

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

In the Matter of

**CERTAIN SMART CEILING FANS,
COMPONENTS THEREOF, AND
ASSOCIATED SYSTEMS AND
SOFTWARE THEREOF**

Investigation No. 337-TA-1374

**NOTICE OF COMMISSION DETERMINATION TO DECLINE JUDICIAL
ENFORCEMENT OF SUBPONA AD TESTIFICANDUM**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to decline authorization of judicial enforcement of a subpoena *ad testificandum* issued by the presiding administrative law judge (“ALJ”) in this investigation at this time.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-3228. 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 October 26, 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 Wangs Alliance Corporation d/b/a, WAC Lighting of Port Washington, New York (“Complainant”). *See* 88 FR 73620-21 (Oct. 26, 2023). The complaint alleges a violation of section 337 based upon the importation into the United States, sale for importation, or sale after importation into the United States of certain smart ceiling fans, components thereof, and associated systems and software thereof, by reason of infringement of certain claims of U.S. Patent Nos. 11,028,854 (“the ’854 patent”); 10,488,897 (“the ’897 patent”); and 11,598,345 (“the ’345 patent”). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The notice of investigation names the following respondents: Minka Lighting, LLC of Newport News, Virginia and Tech Lighting LLC and VC Brands, LLC,

both of Skokie, Illinois (collectively, “Respondents”). *Id.* The Office of Unfair Import Investigations is not participating in this investigation. *Id.*

The Commission previously terminated claims 2 and 3 of the ’854 patent, claims 6, 8, 9, 10, 12, 13, and 14 of the ’345 patent, and the ’897 patent in its entirety. Order No. 16 (Apr. 23, 2024), *unreviewed by* Comm’n Notice (May 15, 2024).

On March 18, 2024, Complainant filed a motion (“Motion”) to certify a request for judicial enforcement of a subpoena *ad testificandum* issued on October 30, 2023 and directed to non-party Olibra, LLC (“Olibra”). Complainant seeks a second deposition of non-party Olibra to provide additional testimony about four topics and answer detailed questions regarding specific lines of source code. On March 29, 2024, Olibra filed a response in opposition to Complainant’s Motion. Olibra argues the second deposition is unreasonable and burdensome, and further argues the source code speaks for itself.

On April 1, 2024, the ALJ issued Order No. 13 granting Complainant’s Motion. Order No. 13 (Apr. 1, 2024). The ALJ certified the request to the Commission to obtain judicial enforcement of the subpoena on April 4, 2024.

The Commission has determined to decline the ALJ’s request for judicial enforcement of the subpoena to Olibra at this time. A moving party seeking judicial enforcement of a subpoena must “provide a sufficient showing of the purpose, relevance, and reasonableness of the subpoena” and that “the responding party failed to comply with the subpoena.” *Certain Standard Cell Libraries, Prods. Containing or Made Using the Same, Integrated Circuits Made Using the Same, & Prods. Containing Such Integrated Circuits*, Inv. No. 337-TA-906, Order No. 33 at 1-2 (Aug. 29, 2014) (denying motion because moving party failed to demonstrate that the responding party failed to comply with the subpoena); *Certain Multi-Stage Fuel Vapor Canister Sys. & Activated Carbon Components Thereof*, Inv. No. 337-TA-1140, Order No. 18 at 3 (July 30, 2019) (granting complainants’ motion for judicial enforcement of non-party subpoena because requests were “(1) sought for a proper purpose, namely to obtain discovery that non-party Kayser is in a unique position to provide; (2) relevant to at least the issues of technical and economic prongs of domestic industry; and (3) reasonable in scope considering the importance of the discovery to the merits of this investigation.”); *Certain Graphics Systems, Components Thereof, and Digital Televisions Containing the Same*, Inv. No. 337-TA-1318, Order No. 58 at 1-4 (Feb. 1, 2023) (denying motion because moving party’s requests for additional testimony were ambiguous and of unknown scope and length, especially in light of previous document productions and depositions); *see also U.S. Int’l Trade Comm’n v. E. & J. Gallo Winery*, 637 F. Supp. 1262, 1267 (D.D.C. 1985). The Commission notes that Olibra has provided Complainant with the requested documents, including source code, and an Olibra witness was previously deposed in a full-day deposition. The Commission finds that the requested second deposition is duplicative of the prior discovery. The Commission further finds that a second deposition on five broad topics is unreasonable, especially to the extent the topics were covered in the first deposition, not timely narrowed prior to that deposition, and not narrowed in the Motion. The Commission also finds that Complainant failed to show that it cannot obtain the information from the already-produced source code and documents. The Commission further finds that requiring a third-party witness to testify regarding the line-by-line functionality of source code

inappropriately shifts the burden of analyzing and interpreting the code to the third-party. *See Int'l Business Machines Corp. v. The Priceline Group Inc.*, Civil Action No. 15-137, 2016 WL 6305981, at *1 (D. Del. Sept. 29, 2016) (“[W]here a plaintiff has access to the source code and the task of requiring a defendant to sift through its source code to identify accused features would be unduly burdensome, courts have denied requests like IBM’s here.”); *Callwave Commc’ns LLC v. AT&T Mobility LLC*, Civil Action Nos. 12-1701 et al., 2015 WL 4039813, at *1 (D. Del. June 29, 2015) (agreeing with the defendant that “to compel the 30(b)(6) witness to testify regarding the functionality of a source code would inappropriately shift the burden of analyzing and interpreting the code to the defendants”). Accordingly, at this time, the Commission declines the request for judicial enforcement as stated in Order No. 13.

Commissioner Schmidlein would grant the request for judicial enforcement of the subpoena. She disagrees with the majority that this would constitute an inappropriate shift of the burden of analyzing and interpreting source code because “[t]estimony on the operations of source code for products at issue is standard fare in patent cases.” *Vasudevan Software, Inc. v. MicroStrategy Inc.*, 2012 WL 12920634, *3 (N.D. Cal. Aug. 22, 2012); *see, e.g., Google, LLC v. Sonos, Inc.*, 2023 WL 1997753, *4 (N.D. Cal. Feb. 14, 2023) (granting motion to compel Google to designate and produce a Rule 30(b)(6) witness to testify on the subject of source code functionality). She notes that the ALJ found that Olibra did not provide a knowledgeable witness for the noticed deposition. Order No. 13 at 4-5. Among other things, the ALJ found that the witness lacked recent experience regarding the subject source code and did not adequately prepare for the deposition. *Id.* She also notes that the ALJ found that the burden of continuing a deposition on the outstanding topics is not unreasonable and that “WAC is entitled to the information” it seeks through the deposition because it is “plainly relevant to the asserted claims and that no other party or entity has been identified as having [the information].” *Id.* at 5-6. Commissioner Schmidlein would defer to the ALJ in this instance and grant the request as, in her view, ALJs are generally entitled to deference regarding the management of the case and discovery.

The Commission vote for this determination took place on June 28, 2024.

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.



Lisa R. Barton
Secretary to the Commission

Issued: June 28, 2024