

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN LIGHT-EMITTING DIODES
AND PRODUCTS CONTAINING SAME**

Investigation No. 337-TA-512

**NOTICE OF COMMISSION FINAL DETERMINATION OF NO VIOLATION OF
SECTION 337 AS TO FIVE PATENTS AND VIOLATION OF SECTION 337 AS
TO THREE PATENTS; ISSUANCE OF LIMITED EXCLUSION ORDER;
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 that there is no violation of 19 U.S.C. § 1337 by Dominant Semiconductors Sdn. Bhd. (“Dominant”) with respect to United States Patent Nos. 6,066,861, 6,277,301, 6,613,247, 6,245,259, and 6,592,780 (collectively, the “Particle Size Patents”); that there is a violation by Dominant with respect to United States Patent Nos. 6,376,902, 6,469,321, and 6,573,580 (collectively, the “Lead Frame Patents”); and that the Commission has determined to issue a limited exclusion order.

FOR FURTHER INFORMATION CONTACT: Michelle Walters, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5468. 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 at <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 based on a complaint filed by Osram GmbH and Osram Opto Semiconductors GmbH, both of Germany (collectively, “Osram”). 69 *Fed. Reg.* 32609 (June 10, 2004). In the complaint, as supplemented and amended, Osram alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after

importation of certain light-emitting diodes and products containing the same by reason of infringement of various claims of the Particle Size Patents, United States Patent No. 6,576,930 (the “‘930 patent”), the Lead Frame Patents, and United States Patent No. 6,716,673 (the “‘673 patent”).

On May 10, 2005, the presiding administrative law judge (“ALJ”) issued his final initial determination (“ID”) finding the sole remaining respondent, Dominant, in violation of section 337, but only with respect to the ‘673 patent. The ALJ concluded that the asserted claims of the Particle Size Patents were invalid for indefiniteness, that the ‘930 patent and the Lead Frame Patents were not infringed by Dominant’s accused products, and that Osram did not meet the technical prong of the domestic industry requirement with respect to the ‘930 patent.

On June 24, 2005, the Commission determined to review the ALJ’s findings and conclusions regarding the Particle Size Patents, the ‘930 patent, and the Lead Frame Patents. 70 *Fed. Reg.* 37431 (June 29, 2005). The Commission declined to review the ALJ’s determination of violation of section 337 with respect to the ‘673 patent.

On review, the Commission determined that the Particle Size Patents were not invalid for indefiniteness and construed the disputed phrase “mean grain diameter d_{50} ” to mean average diameter by volume. Inv. No. 337-TA-512, Comm’n Op. at 4-14 (Aug. 12, 2005). The Commission remanded the investigation to the ALJ for a determination on infringement and domestic industry with regard to the Particle Size Patents consistent with the Commission’s opinion. In addition, the Commission left open the question whether the asserted claims of the Particle Size Patents are invalid as indefinite for failing to specify the type of instrument that should be used to determine the “mean grain diameter d_{50} .” With regard to the ‘930 patent, the Commission terminated the investigation with a finding of no violation. Finally, the Commission deferred addressing the issue of violation with respect to the Lead Frame Patents, as well as issues relating to remedy, public interest, and bonding. 70 *Fed. Reg.* 48194 (Aug. 16, 2005).

The ALJ issued a remand initial determination (“Remand ID”) on October 31, 2005, finding no violation of section 337 with regard to the Particle Size Patents, because Osram failed to show that there was an industry in the United States that practices those patents. The ALJ also concluded that some of Dominant’s accused products do not infringe the asserted claims of the Particle Size Patents. Finally, the ALJ declined to revisit the issue of indefiniteness, because Dominant failed to raise it on remand.

In its remand notice, the Commission had invited comments from the parties addressing the ALJ’s determination on remand, and on November 10, 2005, Osram filed comments, challenging the Remand ID. 70 *Fed. Reg.* 48194 (Aug. 16, 2005). On November 18, 2005, Dominant and the Commission investigative attorney each filed responses to Osram’s comments, asserting that the ALJ’s determinations on remand are not erroneous.

Having examined the record of this investigation, including the ALJ’s final ID and Remand ID and the submissions of the parties, the Commission has determined (1) that there is no violation of section 337 by Dominant with regard to the Particle Size Patents; (2) that there is a violation of

section 337 by Dominant with regard to the Lead Frame Patents; and (3) to issue a limited exclusion order with respect to the Lead Frame Patents and the '673 patent. The Commission's order was delivered to the President on the day of its issuance.

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 section 210.45 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.45).

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: January 11, 2006