

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 NOT TO REVIEW
AN INITIAL DETERMINATION GRANTING STAFF'S MOTION TO DECLASSIFY
CERTAIN PORTIONS OF ITS BRIEF ON VIOLATION, REMEDY, AND BONDING**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined not to review an initial determination (“ID”) (Order No. 19) issued by the presiding administrative law judge (“ALJ”) granting the Commission Investigative Staff’s motion to declassify certain information in its brief on violation, remedy, and bonding.

FOR FURTHER INFORMATION CONTACT: Namo Kim, 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: 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. 7,558,260 and 7,333,511. *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, “Defaulting 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 the Defaulting Respondents in default. Order No. 12 (April 10, 2024), *unreviewed by Comm’n Notice* (May 9, 2024).

Optimum and the Staff opted to have the ALJ decide the investigation on the briefs rather than hold an evidentiary hearing. To that effect, on May 21, 2024, Optimum filed a brief on violation of section 337, remedy, and bonding, and the Staff filed its brief on June 7, 2024. The Staff subsequently asked Optimum to identify any confidential information in the Staff's brief so that it could prepare a public version, and Optimum responded. Ultimately, the parties could not agree on the proposed redactions and the ALJ authorized the Staff to file a motion to declassify. *See* Order No. 17 (Aug. 8, 2024).

On August 21, 2024, the Staff filed a motion and a memorandum in support of its motion to declassify its brief on the issues of violation of section 337, remedy, and bonding. The Staff contended that certain of Optimum's proposed redactions to the Staff's brief do not contain any confidential business information as defined in Commission Rule 201.6(a)(1). 19 CFR 201.6(a)(1). Instead, the Staff contended that the proposed redactions would redact "Staff's description of and arguments regarding publicly available information."

On August 29, 2024, Optimum filed a response to the Staff's motion to declassify, contending that the information is "factually incorrect" and "publishing such falsehoods, by a public sector actor, would constitute malfeasance."

On September 19, 2024, the ALJ issued the subject ID (Order No. 19) granting the Staff's motion to declassify certain proposed portions of its brief on the issues of violation of section 337, remedy, and bonding. The ID finds that, pursuant to Commission Rule 210.20(a) (19 CFR 210.20(a)), Optimum did not establish that its proposed redactions at issue are Optimum's confidential business information as defined in Commission Rule 201.6(a)(1) (19 CFR 201.6(a)(1)).

No petitions for review of the subject ID were filed.

The Commission has determined not to review the subject ID (Order No. 19).

The Commission vote for this determination took place on November 4, 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: November 4, 2024