

PUBLIC VERSION

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.**

In the Matter of

**CERTAIN WIRELESS CONSUMER
ELECTRONICS DEVICES AND
COMPONENTS THEREOF**

Investigation No. 337-TA-853

**RESPONSE OF THE OFFICE OF UNFAIR IMPORT INVESTIGATIONS
TO THE PRIVATE PARTIES' PETITIONS FOR REVIEW**

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I. INTRODUCTION

On September 6, 2013, the Administrative Law Judge (“ALJ”) issued his Initial Determination on Violation of Section 337 (“ID”) in this investigation, which found that no violation of Section 337 has occurred. Concurrently, the ALJ issued a Recommended Determination on Remedy and Bond (“RD”), recommending that a limited exclusion order should issue if a violation is found, and that no bond be imposed during the Presidential review period. The RD also recommended that no cease and desist orders issue because the evidence did not show that any of the Respondents maintained commercially-significant inventories in the United States.

On September 23, 2013, Complainants Technology Properties Limited, LLC, Phoenix Digital Solutions LLC (“PDS”), and Patriot Scientific Corporation (collectively, “Complainants”) filed a petition for review of the ID and RD (“Compl. Pet.”). The ID found that none of the accused products infringe claims 1, 6, 7, 9-11, or 13-16 of the '336 patent. ID at 327. However, Complainants have only petitioned with respect to claims 6 and 13. Compl. Pet. at 3, n.1. Also on September 23, 2013, Respondents filed a contingent petition for review of the ID (“Resp. Pet.”) with respect to domestic industry.

For the reasons set forth below, OUII opposes the private parties’ petitions.

II. BACKGROUND

A. Procedural History

On July 24, 2012, Complainants Technology Properties Limited LLC, Phoenix Digital Solutions LLC, and Patriot Scientific Corporation filed a Complaint with the Commission

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pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337. Complainants allege violations of Section 337 based on infringement of claims 1, 6, 7, 9-11, and 13-16 of the '336 patent.

The Commission instituted an investigation pursuant to Commission Rule 210.10(b) by publication in the Federal Register on August 24, 2012. *See* 77 Fed. Reg. 51572-73 (August 24, 2012) (“Notice of Investigation”).

On February 4, 2013, the Commission terminated the investigation as to Sierra Wireless, Inc. and Sierra Wireless America, Inc. based on a settlement agreement. *See* Order No. 17 (January 15, 2013); Commission Determination Not to Review (February 4, 2013).

On February 8, 2013, the Commission amended the Complaint and Notice of Investigation to remove Huawei North America as a respondent and to add Huawei Device Co., Ltd., Huawei Device USA Inc., and Futurewei Technologies, Inc. as respondents. 78 Fed. Reg. 12354 (February 22, 2013).

On September 20, 2013, the Commission terminated the investigation as to Respondents Kyocera Corporation and Kyocera Communications, Inc. (“Kyocera”) on the basis of a settlement agreement. Commission Notice (September 20, 2013).

The parties participated in an evidentiary hearing on June 3-11, 2013. The ALJ issued his Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond on September 6, 2013, finding no violation of Section 337.

On September 18, 2013, Complainants, and Acer, Inc. and Acer America Corporation (collectively, “Acer”) filed a joint motion to terminate the investigation with respect to Acer on the basis of a settlement agreement. Also on September 18, 2013, Complainants and

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Amazon.com, Inc. (“Amazon”) filed a joint motion to terminate the investigation with respect to Amazon on the basis of a settlement agreement.

