

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-621]

In the Matter of Certain Probe Card Assemblies, Components Thereof and Certain Tested DRAM and NAND Flash Memory Devices and Products Containing Same; Notice of Commission Determination To Review a Final Initial Determination in Part and Set a Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding

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 final initial determination ("ID") issued by the presiding administrative law judge ("ALJ") on June 29, 2009, in the above-captioned investigation.

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) 205-3116. Copies of non-confidential 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 at <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 this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on December 19, 2007, based on a complaint filed by FormFactor, Inc. ("FormFactor") of Livermore, California. The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain probe card assemblies, components thereof, and certain tested DRAM and NAND flash memory devices and products containing same by reason of

infringement of certain claims of U.S. Patent Nos. 5,994,152; 6,509,751 ("the '751 patent"); 6,615,485; 6,624,648 ("the '648" patent); 7,168,162 ("the '162 patent"); and 7,225,538. The complaint named Micronics Japan Co., Ltd.; MJC Electronics Corp.; Phicom Corporation; and Phiam Corporation as respondents (collectively, "Respondents"). Subsequently, the '162 patent was terminated from the investigation.

On December 5, 2008, respondents Phicom Corp. and Phiam Corp., (collectively, "Phicom") jointly filed a motion for partial summary determination that claims 20 and 34 of the '648 patent are invalid as indefinite under 35 U.S.C. 112. On February 11, 2009, the ALJ issued an ID by Order No. 46. The subject ID states that "Phicom's motion * * * for summary determination that the '648 patent is invalid is * * * granted." The ID determines that claims 20 and 34, and any asserted claims depending therefrom, are invalid. Complainant FormFactor filed a petition for review of Order No. 46, which Respondents and the Commission investigative attorney oppose. On March 11, 2009, the Commission determined to review Order No. 46.

The evidentiary hearing in this investigation was held from February 24, 2009 through March 6, 2009. On June 29, 2009, the ALJ issued an Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond, finding no violation of section 337. All parties to this investigation, including the Commission investigative attorney, filed timely petitions for review of various portions of the final ID, as well as timely responses to the petitions.

Having examined the record in this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the ID in part. In particular, the Commission has determined to review: (1) The ID's finding that Japanese Patent Application Publication H10-31034 to Amamiya *et al.* ("Amamiya" or RX-166) does not anticipate the asserted claims of the '751 patent under 35 U.S.C. 102; (2) the ID's conclusion of law regarding non-infringement of the '751 patent by Phicom's accused products; (3) the ID's conclusion that no analysis of the validity of the asserted claims that depend from claim 21 of the '152 patent is needed. The Commission has determined not to review the remainder of the final ID.

On review, the Commission requests the parties to brief their positions on the issues under review with reference to

the applicable law and the evidentiary record. The Commission is particularly interested in responses to the following questions:

(1) With respect to the '751 patent: (a) What, if any, limitations are missing from the Amamiya reference such that it does not render the asserted claims of the '751 patent invalid as anticipated?

(b) Is there support for the Commission investigative attorney's and Phicom's argument that Amamiya anticipates the asserted claims of the '751 patent, *inter alia*, by inherency? In answering this question, address paragraphs 0012 and 0013 on p. 6/8 of Amamiya.

(c) Is the ID's conclusion that there has been no violation of section 337 with respect to the '751 patent supported by its own findings?

(2) With respect to the '152 patent:

(a) Is the ID's statement that "no analysis of the invalidity arguments related to anticipation and obviousness of the dependent claims will be made," ID at 191, consistent with the proper analysis under patent law? If not, what, if any, impact would such an error have on the ID's validity and infringement analyses as to the '152 patent?

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent 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, see *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (Dec. 1994) (Commission Opinion).

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 U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005. 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission. 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 submissions should be concise and thoroughly referenced to the record in this investigation. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to provide the expiration date of the '751 patent and state the HTSUS number under which the accused articles are imported. The written submissions and proposed remedial orders must be filed no later than the close of business on September 25, 2009. Reply submissions must be filed no later than the close of business on October 2, 2009. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. 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 section 201.6 of the Commission's Rules of Practice and Procedure, 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

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 sections 210.42–.46 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–.46).

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

Issued: September 14, 2009.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9–22381 Filed 9–16–09; 8:45 am]

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DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on September 10, 2009, a proposed Consent Judgment in *United States v. Genesco Inc.* No. CV–09–3917, was lodged with the United States District Court for the Eastern District of New York.

The proposed Consent Judgment resolves certain claims of the United States, on behalf of the Environmental Protection Agency ("EPA"), under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, in connection with the Fulton Avenue Superfund Site located in and around the Village of Garden City Park in Nassau County, New York ("Site"), against defendant Genesco Inc. ("Genesco"). The proposed Consent Judgment requires Genesco to implement the interim groundwater extraction and treatment remedy contained in EPA's September 28, 2007 First Operable Unit ("OU1") Record of Decision ("ROD") for the Site.

The proposed Consent Judgment provides that Genesco is entitled to contribution protection as provided by section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2) for matters addressed by the settlement.

The Department of Justice will receive for a period of 30 days from the date of this publication comments relating to the proposed Consent Judgment. Comments should be addressed to the

Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to pubcomment-ees.enrd@usdoj.gov or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *United States v. Genesco Inc.*, No. CV–09–3917, DOJ Ref. No. 90–11–2–09329.

The proposed Consent Judgment may be examined at the Office of the United States Attorney, Eastern District of New York, 610 Federal Plaza, Central Islip, New York 11722–4454. During the public comment period, the proposed Consent Judgment may also be examined on the following Department of Justice Web site, <http://www.usdoj.gov/enrd/ConsentDecrees.html>. A copy of the proposed Consent Judgment may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$46.50 (25 cents per page reproduction cost), payable to the U.S. Treasury.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–22350 Filed 9–16–09; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Pistoia Alliance, Inc.

Notice is hereby given that, on August 19, 2009, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), Pistoia Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, H. Lundbeck A/S, Valby, Denmark; UPCO, Woking, United Kingdom; Rescentris, Columbus, OH; F. Hoffmann-La Roche LTD, Basel, Switzerland; Bristol-Myers Squibb, Princeton, NJ; KNIME.com GmbH,