

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-494]

In the Matter of Certain Automotive Measuring Devices, Products Containing Same, and Bezels for Such Devices; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation as to Respondent Jimray Technology, Inc. on the Basis of a Consent Order; Issuance of Consent Order

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") issued by the presiding administrative law judge ("ALJ") terminating the above-captioned investigation as to respondent Jimray Technology, Inc. on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-3115. Copies of the ALJ's ID and all other nonconfidential 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, DC 20436, telephone (202) 205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<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>.

SUPPLEMENTARY INFORMATION: The Commission issued a notice of investigation dated June 16, 2003, naming Auto Meter Products, Inc. ("Auto Meter") of Sycamore, Illinois, as the complainant and twelve companies as respondents. On June 20, 2003, the notice of investigation was published in the **Federal Register**. 68 FR 37023. The complaint alleged violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain automotive measuring devices, products containing same, and bezels for such devices, by reason of infringement of

U.S. Registered Trademark Nos. 1,732,643 and 1,497,472, and U.S. Supplemental Register No. 1,903,908, and infringement of complainant's trade dress. Subsequently, seven more firms were added as respondents based on two separate motions filed by complainant, and the investigation was terminated as to four respondents on the basis of consent orders.

On June 7, 2004, the ALJ issued an ID (Order No. 30) terminating the investigation as to respondent Jimray Technology, Inc. d/b/a Progauges Co., Ltd. ("Jimray") on the basis of a settlement agreement and consent order. The ALJ observed that respondent Jimray and complainant Auto Meter filed a joint motion to terminate based on a settlement agreement between them, and a proposed consent order. The Commission investigative attorney filed a response supporting the motion to terminate the investigation. No petitions for review of the ID were filed.

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 in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: July 2, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04-15675 Filed 7-9-04; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-491 Inv. No. 337-TA-481 (consolidated)]

In the Matter of: Certain Display Controllers and Products Containing Same and Certain Display Controllers With Upscaling Functionality and Products Containing Same; Notice of Commission Determinations to Review Portions of an Initial Determination Finding a Violation of Section 337 of the Tariff Act of 1930 With Respect to one Respondent and Portions of an Initial Determination on Remand Finding a Violation of Section 337 of the Tariff Act of 1930

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part the presiding administrative law judge's ("ALJ's") initial determination

("ID") issued on May 20, 2004, on remand in Inv. No. 337-TA-481, Certain Display Controllers With Upscaling Functionality and Products Containing Same ("Display Controllers I" or "481 investigation"), and the ALJ's final ID issued on April 14, 2004, in Inv. No. 337-TA-491, Certain Display Controllers and Products Containing Same ("Display Controllers II" or "491 investigation"). The Commission has also determined to grant the motion for leave to file a reply, which motion was filed on May 13, 2004, by a respondent in the 491 investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., or Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-3061. Copies of all nonconfidential 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, DC 20436, telephone 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<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 the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted Display Controllers I on October 18, 2002, based on a complaint filed by Genesis Microchip (Delaware) Inc. of Alviso, Calif, naming Media Reality Technologies, Inc. of Sunnyvale, Calif. ("MRT"); Trumpion Microelectronics, Inc. ("Trumpion") of Taipei City, Taiwan; and SmartASIC, Inc. of San Jose, Calif. as respondents. 67 FR 64411. On January 14, 2003, the then presiding ALJ issued an ID terminating respondent SmartASIC from the investigation on the basis of a settlement agreement. That ID was not reviewed by the Commission. The final ID in Display Controllers I ("the 481 Final ID") issued on October 20, 2003. 68 FR 69719. The ALJ found no violation of section 337 based on his findings that respondents' accused products do not infringe claims 1-3, 5, 6, 9, 12, 13, 16, 17, 33-36, 38, or 39 of the '867 patent, claims 1 and 9 of the '867 patent are invalid, and that complainant Genesis has not satisfied the domestic industry requirement of section 337.

