

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of
CERTAIN PASSIVE OPTICAL NETWORK
EQUIPMENT

Investigation No. 337-TA-1384

**NOTICE OF A COMMISSION DETERMINATION TO REVIEW A FINAL INITIAL
DETERMINATION FINDING NO VIOLATION OF SECTION 337**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review a final initial determination (“FID”) of the presiding administrative law judge (“ALJ”) finding no violation of section 337 in the above-captioned investigation.

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: The Commission instituted this investigation on December 29, 2023, based on a complaint filed by Optimum Communications Services, Inc. of Jersey City, New Jersey (“Optimum”). 88 FR 90200-01 (Dec. 29, 2023). The complaint, as supplemented, 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 in the United States after importation of certain passive optical network equipment by reason of the infringement of certain claims of U.S. Patent Nos. 7,333,511 (“the ’511 patent”) and 7,558,260 (“the ’260 patent”) (collectively, “the asserted patents”). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The Commission’s notice of investigation (“NOI”) names the following respondents: (i) Hangzhou Softel Optic Co., Ltd. of Hangzhou, China; (ii) Hangzhou DAYTAI Network Technologies Co., Ltd. of Hangzhou, China; and (iii) Hangzhou Sumlo Industrial Co., Ltd. of Hangzhou, China (collectively, “Respondents”). *Id.* at 90201. The Office of Unfair Import Investigations (“Staff”) is also a party to this investigation. *Id.*

On May 9, 2024, the Commission found all Respondents in default. Order No. 12 (April 10, 2024), *unreviewed by Comm’n Notice* (May 9, 2024).

Optimum and Staff opted to have the ALJ decide the investigation on the briefs rather than hold an evidentiary hearing. Order No. 13 (May 9, 2024). On May 21, 2024, Optimum filed its brief on the issues of violation, remedy, and bonding, which was titled, “Complainant’s Pre-hearing Brief.” On June 7, 2024, Staff filed its brief. On June 10, 2024, Optimum also filed a reply brief.

Almost two months after the parties’ briefing was completed, Xenogenic Development, LLC (“Xenogenic”) moved to intervene in the investigation, to stay all proceedings, and to terminate the investigation. On August 16, 2024, Optimum filed a response to Xenogenic’s motion to intervene. On August 19, 2024, Staff filed a response to Xenogenic’s motion to intervene. On August 22, 2024, Xenogenic filed a reply.

On December 19, 2024, the ALJ issued the FID finding no violation of section 337 with respect to claims 1 and 12-14 of the ’511 patent and claims 1 and 3 of the ’260 patent. Specifically, the FID finds: (1) termination is proper because, due to post-institution assignments of the asserted patents, Optimum is no longer a proper complainant; (2) the importation requirement has not been satisfied; (3) Optimum has not shown that either claims 1 and 12-14 of the ’511 patent or claims 1 and 3 of the ’260 patent are infringed; (4) Optimum has not satisfied the technical prong of the domestic industry requirement for the ’511 patent or the ’260 patent; and (5) Optimum has not satisfied the economic prong of the domestic industry requirement for the ’511 patent or the ’260 patent. The FID also grants in part Xenogenic’s motion to intervene for the limited purpose of addressing ownership-related issues in the event of Commission review of the FID’s findings of no violation.

The FID includes the ALJ’s recommended determination (“RD”) on remedy, the public interest, and bonding should the Commission find a violation of section 337. Specifically, the RD recommends, if the Commission finds a violation, issuing a general exclusion order (“GEO”) under section 337(d)(2)(A). *Id.* at 49-52. However, the RD recommends that the evidence does not support that there is a widespread pattern of circumvention and, thus, does not support issuance of a GEO under section 337(d)(2)(B). Moreover, because Optimum failed to show a violation of section 337 by substantial, reliable, and probative evidence, the RD does not recommend issuing a GEO under section 337(g)(2). The RD does not recommend issuing any cease and desist orders. The RD also recommends that, because Optimum failed to demonstrate the necessity of a bond, the Commission should issue a zero percent (0%) bond for any infringing products imported during the period of Presidential review.

On December 24, 2024, Optimum filed a petition for review. On January 7, 2025, Staff filed a response to Optimum’s petition. Xenogenic did not file a response to Optimum’s petition.

On January 21, 2025, the Commission published its post-RD *Federal Register* notice seeking submissions on public interest issues raised by the relief recommended by the ALJ should the Commission find a violation. 90 FR 7158-59 (Jan. 21, 2025). On February 10, 2025, Antony Hernandez filed a submission supporting Optimum’s request for a GEO. On February 11, 2025, Xenogenic filed a submission arguing against issuance of a GEO.

Having reviewed the record of this investigation, the Commission has determined to review the FID in its entirety.

The Commission vote for this determination took place on March 11, 2025.

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', enclosed within a large, loopy oval flourish.

Lisa R. Barton
Secretary to the Commission

Issued: March 11, 2025