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## COVER STORY

# Tessera Technologies Loses Patents Case

By Craig Anderson  
Daily Journal Staff Writer

SAN JOSE — Tessera Technologies Inc. had a very bad Monday afternoon.

The San Jose-based technology company, which develops small packages for silicon chips used in everything from cellular phones to network servers, was trying to protect its patents by getting a government agency to block the importation of infringing products.

In a closely watched decision, an administrative law judge with the U.S. International Trade Commission ruled that none of the wireless company defendants violated Section 337 of the Tariff Act of 1930. *In the Matter of Certain Semiconductor Chips With Minimized Chip Package Size and Products Containing Same*, 337-TA-605.

Announcement of the order sent Tessera shares, which were already down 9 percent during the day, plunging more than 40 percent in after-hours trading.

The outcome, unless overturned by the full commission or the U.S. Court of Appeals for the Federal Circuit, is a big victory for Spansion Inc., Qualcomm Inc., Motorola Inc., Freescale Semiconductor Inc. and other defendants.

"This is the first time that Tessera has ever lost in court," said Michael Bettinger, a San Francisco-based partner with K&L Gates, who represents Spansion.

Bettinger's firm represented the defendants along with a host of other law firms, including McDermott Will & Emery and Jones Day.

In a prepared statement, Henry R. Nothhaft, Tessera's president and chief executive officer, said the company was "disappointed that we did not prevail at this juncture against these defendants, and we will review the initial determination in depth before reviewing our next steps.

This was the first of three patent infringement cases Tessera has pending before the ITC.

While the commission itself or the federal circuit could overturn the ruling, Bettinger expressed optimism that Administrative Law Judge Theodore Essex's ruling would stand because it finds the defendants' patents do not infringe.

"It's less likely the Federal Circuit is going to second guess it," he said.

The trial went forward only because the commission overruled the administrative law judge, who had placed a stay on the proceedings based on the results of a patent office re-examination that rejected several of the patents. Taiwan-based Siliconware Precision Industries Co., represented by Menlo Park-based Orrick Herrington & Sutcliffe partner Michael Heafey, requested the re-examination of several patents.

The Tessera patents are due to expire in 2010, and the company's lawyers at Gibson, Dunn & Crutcher argued it would be unfair to wait for re-examination results because the patents could not be enforced two years from now.

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