

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

In the Matter of

**CERTAIN OPTOELECTRONIC
DEVICES, COMPONENTS THEREOF,
AND PRODUCTS CONTAINING THE
SAME**

Investigation No. 337-TA-669

**ISSUANCE OF A LIMITED EXCLUSION ORDER AND CEASE AND DESIST
ORDER; AND TERMINATION OF THE INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has terminated the above-captioned investigation with a finding of violation of section 337, and has issued a limited exclusion order and cease and desist order directed against respondent Emcore Corporation (“Emcore”) of Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2310. 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, S.W., Washington, D.C. 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 March 10, 2009 based on a complaint filed on February 3, 2009, by Avago Technologies Fiber IP (Singapore) Pte. Ltd. of Singapore; Avago Technologies General IP (Singapore) Pte. Ltd. of Singapore; and Avago Technologies Ltd. of San Jose, California (collectively, “Avago”). 74 *Fed. Reg.* 10278-79 (March 10, 2009). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 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 optoelectronic devices, components thereof, or products containing the same by reason of

infringement of certain claims of U.S. Patent Nos. 5,359,447 (“the ‘447 patent”) and 5,761,229 (“the ‘229 patent”). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The complaint names a single respondent, Emcore Corporation (“Emcore”) of Albuquerque, New Mexico.

On December 7, 2009, the Commission issued notice of its determination not to review the presiding administrative law judge’s (“ALJ’s”) initial determination (“ID”) granting Avago’s motion for summary determination on ownership of the asserted patents.

On March 12, 2010, the ALJ issued his final ID finding a violation of section 337 by Emcore by reason of infringement of one or more of claims 1, 2, 3, and 5 of the ‘447 patent. The ALJ found no violation of section 337 with respect to the ‘229 patent. He also issued his recommendation on remedy and bonding during the period of Presidential review. On March 29, 2010, Emcore filed a petition for review of the final ID. The Commission investigative attorney (“IA”) and Avago filed responses to the petition on April 6, 2010. On May 13, 2010, the Commission issued notice of its determination not to review the ALJ’s final ID finding a violation of section 337, and requested written submissions on the issues of remedy, the public interest, and bonding from the parties and interested non-parties. *75 Fed. Reg.* 28060-61 (May 19, 2010).

On May 24 and June 1, 2010, respectively, complainant Avago, respondent Emcore, and the IA filed briefs and reply briefs on the issues for which the Commission requested written submissions.

The Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is both: 1) a limited exclusion order prohibiting the unlicensed entry of optoelectronic devices, components thereof, and products containing the same that are covered by one or more of claims 1, 2, 3 and 5 of the ‘447 patent, where the infringing optoelectronic devices, components thereof, and products containing the same are manufactured abroad by or on behalf of, or are imported by or on behalf of, Emcore, or any of its affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or successors or assigns; and 2) a cease and desist order prohibiting Emcore from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for, optoelectronic devices, components thereof, and products containing the same that are covered by one or more of claims 1, 2, 3, and 5 of the ‘447 patent.

The Commission further determined that the public interest factors enumerated in section 337(d)(1) (19 U.S.C. § 1337(d)(1)) do not preclude issuance of the limited exclusion order or the cease and desist order. Finally, the Commission determined that a three (3) percent bond of the entered value of the covered products is required to permit temporary importation during the period of Presidential review (19 U.S.C. § 1337(j)). The Commission’s orders and opinion were

delivered to the President and to the United States Trade Representative on the day of their issuance.

The Commission has terminated this investigation. 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 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.50).

By order of the Commission.

/s/
Marilyn R. Abbott
Secretary to the Commission

Issued: July 12, 2010