

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN VIDEO DISPLAYS AND
PRODUCTS USING AND CONTAINING
SAME**

Inv. No. 337-TA-828

**NOTICE OF COMMISSION DETERMINATION TO REVIEW AN INITIAL
DETERMINATION GRANTING SUMMARY DETERMINATION AND
TERMINATING THE INVESTIGATION; SCHEDULE FOR FILING WRITTEN
SUBMISSIONS ON THE ISSUES UNDER REVIEW**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review an initial determination issued by the presiding administrative law judge in the above-captioned investigation on August 1, 2012, granting summary determination of no violation of section 337 (19 U.S.C § 1337) and terminating the investigation. The Commission requests briefing from the parties on the issues under review, as indicated in this notice.

FOR FURTHER INFORMATION: Clark S. Cheney, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-2661. 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 investigation on February 21, 2012, based on a complaint filed by Mondis Technology, Inc., of London, England ("Mondis"). *77 Fed. Reg.* 9964 (Feb. 21, 2012). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337) ("section 337"), by reason of infringement of U.S. Patent Nos. 6,247,090 and 7,089,342. The notice of investigation names Chimei Innolux Corporation of Taiwan and Innolux Corporation of Austin, Texas (collectively, "Innolux"), as the only respondents.

On August 1, 2012, the ALJ granted a motion by Innolux for summary determination of no violation of section 337 and termination of the investigation. The ALJ held that an ongoing royalty order issued by the U.S. District Court for the Eastern District of Texas constitutes a

license authorizing Innolux to practice the inventions and accordingly there can be no violation of section 337.

On August 16, 2012, Mondis filed a petition for review of the ID by the Commission. On August 23, 2012, Innolux and the Commission investigative attorney ("IA") opposed the petition for review. On September 7, 2012, the Commission issued a notice stating that it had extended the time for determining whether to review the ID until October 10, 2012. The Commission thereafter issued a notice that it determined to extend the time for its determination to October 16, 2012.

Having examined the record of this investigation, including the ID, the petition for review, and the responses thereto, the Commission has determined to review the ID in its entirety.

The parties are requested to brief their positions on the issues under review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in the following issues:

1. Does the order of the Texas district court dated September 30, 2011 (and/or subsequent related orders), constitute "authorization" to use the patented invention, within the meaning of 35 U.S.C. § 271(a), such that no violation of section 337 may be found? In your response, please address the district court's discussion regarding future use of the patented invention and willful infringement, as well as the decisions in *Paice LLC v. Toyota Motor Corp.*, 504 F.3d 1293 (Fed. Cir. 2007) and *Young Engineers Inc. v. Int'l Trade Comm'n*, 721 F.2d 1305 (Fed. Cir. 1983).
2. When does Innolux's obligation to make payments under the Texas district court's September 30, 2011, order (and/or subsequent related orders) mature? Is payment by Innolux under court order required before Innolux may claim that its importation of the patented invention is authorized? Does the record in connection with this motion for summary determination raise a question of fact as to whether Innolux is in compliance with the September 30, 2011, order (and/or subsequent related orders)? What evidence in the record shows that Innolux is in compliance? What evidence in the record shows that Innolux is not in compliance?

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issues identified in this notice. The written submissions must be filed no later than close of business on Friday, November 2, 2012. Reply submissions must be filed no later than the close of business on Friday, November 16, 2012. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-828") in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures*,

http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf)
Persons with questions regarding filing should contact the Secretary (202-205-2000).

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 Part 210 of the Commission's Rules of Practice and Procedure (19 C.F.R. Part 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', with a large, stylized flourish at the end.

Lisa R. Barton
Acting Secretary to the Commission

Issued: October 16, 2012