

Dated: January 4, 2016.

Madonna L. Baucum,

*Information Collection Clearance Officer,
National Park Service.*

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INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-698 (Remand)]

Certain DC-DC Controllers and Products Containing Same; Commission Determination To Adopt a Recommended Remand Determination; Issuance of Modified Civil Penalty Order and Termination of Remand Enforcement Proceeding

AGENCY: U.S. International Trade
Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to adopt a remand recommended determination (“RRD”) of the presiding administrative law judge (“ALJ”) adding eleven (11) days to the total number of days enforcement respondent uPI Semiconductor Corporation (“uPI”) of Hsinchu, Taiwan, violated the August 13, 2010 consent order (“the Consent Order”). The Commission has adopted the RRD as a final determination of the Commission, issued a modified civil penalty order in the amount of \$650,000 directed against uPI, and has terminated the remand enforcement proceeding.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 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 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 ordered this remand

enforcement proceeding on April 8, 2015, in view of the Federal Circuit’s decision in *uPI Semiconductor Corp. v. ITC and Richtek Technology Corp. v. ITC*, 767 F.3d 1372 (Fed. Cir. 2014). See Comm’n Order (Apr. 8, 2015). The Commission instituted the original enforcement proceeding on September 6, 2011, based on an enforcement complaint filed by Richtek Technology Corp. of Hsinchu, Taiwan, and Richtek USA, Inc. of San Jose, California (collectively “Richtek”). 76 FR 55109-10. The complaint alleged violations of the August 13, 2010, consent orders issued in the underlying investigation by the continued practice of prohibited activities such as importing, offering for sale, and selling for importation into the United States DC-DC controllers or products containing the same that infringe one or more of U.S. Patent Nos. 7,315,190 (“the ‘190 patent’”); 6,414,470 (“the ‘s’ 470 patent’”); and 7,132,717 (“the ‘717 patent’”); or that contain or use Richtek’s asserted trade secrets. The Commission’s notice of institution of enforcement proceedings named uPI and Sapphire Technology Limited (“Sapphire”) of Shatin, Hong Kong as respondents. The Office of Unfair Import Investigations participated in the enforcement proceeding. Sapphire was later terminated from the enforcement proceeding based on a settlement agreement.

On June 8, 2012, the presiding administrative law judge (“ALJ”) issued his enforcement initial determination (“EID”) finding a violation of the Consent Order by uPI. The ALJ found importation and sale of accused products that infringe all asserted claims of the patents at issue, and importation and sale of formerly accused products that contain or use Richtek’s asserted trade secrets. He found that uPI’s products developed after the consent order issued (“post-Consent Order products”) did not misappropriate Richtek’s asserted trade secrets. Also, he recommended enforcement measures for uPI’s violation that included the following: (1) Modifying the Consent Order to clarify that the Order applies (and has always applied) to all uPI affiliates, past, present, or future; and (2) imposing a civil penalty of \$750,000 against uPI.

The Commission did not review the EID with respect to the trade secret allegations, but did review the EID as to certain patent infringement allegations and the number of violation days. On November 14, 2012, after review, the Commission determined to affirm-in-part, reverse-in-part, modify-in-part, and vacate-in-part the EID’s findings under review. The Commission affirmed the

ALJ’s finding that uPI violated the consent order, and imposed a civil penalty of \$620,000 on respondent uPI for violation of the Consent Order on 62 days. The Commission also affirmed the ALJ’s finding of direct infringement of claims 1-11 and 26-27 of the ‘190 patent with respect to uPI’s formerly accused products. The Commission also vacated the ALJ’s finding that uPI does not induce infringement of claims 1-11 and 26-27 of the 190 patent. The Commission also determined to reverse the ALJ’s finding that claims 29 and 34 of the 470 patent are directly infringed by respondent uPI’s accused DC-DC controllers and products containing the same, and determined that Richtek waived any allegations of indirect infringement with respect to the ‘470 patent. This action resulted in a finding of no violation of the Consent Order with respect to the ‘470 patent. Further, the Commission vacated as moot the portion of the EID relating to the ‘717 patent because the asserted claims 1-3 and 6-9 were cancelled by issuance of Ex Parte Reexamination Certificate No. U.S. 7,132,717 C1 on October 3, 2012. The Commission also affirmed the ALJ’s finding that uPI’s formerly accused products contained or used Richtek’s asserted trade secrets to violate the Consent Order, but that uPI’s post-Consent Order products did not misappropriate Richtek’s asserted trade secrets.

