

MAR 20 2014

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

REALTEK SEMICONDUCTOR
CORPORATION, a Taiwanese
corporation,

Plaintiff - Appellee,

v.

LSI CORPORATION, a Delaware
corporation and AGERE SYSTEMS LLC,

Defendants - Appellants.

No. 13-16070

D.C. No. 5:12-cv-03451-RMW

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Ronald M. Whyte, Senior District Judge, Presiding

Submitted March 13, 2014**
San Francisco, California

Before: FARRIS, REINHARDT, and TASHIMA, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

LSI has appealed from the district court's grant of a preliminary injunction to Realtek that enjoined LSI from enforcing a potential exclusion order that the International Trade Commission might issue in a then-ongoing proceeding before that body. The district court stated that the injunction would go into effect only if the ITC granted an exclusion order, but if the ITC found "no section 337 violation...this preliminary injunction will become moot." The ITC recently found that there was "no section 337 violation" by Realtek and terminated its investigation. Dkt. # 53. By its own terms, the preliminary injunction became inoperative when the ITC did not find a Section 337 violation. Both parties argue that the appeal is not moot as LSI may still appeal the ITC's decision to the Federal Circuit. We need not consider that question as the preliminary injunction itself is no longer operative by virtue of the initial decision of the ITC that there was no Section 337 violation. The appeal is DISMISSED.

FILED

RealTek Semiconductor Corp. v. LSI Corp., No. 13-16070

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TASHIMA, Circuit Judge, concurring:

I concur. Under a strict and literal reading of the preliminary injunction, this appeal from the granting of the preliminary injunction is moot. If the Federal Circuit reverses the ITC's Notice of Final Determination and Termination of the Investigation in *In re Certain Audiovisual Components and Products Containing the Same*, Inv. No. 337-TA-837 (Mar. 4, 2014), and this case is then still in active litigation or on appeal, either party may then move for injunctive relief *pendente lite* based on those new circumstances.