On December 5, 2003, the Commission determined to review the 481 Final ID in part. Id. The Commission determined to review portions of the ALJ's claim construction, all of the ALJ's non-infringement findings, the ALJ's finding that complainant Genesis does not practice any claims of the '867 patent, and the ALJ's findings that neither the Spartan reference nor the ACUITY Application Note anticipate the asserted claims of the '867 patent. On review of the 481 Final ID, the Commission determined to reverse portions of the ALJ's claim construction and to remand the investigation to the ALJ. On January 20, 2004, the Commission ordered that the ALJ conduct further proceedings and make any findings necessary in order to determine whether, in light of the claim construction determinations made by the Commission: (a) the accused products in the 481 investigation infringe the asserted claims of the '867 patent; (b) complainant Genesis satisfies the technical prong of the domestic industry requirement; (c) the Spartan Zoom Engine constitutes prior art to the '867 patent and whether it anticipates the asserted claims of the '867 patent; and (d) the Acuity Application Note constitutes an enabling prior art reference that anticipates the asserted claims of the '867 patent. 69 FR 3602 (Jan. 26, 2004). On review of the 481 Final ID, the Commission remanded Display Controllers I to the ALJ. 69 FR 3602 (Jan. 26, 2004). The remand order directed that the ALJ issue his findings by May 20, 2004, and set a schedule for the filing by the parties of comments on the ALJ's findings and response comments. The remand order also extended the target date for completion of the 481 investigation to August 20, 2004.

The Commission instituted Display Controllers II on April 14, 2003, based on a complaint filed on behalf of Genesis. 68 FR 17,964 (Apr. 14, 2003). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and sale within the United States after importation of certain display controllers and products containing same by reason of infringement of claims 13 and 15 of U.S. Patent No. 6,078,361 ("the '361 patent"); certain claims of the U.S. Patent No. 5,953,074 ("the '074 patent"); and certain claims of the U.S. Patent No. 6,177,922 ("the '922 patent"). The notice of investigation named three respondents: Media Reality Technologies, Inc. of Taipei, Taiwan;

MRT; and Trumpion. Id. Both Trumpion and MRT were also named respondents in Display Controllers I.

On June 20, 2003, the ALJ issued an ID (Order No. 5) amending the complaint and notice of investigation in Display Controllers II to add MStar Semiconductor, Inc. ("MStar") as a respondent, additional claims of the '074 patent, and claims 1–3, 5, 6, 9, 12, 13, 16, 17, 33–36, 38, and 39 of the '867 patent, the same patent at issue in the 481 investigation. That ID was not reviewed by the Commission. 68 FR 44,967 (July 31, 2003).

On November 10, 2003, the ALJ issued an ID (Order No. 38) granting complainant's motion to terminate the Display Controllers II investigation with respect to Trumpion, the '922 patent, and the '074 patent. That ID was not reviewed by the Commission.

On January 6, 2004, a tutorial session was held in Display Controllers II. An evidentiary hearing was held on January 6–15, 20, and February 2–3, 2004. On April 14, 2004, the ALJ issued his final ID ("the 491 Final ID") and recommended determination on remedy and bonding in Display Controllers II. In the 491 Final ID, the ALJ found a violation of section 337 with respect to respondent MStar, but no violation with respect to respondent MRT.

Complainant Genesis, respondents MRT and MStar, and the Commission investigative attorney each petitioned for review of portions of the 491 Final ID, and filed responses to the petitions for review. On May 13, 2004, respondent MStar filed a motion for leave to reply and with an attached reply.

On May 20, 2004, the ALJ issued an ID in Display Controllers I ("the 481 Remand ID") on remand. In the 481 Remand ID, the ALJ found a violation of section 337 with respect to both respondents in Display Controllers I, MRT and Trumpion.

On May 21, 2004, the Commission issued an order consolidating the 481 and 491 investigations and set the target date for completion of the consolidated investigation as August 20, 2004.

On June 2, 2004, respondent Trumpion filed a petition for review of the 481 Remand ID. On the same day, the IA filed comments on issues decided in the 481 Remand ID. On June 7, 2004, respondent MRT filed a petition for review of the 481 Remand ID. The IA and complainant Genesis filed timely responses to the petitions.

Having reviewed the record in this consolidated investigation, including the parties' written submissions, the Commission determined to grant respondent MStar's May 13, 2004,

motion for leave to file a reply, to review-in-part the 481 Remand ID, and to review-in-part the 491 Final ID.

With respect to the 481 Remand ID, the Commission determined to review: (1) the ALJ's infringement analysis with regard to the wherein clause of claims 1 and 12 (Issues I.A and I.B in the 481 Remand ID); (2) the ALJ's infringement and domestic industry analysis and findings with regard to the "receiving means" limitation in claim 12 and claims 13, 16, 17, 38, and 39 which depend from claim 12 (Issues I.A, I.B, and II.A in the 481 Remand ID); and (3) the ALJ's infringement finding with respect to Trumpion's t-0944 and t-0947 products (Issue I.B in the 481 Remand ID).