As of this date, the following respondents remain in this investigation: (i) Acer Inc. and Acer America Corporation (collectively, “Acer”); (ii) Amazon.com, Inc. (“Amazon”); (iii) Barnes & Noble, Inc. (“Barnes & Noble”); (iv) Garmin Ltd., Garmin International, Inc., and Garmin USA, Inc. (collectively, “Garmin”); (v) HTC Corporation and HTC America (collectively, “HTC”); (vi) Huawei Technologies Co., Ltd., Huawei Device Co., Ltd., Huawei Device USA Inc., and Futurewei Technologies, Inc. d/b/a Huawei Technologies (USA) (collectively, “Huawei”); (vii) LG Electronics, Inc. and LG Electronics U.S.A., Inc. (collectively, “LG”); (viii) Nintendo Co., Ltd. and Nintendo of America, Inc. (collectively, “Nintendo”); (ix) Novatel Wireless, Inc. (“Novatel Wireless”); (x) Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (collectively, “Samsung”); and (xi) ZTE Corporation and ZTE (USA) Inc. (collectively, “ZTE”). However, as noted above, motions to terminate on the basis of settlement have been filed with respect to Acer and Amazon.

The target date for this investigation is January 6, 2014. Order No. 3 (September 4, 2012).

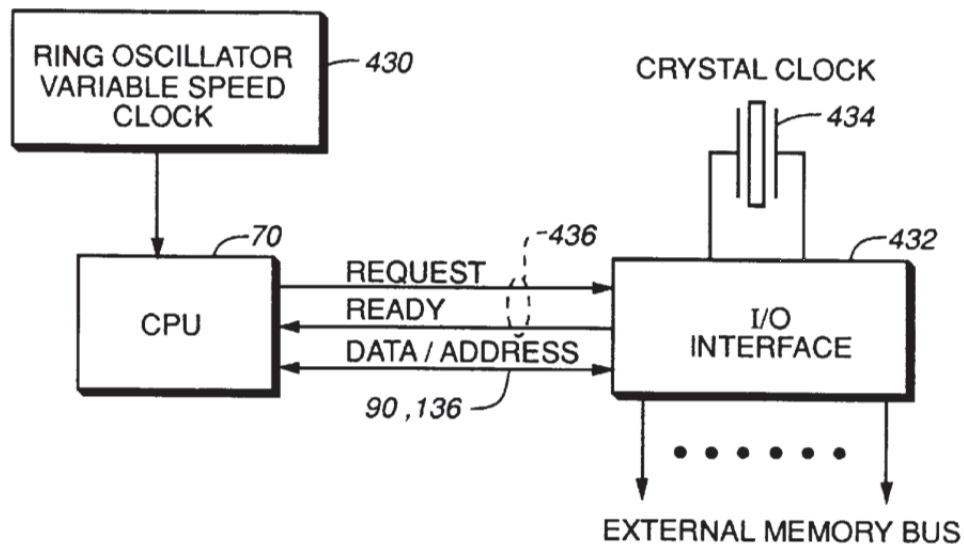
B. The Patent at Issue

U.S. Patent No. 5,809,336, titled “High Performance Microprocessor Having Variable Speed System Clock,” is the sole asserted patent in this investigation. The '336 patent relates generally to variable speed clocking schemes for use in microprocessor systems. JXM-0001, '336 patent, Abstract, Figs. 17-19, col. 16:43-17:10.

According to the patent, conventional CPU designs “must be clocked a factor of two

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slower than their maximum theoretical performance, so they will operate properly in wors[t] case conditions.” JXM-0001, '336 patent, col. 16:50-53. “Temperature, voltage, and process [variations] all affect transistor propagation delays,” and thus maximum CPU clock speed. *See id.* at col. 16:47-48. However, by implementing the system clock entirely on-chip using a ring oscillator, variations in temperature, voltage, and process will affect the ring oscillator in the same manner as they affect the processor. *See id.* at col. 16:59-17:10. Accordingly, “CPU 70 (as shown below in Fig. 17) will always execute at the maximum frequency possible, but never too fast.” *Id.* at 17:1-2. This concept is depicted in Figure 17, which shows a ring oscillator variable speed clock 430 and a CPU 70 that are implemented on the same chip:

