



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1043]

Certain Electrical Connectors, Components Thereof, and Products Containing the Same

Commission Determination to Review a Final Initial Determination Finding a Violation of Section 337; Request for Written Submissions on the Issues Under Review and on Remedy, Bonding, and the Public Interest; and Extension of the Target Date

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“the Commission”) has determined to review a final initial determination (“ID”) of the presiding administrative law judge (“ALJ”) finding a violation of section 337. The Commission is requesting written submissions from the parties on the issues under review and is requesting written submissions on remedy, bonding, and the public interest. The Commission has also determined to extend the target date for completion of the investigation to August 22, 2019.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436, telephone (202) 708-2310. 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, SW., Washington, D.C. 20436, telephone (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>. 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 March 14, 2017, based on a complaint filed by J.S.T. Corporation ("JST") of Farmington Hills, Michigan. 82 FR 13654-55. The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based on the importation and sale of certain electrical connectors, components thereof, and products containing the same by reason of infringement of claims 2, 4, and 9-10 of U.S. Patent No. 7,004,766 ("the '766 patent"). The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named the following respondents: Robert Bosch GmbH of Baden-Wuerttemberg, Germany; Bosch Automotive Products (Suzhou) Co., Ltd. of Jiangsu, China; and Hon Hai Precision Industry Co., Ltd. of New Tapei City, Taiwan (collectively, "the non-importing respondents"); Robert Bosch LLC of Broadview, Illinois; Robert Bosch, Sistemas Automatrices, S.A. de C.V. of Chihuahua, Mexico; Foxconn Interconnect Technology, Ltd. of New Tapei City, Taiwan (collectively, "the remaining respondents"); and Robert Bosch, Ltda. ("Bosch Brazil") of Sao Paulo, Brazil. The Office of Unfair Import Investigations is not participating in the investigation. Bosch Brazil has been terminated from the investigation. *See* Order No. 68 (November 8, 2018), *unreviewed by* Comm'n Notice (December 3, 2018). Two IDs granting respondents' motions for summary determination of invalidity of one or more asserted claims of the '766 patent due to indefiniteness have been reversed by the Commission. *See* Order No. 24 (October 16, 2017), *reversed by* Comm'n Notice (March 26, 2018); Order No. 30 (May 18, 2018), *reversed by* Comm'n Notice (July 24, 2018).

On April 12, 2019, the ALJ issued his final ID finding a violation of section 337. The ID finds that the non-importing respondents do not satisfy the importation requirement of section 337(a)(1)(B). The ID further finds that the remaining respondents' accused products infringe asserted claims 2, 4, and 9-10 of the '766 patent. The ID also finds that the asserted claims are not invalid under 35 U.S.C. §§ 102, 103. In addition, the ID finds that JST satisfied both prongs of the domestic industry requirement with respect to the '766 patent. In the same document, the ALJ recommended that if the Commission finds a violation, it should issue a limited exclusion order directed to respondents' infringing products and no cease and desist orders.

On April 29, 2019, respondents petitioned, and JST contingently petitioned, for review of the final ID. On May 7, 2019, JST and respondents each filed a response in opposition to the other party's petition for review.

Having reviewed the record of the investigation, including the parties' briefing, the Commission has determined to review the subject ID in its entirety. Accordingly, the Commission is interested in responses to the following questions:

- (A) Do the claim language, specification, and prosecution history limit the claim limitation "the first holes are provided in end regions of the tine plate proximate to two opposite ends of the tine plate in the longitudinal direction" recited in claim 2 to require that first holes be disposed closest to the edge of the two opposite ends of the tine plate in the longitudinal direction? And what is your proposed claim construction for this limitation?
- (B) How does your construction apply to infringement, the technical prong of the domestic industry requirement, and invalidity?

The parties are requested to brief only the discrete questions presented above, with reference to the applicable law and record. The parties are not to brief any other issues on review, which have already been adequately presented in the parties' previous filings. Also, the Commission has extended the target date for completion of the investigation to August 22, 2019.

In addition, in connection with the final disposition of this investigation, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (December 1994).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005, 70 *Fed. Reg.* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount

determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: Parties to the investigation are required to file initial submissions regarding the issues under review by no later than July 8, 2019. Response submissions are due by July 15, 2019. The parties should limit their initial and response submissions to 25 pages each. Also, parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding.

Complainant is also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the date that the asserted patents expire, the HTSUS numbers under which the accused products are imported, and to supply the names of known importers of the products at issue in this investigation. The written submissions regarding remedy, bonding, and the public interest and proposed remedial orders must be filed no later than close of business on July 8, 2019. Reply submissions must be filed no later than the close of business on July 15, 2019. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit eight true paper copies to the Office of the Secretary pursuant to Section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1043") in a

prominent place on the cover page and/or the first page. (See Handbook on Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary at (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel¹, solely for cybersecurity purposes. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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.

¹ All contract personnel will sign appropriate nondisclosure agreements.

By order of the Commission.

Issued: June 24, 2019.

Lisa Barton,

Secretary to the Commission.

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