With respect to the 491 Final ID, the Commission determined to review the ALJ's construction of the following claim language in the '361 patent: "according to" (claims 13(b), 13(c), 13(e), 15(b), 15(c), and 15(e)) (Issues II.A.5, II.A.8, II.A.11, II.B.5, II.B.8, and II.B.10 in the 491 Final ID); "address generation circuit coupled to the panel control logic" (claims 13(c) and 15(c)) (Issues II.A.6 and II.B.6 in the 491 Final ID); and "wherein the address generation logic circuit selectively repeats an address for expanding the image vertically" (claim 15) (Issue II.B.11 in the 491 Final ID). The Commission also determined to review the ALJ's findings of fact and conclusions of law with respect to infringement, domestic industry, and invalidity to the extent that those findings and conclusions depend upon the ALJ's construction of the claim limitations of the '361 patent under review. The Commission further determined to review the ALJ's findings in the 491 Final ID (ID at 208–09, Issue VI.B.2.b) that claims 1 and 9 of the '867 patent are not anticipated by the '071 patent, and the ALJ's ultimate finding that the priority date for the '867 patent is February 24, 1997 (*i.e.*, the filing date for the application that matured into the '867 patent). The Commission determined to review the ALJ's findings in the 491 Final ID (ID at 208–09, Issue VI.B.2.b) that claims 2, 33, 34, 35, and 36 of the '867 patent are not anticipated by the '071 patent. The Commission determined to review the ALJ's findings of fact and conclusions of law set forth in the 491 Final ID at 211–13 under the headings Issue VI.B.3.c and VI.B.3.d, and consequently, the ALJ's conclusions that claim 36 of the '867 patent is not invalid as obvious over the '071 patent in view of either U.S. Patent No. 5,227,882 to Kato or U.S. Patent No. 5,838,381 to Kasahara. Finally, the Commission determined to review the

ALJ's infringement findings concerning claims 1, 2, 9, 33, 34, 35, and 36 of the '867 patent with respect to the timing equality limitation of the wherein clause of the '867 patent.

In connection with the final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background information, see the Commission Opinion, In the Matter of Certain Devices for Connecting Computers via Telephone Lines, Inv. No. 337-TA-360.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount to be determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues under review. The Commission is particularly interested in receiving written submissions that address the following issues:

The 481 Remand ID.

1. Do the MRT accused products literally infringe the "receiving means" limitation of claim 12 of the '867 patent (Issue I.A in the 481 Remand ID)? Please explain your position applying the requirements for establishing literal infringement of a § 112 ¶ 6 limitation in accordance with the teachings of the Court of Appeals for the Federal Circuit and citing the relevant authority and record evidence that support your position. In particular, please address the following:

(a) Whether any structure in the MRT accused products performs a function identical to the claimed function of the "receiving means" in claim 12;

(b) Provided the MRT accused products contain a structure that performs a function identical to the claimed function of the "receiving means" in claim 12, whether such a structure is identical to the corresponding structure in the '867 patent specification;

(c) Provided the MRT accused products contain a structure that performs a function identical to the claimed function of the "receiving means" in claim 12, whether such a structure is equivalent to the corresponding structure in the '867 patent specification, *i.e.*, whether any structure in the MRT accused products performs a function identical to the claimed function of the "receiving means" in claim 12 in substantially the same way to achieve substantially the same result as compared to the structure specified in the '867 patent that performs the claimed function of the "receiving means" in claim 12.

2. Do the Trumpion accused products literally infringe the "receiving means" limitation of claim 12 of the '867 patent (Issue I.B in the 481 Remand ID)? Please explain your position applying the requirements for establishing literal infringement of a § 112 ¶ 6 limitation in accordance with the teachings of the Court of Appeals for the Federal Circuit and citing the relevant authority and record evidence that support your position. In particular, please address the following:

(a) Whether any structure in the Trumpion accused products performs a function identical to the claimed function of the "receiving means" in claim 12;

(b) Provided the Trumpion accused products contain a structure that performs a function identical to the claimed function of the "receiving means" in claim 12, whether such a structure is identical to the corresponding structure in the '867 patent specification;

(c) provided the Trumpion accused products contain a structure that performs a function identical to the claimed function of the "receiving means" in claim 12, whether such a structure is equivalent to the corresponding structure in the '867 patent specification, *i.e.*, whether any structure in the Trumpion accused products performs a function identical to the claimed function of the "receiving means" in claim 12 in substantially the same way to achieve substantially the same result as compared to the structure specified in the '867 patent that performs the claimed function of the "receiving means" in claim 12.