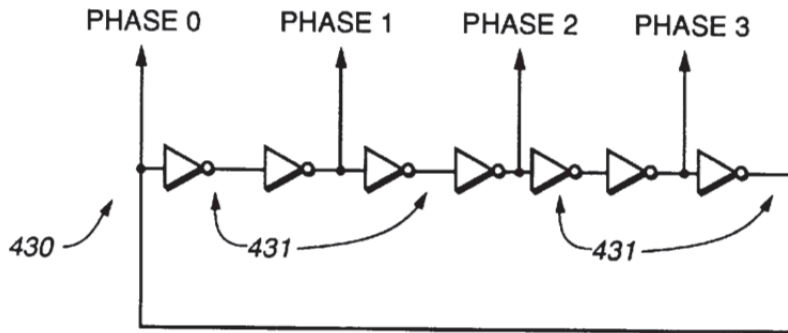


JXM-0001, '336 patent, Fig. 17. In addition to the on-chip system clock, Fig. 17 depicts an external crystal clock 434 for use in synchronizing input/output (“I/O”) communications with the external memory bus. JXM-0001, '336 patent, Fig. 17, 17:14-19.

According to the '336 patent, the ring oscillator variable speed clock 430 can be

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implemented using the type of ring oscillator shown in Fig. 18:



JXM-0001, '336 patent, Fig. 18. This bi-stable loop of seven inverters generates a clock signal at a speed that depends on the propagation delay through those inverters. *See id.* at col. 16:63-17:2. “At room temperature, the frequency will be in the neighborhood of 100 MHz. At 70 degrees Centigrade, the speed will be 50 MHz.” *Id.* at col. 16:60-63. Because the clock is implemented on-chip using the same transistors as the CPU, its performance varies with the CPU’s performance, thus compensating for temperature, voltage, and process variations and allowing the CPU to operate at the highest possible speed. *See id.* at col. 16:59-17:10. The clock speed is determined solely by its operating parameters (i.e., temperature, voltage, and process), as there are no mechanisms provided to otherwise vary or control its operating frequency. In this manner, the clock can sometimes be operated at speeds higher than worst case conditions would otherwise permit. *See id.*

II. APPLICABLE STANDARD

Commission Rule 210.43 states in relevant part that “any party to an investigation may request Commission review of an initial determination under § 210.42(a)(1) by filing a petition

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with the Secretary.” 19 C.F.R. § 210.43(a). A petition for review of an initial determination must “specify one or more of the following grounds upon which review is sought: (i) that a finding or conclusion of material fact is clearly erroneous; (ii) that a legal conclusion is erroneous, without governing precedent, rule or law, or constitutes an abuse of discretion; or (iii) that the determination is one affecting Commission policy.” 19 C.F.R. § 210.43(b)(1).

A petition for review will only be granted “if it appears that an error or abuse of the type described in paragraph (b)(1) of this section is present or if the petition raises a policy matter connected with the initial determination, which the Commission thinks it necessary or appropriate to address.” 19 C.F.R. § 210.43(d)(2).

III. COMPLAINANTS’ PETITION FOR REVIEW

Complainants petition seeks review of eight issues related to the ID’s findings and conclusions with respect to claims 6 and 13 of the '336 patent. Specifically, Complainants seek review of the following issues: (i) the proper construction of the “entire oscillator” limitations of claims 6 and 13; (ii) certain of the ID’s findings of fact and conclusions of law with respect to the “entire oscillator,” “varying,” and “independent” limitations of claims 6 and 13, and the “asynchronous” limitation of claim 13; (iii) and the RD’s finding that no cease and desist orders should issue. Compl. Pet. at 1. For the reasons set forth below, OUII is of the view that the Commission should not review the ID.

A. The “Entire Oscillator” Limitations of Claims 6 and 13 Have Been Properly Construed

In light of the intrinsic evidence, Order No. 31 properly construes the phrase “an entire oscillator disposed upon said integrated circuit substrate” in claims 6 and 13 to mean “an

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oscillator that is located entirely on the same semiconductor substrate as the CPU and does not rely on a control signal or an external crystal/clock generator to generate a clock signal.” Order No. 31 at 40-41 (April 18, 2013). Unlike the construction advanced by Complainants, the ALJ’s construction is consistent with the language of the specification of the '336 patent, and its prosecution history.

