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Issued October 16, 2000.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

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## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-395]

### Certain EPROM, EEPROM, Flash Memory, and Flash Microcontroller Semiconductor Devices, and Products Containing Same; Notice of Final Determination and Issuance of Limited Exclusion Order; Notice of Denial of Motions for Sanctions, for Attorney's Fees, and for Dismissal of Complaint

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and has issued a limited exclusion order in the above-captioned investigation. The Commission has also determined to deny a motion for dismissal of Atmel's complaint for unclean hands and motions for sanctions and attorney's fees.

**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.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on March 18, 1997, based upon a complaint filed by Atmel Corporation alleging that Sanyo Electric Co., Ltd. ("Sanyo"), Winbond Electronics Corporation of Taiwan and Winbond Electronics North America Corporation of California (collectively "Winbond"), and Macronix International Co., Ltd. and Macronix America, Inc. (collectively "Macronix") had violated section 337 in the sale for importation, the importation, and the sale within the United States after importation of certain erasable programmable read only memory ("EPROM"), electrically erasable programmable read only memory ("EEPROM"), flash memory,

and flash microcontroller semiconductor devices, by reason of infringement of one or more claims of U.S. Letters Patent 4,511,811 ("the '811 patent"), U.S. Letters Patent 4,673,829 ("the '829 patent"), and U.S. Letters Patent 4,451,903 ("the '903 patent") assigned to Atmel. 62 FR 13706 (March 21, 1997). Silicon Storage Technology, Inc. ("SST") was permitted to intervene in the investigation.

On March 19, 1998, the presiding administrative law judge ("ALJ") issued his final initial determination ("ID") finding that respondents had not violated section 337, based on his finding that neither the '811 patent, the '829 patent, nor the '903 patent was infringed by any product imported and sold by respondents or intervenor. He also found, that the '903 patent is unenforceable because of waiver and implied license by legal estoppel, that claims 2-8 of that patent are invalid for indefiniteness, but that the '903 patent is not unenforceable for failure to name a co-inventor. Complainant Atmel petitioned for review of the ALJ's final ID, and on May 6, 1998 the Commission determined to review most of the ALJ's findings and requested written submissions on the issues of remedy, the public interest, and bonding. 63 FR 25867 (May 11, 1998).

On review, the Commission determined that the '811 patent and the '829 patent were invalid on the basis of collateral estoppel in light of a U.S. district court decision (*Atmel Corp. v. Information Storage Devices, Inc.*, No. C-95-1987-FMS, 1998 WL 184274 (N.D. Cal. April 14, 1998)), and that the '903 patent was unenforceable for failure to name a co-inventor. The investigation was terminated with a finding of no violation of section 337.63 FR 37133 (July 9, 1998).

On August 11, 1998, after issuance of the Commission opinion, Atmel filed a petition with the U.S. Patent and Trademark Office ("PTO") to correct the inventorship of the '903 patent. The PTO granted Atmel's petition on August 18, 1998, and issued a certificate of correction on October 6, 1998.

On September 8, 1998, Atmel filed with the Commission a "Petition For Relief From Final Determination Finding U.S. Patent No. 4,451,903 Unenforceable." Respondents and the Commission's Office of Unfair Import Investigations ("OUII") filed responses to the petition. The Commission ruled on Atmel's petition on January 25, 1999. It determined to treat Atmel's petition as a petition for reconsideration, granted the petition, and reopened the record of the investigation for the limited purpose of resolving the issues arising from the

PTO's issuance of the certificate of correction for the '903 patent. The investigation was remanded to the ALJ who issued an ID on May 17, 2000, finding that complainant Atmel had committed inequitable conduct at the PTO in the procurement of the certificate of correction for the '903 patent; that the inventors listed on the PTO certificate of correction are not the correct inventors; and that no inequitable conduct was shown to have taken place at the PTO in the prosecution of the original patent application that matured into the '903 patent.

On May 30, 2000, Atmel petitioned for review of the ID of May 17, 2000, and certain orders issued by the ALJ. Respondents, intervenor, and the Commission investigative attorney ("IA") filed responses to Atmel's petition. On July 17, 2000, the Commission determined to review the ALJ's determination that the PTO certificate of correction for the '903 patent was procured inequitably; the ALJ's determination that the inventors named on the PTO certificate of correction are incorrect; the ALJ's ruling in Order No. 50 that Atmel had waived the attorney-client and attorney work product privileges; and the ALJ's ruling in Order No. 69 that Atmel bore the burden of proof by clear and convincing evidence that the inventors shown on the PTO certificate of correction are the correct inventors. The Commission requested briefs on the issues under review, and posed briefing questions for the parties to answer. The Commission also requested written submissions on remedy, the public interest, and bonding. 65 FR 45406 (July 21, 2000).

On August 28, 1998, Atmel appealed the Commission's "no violation" determination of July 2, 1998, to the U.S. Court of Appeals for the Federal Circuit. Sanyo, Winbond, Macronix, and SST intervened in support of the Commission. On November 6, 1998, Sanyo and Winbond moved to dismiss the portion of the appeal concerning the '903 patent. On December 8, 1998, the Federal Circuit stayed the appeal pending a ruling from the Commission on Atmel's then pending motion for the Commission to reconsider its prior determination on inventorship.

