

**INTERNATIONAL TRADE COMMISSION**

[Investigation No. 337-TA-664]

**In the Matter of Certain Flash Memory Chips and Products Containing Same; Notice of Commission Decision Not To Review the ALJ's Final Initial Determination Finding No Violation of Section 337; Termination of Investigation****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 the presiding administrative law judge's ("ALJ") final initial determination ("ID") issued on October 22, 2010, finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in this investigation.

**FOR FURTHER INFORMATION CONTACT:**

Panyin A. Hughes, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-3042. 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:** The Commission instituted this investigation on December 18, 2008, based on a complaint filed by Spansion, Inc. and Spansion LLC both of Sunnyvale, California (collectively, "Spansion"). 73 FR 77059-061 (Dec. 18, 2008). 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 flash memory chips and products containing the same by reason of infringement of various claims of United States Patent Nos. 6,380,029 ("the '029 patent"); 6,080,639 ("the '639 patent"); 6,376,877 ("the '877

patent"); and 5,715,194 ("the '194 patent"). The '029 patent and the '639 patent were subsequently terminated from the investigation. The complaint named over thirty respondents. On March 12, 2010, the complaint and notice of investigation were amended to terminate several respondents from the investigation and to add certain entities as respondents. 75 FR 11909-910 (Mar. 12, 2010).

On October 22, 2010, the ALJ issued his final ID, finding no violation of section 337 by Respondents with respect to any of the asserted claims of the two remaining patents. Specifically, the ALJ found that the accused products do not infringe the asserted claims of the '877 patent. The ALJ also found that none of the cited references anticipated the asserted claims and that none of the cited references rendered the asserted claims of the '877 patent obvious. The ALJ further found that an industry in the United States that practices or exploits the '877 patent does not exist, nor is such an industry in the process of being established, and concluded that Spansion failed to satisfy the domestic industry requirement of section 337 (19 U.S.C. 1337(a)(2) and (3)). With respect to the '194 patent, the ALJ found that certain accused products do not infringe its asserted claims. The ALJ, however, found that other accused products met all the limitations of the asserted claims but found that a prior art reference, United States Patent No. 5,621,684 to Jung, anticipated the asserted claims and rendered them invalid. The ALJ also found that the asserted claims were not obvious in light of the references respondents relied upon to prove obviousness. The ALJ further found that an industry in the United States that practices or exploits the '194 patent does not exist, nor is such an industry in the process of being established, and concluded that Spansion failed to satisfy the domestic industry requirement of section 337.

On November 8, 2010, the Commission investigative attorney ("IA") filed a petition for review of the ID, seeking review of the ALJ's determination that Spansion failed to satisfy the domestic industry requirement by relying on licensing efforts that occurred after the complaint was filed. The next day, Respondents filed a joint contingent petition for review, asking the Commission to review certain findings in the ID in the event that the Commission decides to review the ID. Spansion did not petition the Commission for review of any findings in the ID. On November 16, 2010, Spansion filed a combined response to the IA's petition for review

and Respondents' joint contingent petition for review. Also on November 16, 2010, Respondents filed a joint response to the IA's petition for review.

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined not to review the subject ID.

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

Issued: December 23, 2010.

By order of the Commission.

**Marilyn R. Abbott,***Secretary to the Commission.*

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