

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN LIDAR (LIGHT DETECTION
AND RANGING) SYSTEMS AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1363

**NOTICE OF COMMISSION DETERMINATION TO WAIVE COMMISSION RULE
210.42(h)(3) AND EXTEND THE DATE FOR WHETHER TO REVIEW AN INITIAL
DETERMINATION TERMINATING THE INVESTIGATION IN ITS ENTIRETY
BASED ON AN ARBITRATION AGREEMENT**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to waive Commission Rule 210.42(h)(3) and to extend the date for whether to review 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 to October 10, 2023.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, 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 settlement 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 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.

Order No. 10 was issued pursuant to Commission Rule 210.21(a) and 210.42(c). 19 CFR 210.21(a), 210.42(c). Accordingly, pursuant to Commission Rule 210.42(h)(3), 19 CFR 210.42(h)(3), the date for determining whether to review Order No 10 was September 25, 2023. The Commission has determined to waive Rule 210.42(h)(3) and to extend the date for determining whether to review Order No. 10 to October 10, 2023. *See* 19 CFR 201.4(b); *Swagway, LLC v. Int’l Trade Comm’n*, 934 F.3d 1332, 1343 (Fed. Cir. 2019) (noting the Commission’s ability to waive its rules).

The Commission vote for this determination took place on September 27, 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.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton
Secretary to the Commission

Issued: September 28, 2023