On February 10, 1999, Winbond filed a petition for a writ of mandamus with the Federal Circuit. Winbond asked the Federal Circuit to direct the Commission to vacate its January 25, 1999, order remanding the inventorship issue to the ALJ. Winbond argued that the Commission was without authority to grant relief from its final determination of "no violation" because

the case had been appealed to the Federal Circuit.

The Federal Circuit denied Winbond's petition for a writ of mandamus on April 16, 1999, and remanded Atmel's appeal to the Commission, stating that "[a]fter its proceedings are complete, the ITC shall issue a final determination encompassing Atmel's complaint regarding all three patents so that the parties may seek [judicial] review at that time." In *Re Winbond Electronics Corporation and Winbond Electronics North America Corporation*, Appeal No. 98-1580, Miscellaneous Docket No. 579 (Fed. Cir. April 16, 1999) (Mandate issued on June 7, 1999) at p. 4. As a result of this ruling, and the Federal Circuit's subsequent reversal of the U.S. district court decision in *Atmel Corp. v. Information Storage Devices, Inc.*, all three Atmel patents at issue were before the Commission for final determination.

The U.S. district court decision (*Atmel Corp. v. Information Storage Devices, Inc.*, No. C-95-1987-FMS, 1998 WL 184274 (N.D. Cal. April 14, 1998)) was appealed by Atmel to the Federal Circuit. On December 28, 1999, the Federal Circuit reversed and remanded the case to the district court. *Atmel Corp. v. Information Storage Devices, Inc.*, 198 F.3d 1374 (Fed. Cir. 1999).

On April 3, 2000, the Commission issued an order allowing the parties to file main briefs and reply briefs setting forth their views on intervening developments in the law as they relate to the remaining issues in investigation concerning the '811 patent, the '829 patent, and the '903 patent (all issues other than inventorship).

Having examined the record in this investigation, including the briefs and the responses thereto, the Commission determined, as noted, that there is a violation of section 337. More specifically, the Commission found that the claims in issue of the '903 patent are valid, enforceable (no incorrect inventorship), and infringed by the imports from intervenor SST and respondents Sanyo and Winbond (but not respondent Macronix), and found a violation of section 337 with regard to the '903 patent as to SST, Sanyo, and Winbond. As to the '811 and '829 patents, the Commission found that the claims in issue of those patents are valid and enforceable, but not infringed by the imports of intervenor SST or respondents Sanyo and Winbond (Atmel did not allege that Macronix infringed the claims in issue of the '811 or '829 patents), and thus found no violation of section 337 with regard to the '811 and '829 patents. The Commission also determined to affirm

the result of ALJ Order No. 50, which ordered the production of certain Atmel documents. The Commission also reversed Order No. 69 to the extent that it placed the burden of proving that the certificate of correction of the '903 patent listed the correct inventors on Atmel and vacated the ALJ's determination in Order No. 69 that PTO rule 324 does not comport with its enabling statute.

The Commission also made determinations on the issues of remedy, the public interest, and bonding. The Commission determined that the appropriate form of relief is a limited exclusion order prohibiting the importation of EPROMs, EEPROMs, flash memories, and flash microcontroller semiconductor devices, and circuit boards containing such devices, that infringe claims 1 or 9 of the '903 patent manufactured by or on behalf of Sanyo and Winbond.

The Commission also determined that the public interest factors enumerated in 19 U.S.C. 1337(d) do not preclude the issuance of the limited exclusion and that the bond during the Presidential review period should be set at \$0.78 per device.

The authority for the Commission's determinations is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.45-210.51 of the Commission's Rules of Practice and Procedure (19 CFR 210.45-210.51).

Copies of the Commission order, the Commission opinion in support thereof, 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>).

Issued: October 16, 2000.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

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## INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-434]

### Certain Magnetic Resonance Injection Systems and Components Thereof; Notice of Decision To Extend the Deadline for Determining Whether To Review an Initial Determination Granting a Motion for Summary Determination of Invalidity

**AGENCY:** International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to extend by forty (40) days, or until December 6, 2000, the deadline for determining whether to review an initial determination (ID) (Order No. 16) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:** Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-3104. 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>).

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on May 26, 2000, based on a complaint filed by Medrad, Inc. of Indianola, Pennsylvania. The complaint alleged a violation of section 337 of the Tariff Act of 1930, 337 U.S.C. 1337, based on infringement of U.S. Letters Patent Re. 36,648, (the '648 patent) owned by complainant. The respondents named in the investigation are Nemoto Kyorindo Co., Ltd. of Tokyo, Japan; Liebel-Flarshiem Co. of Cincinnati Ohio; and Mallinckrodt Inc., a New York corporation based in Hazelwood, Mo. 65 *Fed. Reg.* 34231. On September 26, 2000, the ALJ issued an ID finding the '648 patent invalid due to certain omissions that occurred during patent reissue proceedings at the U.S. Patent and Trademark Office.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and section 210.42(h)(3) of the Commission of Practice and Procedure, 19 C.F.R. 210.42(h)(3).

Copies of the nonconfidential version of the ID and all other nonconfidential