

PUBLIC VERSION

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

In the Matter of

CERTAIN INTEGRATED CIRCUITS,
CHIPSETS, AND PRODUCTS
CONTAINING SAME INCLUDING
TELEVISIONS, MEDIA PLAYERS, AND
CAMERAS

Inv. No. 337-TA-709

Order No. 23: Denying Complainant's Motion No. 709-35 For Summary Determination Of Infringement Of Claims 1 And 2 Of The '306 Patent

On September 30, 2010, complainant Freescale Semiconductor, Inc.'s (Freescale) moved for summary determination of infringement of claims 1 and 2 of U.S. Patent No. 7,199,306 (the '306 patent) (Motion Docket No. 709-35.)

The staff, in a response dated October 12, 2010, argued that Motion No. 709-35 should be denied.

Respondents Panasonic Corporation, Panasonic Corporation of North America, Victor Company of Japan Limited, JVC Americas Corp. Best Buy.com, LLC., Best Buy Purchasing, LLC, Best Buy Stores, L.P., B & H Foto & Electronics Corp., Buy.com Inc., Liberty Media Corporation, QVC Inc., Crutchfield Corporation, Wal-Mart Stores, Inc., and Computer Nerds International, Inc. ("respondents") argued that complainant Freescale has failed to meet its burden of proof to demonstrate that there is no triable issue of fact; that in addition to failing to provide any claim constructions, Freescale cannot demonstrate that the claimed limitation of independent claim 1, including select[ion] of the substrate thickness and the size of each of the N by M array such that the planarity variations are maintained as less than 0.15 mm; that there are

no citations to the evidence; and that it concedes that its third party consultant failed to conduct any of the testing required by the '306 patent.

No other party responded to Motion No. 709-35.

Summary determination "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 judgment as a matter of law." See Commission rule 210.18(b) (2010). Rule 210.18 is analogous to Rule 56 of the Federal Rules of Civil Procedure. FED. R. CIV. P. 56; see Certain Digital Processors and Digital Processing Systems, Components Thereof, and Products Containing Same, Inv. No. 337-TA-559, 2006 ITC LEXIS 522, at * 6, Order No. 13 (Sept. 6, 2006) (collecting cases). Summary determination is appropriate only when the relevant, material facts are so clear and beyond dispute that a hearing on the matter at issue would serve no useful purpose and the movant is entitled to judgment as a matter of law. Certain Recombinant Erythropoietin, Inv. No. 337-TA-281, 1989 ITC LEXIS 7, at *103, Initial Determination (Jan. 10, 1989).

The moving party bears the initial burden of establishing that there is an absence of a genuine issue of material fact and it is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). If the movant satisfies its initial burden, the burden then shifts to the non-movant to demonstrate specific facts showing that there is a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986).

When evaluating a motion for summary determination, the evidence is to be examined in the light most favorable to the non-moving party, and all justifiable inferences are to be drawn in his favor. Anderson, 477 U.S. at 255; Certain Lens-Fitted Film Packages, Inv. No. 337-TA-406,

Order No. 7 at 3 (July 10, 1998). Any doubt as to the existence of a genuine issue of material fact must be resolved in favor of the non-moving party. Certain Coated Optical Waveguide Fibers and Products Containing Same, Inv. No. 337-TA-410, Order No. 6 at 3 (July 28, 1998) (denying a motion for summary determination of non-infringement). Summary determination is improper where “the record contains facts which, if explored and developed, might lead the Commission to accept the position of the non-moving party.” Id. However, “[a] party may not overcome a grant of summary judgment by merely offering conclusory statements.” TechSearch L.L.C. v. Intel Corp., 286 F.3d 1360, 1371 (Fed. Cir. 2002).

In the patent infringement context, resolution of the question of infringement requires a two-step analysis. First, the patent claims must be construed, as a matter of law, to determine their scope and meaning. Second, a factual inquiry must be conducted in order to compare the claims, as properly construed, to the accused device or process. MBO Labs., Inc. v. Becton, Dickinson & Co., 474 F.3d 1323, 1329 (Fed. Cir. 2007) (emphasis added); Zelinski v. Brunswick Corp., 185 F.3d 1311, 1315 (Fed. Cir. 1999) (citation omitted). Controlling principles that guide the resolution of this question are discussed below.

