



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1363]

Certain Lidar (Light Detection and Ranging) Systems and Components Thereof; Notice of Commission Determination to Review and, On Review, to Affirm with Modification an Initial Determination Terminating the Investigation in its Entirety Based on an Arbitration Agreement; Termination of 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 and, on review, to affirm with modification an initial determination (“ID”) (Order No. 10) of the presiding administrative law judge (“ALJ”) granting a motion to terminate the investigation in its entirety based upon an arbitration agreement. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Namo Kim, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-3459. 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. 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 on (202) 205-1810.

SUPPLEMENTARY INFORMATION: On May 17, 2023, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based on a complaint filed by Ouster, Inc. of San Francisco, CA (“Ouster”). See 88 FR 31519-20 (May 17, 2023). 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 LiDAR (Light Detection and Ranging) systems and components thereof by reason of the infringement of certain claims of U.S. Patent Nos. 11,175,405; 11,178,381; 11,190,750; 11,287,515; and 11,422,236. *Id.* The notice of investigation names as respondents Hesai Group of Shanghai, China; Hesai Technology Co., Ltd. of Shanghai, China; and Hesai Inc. of Palo Alto, CA (collectively, “Hesai”). *Id.* The Office of Unfair Import Investigations (“OUII”) is also participating in this investigation. *Id.*

On June 22, 2023, Hesai filed a motion to terminate or alternatively stay the investigation in its entirety based upon an arbitration provision in a 2020 Litigation Settlement and Patent Cross-License Agreement (“Settlement Agreement”) between Hesai Photonics Technology Co. Ltd. (“Hesai Photonics,” a subsidiary of respondent Hesai Group) and Velodyne Lidar, Inc. (“Velodyne,” now merged with Ouster). On July 7, 2023, Ouster filed an opposition to the motion and OUII filed a response in support of the motion. On July 12, 2023, a case management conference was held to give each of the parties an opportunity to discuss the motion to terminate or stay.

On July 17, 2023, Ouster filed a supplemental brief. On July 18, 2023, OUII filed a sur-reply to Ouster’s opposition. On July 20, 2023, Hesai filed a sur-reply to Ouster’s opposition.

On August 24, 2023, the ALJ issued the subject ID (Order No. 10) pursuant to Commission Rule 210.21(d), 19 CFR 210.21(d), granting the motion to terminate the investigation in its entirety under 19 U.S.C. 1337(c) because of an arbitration agreement. In particular, the ID finds that (1) “a valid arbitration agreement at ¶ 9.5 exists as part of the Settlement Agreement that binds Ouster and Hesai,” (2) “the arbitrability of the dispute between Ouster and Hesai . . . rests with [Judicial Arbitration and Mediation Services, Inc.], London,” and (3) “Hesai did not waive its right to arbitrate as Ouster argues.” *See* ID at 4.

On August 31, 2023, Ouster filed a petition for review of the ID with the Commission. On September 8, 2023, Hesai and OUII filed their responses to Ouster’s petition.

On September 12, 2023, Ouster filed a notice of recent developments explaining that, on September 5, 2023, Hesai filed petitions for *inter partes* review before the Patent Trial and Appeal Board with respect to two of the patents at issue in this investigation. On September 14, 2023, Hesai and OUII filed their responses to Ouster’s notice of recent developments.

The Commission has determined to review and, on review, to affirm the subject ID with modification. In particular, the Commission strikes the “wholly groundless” legal standard discussion and analysis at pages 11-12 and 16 of the subject ID, including the following statements: (1) “[T]he ALJ then must make a secondary inquiry to determine whether the assertion of arbitrability is ‘wholly groundless.’ If it is determined that the assertion of arbitrability is not ‘wholly groundless.’” ID at 11. (2) “Therefore, Hesai’s claim for arbitration is not ‘wholly groundless.’” ID at 11-12. (3) “In other words, the demand for arbitration is ‘not wholly groundless.’” ID at 16. The Supreme Court previously overruled the “wholly groundless” exception, holding that “[w]hen the parties’ contract delegates the arbitrability question to an arbitrator, a court may not override the contract . . . even if the court thinks that the argument that the arbitration agreement applies to a particular dispute is wholly groundless . . . In sum, we reject the ‘wholly groundless’ exception.” *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 529-31 (2019).

The Commission also addresses a typographical error at page 10 of the subject ID by modifying “*See id.* at ¶ 9.5” to state “*See id.* at ¶ 9.4.” This is a citation for the sentence in the subject ID that states “[t]he Choice of Law for purposes of construing the Settlement Agreement is designated as California law,” and Section 9.4 of the Settlement Agreement on “Governing Law” is the section that determines the choice of law for the Settlement Agreement.

With regard to Ouster’s notice of recent developments, the Commission finds that, under the facts of this investigation, Hesai’s separately filed *inter partes* review petitions do not prevent the Commission from determining that the investigation must be terminated in favor of arbitration. The Commission also notes that the Settlement Agreement provides that “either

Party shall have the right to challenge the validity and enforceability of any Patent in defense to a suit or assertion of a claim relating to any such Patent that is brought against a Party or alleging infringement by a Licensee Product or a Velodyne Product.” Settlement Agreement section 3.4 (“Contesting Validity”).

The investigation is terminated.

The Commission vote for this determination took place on October 10, 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: October 11, 2023.

Lisa Barton,

Secretary to the Commission.

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