

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN POWER INVERTERS AND
CONVERTERS, VEHICLES CONTAINING
THE SAME, AND COMPONENTS THEREOF**

Investigation No. 337-TA-1267

**NOTICE OF A COMMISSION DETERMINATION TO GRANT TWO UNOPPOSED
JOINT MOTIONS TO TERMINATE CERTAIN RESPONDENTS BASED ON
SETTLEMENT**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (the “Commission”) has determined to grant two unopposed motions to terminate certain respondents from this investigation based on settlement.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2382. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket system (“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, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On June 28, 2021, the Commission instituted this investigation based on a complaint filed by Arigna Technology Limited of Carrickmines, Ireland (“Arigna”). 86 FR 34042-43 (Jun. 28, 2021). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“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 power inverters and converters, vehicles containing the same, and components thereof that infringe one or more of the asserted claims of U.S. Patent Nos. 8,247,867 (“the ’867 patent”) and 8,289,082 (“the ’082 patent”). *Id.* at 34042. The complaint also alleges that a domestic industry exists or is in the process of being established. *Id.*

The Commission’s notice of investigation named the following respondents: Porsche AG, of Stuttgart, Germany; Porsche Cars North America, Inc. of Atlanta, Georgia (collectively, “Porsche”); Volkswagen AG of Wolfsburg, Germany; Volkswagen Group of America, Inc., of Herndon, Virginia (collectively, “Volkswagen”); Audi AG of Ingolstadt, Germany; Audi of America, LLC, of Herndon, Virginia (collectively, “Audi”); Bentley Motors Limited of Crewe,

United Kingdom; Bentley Motors, Inc., of Reston, Virginia (collectively, “Bentley”); Automobili Lamborghini America, LLC, of Herndon, Virginia; Automobili Lamborghini S.p.A., of Sant’Agata, Italy (collectively, “Lamborghini”); Daimler AG of Stuttgart, Germany; Mercedes-Benz USA, LLC of Sandy Springs, Georgia (collectively, “Daimler”); Bayerische Motoren Werke AG of Munich, Germany; BMW of North America, LLC, of Woodcliff Lake, New Jersey (collectively, “BMW”); and General Motors Company of Detroit, Michigan and General Motors LLC of Detroit, Michigan (“GM”) (all collectively, “Respondents”). *Id.* at 34043. The Office of Unfair Import Investigations (“OUII”) is also participating in this investigation. *Id.*

The presiding administrative law judge (“ALJ”) held a *Markman* hearing on December 1, 2021. The ALJ issued a *Markman* order (Order No. 30) on January 18, 2022, construing certain claim terms of the ’082 and ’867 patents.

On January 18, 2022, the Commission terminated the investigation with respect to General Motors Company based on a partial withdrawal of the complaint. Order No. 23 (Dec. 20, 2021), *unreviewed by* Comm’n Notice (January 18, 2022).

On March 15, 2022, the Commission terminated the ’867 patent from the investigation as asserted against BMW based on partial withdrawal of the complaint. Order No. 37 (Feb. 18, 2022), *unreviewed by* Comm’n Notice (Mar. 15, 2022). On April 25, 2022, the Commission terminated claims 2-6 and 18-22 of the ’082 patent and claims 1, 2, and 9 of the ’867 patent based on a partial withdrawal of the complaint. Order No. 50 (Apr. 6, 2022), *unreviewed by* Comm’n Notice (Apr. 25, 2022).

On May 17, 2022, the Commission terminated the investigation with respect to Porsche based on a settlement agreement. Order No. 53 (April 29, 2022), *unreviewed by* Comm’n Notice (May 17, 2022).

The presiding ALJ held an evidentiary hearing on April 4-8, 2022. The parties timely filed their initial post-hearing briefs on April 25, 2022, and their post-hearing reply briefs on May 4, 2022.

On August 12, 2022, the presiding ALJ issued a final initial determination on violation, finding no violation of section 337 with respect to either the ’082 patent or the ’867 patent. On August 26, 2022, the presiding ALJ issued a recommended determination on remedy, bonding, and the public interest, recommending that the Commission issue a limited exclusion order (subject to a delay in implementation of up to six months) and cease and desist orders against Audi, BMW, Mercedes, GM, and Volkswagen (but not Bentley or Lamborghini), and set a zero percent bond, should the Commission find a violation of Section 337.

On August 26, 2022, Arigna filed a petition for review of the ID’s finding of no-violation with respect to the ’082 patent, including issues of claim construction, non-infringement, and invalidity. Arigna did not petition for review of any findings relating to the ’867 patent. No other party petitioned for review of any of the ID’s findings with respect to the ’082 patent.

On August 26, 2022, respondent GM filed a contingent petition for review of the ID's finding that asserted claim 8 of the '867 patent is not invalid. GM did not petition for review of any findings with respect to the '082 patent. No other party petitioned for review of any findings regarding the '867 patent.

On September 6, 2022, Respondents filed their opposition to Arigna's petition for review of the ID's findings with respect to the '082 patent. OUII filed its respective responses to Arigna's petition and to GM's contingent petition on the same date.

On September 2, 2022, Arigna and respondents Volkswagen, Audi, Bentley, and Lamborghini (collectively, the "Volkswagen Respondents") filed the subject joint motion to terminate the investigation with respect to the Volkswagen Respondents based on a confidential license agreement that purportedly resolves all of Arigna's claims against the Volkswagen Respondents. On September 14, 2022, OUII filed a response in favor of the motion to terminate the Volkswagen Respondents. No party opposed the motion.

On September 15, 2022, Arigna and Daimler filed the subject joint motion to terminate the investigation with respect to Daimler due to a confidential license agreement that purportedly resolves all of Arigna's claims against Daimler. On September 28, OUII filed a response in support of the joint motion to terminate Daimler. No party opposed the motion.


The Commission has determined to grant both joint motions to terminate Daimler and the Volkswagen Respondents and to limit service of their respective license agreements as requested. Specifically, the Commission has determined to limit service of the license agreements concerning the Volkswagen Respondents to the settling parties and OUII, and to limit service of the license agreements concerning Daimler to OUII. The Commission finds that the joint motions satisfy Commission Rule 210.21(b) (19 CFR 210.21(b)). Specifically, the Commission finds that the joint motions included confidential and public versions of the license agreements, and a statement that there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation. The Commission finds that there are no extraordinary circumstances that would warrant denial of the requested termination. The license agreements shall remain confidential with respect to the other Respondents and other non-parties to the agreements.

BMW and GM remain as respondents in this investigation.

The Commission voted to approve this determination on November 22, 2022.

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 "Katherine M. Hiner". The signature is written in a cursive style with a large initial "K".

Katherine M. Hiner
Acting Secretary to the Commission

Issued: November 22, 2022