

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN LIQUID CRYSTAL DISPLAY
DEVICES AND PRODUCTS
CONTAINING THE SAME**

Investigation No. 337-TA-631

**NOTICE OF COMMISSION DECISION TO REVIEW-IN-PART A FINAL INITIAL
DETERMINATION FINDING A VIOLATION OF SECTION 337; REQUEST FOR
WRITTEN SUBMISSIONS REGARDING REMEDY, BONDING, AND THE PUBLIC
INTEREST; AND EXTENSION OF TARGET DATE**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part a final initial determination (“ID”) of the presiding administrative law judge (“ALJ”) finding a violation of section 337 in the above-captioned investigation, and to request written submissions regarding remedy, bonding, and the public interest. The Commission has also extended the target date for completion of the investigation by 30 days until May 27, 2009.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., 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, 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 on January 25, 2008, based on a complaint filed by Samsung Electronics Co., Ltd. (“Samsung”) of Korea. *73 Fed. Reg.* 4626-27. The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain

liquid crystal display (“LCD”) devices and products containing the same by reason of infringement of certain claims of U.S. Patent Nos. 7,193,666 (“the ‘666 patent”); 6,771,344 (“the ‘344 patent”); 7,295,196; and 6,937,311 (“the ‘311 patent”). The complaint further alleges the existence of a domestic industry. The Commission’s notice of investigation named the following respondents: Sharp Corporation of Japan; Sharp Electronics Corporation of Mahwah, New Jersey; and Sharp Electronics Manufacturing, Company of America, Inc. of San Diego, California (collectively “Sharp”).

On January 26, 2009, the ALJ issued his final ID finding a violation of section 337 by respondents. On February 9, 2009, Sharp and the Commission investigative attorney (“IA”) filed petitions for review of the final ID. The IA and Samsung filed responses to the petitions on February 17, 2009. Also, on March 12, 2009, Sharp filed a motion to extend the target date for completion of the investigation to allow consideration of the final ID scheduled to issue in *Certain Liquid Crystal Display Modules, Products Containing Same, and Methods for Using the Same*, Inv. No. 337-TA-634, on June 12, 2009. On March 23, 2009, Samsung and the IA filed responses in opposition to Sharp’s motion. On March 26, Sharp filed a motion for leave to file a reply to Samsung’s and the IA’s responses in opposition.

Upon considering the parties’ filings, the Commission has determined to review-in-part the ID. Specifically, the Commission has determined to review: 1) the ALJ’s construction of the claim term “domain dividers” relating to the ‘311 patent;” 2) the ALJ’s determination that Sharp’s LCD devices infringe the ‘311 patent; 3) the ALJ’s determination that the ‘311 patent is not unenforceable; and 4) the ALJ’s determination that the asserted claims of the ‘344 patent are not invalid as anticipated by U.S. Patent No. 5,309,264 (“the ‘264 patent”). The Commission has determined not to review the remainder of the ID. Also, the Commission has extended the target date for completion of the investigation by 30 days until May 27, 2009, for procedural reasons. It has denied Sharp’s motion to extend the target date to the extent necessary to allow consideration of the final ID to issue in Inv. No. 337-TA-634. Also, the Commission has denied Sharp’s motion for leave to file a reply to Samsung’s and the IA’s responses in opposition to Sharp’s motion to extend the target date.

On review, with respect to violation, the parties are requested to submit briefing limited to the following issues:

- 1) Whether one of ordinary skill in the art would understand that the claim term “domain dividers” in claims 6 and 8 of the ‘311 patent includes protrusions, in light of the intrinsic evidence and the context of the claimed invention. Please discuss *Wang Labs, Inc. v. Am. Online*, 197 F.3d 1377 (Fed. Cir. 1999) in your response.
- 2) Under the ID’s construction for the claim term “domain dividers” which includes protrusions, whether claims 6 and 8 of the ‘311 patent are invalid under 35 U.S.C. § 112, ¶ 1. Please discuss *ICU Med., Inc. v. Alaris Med. Sys.*, No.

2008-1077, 2009 U.S. App. LEXIS 5271 (Fed. Cir. Mar. 13, 2009) and *LizardTech, Inc. v. Earth Res. Mapping, Inc.*, 424 F.3d 1336 (Fed. Cir. 2005) in your response.

3) Under the ID's construction of "aperture" in claims 7 and 8 of the '344 patent, (a) whether U.S. Patent No. 5,309,264 anticipates those claims; and (b) how the "orientation" of a multi-pronged aperture is determined. Assume the Commission finds that all other claim terms are met.

In addressing these issues, the parties are requested to make specific reference to the evidentiary record and to cite relevant authority.

In connection with the final disposition of this investigation, the Commission may issue an order that results in the exclusion of the subject articles from entry into the United States. 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 *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

When 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.

When 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: The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be concise and thoroughly

referenced to the record in this investigation. 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, and such submissions should address the recommended determination by the ALJ on remedy and bonding. The complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the dates that the patents at issue expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on April 10, 2009. Reply submissions must be filed no later than the close of business on April 17. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. 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 C.F.R. § 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

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 sections 210.42-46 of the Commission's Rules of Practice and Procedure, 19 C.F.R. §§ 210.42-46.

By order of the Commission.

/s/

Marilyn R. Abbott

Secretary to the Commission

Issued: March 30, 2009

William R. Bishop

Acting Secretary to the Commission