Both uPI and Richtek timely appealed the Commission’s final determination. The Federal Circuit issued its opinion in the two appeals on September 25, 2014. See 767 F.3d 1372. The Court affirmed the Commission’s findings regarding uPI’s appeal with a slight modification, but regarding Richtek’s appeal, the Court reversed the Commission’s determination that uPI did not violate the Consent Order based on trade secret misappropriation with respect to uPI’s post-Consent Order products. *Id.* Specifically, the Court found that, on the record provided, substantial evidence did not support the Commission’s conclusion that uPI’s post-Consent Order products were independently developed. *Id.* at 1383. Also specifically, regarding uPI’s appeal and before deciding Richtek’s appeal, the Court reduced the number of days of violation by eight (8) days to fifty-four (54) days. *Id.* at 1380. The Court remanded the case to the Commission for further proceedings with respect to violation of the Consent Order. *Id.* at 1383. On December 1, 2014, the Court denied uPI’s petition for rehearing of the Court’s finding of no independent development of uPI’s post-Consent

Order products. The mandate of the Court issued on November 17, 2014, with respect to uPI's appeal (Appeal No. 13–1157) and on December 8, 2014, with respect to Richtek's appeal (Appeal No. 13–1159).

In its order of April 8, 2015, the Commission remanded the case to a presiding administrative law judge and ordered the presiding ALJ to:

make findings and issue a remand recommended determination (“RRD”) concerning the total number of days an importation or sale in the United States occurred in violation of the Consent Order in accordance with the Federal Circuit decision in *uPI Semiconductor Corp. v. ITC and Richtek Technology Corp. v. ITC*, 767 F.3d 1372 (Fed. Cir. 2014), taking into account (1) any additional violation days with respect to the post-Consent Order products Richtek specifically accused (*see* EID at 9 n.6); and (2) the subtraction of eight (8) violation days with respect to the formerly accused products. The RRD will also recommend a total civil penalty amount based on the previous daily penalty of \$10,000 per day of violation.

Comm'n Order. On April 20, 2015, Richtek filed a motion for reconsideration of the Commission's Remand Order with respect to the amount of the daily penalty and on May 7, 2015, the motion was denied. *See* Comm'n Order Denying Motion. On October 8, 2015, the presiding ALJ issued his RRD finding that after the eight-day subtraction, eleven (11) days, associated with post-Consent Order products, should be added to the number of days (54) uPI violated the Consent Order to make the total sixty-five (65) days in violation, and accordingly increased the total civil penalty amount to \$650,000 based on the daily penalty of \$10,000. On October 19, 2015, Richtek submitted comments regarding the RRD which reiterated the same arguments made in its denied motion for reconsideration. *Id.* On October 26, 2015, uPI and the Commission investigative attorney each filed a reply to Richtek's comments.

The Commission has determined to adopt the RRD as a final determination of the Commission and has issued a modified civil penalty order in the amount of \$650,000 directed against uPI. The Commission has rejected the arguments regarding the amount of the daily penalty made by Richtek in its submitted comments for the same reasons given in the Commission's Order denying Richtek's motion for reconsideration. The Commission has terminated the remand enforcement proceeding.

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 Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: January 6, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–288 Filed 1–8–16; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–979]

Certain Radio Frequency Identification (“RFID”) Products and Components Thereof Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 4, 2015, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Neology, Inc. of Poway, California. A supplement to the complaint was filed on December 22, 2015. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain radio frequency identification (“RFID”) products and components thereof by reason of infringement of certain claims of U.S. Patent No. 8,325,044 (“the ‘044 patent”); U.S. Patent No. 8,587,436 (“the ‘436 patent”); and U.S. Patent No. 7,119,664 (“the ‘664 patent”). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will

need special assistance in gaining access to the Commission should contact the Office of the Secretary at (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>.

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2015).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 5, 2016, *ordered that—*

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain radio frequency identification (“RFID”) products and components thereof by reason of infringement of one or more of claims 13, 14, and 25 of the ‘044 patent; claims 1–4, 6–12, and 14–18 of the ‘436 patent; and claims 1, 2, 9–12, 14–18, and 26–28 of the ‘664 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Neology, Inc., 12760 Danielson Court, Suite A, Poway, CA 92064.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Kapsch TrafficCom IVHS, Inc., 8201 Greensboro Drive, Suite 1002, McLean, VA 22102.

Kapsch TrafficCom IVHS Holding Corp., 8201 Greensboro Drive, Suite 1002, McLean, VA 22102.

Kapsch TrafficCom IVHS Technologies Holding Corp., 8201 Greensboro Drive, Suite 1002, McLean, VA 22102.

Kapsch TrafficCom U.S. Corp., 8201 Greensboro Drive, Suite 1002, McLean, VA 22102.