The claims of a patent define the invention to which the patentee is entitled the right to exclude. Phillips v. AWH Corp., 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (“Phillips”). Claims are construed as a matter of law. Markman v. Westview Instruments, Inc., 52 F.3d 967, 979 (Fed. Cir. 1995) (en banc), aff’d, 517 U.S. 370 (1996). The words of a claim are generally given their ordinary and customary meaning. Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed. Cir. 1996). The ordinary and customary meaning of a claim term is the meaning the term would have to a person of ordinary skill in the art at the time of the invention,

i.e., as of the effective filing date of the patent application. Phillips, 415 F.3d at 1313. The ordinary meaning of a claim term as understood by a person of ordinary skill in the art may in some circumstances be readily apparent to laymen. Brown v. 3M, 265 F.3d 1349, 1352 (Fed. Cir.2001). However, “[w]hen the parties present a fundamental dispute regarding the scope of a claim term, it is the court’s duty to resolve it.” O2 Micro Int’l Limited v. Beyond Innovation Technology Co., 521 F.3d 1351, 1362 (Fed. Cir. 2008). When giving a claim term meaning, “the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification.” Phillips, 415 F.3d at 1313. In construing the claims, the court should also consider “the patent’s prosecution history, if it is in evidence.” Markman, 52 F.3d at 976, 980.

While information extrinsic to the patent and its prosecution history may be considered, it is often “less reliable than the patent and its prosecution history.” Phillips, 415 F.3d at 1318 (noting that litigation-derived expert reports and testimony are especially suspect). “[E]xpert testimony at odds with the intrinsic evidence must be disregarded.” Network Commerce, Inc. v. Microsoft Corp., 422 F.3d 1353, 1361 (Fed. Cir. 2005) (holding that unsupported conclusions concerning patent claims provide little support for suggested claim construction). Not all extrinsic information, however, must be disregarded. For example, if “the ordinary meaning of the claim term as understood by a person of skill in the art may be readily apparent even to layjudges,” then general purpose dictionaries may be helpful. Phillips, 415 F.3d at 1314.

A patent claim may be infringed literally or under the doctrine of equivalents.

Literal infringement requires the literal presence of each and every claim limitation, as properly construed, in the accused device. TechSearch, 286 F.3d at 1371. “A device that does not literally infringe a claim may nonetheless infringe under the doctrine of equivalents if every element in the claim is literally or equivalently present in the accused device.” Sage Prods., Inc v. Devon Indus., Inc., 126 F.3d 1420, 1423 (Fed. Cir. 1997).

The ‘306 patent has one independent claim, which recites:

1. A method for assembling ball-grid array (BGA) packages, comprising the steps of: providing a plurality of BGA substrates arranged in an N by M array within a printed

 circuit board having a thickness, wherein N and M are greater than or equal to 2, each of the plurality of BGA substrates having a plurality of bond posts and a plurality of contact pads;

 attaching a semiconductor die to each of the plurality of BGA substrates, the semiconductor die having a plurality of bond pads;

 encapsulating the semiconductor die with an encapsulant;

 curing the encapsulant; and

 dividing the N by M array into separate BGA packages, wherein the size of the N by

 M array and the thickness of the printed circuit board are selected such that each of the plurality of BGA substrates maintains a planarity variation less than approximately 0.15 mm after assembly.

(emphasis added)

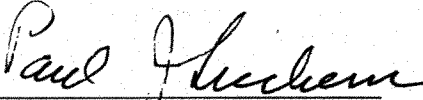
Dependent claim 2 further requires that the “providing” step in claim 1 includes the step of “providing the plurality of BGA substrates within the printed circuit board having a plurality of stress-relief slots at various locations within the printed circuit board.”

The first step in any infringement analysis is to construe the claims to determine their scope and meaning. See supra. As the staff argued Freescale seeks a summary determination of

infringement of claims 1 and 2 of the '306 patent without first construing the claims. For example, it is unclear at this time whether the "are selected such that" language of claim 1 imposes an intent requirement. In addition, Freescale does not construe "thickness" as that term appears in claim 1. Thus Freescale does not indicate whether that term requires "PCBs" of greater than 0.35 mm, or whether any dimension of the PCB would satisfy this term. See '306 patent at 3:47-50. In addition reference is made to respondents' arguments and evidence cited under the heading "IV Claims 1 And 2 Of The '306 Patent Are Not Infringed" of respondents' opposition.

Based on the foregoing and considering the burden that a complainant must meet, the administrative law judge finds that said burden has not been met. Hence, Motion No. 709-35 is denied.

This order will be made public unless a bracketed confidential version is received no later than the close of business on October 29, 2010.


Paul J. Luckern
Chief Administrative Law Judge

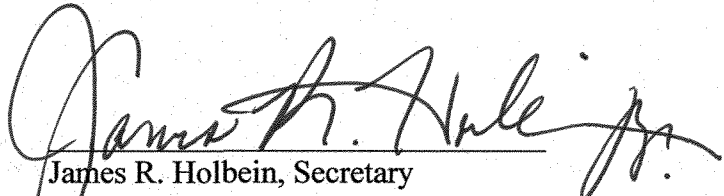
Issued: October 19, 2010

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337-TA-709

PUBLIC CERTIFICATE OF SERVICE

I, James R. Holbein, hereby certify that the attached **Public Version Order** has been served by hand upon the Office of Unfair Import Investigations, and the following parties as indicated, on
July 27, 2011.



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