (collectively, "Moving Parties") have entered into a Binding Term Sheet ("Agreement") on February 28, 2012. The Agreement includes an agreement to terminate this Enforcement Proceeding as to Sapphire, and has been executed by the Moving Parties. There are no other agreements, written or oral, express or implied, between the parties concerning the subject matter of this Investigation. Accordingly, pursuant to 19 C.F.R. § 210.21(b), Richtek and Sapphire jointly move to terminate the Investigation as to Sapphire.

Granting this Motion is consistent with the Commission Rules and serves the public interest. Commission Rule 210.21(b)(1) provides, in relevant part: "An investigation before the Commission may be terminated as to one or more respondents pursuant to Section 337(c) of the Tariff Act of 1930 on the basis of a licensing or other settlement." 19 C.F.R. § 210.21(b)(1). The Commission Rules provide that in the case of a proposed termination by settlement agreement or consent order, the Administrative Law Judge shall consider the impact of the termination "on the public health and welfare, competitive conditions in the U.S. economy, the

production of like or directly competitive articles in the United States, and U.S. consumers.” 19 C.F.R. § 210.50(B)(2). Granting this Motion will not adversely affect these considerations. Indeed, Commission policy and the public interest generally favor settlements, which preserve resources for both the Commission and the private parties. Termination based on a settlement agreement, thus, has been routinely granted. *See, e.g., Certain Protective Cases & Components Thereof*, Inv. No. 337-TA-780, Order No. 13 at 2-3 (Sep. 22, 2011); *Certain Equip. for Telecomms or Data Commc’ns Networks, Including Routers, Switches & Hubs, & Components Thereof*, Inv. No. 337-TA-574, Order No. 27 at 4 (May 24, 2007) (terminating investigation based on settlement); *Certain Synchronous Dynamic Random Access Memory Devices, Microprocessors & Prods. Containing Same*, Inv. No. 337-TA-431, Order No. 11 at 2 (July 12, 2000). Thus, granting the present Joint Motion to Terminate will resolve this Investigation as to Sapphire, and will streamline the issues for the evidentiary hearing.

The Agreement contains Confidential Business Information within the meaning of 19 C.F.R. § 201.6, including the financial terms of the settlement. The Moving Parties therefore request that said Agreement be treated as Confidential Business Information under the Protective Order. The unredacted Agreement will be filed separately as a confidential document.¹ Per

¹ In the contemporaneously filed confidential motion to terminate, the Moving Parties requested that the Commission not provide the unredacted Agreements to Respondent uPI Semiconductor Corporation (“uPI”). *See Certain Mach. Vision Software, Mach. Vision Sys., & Prods. Containing Same*, Inv. No. 337-TA-680, Order No. 17 (Initial Determination), 2009 WL 3535542 (Oct. 26, 2009) (counsel for non-settling respondents were not entitled to receive unredacted financial terms of settlement) (“it has been recognized, both in section 337 investigations and district court cases, that forcing settling respondents and complainants to reveal the precise terms of their settlements to non-settling respondents could discourage settlements, even if such disclosures were made only to counsel who have subscribed to the protective order”); *Certain Hydraulic Excavators & Components Thereof*, Inv. No. 337-TA-582, Order No. 49, 2007 WL 2328098 (Aug. 13, 2007) (only public version of settlement agreement should be served on non-settling respondents) (“In order to foster settlement in this case, it is

Rule 210.21(b), the Moving Parties file this public motion to terminate with the public version of the Agreement, which will also be served on counsel for uPI. *See* Ex. A-Pub (containing redacted version of Agreement).

Because the public interest and Commission precedent support the termination of a pending investigation based on settlement, Complainants and the Sapphire respectfully request that the ALJ issue an initial determination terminating the above-captioned investigation as to Sapphire in accordance with the provisions of 19. U.S.C. § 1337(c) and 19 C.F.R. § 210.21(b) based on the accompanying Agreement.

In the interim in which the ALJ will decide whether to grant this Motion to Terminate, the Moving Parties request that the ALJ suspend the procedural schedule as to Sapphire to conserve the parties' resources.

necessary to protect the exact terms of the settlement agreement against disclosure to the non-settling respondents.”).

Dated: February 29, 2012

Respectfully submitted,

/s/

Yitai Hu
Attorney for Enforcement Complainants
Richtek Technology Corp and Richtek USA

ALSTON & BIRD LLP
275 Middlefield Road, Suite 150
Menlo Park, CA 94025
Telephone: (650) 838-2000
Fax: (650) 838-2001

/s/

Bryan G. Harrison
Attorney for Enforcement Respondent
Sapphire Technology Ltd.

