



7020-02

INTERNATIONAL TRADE COMMISSION

Inv. No. 337-TA-897

Certain Optical Disc Drives, Components Thereof, and Products Containing the Same

Notice of Commission Determination to Review in Part an Initial Determination Terminating the Investigation in its Entirety Based on Complainant's Lack of Standing and on Review to Affirm with Modified Reasoning; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 135) terminating the above-captioned investigation based on complainant's lack of standing with respect to the remaining asserted patents. On review, the Commission affirms with modified reasoning and terminates the investigation in its entirety.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-2392. 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, S.W., Washington, D.C. 20436, telephone 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<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 instituted this investigation on October 25, 2013, based on a Complaint filed by Optical Devices, LLC of Peterborough, New Hampshire ("Optical Devices"), as supplemented. 78 FR 64009 (Oct. 25, 2013). The Complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, by reason of infringement of certain claims of U.S. Patent Nos. 6,904,007; 7,196,979; 8,416,651 (collectively, "the Kadlec Patents"); RE40,927; RE42,913; and RE43,681 (collectively "the Wild Patents"). The Complaint further alleges the existence of a domestic industry. The Commission's Notice of Investigation named numerous respondents including Lenovo Group Ltd. of Quarry Bay, Hong Kong and Lenovo (United States) Inc., of Morrisville, North Carolina; LG Electronics, Inc. of Seoul, Republic of Korea and LG Electronics U.S.A., Inc. of Englewood Cliffs, New Jersey; Toshiba Corporation of Tokyo, Japan and Toshiba America Information Systems, Inc. of Irvine, California; and MediaTek, Inc. of Hsinchu City, Taiwan and MediaTek USA Inc. of San Jose, California. The Office of Unfair Import Investigations was not named as a party to the investigation.

The Commission later terminated the investigation as to the application of numerous claims of the asserted patents to various named respondents. *See* Notice of Commission Determination Not to Review an Initial Determination Granting Complainant's Motions to Partially Terminate the Investigation as to Certain Patents (Aug. 8, 2014). The Commission also later terminated the investigation with respect to Nintendo Co., Ltd. of Kyoto, Japan and Nintendo of America, Inc. of Redmond, Washington; Panasonic Corp. of Osaka, Japan and Panasonic Corporation of North America of Secaucus, New Jersey; Samsung Electronics Co.,

Ltd. of Seoul, Republic of Korea and Samsung Electronics America, Inc. of Ridgefield Park, New Jersey, based on settlement agreements. *See* Notice of Commission Determination to Grant a Joint Motion to Terminate the Investigation as to Respondents Samsung Electronics Co., Ltd. Samsung Electronics America, Inc. on the Basis of a Settlement Agreement (Sept. 2, 2014); Notice of Commission Determination Not to Review an Initial Determination Terminating the Investigation In Part as to Respondents Panasonic and Nintendo (Mar. 30, 2015).

On December 4, 2014, the Commission affirmed, with modified reasoning, the ALJ's determination to terminate the investigation with respect to the Wild Patents based on Optical Devices' lack of standing to assert the Wild Patents. On the same day, the Commission vacated the ALJ's finding that Optical Devices lacked standing with respect to the Kadlec Patents, and remanded the investigation to the ALJ for further proceedings.

After re-opening discovery and receiving additional briefing from the parties, the ALJ issued the subject ID on April 27, 2015, finding that Optical Devices does not have standing to assert the Kadlec Patents in this investigation.

On May 7, 2015, Optical Devices filed a petition for review of the subject ID, and Respondents filed a contingent petition for review of the subject ID. On May 14, 2015, the parties filed their respective responses to the petitions.

Having reviewed the parties' submissions and the record evidence, the Commission has determined to review the subject ID in part. Specifically, the Commission has determined to review a finding related to an agreement discussed on pages 22-25 of the ID. On review, the Commission affirms the ID's finding with modified reasoning. The Commission has also determined to correct certain statements made in the subject ID. A Commission opinion will be issued shortly. The investigation is terminated in its entirety.

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.

William R. Bishop

Supervisory Hearings and Information Officer

Issued: June 9, 2015

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