

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

**In the Matter of**

**CERTAIN BASEBAND PROCESSOR  
CHIPS AND CHIPSETS,  
TRANSMITTER AND RECEIVER  
(RADIO) CHIPS, POWER CONTROL  
CHIPS, AND PRODUCTS CONTAINING  
SAME, INCLUDING CELLULAR  
TELEPHONE HANDSETS**

**Investigation No. 337-TA-543**

**ORDER TO CEASE AND DESIST**

IT IS HEREBY ORDERED THAT Qualcomm Incorporated, 5775 Morehouse Drive, San Diego, California, 92121 ("Qualcomm"), cease and desist from conducting any of the following activities in the United States: importing, selling, distributing, marketing, consigning, transferring (except for exportation), offering for sale in the United States, or soliciting U.S. agents or distributors for, certain baseband processor chips and chipsets in violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337. Additionally, it is ordered that Qualcomm cease and desist from transforming certain imported chips and chipsets in the United States into infringing products by programming (or enabling or encouraging others to program) them with software that enables the patented features.

**I.**

**Definitions**

As used in this Order:

(A) "Commission" shall mean the United States International Trade Commission.

(B) "Complainant" and "Broadcom" shall mean Broadcom Corporation, 16215 Alton Parkway, Irvine, California.

(C) "Respondent" and "Qualcomm" shall mean Qualcomm Incorporated, 5775 Morehouse Drive, San Diego, California.

(D) "Person" shall mean an individual, or any nongovernmental partnership, firm, association, corporation, or other legal or business entity other than the Respondent or its majority owned or controlled subsidiaries, their successors, or assigns.

(E) "United States" shall mean the fifty States, the District of Columbia, and Puerto Rico.

(F) The terms "import" and "importation" refer to importation for entry for consumption, entry for consumption from a foreign-trade zone, and withdrawal from a warehouse for consumption under the Customs laws of the United States.

(G) The term "covered product" shall include, without limitation, baseband processor chips programmed to enable the power saving features covered by claims 1, 4, 8, 9, and 11 of U.S. Patent No. 6,714,983.

**II.****Applicability**

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, contractors, distributors, controlled (whether by stock ownership or otherwise) and majority owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra*, for, with, or otherwise on behalf of Respondent.

**III.****Conduct Prohibited**

The following conduct of Respondent in the United States is prohibited by the Order. For the remaining term of U.S. Patent No. 6,714,983, Respondent shall not:

- (A) import or sell for importation into the United States covered product;
- (B) transform an imported baseband processor chip into covered product by programming it in the United States with software that enables the patented battery saving features;
- (C) market, distribute, offer for sale, sell, consign, or otherwise transfer (except for exportation) in the United States imported covered product;
- (D) solicit U.S. agents or distributors for covered product;
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered product in the United States; or
- (F) aid or abet other entities in the transformation of an imported baseband processor chip into covered product by facilitating or encouraging the programming of such chip in the United States with software that enables the patented battery saving features.

**IV.****Conduct Permitted**

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of U.S. Patent No. 6,714,983 licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered product by or for the United States.

**V.****Reporting**

For purposes of this reporting requirement, the yearly reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. However, the first yearly report required under this section shall cover the period from the date of issuance of this Order through June 30, 2007.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission the quantity in units and the value in dollars of baseband processor chips that Respondent has imported or sold in the United States after importation during the reporting period, the quantity in units and the value in dollars of covered product that Respondent has created by programming baseband processor chips with software that enables the patented battery saving features, and the quantity in units and value in dollars of reported baseband processor chips and covered product that remain in inventory in the United States at the end of the reporting period.

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

## **VI.**

### **Record-keeping and Inspection**

(A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the exportation to, importation into, and programming in the United States of baseband processor chips and the exportation to and importation into the United States and the sale, offer for sale, marketing, or distribution in the United States of covered product, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of two (2) years from the close of the fiscal year to which they pertain.

(B) For the purposes of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

**VII.**

**Service of Cease and Desist Order**

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for (i) the importation, marketing, distribution, or sale of imported covered product in the United States and (ii) the programming of imported baseband processor chips;

(B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII (A) of this Order, a copy of the Order upon each successor; and

(C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the date of expiration of U.S. Patent No. 6,714,983.

**VIII.**

**Confidentiality**

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of the Order should be in accordance with section 201.6 of the Commission Rules of Practice and Procedure. 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

**IX.****Enforcement**

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.75, including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, 19 U.S.C. § 1337(f), and any other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if Respondent fails to provide adequate or timely information.

**X.****Modification**

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.

**XI.****Bonding**

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the President pursuant to section 337(j) of the Tariff Act of 1930, 19 U.S.C. § 1337(j), subject to Respondent posting a bond of 100% of the imported value per unit for covered products. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered product imported on or after the date of issuance of this order is subject to the entry bond as set forth in the limited exclusion order issued by the Commission, and is not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. *See* 19 C.F.R. § 210.68. The bond and any accompanying documentation is to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by Section III of this Order.

The bond is to be forfeited in the event that the President approves, or does not disapprove within the Presidential review period, this Order, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports the products subject to this bond or destroys them and provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the President disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the President, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By Order of the Commission.

  
Marilyn R. Abbott  
Secretary to the Commission

Issued: June 7, 2007

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

**In the Matter of**

**CERTAIN BASEBAND PROCESSOR  
CHIPS AND CHIPSETS,  
TRANSMITTER AND RECEIVER  
(RADIO) CHIPS, POWER CONTROL  
CHIPS, AND PRODUCTS CONTAINING  
SAME, INCLUDING CELLULAR  
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**Inv. No. 337-TA-543**

**LIMITED EXCLUSION ORDER**

The Commission has determined that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the unlawful importation, sale for importation, and sale after importation of baseband processor chips and chipsets produced by or on behalf of Qualcomm Incorporated that are programmed to enable the power saving features covered by claims 1, 4, 8, 9, or 11 of U.S. Patent No. 6,714,983 (“infringing chips and chipsets”).