MORRIS, MANNING & MARTIN, LLP
1600 Atlanta Financial Center
3343 Peachtree Road, N.E.
Telephone: (404) 233-7000
Fax: (404) 365-9532

Exhibit A

BINDING TERM SHEET

This Binding Term Sheet is made and entered into as of February __, 2012 (the "Effective Date") by Richtek Technology Corp. and Richtek USA, Inc. (collectively "Richtek") and Sapphire Technology Limited ("Sapphire").

RECITALS

A. Richtek filed an complaint before the United States International Trade Commission to enforce Consent Orders Respondents Sapphire and uPI Semiconductor Corporation ("uPI") entered into in Investigation No. 337-TA-698 (hereinafter "ITC Action"), the underlying action of which was initiated by Richtek, alleging certain companies, including uPI and Sapphire, engaged in unfair acts in the sale for importation, importation into, and sale in the United States after importation of certain DC-DC controllers and products containing the same by, among others, Sapphire, alleged to infringe U.S. Letters Patent 7,315,190 ("the '190 patent"), U.S. Letters Patent 6,414,470 ("the '470 patent"), U.S. Letters Patent 7,132,717 ("the '717 patent") or which were produced using and/or include trade secrets misappropriated from Richtek; specifically, Richtek is alleging that Sapphire violated its Consent Order by, *inter alia*, knowingly permitting Grand Vision, an affiliate of Sapphire, to import products containing the accused uPI products at issue into the U.S. using Sapphire's logo and trade name;

B. Richtek filed a complaint before the United States District Court for the Northern District of California, No. C09-05659, (the "District Court Action") alleging infringement of the '190 patent, the '470 patent, and the '717 patent, and naming as defendants, among others Sapphire;

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual covenants and promises set forth herein, the adequacy and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

AGREEMENT

1. Sapphire and Grand Vision, hereby agree, on behalf of their affiliated companies, including but not limited to their parents, subsidiaries, affiliated and related companies, to cease any purchase or use of uPI DC-DC converter/controller parts, made, designed or sold by uPI or any uPI affiliated companies, including but not limited to its parents, subsidiaries, related companies, distributors and agents, regardless of whether they are subject to any ITC action, in products manufactured for them, not to purchase or use such uPI products in the future and that, during the period where the existing inventory of products containing such uPI parts is sold, neither Sapphire nor Grand Vision will import, offer for sale, or sell products incorporating such uPI parts to customers in the U.S. and products incorporating such uPI parts shall be clearly marked as "Not for Importation Into the U.S."

2. Sapphire and Grand Vision covenant and agree that they will not challenge the validity of the Richtek's intellectual property rights, nor foment or assist litigation by or against Richtek based in whole or in part on the subject matter of the ITC Action or the District Court Action and will not voluntarily provide information or otherwise cooperate with any person or entity related to

BINDING TERM SHEET

or engaged by any Respondent or Defendant in the ITC Action or the District Court Action, except as required by law. Sapphire and Grand Vision further agree that any attorneys, expert witnesses or other service professionals or vendors they engaged in the ITC Action or the District Court Action will be instructed, consistent with the California Rules of Professional Conduct, to cease all work on and to refrain from any and all use of information owned by Sapphire and Grand Vision as part of their investigation of the subject matter of the ITC Action or the District Court Action. This paragraph is expressly intended to apply to the ITC Action and to the District Court Action. This agreement is not intended and should not be interpreted to restrict any entity's obligation to comply with court process or any other legal obligation.

4. Sapphire will commit itself in good faith and use its best effort to develop a business relationship with Richtek, specifically:

5. Richtek releases Sapphire and Grand Vision from any and all claims, including but not limited to claims for damages, for past infringement or past misappropriation of Richtek's intellectual property rights.

6. Richtek covenants not to sue Sapphire or Grand Vision for selling off the existing inventory of products containing any uPI DC-DC converter/controller products outside the U.S. as referenced in Paragraph 1 above.

a. Richtek will move to terminate the ITC enforcement proceeding against Sapphire and also dismiss Sapphire from the corresponding District Court Litigation; and

BINDING TERM SHEET

b. Sapphire and Richtek will immediately work on a Business Development Agreement consistent with Paragraph 6 after the ITC enforcement proceeding against Sapphire is terminated.