3. Do the Genesis products at issue practice the "receiving means" limitation of claim 12 of the '867 patent (Issue II.A in the 481 Remand ID)? Please explain your position applying the requirements for establishing literal infringement of a § 112 ¶ 6 limitation in accordance with the teachings of the Court of Appeals for the Federal Circuit and citing the relevant authority and record evidence that support your position. In particular, please address the following:

(a) Whether any structure in the Genesis products at issue performs a function identical to the claimed function of the "receiving means" in claim 12;

(b) Provided the Genesis products at issue contain a structure that performs a function identical to the claimed function of the "receiving means" in claim 12, whether such a structure is identical to the corresponding structure in the '867 patent specification;

(c) Provided the Genesis products at issue contain a structure that performs a function identical to the claimed function of the "receiving means" in claim 12, whether such a structure is equivalent to the corresponding structure in the '867 patent specification, *i.e.*, whether any structure in the Genesis products at issue performs a function identical to the claimed function of the "receiving means" in claim 12 in substantially the same way to achieve substantially the same result as compared to the structure specified in the '867 patent that performs the claimed function of the "receiving means" in claim 12.

The 491 Final ID.

1. Please address (a) whether the '071 patent is prior art to the '867 patent, and (b) whether either claim 1 or 9 of the '867 patent is anticipated by the '071 patent under the Commission's claim construction, in view of the consolidated record in the 481 and 491 investigations.

2. (a) As to the ALJ's infringement findings with respect to claims 1, 2, 9, 33, 34, 35, and 36 of the '867 patent that are under review, please address whether any of MStar's accused products satisfy the timing equality limitation ("maintain an equality of equal source and destination image frame periods" (ID at 148)) of the wherein clause of claim 1 under the Commission's claim construction. Cite supporting exhibits and testimony of record relevant to this issue, and identify where this specific argument and supporting evidence regarding infringement was presented to the ALJ with citations to previous briefing. (b) Are the ALJ's findings of fact FF 129, 130, and 132 sufficient to support a finding that any of MStar's accused products satisfy the timing equality limitation of the wherein clause of claim 1 under the Commission's claim construction, and infringe claims 1, 2, 9, 33, 34, 35, or 36 of the '867 patent? Cite supporting exhibits and testimony of record, and identify where this evidence and argument was presented to the ALJ with citations to previous briefing.

3. How should the language of claims 13 and 15 of the '361 patent that is under review be construed?

(a) In light of the expert testimony of Ferraro (Trans. at 1423, 1445–51; RDX–102 at 12–15), is it legally permissible to construe "according to" to mean "based upon" in claims 13 and 15 and to mean "consistent with" in claim 5? Please cite to any relevant case law. May the same phrase appearing in two claims of the same patent be construed differently in the two claims by using different definitions for the phrase in question?

(b) Assuming that the '361 patent teaches only "front-end," and not "back-end," vertical expansion (ID at 102–04), is it legally permissible to narrow the meaning of the broad term "an address" to mean "addresses other than the memory read addresses," based on the lack of disclosure of such an embodiment in the specification? Please cite to any relevant case law.

(c) Identify any finding of fact or conclusion of law with respect to infringement, domestic industry, or invalidity in the 491 Final ID rendered clearly erroneous or legally erroneous under the proposed interpretation of the claim limitations under review. Provide supporting citations to the record.

The written submissions should be concise and thoroughly referenced to the consolidated record in this investigation, including references to exhibits and testimony. Additionally, the parties to the investigation, interested government agencies, and any

other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the ALJ's April 14, 2004, recommended determination on remedy and bonding issued in Display Controllers II, and the ALJ's October 20, 2003, recommended determination on remedy and bonding issued in Display Controllers I. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on July 16, 2004. Reply submissions must be filed no later than the close of business on July 23, 2004. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–.45 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–.45).

Issued: July 7, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–15737 Filed 7–9–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–501]

In the Matter of: Certain Encapsulated Integrated Circuit Devices and Products Containing Same; Notice of Commission Determination Not To Review an Initial Determination Granting a Motion for Summary Determination That the Importation Requirements of 19 U.S.C. 1337(A)(1)(B) Have Been Met

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") of the presiding administrative law judge ("ALJ") in the above-captioned investigation granting a motion for summary determination that the importation requirements of 19 U.S.C. 1337(A)(1)(B) have been met.

FOR FURTHER INFORMATION CONTACT:

Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of the public version of the ID and all nonconfidential 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, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (<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>.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of unfair acts in violation of section 337 of the Tariff Act of 1930 in the importation and sale of certain encapsulated integrated circuit devices and products containing same thereof on December, 19, 2003, based on a complaint filed by Amkor Technology, Inc. ("Amkor") of West Chester, Pennsylvania. The respondents named in the notice of investigation are Carsem (M) Sdn Bhd, and Carsem