Having reviewed the record in this investigation, including the written submissions of the parties and hearing testimony, 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 a limited exclusion order prohibiting the unlicensed entry of infringing chips and chipsets manufactured by or on behalf of Qualcomm and circuit board modules or carriers

containing such infringing chips or chipsets, and certain handheld wireless communications devices that contain an infringing chip. Such devices include cellular telephone handsets and personal digital assistants (“PDAs”). This exclusion order does not apply to computer data cards. This exclusion order also does not apply to handheld wireless communications devices that are of the same models as handheld wireless communications devices that were being imported for sale to the general public on or before the date of this order. The Commission has also determined to issue a cease and desist order directed to Qualcomm.

The Commission reached this decision after assessing the appropriateness of an order excluding downstream products. In particular, the Commission found that the exemption for previously imported models is necessary to reduce the burdens imposed on third parties and consumers particularly in light of the limited availability of alternative devices that do not contain the infringing chips or chipsets.

The Commission has determined that the public interest factors enumerated in 19 U.S.C. § 1337 (d) and (f) do not preclude issuance of the limited exclusion order or the cease and desist order. The Commission found that, while exclusion of handheld wireless communications devices would have some impact on the public interest, particularly the public health and welfare, competitive conditions in the U.S. economy, and U.S. consumers, the exemption for

previously imported models sufficiently reduced this impact such that the exclusion order should issue.

The Commission has further determined that the bond during the Presidential review period shall be in the amount of one hundred (100) percent of the entered value for any infringing chips or chipsets imported separately or within circuit board modules or carriers and five (5) percent of the entered value for any handheld wireless communications devices that are subject to this order and which contain infringing chips or chipsets.

Accordingly, the Commission hereby **ORDERS** that:

1. Baseband processor chips or chipsets, including chips or chipsets incorporated into circuit board modules and carriers, manufactured abroad by or on behalf of Qualcomm Incorporated or any of its affiliated companies, parents, subsidiaries, contractors, or other related business entities, or their successors or assigns, that are programmed to enable the power saving features covered by claims 1, 4, 8, 9, or 11 of U.S. Patent No. 6,714,983 are excluded from entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, for the remaining term of the patent except under license of the patent owner or as provided by law.
2. Handheld wireless communications devices, including cellular telephone handsets and PDAs, containing Qualcomm baseband processor chips or chipsets that are programmed to enable the power saving features covered by claims 1, 4,

8, 9, or 11 of U.S. Patent No. 6,714,983, wherein the chips or chipsets are manufactured abroad by or on behalf of Qualcomm Incorporated or any of its affiliated companies, parents, subsidiaries, contractors, or other related business entities, or their successors or assigns, are excluded from entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, for the remaining term of the patent unless under license of the patent owner, as provided by law, or as exempted below. This order does not apply to computer data cards. Also exempted from this order are handheld wireless communications devices that are of the same models as handheld wireless communications devices that were being imported into the United States for sale to the general public on or before the date of this Order. The exempted models must be identifiable by specific and verifiable model numbers, denoting model-specific product specifications, features, and functions. This exemption will not apply to handheld wireless communications devices that differ in terms of model number, product specifications, features, or functions from handheld wireless communications devices that were being imported into the United States for sale to the general public on or before the date of this Order.

3. Chips, chipsets, and handheld wireless communications devices otherwise excluded from entry or withdrawal for consumption under paragraphs 1 and 2 of this Order are entitled to entry for consumption into the United States, entry for

consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, under bond in the amount of one hundred (100) percent of entered value for infringing chips or chipsets imported separately, or five (5) percent of entered value per handheld wireless communications device containing infringing chips or chipsets, pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337(j), from the day after this Order is received by the United States Trade Representative (*70 Fed. Reg.* 43251 (July 21, 2005)), until such time as the United States Trade Representative notifies the Commission that she approves or disapproves this action but, in any event, not later than sixty (60) days after the date of receipt of this action.

4. Pursuant to procedures to be specified by the Bureau of Customs and Border Protection ("Customs"), as Customs deems necessary, persons seeking to import chips, chipsets, or handheld wireless communications devices that are potentially subject to this Order may certify that they are familiar with the terms of this Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the products being imported are not excluded from entry under paragraphs 1 or 2 of this Order. At its discretion, Customs may require persons who have provided the certification described in this paragraph to furnish such records or analyses as are necessary to substantiate the certification.

5. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to chips, chipsets, or handheld wireless communications devices containing same that are imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.

6. The Commission may modify this Order in accordance with the procedures described in Rule 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.

7. The Secretary shall serve copies of this Order upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and Customs.

8. Notice of this Order shall be published in the *Federal Register*.

By Order of the Commission.

  
Marilyn R. Abbott  
Secretary to the Commission

Issued: June 7, 2007

**CERTAIN BASEBAND PROCESSOR CHIPS AND  
CHIPSETS, TRANSMITTER AND RECEIVER (RADIO)  
CHIPS, POWER CONTROL CHIPS, AND PRODUCTS  
CONTAINING SAME, INCLUDING CELLULAR  
TELEPHONE HANDSETS**

**337-TA-543**

**CERTIFICATE OF SERVICE**

I, Marilyn R. Abbott, hereby certify that the attached NOTICE AND ORDERS have been served by hand upon the Commission Investigative Attorney, Karin J. Norton, Esq., and the following parties as indicated, on June 8, 2007.



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