In this respect, the patentee amended the claims at issue during prosecution so as to distinguish the claimed invention from U.S. Patent No. 4,503,500 (“Magar”). JXM-0015. Magar discloses an on-chip clock generator that relies upon off-chip components to determine clock frequency, namely, an external crystal, which was allegedly distinct from the claimed invention. JXM-0016, at TPL853_02954559 (“In response, the independent claims have been rewritten to specify that the entire ring oscillator variable speed system clock, variable speed clock or oscillator be provided in the integrated circuit, in order to sharpen the distinction over prior art. Because the prior art does not provide an entire ring oscillator variable speed system clock, variable speed clock or oscillator in the integrated circuit, in that the prior art circuits require an external crystal, the prior art fails to teach or suggest the invention now claimed.”). The patentee further explained that “[a]s a self-contained on-chip circuit, Magar’s clock gen is distinguished from an oscillator in at least that it lacks the crystal or external generator that it requires.” *Id.* at TPL853_02954560; *see also id.* at TPL853_02954561 (“The Magar teaching is well known in the art as a conventional crystal controlled oscillator. It is specifically distinguished from the instant case in that it is both fixed-frequency (being crystal based) and requires an external crystal or external frequency generator.”). Indeed, the fixed-frequency clocking system used by Magar suffered from the same deficiencies as other conventional

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clocking schemes, thus requiring that clock speeds be fixed slow enough to enable operation under worst case conditions.

Similarly, in distinguishing U.S. Patent No. 4,670,837 (RXM-0021) (“Sheets”), the patentee asserted that “[t]he present invention does not [] rely upon provision of frequency control information to an external clock, but instead contemplates providing a ring oscillator clock and the microprocessor within the same integrated circuit. The placement of these elements within the same integrated circuit obviates the need for provision of the type of frequency control information described by Sheets, since the microprocessor and clock will naturally tend to vary commensurately in speed as a function of various parameters (e.g., temperature) affecting circuit performance.” JXM-0017 at TPL853_02954574. These disclaimers made with respect to Magar and Sheets confirm that the claimed invention excludes an oscillator that relies on a control signal or an external crystal/clock generator to generate a clock signal.

Complainants’ proposed construction is improper because it fails to reflect these disclaimers. OUII is thus of the view that the ALJ’s construction for the “entire oscillator” limitations of claims 6 and 13 is correct. Accordingly, OUII opposes Complainants’ petition for review on this issue.

- B. Complainants Fail to Identify Any Erroneous Findings of Fact or Conclusions of Law**
 - 1. The ID’s Findings of Fact and Conclusions of Law With Respect to the “Entire Oscillator” Limitations of Claims 6 and 13 Are Not Clearly Erroneous**

Complainants next seek review of the ID on the grounds that the ALJ committed clear

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error by failing to consider evidence that all accused products include ring oscillators. Compl. Pet. at 7. In this regard, Complainants are incorrect. The parties presented conflicting evidence at trial, and in view of the absence of evidence supporting the contentions of Complainants expert, the ID therefore properly rejected Dr. Oklobdzija's testimony that certain Qualcomm chips include the requisite oscillator based on their use of PLLs. ID at 118-119. In this respect, Complainants only identified PLLs but failed to adduce direct evidence as to the design and implementation of those PLLs such that one could determine whether the "entire oscillator" limitation is met. However, despite Complainants' arguments to the contrary, the ALJ's analysis does not end there.

The ID goes on to fully consider each argument set forth by Complainants. *See* ID at 119-132. Based on all of the evidence adduced by the parties, the ID correctly found that even PLLs containing ring oscillators do not satisfy the "entire oscillator" limitations. ID at 124 ("[T]he oscillators in *all* of the Accused Products rely on control signals from within the PLL (Tr. (Subramanian) at 1316-32), and on an external crystal/clock generator to generate a clock signal (Tr. (Subramanian) at 1304-1316).") (emphasis added).

