



## **INTERNATIONAL TRADE COMMISSION**

**[Investigation No. 337-TA-1293]**

### **Certain Automated Put Walls and Automated Storage and Retrieval Systems, Associated Vehicles, Associated Control Software, and Component Parts Thereof**

#### **Notice of Commission Determination to Review in Part a Final Initial Determination**

#### **Finding a Violation of Section 337; Schedule for Filing Written Submissions on Remedy,**

#### **The Public Interest, and Bonding**

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

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that on March 31, 2023, the presiding chief administrative law judge (“CALJ”) issued a combined final initial determination (“ID”) finding a violation of section 337 and a recommended determination (“RD”) on remedy and bonding in the above-captioned investigation. The Commission has determined to review the final ID in part. The Commission also requests briefing from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding.

**FOR FURTHER INFORMATION CONTACT:** Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3179. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email [EDIS3Help@usitc.gov](mailto:EDIS3Help@usitc.gov). General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on January 27, 2022, based on a complaint filed by OPEX Corporation (“OPEX”) of Moorestown,

New Jersey. 87 FR 4290-91 (Jan. 27, 2022). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain automated put walls and automated storage and retrieval systems, associated vehicles, associated control software, and component parts thereof by reason of infringement of certain claims of U.S. Patent Nos. 8,104,601 (“the ’601 patent”), 8,276,740 (“the ’740 patent”), 8,622,194 (“the ’194 patent”), and 10,576,505 (“the ’505 patent”). *Id.* at 4291. The complaint further alleges that a domestic industry exists. *Id.* The notice of investigation named two respondents: (1) HC Robotics (a.k.a. Huicang Information Technology Co., Ltd.) of Hangzhou City, Zhejiang Province, China; and (2) Invata, LLC (d/b/a Invata Intralogistics) of Conshohocken, Pennsylvania (collectively, “Respondents”). *Id.* The Office of Unfair Import Investigations is not named as a party. *Id.*

On September 13, 2022, the Commission terminated the investigation as to the OmniSort Generation 1 products based on a consent order. Order No. 10 (Aug. 12, 2022), *unreviewed by* Comm’n Notice (Sept. 13, 2022). On October 11, 2022, the Commission terminated the investigation as to (i) the ’601 patent, (ii) the ’740 patent, (iii) asserted claims 2-4, 6, 10, 12-17, 19, and 20 of the ’194 patent, and (iv) asserted claims 14, 17, and 21 of the ’505 patent based on OPEX’s partial withdrawal of the complaint. Order No. 12 (Sept. 23, 2022), *unreviewed by* Comm’n Notice (Oct. 11, 2022). On December 19, 2022, the Commission determined that the technical prong of the domestic industry requirement is satisfied in this investigation as to the remaining asserted patents—*i.e.*, the ’194 and ’505 patents. *See* Order No. 17 (Nov. 23, 2022), *unreviewed by* Comm’n Notice (Dec. 19, 2022).

On March 31, 2023, the CALJ issued the subject final ID on violation and RD on remedy and bonding. The ID finds violations of section 337 with respect to asserted claims 1 and 5 of the ’194 patent and asserted claims 1-5, 7-9, 11-13, 15-16, and 18-20 of the ’505 patent. Specifically, the ID finds that: (i) OPEX has standing to assert both the ’194 and ’505 patents;

(ii) the asserted claims listed above are directly infringed by Respondents; (iii) Respondents both induced and contributed to the infringement of each of the asserted claims listed above; (iv) no asserted claim is invalid; and (v) OPEX has satisfied the economic prong of the domestic industry requirement as to both patents. The RD recommends that, should the Commission determine that violations of section 337 occurred, the Commission should: (i) issue a limited exclusion order against the Respondents' infringing products; (ii) issue a cease and desist order against the Respondents; and (iii) set a 100 percent bond for importations of infringing products during the period of Presidential review.

On April 14, 2023, Respondents filed a petition for review of the ID on violation, including the ID's findings concerning claim construction, infringement, validity, and satisfaction of the economic prong of the domestic industry requirement. On April 26, 2023, OPEX filed a response opposing Respondents' petition.

The Commission did not receive submissions on the public interest from the parties pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)). The Commission also did not receive any submissions on the public interest from members of the public in response to the Commission's *Federal Register* notice. See 88 FR 23689 (Apr. 18, 2023).

The Commission has determined to review the ID in part. Specifically, the Commission has determined to review the ID's finding that OPEX has satisfied the economic prong of the domestic industry requirement. The Commission has also determined to correct typographical errors on pages 8, 35, and 38 of the ID. The Commission has determined not to review the remaining findings in the ID.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia*, (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States; and/or (2) cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, 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 (Dec. 1994).

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and 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, disapprove, or take no action on the Commission's determination. See Presidential Memorandum of July 21, 2005, 70 FR 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, 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 CALJ on remedy and bonding.

In its initial written submission, OPEX is also requested to identify the remedy sought and to submit proposed remedial orders for the Commission's consideration. OPEX is further

requested to state the dates that the asserted patents expire, to provide the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation.

The initial written submissions and proposed remedial orders must be filed no later than close of business on **June 15, 2023**. Reply submissions must be filed no later than the close of business on **June 22, 2023**. 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. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1293) in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf)*). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed with the Commission and served on any parties to the investigation within two business days of 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 personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on June 1, 2023.

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.

Issued: June 2, 2023.

**Lisa Barton,**  
*Secretary to the Commission.*

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