

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.**

In the Matter of

**CERTAIN SOLID STATE STORAGE
DRIVES, STACKED ELECTRONICS
COMPONENTS, AND PRODUCTS
CONTAINING SAME**

Investigation No. 337-TA-1097

**NOTICE OF COMMISSION DECISION TO AFFIRM WITH MODIFICATIONS
AN INITIAL DETERMINATION FINDING COMPLAINANT HAS SATISFIED
THE ECONOMIC PRONG OF THE DOMESTIC INDUSTRY REQUIREMENT
AS TO ALL BUT ONE OF THE ASSERTED PATENTS;
TERMINATION OF THE INVESTIGATION WITH A FINDING OF NO
VIOLATION OF SECTION 337 WITH RESPECT TO U.S. PATENT NO. 9,135,190**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm with modifications the presiding administrative law judge's ("ALJ") initial determination ("ID"), which found that the complainant has satisfied the economic prong of the domestic industry requirement as to U.S. Patent Nos. 7,826,243 ("the '243 patent"); 6,529,416 ("the '416 patent"); and 8,093,103 ("the '103 patent"); but not as to U.S. Patent No. 9,135,190 ("the '190 patent"). Accordingly, the investigation is terminated with a finding of no violation of section 337 with respect to the '190 patent.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2392. 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, DC 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 January 26, 2018, based on a complaint filed by BiTMICRO, LLC ("BiTMICRO") of Reston, Virginia. 83 FR 3771 (Jan. 26, 2018). The complaint, as amended, 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 solid state storage drives, stacked electronics components, and products containing the same by reason of infringement of one or more of claims 1, 2, 11, and 12 of the '243 patent; claims 1-20 of the '416 patent; claims 1-101 of the '190 patent; and claims 12 and 16 of the '103 patent. *Id.* The complaint also alleges that an industry in the United States exists as required by 19 U.S.C. § 1337(a)(2). *Id.* The notice of investigation named as respondents Samsung Electronics Co., Ltd. of Gyeonggi-do, Republic of Korea; Samsung Semiconductor, Inc. of San Jose, California; Samsung Electronics America, Inc. of Ridgefield Park, New Jersey; SK Hynix Inc. of Gyeonggido, Republic of Korea; SK Hynix America Inc. of San Jose, California; Dell Inc. of Round Rock, Texas; Dell Technologies Inc. of Round Rock, Texas; Lenovo Group Ltd. of Beijing, China; Lenovo (United States) Inc. of Morrisville, North Carolina; HP Inc. of Palo Alto, California; Hewlett Packard Enterprise Co. of Palo Alto, California; ASUSTeK Computer Inc. of Taipei, Taiwan; ASUS Computer International of Fremont, California; Acer Inc. of New Taipei City, Taiwan; Acer America Corp. of San Jose, California; VAIO Corporation of Azumino, Japan; and Transcosmos America Inc. of Gardena, California. *Id.* at 3772. The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation. *Id.*

The Commission’s notice of institution directed the presiding ALJ to conduct an early hearing and to issue an early decision on whether BiTMICRO “has satisfied the economic prong of the domestic industry requirement.” *Id.* at 3771.

The ALJ held an evidentiary hearing on the domestic industry issue on March 22, 2018, and thereafter received post-hearing briefing from the parties. On May 11, 2018, the ALJ issued the subject ID, which found that BiTMICRO has satisfied the economic prong of the domestic industry requirement with respect to the '243, the '103, and the '416 patents, but not with respect to the '190 patent. On May 21, 2018, all parties, including OUII, filed petitions for review of the ID. On May 24, 2018, the parties filed replies to the others’ petitions.

On June 12, 2018, the Commission determined to review the subject ID. On review, the Commission adopts different reasoning from that of the ALJ, but reaches the same conclusion that BiTMICRO has satisfied the economic prong of the domestic industry requirement with respect to the '243 patent, the '103 patent, and the '416 patent, but not with respect to the '190 patent. Accordingly, the investigation is terminated with a finding of no violation of section 337 as to the '190 patent. The Commission’s reasoning in support of its determinations will be set forth more fully in the concurrent opinion.

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.

A handwritten signature in black ink, appearing to read "Lisa R. Barton". The signature is fluid and cursive, with the first name "Lisa" and the last name "Barton" clearly distinguishable.

Lisa R. Barton
Secretary to the Commission

Issued: June 20, 2018