Indeed, Complainants' expert, Dr. Oklobdzija, testified that the alleged ring oscillators in the accused products rely on delays to generate clock signals:

Q. The ring oscillator generates a clock signal, but does it rely on an external clock generator to generate a clock signal?

A. As I explained in my explanation of how ring oscillators oscillate, everyone in this courtroom can conclude that it does not rely on anything else but on delay between -- delays that inverters introduce in the loop.

Tr. (Oklobdzija) at 414:7-14. But these delays are controlled by PLLs based on external clock

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references. Tr. (Oklobdzija) at 1058:19-24. Dr. Oklobdzija explained that the PLL functions like a water faucet. “[T]he water faucet, you are controlling how much water goes through, and that affects how fast or how slow it's going to oscillate.” *Id.* In other words, the PLL controls the delay that Dr. Oklobdzija admitted is relied on by the alleged oscillator/clock to generate a clock signal:

Q. Now, changing the off-chip crystal frequency FIN in this equation will result in a change of the PLL's output frequency. Correct?

A. Because the phase comparator will see the difference and will try to adjust the VCO closer so that they match.

Q. So the answer to my question is yes?

A. It would be changed -- the output frequency would be changed if the input frequency changes. That's what PLL does.

Tr. (Oklobdzija) at 967:12-21.

Dr. Oklobdzija further explains that the PLL relies on the reference frequency to adjust the frequency of the clock signal. Tr. (Oklobdzija) at 375:6-12 (“This is a reference that I rely on and a reference that I relied stable, or it's a reference that I want to be -- I want this clock to run with respect to that reference.[] Now, that reference comes from outside.”). Dr. Oklobdzija thus testified:

The system clock -- and I said it many times here, also. The system clock is supplied by the on-chip ring oscillator. In other words, the ring oscillator generates the clock, and that is the timing signal that goes and clocks the CPU.

The PLL, the purpose of the PLL is to set that VCO into a desired range, as we have seen also here, through the formulas, which says, “Okay, we want it to be here; no, we want it to shift over there.” And that is done. How do you do it? Because you cannot

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multiply. You use the second reference and say, “Okay, with respect to that reference, I want to be 20 yards away, or with respect to this reference I want to be 5 yards away from it, or with respect to this reference I want to be 100 yards away.”

So you need the reference in order to set it where you want to set it. This is why reference is needed. So what PLL does, it needs the reference to put it where it doesn't want to put it, because PLL doesn't know. PLL can only say, “Okay, where do you want me to put it?” “I'll put it to be double of that or twice or four-thirds or something like that,” and this is where PLL will set it.

Tr. (Oklobdzija) at 1051:23-1052:24. The ID thus correctly concludes that the alleged “entire oscillators” rely, contrary to the claimed invention, on external crystals to generate clock signals.

ID at 124. Accordingly, OUII opposes Complainants' petition for review on this issue.

2. The ID's Findings of Fact and Conclusions of Law With Respect to the “Varying” Limitations of Claims 6 and 13 Are Not Clearly Erroneous

Complainants also seek review of the ID on the grounds that the ALJ committed clear error by failing to apply the claim language with respect to the “varying” limitations of claims 6 and 13. Compl. Pet. at 26. Complainants do not contest the ALJ's construction of this limitation. Indeed, Order No. 31 adopted Complainants' position that the “varying” limitation need not be construed and should instead be given its plain and ordinary meaning. Order No. 31 at 67. Rather, Complainants contend that the ALJ's factual findings are erroneous to the extent that the ID improperly applies this limitation so as to exclude devices that do not exhibit frequency variation during operation. *See* Compl. Pet. at 27. In the view of OUII, however, the ALJ properly found that the preponderance of the evidence shows that the accused products do not meet the “varying” limitations of claims 6 and 13.

