

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of)	
)	
CERTAIN TUNABLE LASER CHIPS,)	Investigation No. 337-TA-662
ASSEMBLIES, AND PRODUCTS)	
)	

Order No. 15: Initial Determination Terminating The Investigation As To Respondent Bookham

On April 15, 2009, complainant JDS Uniphase Corporation (JDSU) and respondent Bookham, Inc. (Bookham) moved to terminate the investigation with respect to Bookham based on a "License And Settlement Agreement." (Motion Docket No. 662-18.)

The staff, in a response dated April 27, 2009, has represented that it has reviewed said Motion to Terminate and said License And Settlement Agreement and is of the view that the private parties satisfy all the procedural requirements of the Commission rules relating to termination based on a settlement agreement and hence it supports Motion No. 662-18.¹

Pursuant to Commission rule 210.21(a)(2), "[a]ny party may move at any time for an order to terminate an investigation in whole or in part as to any or all respondents on the basis of a settlement, a license or other agreement . . .". With respect to termination based on a settlement agreement, Commission rule 210.21(b)(1) provides in relevant part that:

A motion for termination by settlement shall contain copies of the licensing or other settlement agreement, any supplemental agreements, and a statement that there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation. If the licensing or other JDSU 1 DSU asserted only U.S. Patent Nos. 6,658,035 and

¹ The staff references Motion No. 662-16; however, Motion No. 662-18 is the correct designation for said joint motion to terminate Bookham.

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6,687,278 in this investigation. Complaint. settlement agreement contains confidential business information within the meaning of Sec. 201.6(a) of this chapter, a copy of the agreement with such information deleted shall accompany the motion.

The administrative law judge finds that Motion No. 662-18 complies with each of the requirements set forth in Commission rule 210.21(b). A copy of the License and Settlement Agreement has been provided. (Motion, Attachment 1.) In addition, JDSU states that there are no other agreements, written or oral, express or implied, regarding the subject matter of this investigation. (Motion, p. 1.)

Regarding the License and Settlement Agreement in issue, it has been executed by JDSU and Bookham and is fully effective between them. (Motion, p. 1; Attachment 1, p. 26.) In the License and Settlement Agreement, JDSU grants Bookham a license to U.S. Patent Nos. 6,658,035, 6,654,400, and 6,687,278.² (Attachment 1, p. 8.) In return, Bookham agrees to pay JDSU \$ 3,000,000 in two installments. The first installment of \$1.5 M was due April 15, 2009. (Id., p. 11.) The staff represented that counsel for complainant has informed it that this amount was paid. Bookham agrees to pay JDSU a second installment of \$1.5M within three days after the one year anniversary of the effective date, i.e. April 10, 2010. (Id. at ¶ 3.1.) Bookham also agrees to pay a royalty to JDSU on all licensed products beginning on April 10, 2010 and ending on March 31, 2015. (Id., p. 12.)

The administrative law judge is unaware of any public interest concern militating against termination of the investigation as to Bookham based on the License and Settlement Agreement. He finds nothing in the record to suggest that the License and Settlement Agreement would


² JDSU asserted only U.S. Patent Nos. 6,658,035 and 6,687,278 in this investigation. See Notice of Investigation.

impose an undue burden 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, or U.S. consumers. See 19 U.S.C. §1337(d). To the contrary Bookham may still sell the accused products under said agreement. Moreover, there is no indication that the technology at issue in this investigation is the type of product that invokes significant public health concerns.

Public interest favors settlement to avoid needless litigation and to conserve public and private resources. Certain Enhanced DRAM Devices Containing Embedded Cache Memory Registers, Components Thereof, and Products Containing Same, Inv. No. 337-TA-421, Order No. 8, (Unreviewed) Initial Determination Terminating the Investigation on the Basis of Settlement and License Agreements (December 20, 1999); Certain Remodulating Channel Selectors and Systems Containing Same, Inv. No. 337-TA-407, Order No. 4, (Unreviewed) Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement (July 31, 1998). The Administrative Procedure Act indicates that agencies should consider termination of disputes by the involved parties where “the public interest permit[s].” 5 U.S.C. §554(c)(1). Finally, the public interest favors the protection of presumptively valid intellectual property rights. Certain Two-Handle Centerset Faucets and Escutcheons, and Components Thereof, Inv. No. 337-TA-422, USITC Pub. 3332, Comm’n Op. at 9 (July 2000); Certain Recombinantly Produced Hepatitis B Vaccines and Products Containing Same, Inv. No. 337-TA-408, Order No. 7, Initial Determination Terminating the Investigation Based on Settlement (August 17, 1998).

Based on the foregoing, Motion No. 662-18 is granted.³

This initial determination, pursuant to Commission rule 210.42(c), is hereby CERTIFIED to the Commission. Pursuant to Commission rule 210.42(h)(3), this initial determination shall become the determination of the Commission within thirty (30) days after the date of service hereof unless the Commission grants a petition for review of this initial determination pursuant to Commission rule 210.43, or orders on its own motion a review of the initial determination or certain issues therein pursuant to Commission rule 210.44.


Paul J. Luckern
Chief Administrative Law Judge

Issued: May 1, 2009

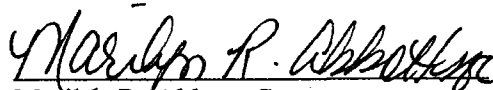
³ Order No. 14, which issued on April 24, 2009 terminated the investigation as to respondents Syntune AB and CyOptics. If the Commission determines to non review Order No. 14 and this order than the investigation is terminated in toto.

**CERTAIN TUNABLE LASER CHIPS, ASSEMBLIES,
AND PRODUCTS CONTAINING SAME**

Inv. No. 337-TA-662

CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **Initial Determination** was served has been served by hand upon the Commission Investigative Attorney, Maressa A. Frederick, Esq., and the following parties as indicated, on **MAY , 1 2009**



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AND PRODUCTS CONTAINING SAME**

Inv. No. 337-TA-662

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