

REVISED

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN SILICON MICROPHONE
PACKAGES AND PRODUCTS
CONTAINING THE SAME

Investigation No. 337-TA-629

RECEIVED
SECRETARY
OFFICE OF THE SECRETARY
U.S. INTERNATIONAL TRADE COMMISSION

NOTICE OF COMMISSION FINAL DETERMINATION OF VIOLATION OF
SECTION 337; ISSUANCE OF A LIMITED EXCLUSION ORDER; TERMINATION OF
INVESTIGATION

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that there is a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337) by respondent MEMS Technology Berhad of Malaysia ("MemsTech") in the above-captioned investigation. The Commission has issued a limited exclusion order against the respondent and has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone (202) 205-3116. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 14, 2008, based on the complaint of Knowles Electronics, LLC of Itasca, Illinois ("Knowles"). 73 *Fed. Reg.* 2277 (Jan. 14, 2008). The complaint alleges violations of section

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337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain silicon microphone packages or products containing same by reason of infringement of one or more of claims 1 and 2 of U.S. Patent No. 6,781,231 (“the ‘231 patent”), and claims 1, 2, 9, 10, 15, 17, 20, 28, and 29 of U.S. Patent No. 7,242,089 (“the ‘089 patent”). The only named respondent is Memstech.

The evidentiary hearing in this investigation was held on September 22-25, 2008. On January 12, 2009, the presiding administrative law judge (“ALJ”) issued an Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond, finding a violation of section 337. All parties to this investigation, including the Commission investigative attorney, filed timely petitions for review of various portions of the final ID, as well as timely responses to the petitions.

The Commission determined to review various portions of the final ID and issued a Notice to that effect dated March 13, 2009. 74 *Fed. Reg.* 11748 (Mar. 19, 2009). In the Notice, the Commission also set a schedule for the filing of written submissions on the issues under review, including certain questions posed by the Commission, and on remedy, the public interest, and bonding. The parties have briefed, with initial and reply submissions, the issues under review and the issues of remedy, the public interest, and bonding.

On review, the Commission has determined as follows.

(1) With respect to the ‘231 patent:

- (a) to affirm with modifications the ALJ’s finding that Memstech’s accused products infringe claims 1 and 2 of the ‘231 patent;
- (b) to affirm with modifications the ALJ’s determination that claims 1 and 2 of the ‘231 patent are not invalid due to anticipation or obviousness;

(2) With respect to the ‘089 patent:

- (a) to affirm the ALJ’s construction of the term “electrically coupled”;
- (b) to affirm with modifications the ALJ’s construction of the term “volume;”
- (c) to affirm with modifications the ALJ’s finding that Memstech accused products infringe the asserted claims of the ‘089 patent;
- (d) to affirm the ALJ’s determination that Knowles SiSonic products practice claim 1 of the ‘089 patent;
- (e) to affirm with modifications the ALJ’s determination that the asserted claims of the ‘089 patent are not invalid due to anticipation or obviousness;

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(f) to affirm the ALJ's determination that evidence shows that the commercial success of the SiSonic products is attributable to the '089 patent.

(3) to affirm the ALJ on any other findings under review except insofar as they are inconsistent with the opinion of the Commission.

The Commission determined that the appropriate form of relief in this investigation is a limited exclusion order prohibiting the unlicensed entry of silicon microphone packages that infringe claims 1 and 2 of U.S. Patent No. 6,781,231 and claims 1, 2, 9, 15, 17, 20, 28, and 29 of U.S. Patent No. 7,242,089, and that are manufactured abroad by or on behalf of, or imported by or on behalf of, MemsTech.

The Commission further determined that the public interest factors enumerated in section 337(d)(1) (19 U.S.C. § 1337(d)(1)) do not preclude issuance of the limited exclusion order. Finally, the Commission determined that there should be no bond during the period of Presidential review. The Commission's original order was delivered to the President and the United States Trade Representative on the day of its issuance.

The Commission has therefore terminated this investigation. The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and sections 210.41-.42, 210.50 of the Commission's Rules of Practice and Procedure (19 CFR § 210.41-.42, 210.50).

By order of the Commission.



