

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of)

CERTAIN LIGHT-EMITTING)
DIODES AND PRODUCTS)
CONTAINING SAME)

Inv. No. 337-TA-512

**NOTICE OF COMMISSION DETERMINATION TO REVIEW A FINAL
DETERMINATION ON VIOLATION OF SECTION 337; SCHEDULE FOR FILING
WRITTEN SUBMISSIONS ON THE ISSUES UNDER REVIEW AND ON REMEDY,
THE PUBLIC INTEREST, AND BONDING**

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 portion of the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on May 10, 2005, regarding whether there is a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3090, or Michelle Walters, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.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 patent-based section 337 investigation based on a complaint filed by Osram GmbH and Osram Opto Semiconductors GmbH, both of Germany (collectively, “Osram”). 69 *Fed. Reg.* 32609 (June 10, 2004). In the complaint, as supplemented and amended, Osram alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United

States after importation of certain light-emitting diodes and products containing the same by reason of infringement of United States Patent Nos. 6,066,861, 6,277,301, 6,613,247, 6,245,259, 6,592,780 (collectively, the “Particle Size Patents”), 6,576,930 (the “‘930 patent”), 6,376,902, 6,469,321, 6,573,580 (collectively, the “Lead Frame Patents”), and 6,716,673 (the “‘673 patent”). The complaint, as subsequently amended, named three respondents: Dominant Semiconductors Sdn. Bhd. (“Dominant”), American Opto Plus, Inc. (“AOP”), and American Microsemiconductor, Inc. (“AMS”). The Commission has terminated the investigation as to AOP and AMS based on settlement agreements.

On May 10, 2005, the ALJ issued his final ID finding a violation of section 337 with regard to the ‘673 patent and containing his recommended determination on remedy and bonding. He found no violation of section 337 with respect to the nine other patents asserted by Osram. Specifically, he found that the asserted claims of the Particle Size Patents are invalid for indefiniteness, that the asserted claims of the ‘930 patent and the Lead Frame Patents are not infringed, and that the domestic industry requirement was not met for the ‘930 patent. Osram and the Commission investigative attorney (“IA”) filed petitions for review of the ALJ’s final ID. Dominant filed a response in opposition to the petitions from Osram and the IA. The IA filed a response to Osram’s petition. Osram filed a motion for leave to file a reply to Dominant’s response to its petition for review.

Having examined the record of this investigation, including the ALJ’s final ID, the petitions for review, and the responses thereto, the Commission has determined (1) not to grant Osram’s motion for leave to file a reply; (2) not to review the ALJ’s determination of violation with respect to the ‘673 patent; and (3) to review the ALJ’s findings and conclusions regarding the Particle Size Patents, the ‘930 patent, and the Lead Frame Patents.

In connection with its review, the Commission is particularly interested in responses to the following questions:

1. With respect to the Particle Size Patents, state your position with regard to whether the disputed limitation, “mean grain diameter d_{50} ,” can be construed and, if so, what the appropriate construction is. Identify the intrinsic evidence (and, if appropriate, extrinsic evidence) upon which you rely. Your response should separately discuss the meaning of the words “mean” and “ d_{50} .”
2. With respect to the ‘930 patent, provide your claim construction of the phrase “path length,” including an analysis of any intrinsic and/or extrinsic evidence upon which you rely.
3. With respect to the Lead Frame Patents, provide your claim construction of the phrase “starting from,” including an analysis of any intrinsic and/or extrinsic evidence upon which you rely.

4. With respect to the Lead Frame Patents, given that the ALJ construed the term “lead frame” to exclude glue dots, can the glue dot at issue in the accused device be considered part of the alleged equivalent in assessing infringement under the doctrine of equivalents?
5. Assuming the answer to the previous question is “yes,” are the three ground leads plus the glue dot at issue in the accused device equivalent to the claimed external connections, especially with respect to the limitation “starting from said chip carrier part run toward the outside in a stellate form?” (You should discuss the “function, way, result” test in your analysis.)

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission’s action. During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issues identified in this notice. The written submissions should be concise and should thoroughly reference the record. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the May 10, 2005, recommended determination by the ALJ on remedy and bonding. Complainants and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission’s consideration.

Complainants are also requested to state the dates that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on July 8, 2005. Reply submissions must be filed no later than the close of business on July 15, 2005. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

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 section 210.42-46 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42-46).

By order of the Commission.

/s/
Marilyn R. Abbott
Secretary to the Commission

Issued: June 24, 2005