In the accused products, the clock signals generated by the alleged oscillators are fixed-

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speed, as opposed to variable-speed, and thus do not vary at all, much less “as a function of parameter variation in one or more fabrication or operational parameters” as the claims require. Tr. (Subramanian) at 1212:17-1214:1. Complainants’ argument was thus properly rejected by the ID. Indeed, Complainants’ expert, Dr. Oklobdzija, admitted that the '336 patent refers to a clock based on an external crystal as a fixed-speed clock:

Q. Okay. Well, we know that the I/O interface is operated at a fixed speed; correct?

A. The I/O interface operates at the speed which is relatively fixed, right, because it's using the crystal to stabilize this frequency, and therefore it is fixed. As I explained in my also presentation, it has to be fixed not to confuse the I/O.

Tr. (Oklobdzija) 796:24-797:7. Under Dr. Oklobdzija’s reasoning, the alleged oscillators/clocks in the accused products are similarly fixed because their frequency is stabilized by a PLL using an external crystal/clock generator. Tr. (Subramanian) at 1212:17-1214:1. Nonetheless, Complainants argue that a fixed-speed clock still varies as a result of PVT because the PLLs “do not completely eliminate variations.” Compl. Pet. at 27. But construing the “varying” limitations to cover fixed-speed clocks would be contrary to the plain and ordinary meaning of the claims, and contrary to the disclosure of the '336 patent. *See* JXM-0001, '336 patent, at col. 17:32-34; Tr. (Oklobdzija) at 797:19-798:5.

Moreover, Respondents’ expert, Dr. Subramanian, also testified that the Accused Products use fixed-speed oscillators/clocks:

We use PLLs so that the oscillation output, whether you take the PLL as a whole or the controlled oscillator, is very precisely controlled and fixed, and it does not vary due to, as a function of, or relative to PVT.

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And we ensure that by using an accurate reference -- in this case, as shown on RDX-4.94, a temperature-controlled crystal oscillator -- which ensures that the output is incredibly stable.

Tr. (Subramanian) at 1213:5-14. And further, tests confirmed that the clock signals in the accused products are fixed-speed. RX-1180C; RX-1182C; RX-1184C; RX-1186C; RX-1187C; RX-1189C. The ID thus properly found Dr. Oklobdzija's unsupported testimony as insufficient to demonstrate infringement. ID at 195 ("What Dr. Oklobdzija and Complainants do is isolate the oscillators in space and time by divorcing them from the effects of external crystals and PLLs associated therewith and then observing how they function without them. However, this betrays the concept of the claimed 'entire oscillator' because the accused oscillators do not perform the clocking function hermetically. Consequently, Dr. Oklobdzija's testimony is either hypothetical or disregards material facts."). In contrast, the ALJ found that Dr. Subramanian "took into account the 'entire' terms, as construed, in addressing the 'varying' limitations and that the testing he described and the data obtained therefrom are reliable and support his opinion that none of the Accused Products satisfies the 'varying' limitations of the asserted claims." ID at 196. Accordingly, the ID found that "Respondents' evidence ... affirmatively shows that none of the Accused Products infringes any of the asserted claims with respect to the 'varying' limitations." *Id.*

For the reasons set forth above, OUII opposes Complainants' petition for review of this issue.

3. The ID's Findings of Fact and Conclusions of Law With Respect to the "External Clock" Limitations of Claims 6 and 13 Are Not Clearly Erroneous

Complainants further seek review of the ID on the grounds that the ALJ committed clear

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error by finding that the accused products do not meet the “external clock” limitations of claims 6 and 13. Compl. Pet. at 35. In this regard, the private parties offered conflicting expert testimony at trial regarding those limitations. Admonishing Complainants, the ID stated that “Complainants have the ultimate burden of proof, and any unresolved questions on material issues redound to their detriment.” ID at 255. Ultimately, the ALJ found that “Dr. Subramanian’s opinions have been shown to be more persuasive than Dr. Oklobdzija’s since Dr. Subramanian provided detailed explanations for his conclusions, which logically follow from his rational interpretation of the documents, in contrast to Dr. Oklobdzija’s cursory conclusions.” ID at 251. Accordingly, the ID concluded that the evidence was not sufficient to show that any of the accused products satisfy the “external clock” limitations of claims 6 and 13. ID at 259.

