

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C.

In the Matter of

CERTAIN FLASH MEMORY AND  
PRODUCTS CONTAINING SAME

Inv. No. 337-TA-685

**Order 45: INITIAL DETERMINATION Granting  
Complainant's Motion For Summary Determination That The  
D-Link Respondents Have Met The Importation Requirement  
Of 19 U.S.C. § 1337**

Complainant Samsung Electronics, Co., Ltd. ("Samsung") moves for summary determination, pursuant to Commission Rule 210.18, that respondents D-Link Corporation and D-Link Systems, Inc. (collectively, "D-Link") have met the importation requirement of 19 U.S.C. § 1337(a)(1)(B). (Motion No. 685-39).<sup>1</sup> D-Link opposes Samsung's motion for summary determination.<sup>2</sup> The Commission Investigative Staff supports the motion. For the reasons explained below, the motion is granted.

By publication of a notice in the *Federal Register* on September 2, 2009, pursuant to section 337(b) of the Tariff Act of 1930, as amended, the Commission instituted this

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<sup>1</sup> Commission Rule 210.18(b) provides that summary determination may 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 a summary determination as a matter of law." 19 C.F.R. 210.18(b).

<sup>2</sup> D-Link concedes, however, "D-Link does not dispute that the Commission has jurisdiction over certain D-Link System's Inc. products that contain a Spansion chip and that have been imported into the United States." Opp. at 3.

investigation to determine:

[W]hether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain flash memory or products containing same by reason of infringement of one or more of claims 1, 19, 31, and 35 of U.S. Patent No. 6,930,050 and claims 1-8, 11, and 12 of U.S. Patent No. 5,740,065, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

74 Fed. Reg. 45468 (2009). Pursuant to Orders 22 and 31, only claims 8 and 12 of the '065 patent are now asserted in this investigation.

Samsung alleges that Spansion infringes the '065 patent. Section 337(a)(B)(i) makes unlawful, “[t]he importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of articles that – (i) infringe a valid and enforceable United States patent.” 19 U.S.C. § 1337(a)(B)(i).

In its complaint, Samsung identifies the accused products that infringe the '065 patent as including, but not limited to, Spansion S29GL128P11TFI010, AL008D08F102, S29GL256N11TFI010, S26GL064A90TFIR3, NS032J0LBJW0Q, S29AL032D90FT103, and S29GL256P10FI010. Compl., ¶ 2.

At the outset, as noted, “D-Link does not dispute that the Commission has jurisdiction over certain D-Link System’s Inc. products that contain a Spansion chip and that have been imported into the United States.” Opp. at 3. Therefore, there is no real dispute in substance.

Further, in D-Link’s Response to Samsung’s complaint, D-Link admits that D-Link Systems, Inc. is a subsidiary of D-Link Corporation. See 5/24/10 D-Link’s

Response to the Complaint at ¶18. (

) Ex. 3, 9/1/10 Respondent D-Link's Responses to Complainant Samsung Electronics, Co., Ltd's First Set of Interrogatories at Nos. 2-4, 7, 16, and 19. Specifically, in response to Samsung's interrogatory No. 2, D-Link states (

) *Id.*

D-Link Systems (

) *See e.g., id.* at No. 4; Ex. 1, A. Wang Tr. at 29-31. For example, according to its documents, (

) *See e.g., Ex. 3,*

9/1/10 Respondent D-Link's Responses to Complainant Samsung Electronics, Co., Ltd's First Set of Interrogatories at No. 2; Ex. 4 at DLINK-ITC00037309. D-Link has also admitted that (

) *See e.g. Ex. 3, 9/1/10 Respondent*

D-Link's Responses to Complainant Samsung Electronics, Co., Ltd's First Set of Interrogatories at No. 2 and Ex. 1.

Additionally, D-Link Systems is the importer of record for its products containing

(

) *See e.g., Ex. 3, 9/1/10*

Respondent D-Link's Responses to Complainant Samsung Electronics, Co., Ltd's First

Set of Interrogatories at No. 19; Ex. 1, A. Wang Tr. at 60.


Accordingly, in light of D-Link's admission that (

) Samsung's motion for summary

determination pursuant to Commission Rule 210.18 is granted. It is the Initial Determination that Samsung has satisfied the importation requirement of section 337.

Within seven days of the date of this document, each party shall submit to the Office of Administrative Law Judges a statement as to whether or not it seeks to have any portion of the document redacted from the public version. The parties' submissions may be made by facsimile and, or, by hard copy. Any party seeking to have a portion of this document redacted from the public version must submit to this office a copy of this document with red brackets indicating the portion, or portions, asserted to contain confidential business information.

So Ordered.

  
\_\_\_\_\_  
Carl C. Charneski  
Administrative Law Judge

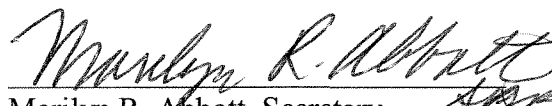
Issued: November 30, 2010

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**PUBLIC CERTIFICATE OF SERVICE**

I, Marilyn R. Abbott, hereby certify that the attached **ORDER 45** has been served by hand upon the Commission Investigative Attorney, Juan S. Cockburn, Esq., and the following parties as indicated, on DEC 22 2010.

  
Marilyn R. Abbott, Secretary *MRB*  
U.S. International Trade Commission  
500 E Street, S.W., Room 112A  
Washington, D.C. 20436

**FOR COMPLAINANT SAMSUNG  
ELECTRICS CO., LTD.:**

Christian Chadd Taylor, Esq.  
**KIRLAND & ELLIS LLP**  
555 California St.  
27<sup>th</sup> Floor  
San Francisco, CA 94104

- Via Hand Delivery  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

**FOR RESPONDENTS SPANSION, INC.,  
SPANSION LLC, D-LINK CORP.,  
D-LINK SYSTEMS, INC., ALPINE  
ELECTRONICS, INC. AND ALPINE  
ELECTRONICS OF AMERICA, INC.:**

Joel M. Freed, Esq.  
Stephen K. Shahida, Esq.  
**MCDERMOTT WILL & EMERY LLP**  
600 13<sup>th</sup> St., N. W., 12<sup>th</sup> Floor  
Washington, D.C. 20005

- Via Hand Delivery  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

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**RESPONDENTS**

**Shenzhen Egreat Co., Ltd.**

4/F, 1 Building  
Sha San Chuang Ye Industrial Park  
Sha Jing, Bao An Shenzhen, China

- Via Hand Delivery  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

**EGreat USA**

2242 Sir Francis Drake Blvd.  
Fairfax, CA 94930

- Via Hand Delivery  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

**PUBLIC MAILING LIST**

Heather Hall

**LEXIS-NEXIS**

9443 Springboro Pike

Miamisburg, OH 45342

Kenneth Clair

**THOMSON WEST**

1100 Thirteen Street, NW, Suite 200

Washington, D.C. 20005