Marilyn R. Abbott
Secretary to the Commission

Issued: August 18, 2009

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

In the Matter of

**CERTAIN SILICON MICROPHONE
PACKAGES AND PRODUCTS
CONTAINING THE SAME**

Inv. No. 337-TA-629

LIMITED EXCLUSION ORDER

The Commission has determined that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the unlawful importation, sale for importation, and sale after importation by MEMS Technology Berhad's ("MemsTech") silicon microphone packages that infringe claims 1 and 2 of U.S. Patent No. 6,781,231, and claims 1, 2, 9, 15, 17, 20, 28, and 29 of U.S. Patent No. 7,242,089.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry of infringing silicon microphone packages manufactured abroad by or on behalf of, or imported by or on behalf of MemsTech.

The Commission has further determined that the public interest factors enumerated in 19 U.S.C. § 1337(d) do not preclude issuance of the limited exclusion order and that respondent may import without posting bond during the period of Presidential review.

Accordingly, the Commission hereby **ORDERS** that:

1. Silicon microphone packages that are covered by claims 1 and 2 of U.S. Patent

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No. 6,781,231 and claims 1, 2, 9, 15, 17, 20, 28, and 29 of U.S. Patent No. 7,242,089, and that are manufactured abroad by or on behalf of, or imported by or on behalf of, Memstech or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns, shall be excluded from entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, for the remaining term of the patents except under license of the patent owner as provided by law.

2. At the discretion of U.S. Customs and Border Protection (“CBP”) and pursuant to procedures it establishes, persons seeking to import silicon microphone packages that are potentially subject to this Order may be required to certify that they are familiar with the terms of this Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the products being imported are not excluded from entry under paragraph 1 of this Order. At its discretion, CBP may require persons who have provided the certification described in this paragraph to furnish such records or analyses as are necessary to substantiate the certification.

3. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to silicon microphone packages that are imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.

4. The Commission may modify this Order in accordance with the procedures described in Rule 210.76 of the Commission’s Rules of Practice and Procedure, 19 C.F.R. § 210.76.

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5. The Secretary shall serve copies of this Order upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and CBP.

6. Notice of this Order shall be published in the *Federal Register*.

By Order of the Commission.

A handwritten signature in black ink, appearing to read "Marilyn R. Abbott", written in a cursive style.

Marilyn R. Abbott
Secretary to the Commission

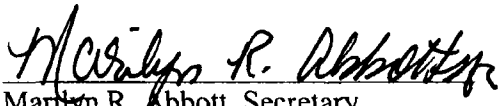
Issued: August 18, 2009

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337-TA-629

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **REVISED NOTICE OF COMMISSION FINAL DETERMINATION OF VIOLATION OF SECTION 337; ISSUANCE OF A LIMITED EXCLUSION ORDER; TERMINATION OF INVESTIGATION** has been served by hand upon the Commission Investigative Attorney, Mareesa Frederick, Esq., and the following parties as indicated, on **AUG 19 2009**.


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

FOR KNOWLES ELECTRONICS LLC:

Lyle B. Vander Schaaf, Esq.
BRYAN CAVE LLP
1155 F Street, NW
Washington, DC 20004

() Via Hand Delivery
 Via Overnight Mail
() Via First Class Mail
() Other: _____

FOR MEMS TECHNOLOGY BERHAD:

Richard D. Kelly, Esq.
**OBLON SPVAK MCCLELLAND
MAIER & NEUSTADT**
1940 Duke Street
Alexandria, VA 22314

() Via Hand Delivery
 Via Overnight Mail
() Via First Class Mail
() Other: _____

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

() Via Hand Delivery
 Via Overnight Mail
() Via First Class Mail
() Other: _____

Kenneth Clair
West Group
901 Fifteenth Street, NW
Suite 230

() Via Hand Delivery
 Via Overnight Mail
() Via First Class Mail
() Other: _____

Washington, DC 20005

GOVERNMENT AGENCIES:

Edward T. Hand, Chief
Foreign Commerce Section
Antitrust Division
U.S. Department of Justice
450 5th Street NW – Room 11000
Washington, DC 20530
P-202-514-2464

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

U.S. Bureau of Customs and Border Protection
Intellectual Property Rights Branch
Mint Annex Building
799 9th Street, NW -7th floor
Washington, DC 20229-1177
202-325-0100

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

Elizabeth Kraus, Deputy Director
International Antitrust, Office of
International Affairs
Federal Trade Commission
600 Pennsylvania Avenue, Room 498
Washington, DC 20580
P-202-326-2649

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

Richard Lambert, Esq.
Office of Technology Development Services
Dept. of Health & Human Services
National Institutes of Health
6610 Rockledge Drive - Room 2800
MSC 6606
Bethesda, MD 20892
P-301-496-2644

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