Furthermore, with respect to the “external clock” limitations of claims 6 and 13, Complainants’ infringement theory requires that a second device (e.g., a television, desktop computer, laptop computer) be connected to the accused product. Compl. Pet. at 43 (“Because the clock signal originates from an unrelated device, it neither depends on the Accused Product’s first clock nor receives the same reference signal, as required by the industry standard USB specification.”), *citing* Tr. 531:9-534:4. Under this theory, an accused device cannot infringe unless and until such device is connected to another, unrelated device. Because the accused products are not sold or imported in the accused configuration, they do not directly infringe claims 6 or 13 of the '336 patent.¹

¹ To the extent that Complainants argue that Respondents induce infringement by end-users, OUII notes that the ID concluded that “the evidence is not sufficient to show that Respondents are guilty of indirect infringement.” ID at 280. Nonetheless, Complainants do not appear to

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For the reasons set forth above, OUII opposes Complainants' petition for review on this issue.

C. The Commission Should Deny Complainants' Petition for Review of the ALJ's Recommended Determination Regarding Cease and Desist Orders

Finally, Complainants seek Commission review of the ALJ's recommended determination that no cease and desist orders should issue because Complainants have failed to show that Respondents maintained commercially significant inventories in the United States. Compl. Pet. at 47-49. In this respect, Complainants' petition is improper. Pursuant to Commission Rule 210.43, 19 C.F.R. § 210.43 (2013), a party may petition for review of an initial determination. However, the Commission Rules do not contemplate a petition for review of a recommended determination. *See id.* Instead, parties may file written submissions regarding the ALJ's recommended determination when requested by the Commission. 19 C.F.R. § 210.50(a)(4); *see also* 19 C.F.R. § 210.46(a) ("The Commission will issue a notice setting deadlines for written submissions from the parties, other Federal agencies, and interested members of the public on the issue of remedy, the public interest, and bonding by the respondents.").

Accordingly, Complainants' petition for review should be denied to the extent that it seeks review of the ALJ's recommended determination that the Commission should not issue

seek review of the ID in this respect. While their petition does recognize that the ID found no indirect infringement, Complainants' petition fails to address the necessary elements of induced infringement, including, *inter alia*, whether each Respondent possessed the requisite intent. *See DSU Medical Corp. v. JMS Co. Ltd.*, 471 F.3d 1293, 1304-06 (Fed. Cir. 2006) (*en banc* as to the intent element of induced infringement).

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cease and desist orders.

IV. RESPONDENTS' CONTINGENT PETITION FOR REVIEW

Respondents contend that it is not necessary for the Commission to review the ID. Resp. Pet. at 1. However, should the Commission determine any portion of the ID, Respondents request that the Commission review the ID's conclusion that a domestic industry exists on the basis that those conclusions regarding a licensing domestic industry affect Commission policy. For the reasons set forth below, OUII is of the view that Respondents' contingent petition for review should be denied.

First, Respondents argue that there can be no domestic industry based on licensing because TPL did not have the right to license the '336 patent at the time of the complaint. Resp. Pet. at 3. In this regard, whether it was TPL or another complainant that had the ability to license the '336 patent is immaterial. In order to establish the existence of a domestic industry based on investments in patent licensing, a complainant must demonstrate that these investments are: (i) related to the asserted patents; (ii) related to licensing; and (iii) related to the United States. *Certain Multimedia Display and Navigation Devices and Systems, Components Thereof, and Products Containing Same*, Inv. No. 337-TA-694, Commission Opinion at 8-15 (August 8, 2011). So long as a Complainant's investments in an alleged licensing domestic industry are related to the asserted patents, related to licensing, and related to the United States, those investments may satisfy the domestic industry requirement even if an affiliated company, which in this case is also a Complainant, actually holds the right to license the asserted patent. In this case, it is undisputed that Complainant Phoenix Digital Solutions ("PDS") held the right to

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license the asserted patents. ID at 311. Accordingly, Respondents’ first argument should be rejected.

