

PUBLIC VERSION

**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 47

Respondents Spansion, LLC and Spansion, Inc. (collectively, “Spansion”) move for summary determination, pursuant to 19 C.F.R. 210.18, that the asserted claims of U.S. Patent No. 5,740,065 (“the ‘065 patent”) are not infringed or are invalid for indefiniteness under 35 U.S.C. § 112. (Motion No. 685-30). Complainant Samsung Electronics Co., Ltd. (“Samsung”) opposes the motion. For the reasons that follow, Spansion’s motion for summary determination is denied.

Spansion seeks summary determination on two grounds. The first is that “because Samsung’s own expert has confirmed that the claims require use of Equation (1) – the patent’s only disclosure for accumulatively averaging working conditions – and because () as required by the claims and by Equation (1), there should be a summary determination of non-infringement of all asserted claims.” Mem. at 7.

The second ground relied upon by respondents is that, if not limited to implementation of Equation (1), the claims are invalid as indefinite. Spansion argues that

the only disclosure of accumulatively averaging working conditions in the '065 patent is in Equation (1), and that Samsung's expert, Dr. Watts, has acknowledged that the first step of the claims requires implementing Equation (1). Spansion submits that "Dr. Watts also verified that unless the claims are limited to implementing Equation (1), they are unquestionably invalid under 35 U.S.C. § 112, ¶ 2 as indefinite." Mem. at 7-8. Spansion further submits that "Dr. Watts unambiguously testified that if someone skilled in the art were not practicing Equation (1) then that person would not know whether or not they were practicing the accumulatively averaging step of the claims." Mem. at 8, citing Ex. B (Watts Dep.) at Tr. 245.

In response, Samsung argues that the "accumulatively averaging" claim step is definite. In that regard, complainant states that Spansion's citation to the deposition of Dr. Watts, the sole basis for respondents' indefiniteness argument, is taken out of context and is incomplete. Opp. at 3. Samsung further states that Dr. Watts in fact testified that to understand a claim for the purpose of an infringement determination one would need to review the specification and take into account the preferred embodiment. Samsung also explains that Dr. Watts did not limit the "accumulatively averaging" claim phrase to Equation (1). "Instead, he testified that 'Equation 1 is the obvious way to do it' and was clearly speaking in light of Equation (1) teaching the use of a moving average, not the strained ever-increasing average that Spansion wrongly interpreted it to mean." *Id.*, citing Ex. A (Watts Dep.) at Tr. 58 & 65.¹

In addition, Samsung contends that () is exactly what is described in Equation (1). In that regard, Samsung argues that "Dr. Watts has been

¹ Samsung also argues that the claim phrase "extracting an optimal working condition" is not indefinite. Opp. at 3, citing, in part, the Expert Rebuttal Report of Dr. Spanos.

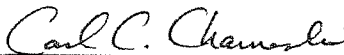
consistent in his opinion that () infringes the '065 Patent." Opp. at 4, citing Expert Report of Dr. Watts at ¶¶ 87-88, 98-100, 131-132, 239-240 & Ex. A (Watts Dep.) at Tr. 283; Ex. B (Spanos Dep.) at Tr. 174.

In sum, Samsung has succeeded in identifying that there exist genuine issues as to material facts and has shown that Spansion is not, at this time, entitled to judgment as a matter of law. 19 C.F.R. 210.18.

Accordingly, Motion No. 685-30 is denied.

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

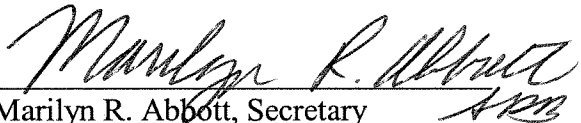
Issued: December 1, 2010

CERTAIN CERTAIN FLASH MEMORY AND PRODUCT CONTAINING SAME

INV. NO. 337-TA-685

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **ORDER NO. 47** 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
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.
27th 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 13th St., N. W., 12th Floor
Washington, D.C. 20005

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

CERTAIN CERTAIN FLASH MEMORY AND PRODUCT CONTAINING SAME

INV. NO. 337-TA-685

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