

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN SEMICONDUCTOR CHIPS WITH
MINIMIZED CHIP PACKAGE SIZE AND
PRODUCTS CONTAINING SAME (III)**

Inv. No. 337-TA-630

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**ORDER NO. 46: INITIAL DETERMINATION GRANTING COMPLAINANT'S
MOTION FOR AN ENTRY OF DEFAULT AGAINST TWO RESPONDENTS**

(August 28, 2009)

On February 19, 2008, Complainant Tessera, Inc. ("Tessera") filed a motion, pursuant to Commission Rule 210.16(b), for an order to show cause and default judgment against respondents TwinMOS Technologies Inc. and TwinMOS Technologies USA Inc. (collectively "TwinMOS"), based on TwinMOS's failure to respond to the Complaint and Notice of Investigation. (Motion Docket No. 630-011.) The motion also requested, upon finding TwinMOS in default, the issuance of an initial determination. On March 12, 2008, the Judge Bullock ordered TwinMOS to show, by the close of business on March 28, 2008, why it should not be found in default for failure to respond to the Complaint and Notice of Investigation pursuant to Rule 210.16 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.16. (*See* Order No. 12.) On March 20, 2008, Judge Bullock received a letter from TwinMOS asserting that it replied to Tessera's Complaint on January 8, 2008, stating that it is "a memory module house" and is "not in a position to involve in the patent litigation matters or to be liable to the charge."

Commission Rule 210.16 provides in pertinent part, as follows:

A party shall be found in default if it fails to respond to the complaint and notice of investigation in the manner prescribed in §210.13 or § 210.59(c), or otherwise fails

to answer the complaint and notice, and fails to show cause why it should not be found in default.

19 C.F.R. § 210.16(a)(1). The Commission's Rules further provide that “[a] party found in default shall be deemed to have waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation.” 19 C.F.R. § 210.16(b)(3).

Commission Rule 210.17 states, in relevant part, that “[f]ailures to act other than the defaults listed in § 210.16 may provide a basis for the presiding administrative law judge or the Commission to draw adverse inferences and to issue findings of fact, conclusions of law, determinations (including a determination on violation of section 337 of the Tariff Act of 1930)...[s]uch failures include, but are not limited to

....

(e) Failure to file a brief or other written submission requested by the administrative law judge or the Commission during an investigation or related proceeding;

....

(g) Failure to file a brief or other written submission requested by the administrative law judge or the Commission;

....

The presiding administrative law judge or the Commission may take action under this rule sua sponte or in response to the motion of a party.

19 C.F.R. § 210.17. The Commission has found respondents in default under Rule 210.17 and has made adverse inferences based on their failure to act. *See Certain Electrical Connectors and Products Containing Same*, Inv. No. 337-TA-374, Order No. 38 (Feb. 9, 1996) (unreviewed initial determination finding respondent in default under 19 C.F.R. § 210.17 for failure to respond to a motion for summary determination and making an adverse inference of a violation); *see also, e.g.,*

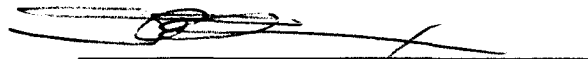
Cigarettes, Order No. 17, at 4-6 (unreviewed initial determination finding a respondent in default pursuant to Rules 210.16(a)(2) and 210.17); *Certain Agricultural Vehicles and Components Thereof*, Inv. No. 337-TA-487, Order No. 45, at 4 (Oct. 1, 2003) (unreviewed initial determination finding respondents in default pursuant to 19 C.F.R. §§ 210.16 and 210.17).

Since the issuance of Order No. 12 and TwinMOS's response thereto, TwinMOS has failed to participate in this investigation in its entirety, including failing to participate in discovery, failing to appear at the evidentiary hearing as well as failing to file any requested briefing as set forth in the ALJ's ground rules and in Order Nos. 11 and 18.¹

Accordingly, it is the INITIAL DETERMINATION of the Administrative Law Judge that respondents TwinMOS Technologies Inc. and TwinMOS Technologies USA Inc. be found to be in default pursuant to 19 C.F.R. §§ 210.16(a)(1) and 210.17. Consequently, these two Respondents have waived their right to appear, to be served with any further documents, and to contest the allegations at issue in the investigation.

Pursuant to 19 C.F.R. § 210.42(h), this initial determination shall become the determination of the Commission unless a party files a petition for review of the initial determination pursuant to 19 C.F.R. § 210.43(a), or the Commission, pursuant to 19 C.F.R. § 210.44, orders on its own motion a review of the initial determination or certain issues contained herein.

SO ORDERED.



Theodore R. Essex
Administrative Law Judge

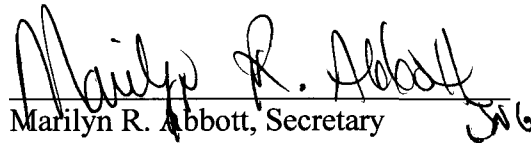
¹Furthermore, the record shows that attempts to serve TwinMOS with documents related to the investigation have been returned. (See EDIS Document ID Nos. 401262 and 401277, Returned Mail from TwinMOS.)

**IN THE MATTER OF CERTAIN SEMICONDUCTOR CHIPS
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337-TA-630

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **ORDER 46 INITIAL DETERMINATION GRANTING COMPLAINANT' MOTION FOR AN ENTRY OF DEFAULT AGAINST TWO RESPONDENTS** has been served by hand upon, the Commission Investigative Attorney, **Kecia J. Reynolds, Esq.**, and the following parties as indicated on **August 28, 2009**.


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CERTIFICATE OF SERVICE- PAGE 2

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CERTIFICATE OF SERVICE- PAGE 4

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