Second, Respondents contend that Complainants’ investment in its licensing domestic industry is not substantial. Resp. Pet. at 8. In this regard, Complainants’ investments relate to a portfolio licensing program. The evidence adduced at trial shows that Complainants invested over ██████ in its MMP licensing program in salaries and benefits related to employees engaged in licensing the '336 patent. *See, e.g.*, Tr. (Hannah) at 1751:24-1752:12; CX-0705C; Tr. (M. Leckrone) at 1542:8-1544:24, 1546:10-1547:1, 1548:19-1549:20, 1551:2-18, 1552:10-1555:9, 1564:9-1566:22. From 2006 through June 2012, Complainants employed labor in the United States (either directly or through a sister licensing company, Alliacense) as follows:

<i>Category</i>	<i>Employees</i>	<i>Salary and Benefits</i>
IP R&D/IP Legal	█████	████████████████████
Business Analysts	█████	████████████████████
Inventory Control Specialists	█████	████████████████████
Reverse Engineering Specialists	█████	████████████████████
Operations Analysts	█████	████████████████████
Licensing Coordinators	█████	████████████████████
Licensing Executives	█████	████████████████████
Technical Expert	█████	████████████████████
Total	█████	████████████████████

Tr. (Hannah) at 1751:24-1752:12; CX-0705C. The evidence further shows that these employees were engaged in activities in support of Complainants’ MMP licensing program. Tr. (M. Leckrone) at 1542:8-1544:24, 1546:10-1547:1, 1548:19-1549:20, 1551:2-18, 1552:10-1555:9, 1564:9-1566:22. Given that the MMP Portfolio encompasses a relatively small number of related patents (approximately seven U.S. patents and their foreign counterparts), and that the '336 patent factors prominently in licensing discussions, negotiations, and license agreements, the nexus between Complainants’ investments and the '336 patent is relatively strong. Tr.

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(Leckrone) at 126:6-10. Although Complainants' licensing activities are not the type of activities that are referenced favorably in the legislative history of Section 337(a)(3)(C), Complainants nonetheless engage in a variety of ancillary licensing activities, including significant post-licensing work. Tr. (M. Leckrone) at 1565:23-1566:22. On balance, the ALJ correctly determined that Complainants' investment was substantial. ID at 317.

Lastly, Respondents argue that Complainants do not meet the domestic industry requirement of Section 337 because they fail to meet the technical prong of the domestic industry requirement. Resp. Pet. at 15. In this regard, Respondents' argument appears to be at odds with binding precedent. *See Certain Semiconductor Chips with Minimized Chip Package Size and Products Containing Same*, Inv. No. 337-TA-432, Order No. 13, at 4-5, 11 (Jan. 24, 2001) (unreviewed initial determination).²

For the reasons set forth above, OUII is of the view that the Commission should determine not to review the ID with respect to the issues raised by Respondents' contingent petition for review.

V. CONCLUSION

For the foregoing reasons, the Commission should determine not to review the ID.

Respectfully submitted,

² OUII understands that the Commission has sought briefing on this issue in *Certain Wireless Devices With 3G Capabilities and Components Thereof*, Inv. No. 337-TA-800. Should the Commission determine to reassess Commission precedent regarding whether there is a technical prong for a licensing domestic industry, OUII will more fully brief the issue at the appropriate time.

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CERTIFICATE OF SERVICE

The undersigned certifies that on October 29, 2013, he caused the foregoing **RESPONSE OF THE OFFICE OF UNFAIR IMPORT INVESTIGATIONS TO THE PRIVATE PARTIES' PETITIONS FOR REVIEW** to be filed with the Commission and served upon the parties in the manner indicated below:

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