

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN OPTOELECTRONIC
DEVICES, COMPONENTS THEREOF,
AND PRODUCTS CONTAINING SAME**

Inv. No. 337-TA-669

**NOTICE REGARDING INITIAL DETERMINATION ON VIOLATION OF SECTION
337 AND RECOMMENDED DETERMINATION ON REMEDY AND BONDING**

(March 12, 2010)

On this date, the ALJ issued an initial determination on violation of Section 337 and recommended determination on remedy and bond in the above-referenced investigation. Attached are the Introduction and Conclusions of Law from said filing, which are a matter of public record. A complete public version of the Initial Determination and Recommended Determination on Remedy and Bond will be issued when all the parties have submitted their redactions and the ALJ has had an opportunity to review the redactions.



Theodore R. Essex
Administrative Law Judge

Pursuant to the Notice of Investigation, 74 Fed. Reg. 10278 (2009), this is the Initial Determination of the in the matter of *Certain Optoelectronic Devices, Components Thereof, And Products Containing Same*, United States International Trade Commission Investigation No. 337-TA-669. See 19 C.F.R. § 210.42(a).

It is held that a violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, has occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain optoelectronic devices, components thereof and products containing same that infringe one or more of claims 1, 2, 3 and 5 of U.S. Patent No. 5,359,447.¹ It is further held that no violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, has occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain optoelectronic devices, components thereof and products containing same that infringe claim 6 of U.S. Patent No. 5,359,447 and one or more of claim 8 of U.S. Patent No. 5,761,229.

¹ In its post-hearing brief, Avago withdrew claim 4 from the investigation. (CIB at 5, note 2.)

CONCLUSIONS OF LAW

1. The Commission has personal jurisdiction over the parties, and subject-matter jurisdiction over the accused products.
2. The importation or sale requirement of Section 337 is satisfied.
3. The accused products infringe the claims 1, 2, 3 and 5 of the '447 Patent.
4. The accused products do not infringe claim 6 of the '447 Patent.
5. The accused products do not infringe the asserted claim of the '229 Patent
6. Respondent induces infringement of claims 1, 2, 3, and 5 of the '447 Patent.
7. Respondent contributes to the infringement of claims 1, 2, 3, and 5 of the '447 Patent.
8. Respondent does not induce or contribute to the infringement of claim 6 of the '447 Patent.
9. Respondent does not induce infringement of the asserted claim of the '229 Patent.
10. The asserted claims of the '447 Patent are not invalid under 35 U.S.C. § 102 for anticipation.
11. The asserted claim of the '229 Patent is not invalid under 35 U.S.C. § 102 for anticipation.
12. The asserted claims of the '447 Patent are not invalid under 35 U.S.C. § 103 for obviousness.
13. The asserted claim of the '229 Patent is not invalid under 35 U.S.C. § 103 for obviousness.
14. Respondent does not have an implied license to practice the asserted claims of the '447 Patent.
15. The '447 Patent is not unenforceable due to inequitable conduct.

16. The technical prong of the domestic industry requirement for the '447 Patent has been satisfied.
17. The technical prong of the domestic industry requirement for the '229 Patent has not been satisfied.
18. The economic prong of the domestic industry requirement for the '447 Patent and the '229 Patent has been satisfied.
19. It has been established that a violation exists of Section 337 with respect to claims 1, 2, 3, and 5 of the '447 Patent.
20. It has not been established that a violation exists of Section 337 with respect to claim 6 of the '447 Patent and the asserted claim of the '229 Patent.

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CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **NOTICE INITIAL DETERMINATION ON VIOLATION OF SECTION 337 AND RECOMMENDED DETERMINATION ON REMEDY AND BOND** has been served by hand upon, the Commission Investigative Attorney, **Christopher G. Paulraj, Esq.** and the following parties as indicated on March 12, 2010.



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