9. Effective Date. This Binding Term Sheet shall become effective immediately upon execution by each of the Parties.

10. Definitive Agreement. The Settling Parties shall each use all reasonable efforts to finalize and execute a Definitive Agreement in accordance with the terms and conditions of this Binding Term Sheet (the "Definitive Agreement"). In the absence of a fully-executed Definitive Agreement, the terms and conditions of this Binding Term Sheet shall bind the Settling Parties.

11. Press Release. No press release(s) relating to the Binding Term Sheet or the Definitive Agreement shall be issued unless and until all Parties agree to the issuance and the content of such a press release.

12. Confidentiality. The terms and conditions of this Binding Term Sheet and the Definitive Agreement shall remain confidential, other than to the extent disclosure is required by law or to the Settling Parties' tax advisors or auditors, who shall be instructed to abide by this confidentiality provision.

13. Choice of Law. This Binding Term Sheet and the Definitive Agreement and any and all disputes arising out of or related to this Binding Term Sheet and the Definitive Agreement shall be governed by the laws of the State of California without regard to conflict of law principles that would require application of the laws of another jurisdiction. Sapphire also consents to personal jurisdiction and venue in the Courts in California for any dispute arising under this Agreement and agrees that service of process can be accomplished by overnight mail.

14. California Civil Code § 1542 Waiver. The Parties each expressly waive the benefit of California Civil Code § 1542 (and any other statutory or common law provisions of similar effect in any applicable jurisdiction), which is set forth below, and specifically agree that the releases contained in this Binding Term Sheet shall extend to all claims arising out of actions, events, or transactions prior to the date of this Binding Term Sheet that such Settling Parties do not know or suspect to exist in their favor at this time and which arise out of or are related or connected to the subject matter of this Binding Term Sheet. Civil Code § 1542 provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Settling Parties understand and acknowledge the significance and consequences of this Binding Term Sheet and of such specific waiver of Civil Code § 1542 and expressly consent that this Binding Term Sheet shall be given full force and effect according to each and all of its express terms and provisions, including those relating to unknown and unsuspected claims, demands, obligations and causes of action, if any, as well as those relating to any other claims, demands, obligations or causes of action hereinabove specified. Each Settling Party hereto acknowledges

BINDING TERM SHEET

that the Settling Party and/or his/its attorneys may hereafter discover facts different from or in addition to those which they now know or believe to be true with respect to the claims, demands, debts, liabilities, accounts, obligations, and causes of action of every kind so released, and agrees that the release so given shall be and remain in effect as a full and complete release of the persons and entities released thereby notwithstanding any such different or additional facts.

15. Attorneys' Fees and Costs in the Action. Each Settling Party shall bear its own costs and expenses and attorneys' fees with regard to the ITC Action and District Court Action and the negotiation, drafting, and execution of this Binding Term Sheet.

16. Counterparts. This Binding Term Sheet may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

17. Entire Agreement. This Binding Term Sheet contains all of the terms and conditions agreed upon by the Settling Parties regarding the subject matter of this Binding Term Sheet. Any prior or contemporaneous agreements, promises, negotiations, or representations, either oral or written, relating to the subject matter of this Binding Term Sheet not expressly set forth in this Agreement are of no force or effect.

Richtek

Sapphire

By: _____
Name: _____
Title: _____
Dated: February __, 2012

By: _____
Name: Rita Ng
Title: CFO
Dated: February 29, 2012

Richtek USA

Grand Vision

By: _____
Name: _____
Title: _____
Dated: February __, 2012

By: _____
Name: Rita Ng
Title: CFO
Dated: February 29, 2012

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.**

**Before the Honorable David P. Shaw
Administrative Law Judge**

In the Matter of:

**CERTAIN DC-DC CONTROLLERS AND
PRODUCTS CONTAINING THE SAME**

**Investigation No. 337-TA-698
(Enforcement Proceeding)**

[PROPOSED] ORDER

The ALJ has considered Enforcement Complainants Richtek Technology Corp. and Richtek USA, Inc.'s ("Richtek") and Respondent Sapphire Technology Limited ("Sapphire") (collectively, "Moving Parties")'s Joint Motion to terminate this Enforcement Proceeding as to Sapphire on the basis of a settlement agreement executed on February 28, 2012. The Moving Parties also request that the procedural schedule be stayed as to Sapphire until the ALJ determines whether to grant this Motion to Terminate. Good cause appearing, it is hereby ORDERD that the Moving Parties' Motion is GRANTED.

