



7020-02

## INTERNATIONAL TRADE COMMISSION

### Investigation No. 337-TA-1089

#### Certain Memory Modules and Components Thereof

#### Institution of Investigation

**Agency:** U.S. International Trade Commission

**Action:** Notice

**Summary:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 31, 2017, under section 337 of the Tariff Act of 1930, as amended, on behalf of Netlist, Inc. of Irvine, California. A supplement to the complaint was filed on November 21, 2017. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain memory modules and components thereof by reason of infringement of certain claims of U.S. Patent No. 9,606,907 (“the ’907 patent”) and U.S. Patent No. 9,535,623 (“the ’623 patent”). The complaint further alleges that an industry in the United States exists or is in the process of being established as required by the applicable Federal Statute.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and a cease and desist order.

**Addresses:** The complaint, except for any confidential information contained therein, is 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., Room 112, Washington, D.C. 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining

access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

**For Further Information Contact:** Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2560.

**Supplementary Information:**

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 C.F.R. 210.10 (2017).

**Scope of Investigation:** Having considered the complaint, the U.S. International Trade Commission, on November 28, 2017, **ORDERED THAT** –

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain memory modules and components thereof by reason of infringement of one or more of claims 1-8, 10, 12, 14-22, 24-25, 27, 29-35, 38, 43-45, 47, 48, 50, 52, and 58 of the '907 patent and claims 1-5, 7-15, 17-25, 27, and 29 of the '623 patent; and whether an industry in the United States exists or is in the process of being established, as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 C.F.R. § 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties or other interested persons with respect to the public interest in this investigation, as

appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. §§ 1337(d)(1), (f)(1), (g)(1);

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants is:

Netlist, Inc.  
Technology Drive, Suite 150  
Irvine, CA 92618

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served:

SK hynix, Inc.  
2091, Gyeongchung-daero, Bubal-eub  
Icheon-si, Gyeonggi-do  
Republic of Korea

SK hynix America, Inc.  
3101 N. First Street  
San Jose, CA 95134

SK hynix memory solutions, Inc.  
3103 N. First Street  
San Jose, CA 95134

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Suite 401, Washington, D.C. 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 C.F.R. 210.13. Pursuant to 19 C.F.R. 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Lisa R. Barton  
Secretary to the Commission

Issued: November 28, 2017

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