

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

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U.S. INTERNATIONAL TRADE COMMISSION
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In the Matter of

CERTAIN SEMICONDUCTOR
INTEGRATED CIRCUITS USING
TUNGSTEN METALLIZATION AND
PRODUCTS CONTAINING SAME

Inv. No. 337-TA-648

**Order No. 80: Denying Motions For Summary Determination
That Relate To Validity Of The '335 Patent**

Four motions for summary determination have been filed that pertain to the question of whether the asserted claims of U.S. Patent No. 5,227,335 ("the '335 patent") are valid or invalid given the requirements of 35 U.S.C. § 102 (which relates to anticipation) and §103 (which relates to obviousness). The motions involve similar factual and legal issues. The motions are denied.

Respondents National Semiconductor Corporation, Integrated Device Technology, Inc., STMicroelectronics N.V., Grace Semiconductor Manufacturing Corporation, Spansion Inc., Nanya Technology Corporation, Powerchip Semiconductor Corporation, Cypress Semiconductor Corporation¹ and Elpida Memory, Inc. filed a motion, pursuant to 19 C.F.R. § 210.18, for summary determination of invalidity of claims 1, 3, and 4 of the '335 patent under 35 U.S.C. §§ 102 and 103. (Motion No. 648-70).²

¹ Cypress Semiconductor Corporation was terminated as a respondent in this investigation. See Order No. 74 (Initial Determination), Notice of Comm'n Determination Not to Review an Initial Determination Terminating the Investigation As to Cypress Semiconductor Corporation (May 13, 2009).

² Respondents United Microelectronics Corp., Microchip Technology, Inc., Micronas
(continued...)

Motion No. 648-70 is based on work conducted at IBM (a company that is not a party in this investigation).³ *See* Mem. at 1, 11. Movants state that the IBM work at issue was a “cornerstone” of the prior art relied upon in *Agere Sys., Inc. v. Atmel Corp.*, 2005 WL 2994702 (E.D.Pa. Aug. 17, 2005) (“the *Atmel* case”), in which both anticipation and obviousness were found. The judgement in the *Atmel* case was vacated following a settlement reached by the parties in the District Court action. *See id.* at 1 & n.1. The *Atmel* case was the subject of Order No. 26, Denying Respondent Cypress’ Joint Motion For Summary Determination That Complainants Are Precluded from Re-Litigating the ‘335 Patent.

Complainants LSI Corporation and Agere Systems, Inc. filed a response in opposition to Motion No. 648-70, which included a cross motion for summary determination of validity of claims 1, 3, and 4 of the ‘335 patent. (Motion No. 648-122). Complainants’ response and cross-motion addresses the IBM work, as well as issues relating to the *Atmel* case.

Complainants also filed a separate motion requesting summary determination that the IBM work does not anticipate claims 1, 3, or 4 of the ‘335 patent against respondents Microchip Technology, Inc., ProMOS Technologies, Inc., United Microelectronics Corporation, Micronas Holding AG,⁴ NXP Semiconductors USA, Inc.,⁵ Vanguard International Semiconductor

²(...continued)

GmbH, ProMOS Technologies, Inc. and Dongbu HiTek Semiconductor Business filed a joinder in the motion.

³ While the term “IBM prior art” is used in the motion, the undersigned has not ruled upon the question of whether or not an IBM invention disclosure and related documents constitute “prior art,” as that term is used in patent law.

⁴ Micronas GmbH has been substituted for Micronas Semiconductor Holding AG. *See* Order No. 13 (Initial Determination); Notice of Comm’n Decision Not to Review an Initial

(continued...)

Corporation,⁶ Dongbu HiTek Semiconductor Business, Qimonda AG, Jazz Semiconductor, Tower Semiconductor, Ltd. and ON Semiconductor Corporation.⁷ (Motion No. 648-86).⁸ As in the case of the aforementioned motions, this motion is based on work conducted at IBM.

Complainants filed another motion for summary determination that the alleged IBM prior art does not anticipate or render obvious claims 1, 3, or 4 of the '335 patent, specifically directed against respondent Magnachip Semiconductor, Ltd. (Motion No. 648-88).

Each of the motions for summary determination is opposed by cross-motion, opposition

⁴(...continued)

Determination Granting Motion to Amend the Complaint and Notice of Investigation (Oct. 8, 2008).

⁵ NXP Semiconductors USA, Inc. was terminated as a respondent in this investigation. *See* Order No. 47 (Initial Determination); Notice of a Comm'n Determination Not to Review an Initial Determination Terminating the Investigation As to NXP Semiconductors USA, Inc. (Mar. 31, 2009).

⁶ Vanguard International Semiconductor was terminated as a respondent in this investigation. *See* Order No. 67 (Initial Determination); Notice of a Comm'n Determination Not to Review an Initial Determination Terminating the Investigation As to Vanguard International Semiconductor Corporation (Apr. 23, 2009).

⁷ ON Semiconductor Corporation was terminated as a respondent in this investigation. *See* Order No. 66 (Initial Determination); Notice of a Comm'n Determination Not to Review an Initial Determination Terminating the Investigation As to ON Semiconductor Corporation (Apr. 23, 2009).

⁸ In opposing this motion, respondents Tower Semiconductor, Ltd. and Jazz Semiconductor correctly point out that only claim 1 of the '335 patent is asserted against them in this investigation. *See* Order No. 54 at 3-4 (summary of asserted claims). They also include in their filing a cross-motion for summary determination of invalidity of claim 1 of the '335 patent for non-enablement. (Motion No. 648-115). The cross-motion on the question of enablement was denied in Order No. 81.

or both.⁹

The motions for summary determination cut across a wide range of legal and factual issues that are material to this investigation, including issues of claim construction, and the scope and content of the prior art. Genuine issues of material fact remain, and it has not been established that any movant is entitled as a matter of law to summary determination on the validity of the asserted claims of the '335 patent.

Accordingly, Motion Nos. 648-70, 648-86, 648-88 and 648-122 are denied.

So Ordered.



Carl C. Charneski
Administrative Law Judge

Issued: May 20, 2009

⁹ Motion No. 648-89 of National Semiconductor Corporation, Integrated Device Technology, Inc., STMicroelectronics N.V., Grace Semiconductor Manufacturing Corporation, Spansion Inc., Nanya Technology Corporation, Powerchip Semiconductor Corporation, Cypress Semiconductor Corporation and Elpida Memory, Inc. for leave to reply is granted.

Motion No. 648-101 of complainants for leave to reply is granted.

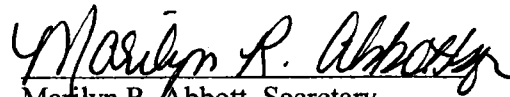
CERTAIN SEMICONDUCTOR INTEGRATED CIRCUITS USING TUNGSTEN METALLIZATION AND PRODUCTS CONTAINING SAME

INV. NO. 337-TA-648

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **ORDER** has been served upon the Commission Investigative Attorney, Ret Snotherly, Esq., and the following parties as indicated, on

MAY 21 2009



Marilyn R. Abbott, Secretary
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