David P. Shaw
Administrative Law Judge
United States International Trade Commission

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day, a true and correct copy of the foregoing

**JOINT [PUBLIC] MOTION FOR TERMINATION OF THE INVESTIGATION
AS TO RESPONDENT SAPPHIRE TECHNOLOGY LIMITED ON THE BASIS
OF A SETTLEMENT AGREEMENT AND [PROPOSED] ORDER**

was served by the indicated means to the persons at the addresses below:

| | |
|---|--|
| The Honorable James R. Holbein Secretary U.S. International Trade Commission 500 E Street, S.W., Room 112 Washington, DC 20436 | Via EDIS and hand delivery (2 copies) |
| Hon. David P. Shaw Administrative Law Judge U.S. INTERNATIONAL TRADE COMMISSION 500 E Street, S.W., Room 317 Washington, DC 20436 | By Hand Delivery (2 copies) |
| Pyong W. Yoon Attorney-Advisor to Hon. David P. Shaw Chief Administrative Law Judge | One copy in PDF format by Email to pyong.yoon@usitc.gov |
| Lisa A. Murray Commission Investigative Attorney Office of Unfair Import Investigations U.S. INTERNATIONAL TRADE COMMISSION 500 E Street, S.W., Room 401-G Washington, DC 20436 | E-mail to lisa.murray@usitc.gov |
| <i>Counsel for Respondent Sapphire Technology Limited</i> Bryan G. Harrison Morris, Manning & Martin LLP 1600 Atlanta Financial Center 3343 Peachtree Road, N.E. Atlanta, GA 30326 | Email to sapphire-itc- service@mmmlaw.com |
| <i>Counsel for Respondent uPI Semiconductor Corp.</i> Steven M. Levitan Haynes and Boone LLP 2033 Gateway Place, Suite 300 San Jose, CA 95110 | Email to Upi-itc@haynesboone.com and fm-upi-698@fostermurphy.com |

Date: February 29, 2012

A handwritten signature in black ink, appearing to read "Laura G. Williams". The signature is fluid and cursive, with a large initial "L" and a stylized "W".

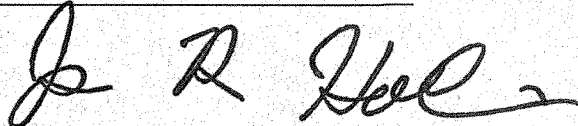
Laura G. Williams

**CERTAIN DC-DC CONTROLLERS AND
PRODUCTS CONTAINING THE SAME**

**337-TA-698
Enforcement Proceeding**

PUBLIC CERTIFICATE OF SERVICE

I, James R. Holbein, hereby certify that the attached **Order No. 89** has been served by hand upon the Commission Investigative Attorney, **Lisa A. Murray, Esq.**, and the following parties as indicated, on March 20, 2012.



James R. Holbein, Secretary
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

**Complainants Richtek Technology Corp., & Richtek
USA, Inc.:**

Yitai Hu, Esq.

ALSTON & BIRD LLP

275 Middlefield Road, Suite 150
Menlo Park, CA 94025-4008

- ☐ Via Hand Delivery
☒ Via Overnight Mail
☐ Via First Class Mail
☐ Other: _____

For Respondent Sapphire Technology Limited:

Bryan G. Harrison, Esq.

MORRIS, MANNING & MARTIN, LLP

1600 Atlanta Financial Center
3343 Peachtree Road, NE
Atlanta, Georgia 30326

- ☐ Via Hand Delivery
☒ Via Overnight Mail
☐ Via First Class Mail
☐ Other: _____

For Respondent uPI Semiconductor Corporation.:

Steven M. Levitan, Esq.

HAYNES AND BOONE, LLP

2033 Gateway Place, Suite 300
San Jose, CA 95110

- ☐ Via Hand Delivery
☒ Via Overnight Mail
☐ Via First Class Mail
☐ Other: _____

**CERTAIN DC-DC CONTROLLERS AND
PRODUCTS CONTAINING THE SAME**

**337-TA-698
Enforcement Proceedings**

PUBLIC MAILING LIST

Heather Hall
LEXIS-NEXIS
9443 Springboro Pike
Miamisburg, OH 45342

☐ Via Hand Delivery
☐ Via Overnight Mail
☒ Via First Class Mail
☐ Other: _____

Kenneth Clair
Thomson West
1100 Thirteen Street, NW, Suite 200
Washington, DC 20005

☐ Via Hand Delivery
☐ Via Overnight Mail
☒ Via First Class Mail
☐ Other: _____