

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

**In the Matter of**

**CERTAIN OPTICAL DISC DRIVES,  
COMPONENTS THEREOF, AND  
PRODUCTS CONTAINING THE SAME**

**Investigation No. 337-TA-897**

**NOTICE OF COMMISSION DETERMINATION TO REVIEW AND ON REVIEW TO  
VACATE AN INITIAL DETERMINATION GRANTING RESPONDENTS' CROSS-  
MOTIONS FOR SUMMARY DETERMINATION ON LACK OF DOMESTIC  
INDUSTRY AND TO REMAND THE INVESTIGATION TO THE PRESIDING  
ADMINISTRATIVE LAW JUDGE FOR FURTHER PROCEEDINGS**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review and, on review, to vacate the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 95) granting the respondents' cross-motions for summary determination that complainant Optical Devices, LLC of Peterborough, New Hampshire ("Optical") has failed to satisfy the economic prong of the domestic industry requirement. The Commission remands the investigation to the presiding ALJ for further proceedings consistent with its concurrently issued remand order.

**FOR FURTHER INFORMATION CONTACT:** Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2301. 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 at <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 October 25, 2013, based on a Complaint filed by Optical, as supplemented. 78 *Fed. Reg.* 64009-10 (Oct. 25, 2013). The Complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 ("section 337"), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain optical disc drives, components thereof, and products containing the same by reason of infringement of certain

claims of U.S. Patent Nos. 6,904,007; 7,196,979 (“the ’979 patent”); 8,416,651 (“the ’651 patent”); RE40,927 (“the ’927 patent”); RE42,913; and RE43,681. The Complaint further alleges the existence of a domestic industry. The Commission’s Notice of Investigation named as respondents Lenovo Group Ltd. of Quarry Bay, Hong Kong and Lenovo (United States) Inc., of Morrisville, North Carolina (collectively “Lenovo”); LG Electronics, Inc. of Seoul, Republic of Korea and LG Electronics U.S.A., Inc. of Englewood Cliffs, New Jersey (collectively “LG”); Nintendo Co., Ltd. of Kyoto, Japan and Nintendo of America, Inc. of Redmond, Washington (collectively “Nintendo”); Panasonic Corp. of Osaka, Japan and Panasonic Corporation of North America of Secaucus, New Jersey (collectively “Panasonic”); Samsung Electronics Co., Ltd. of Seoul, Republic of Korea and Samsung Electronics America, Inc. of Ridgefield Park, New Jersey (collectively “Samsung”); Toshiba Corporation of Tokyo, Japan and Toshiba America Information Systems, Inc. of Irvine, California (collectively “Toshiba”); and MediaTek, Inc. of Hsinchu City, Taiwan and MediaTek USA Inc. of San Jose, California (collectively “MediaTek”). The Office of Unfair Import Investigations was not named as a party to the investigation.

On April 9, 2014, the ALJ ordered Optical to move by April 14, 2014, for summary determination on the economic prong of the domestic industry requirement. Order No. 50 (April 14, 2014). On April 16, 2014, Optical filed its motion for summary determination on the economic prong. On April 28, 2014, respondents Lenovo, LG, Samsung, Toshiba, and MediaTek (collectively “Respondents”) filed an opposition to Optical’s motion and a cross-motion for summary determination of no domestic industry. Also on April 29, respondents Panasonic and Nintendo filed their own cross-motion for summary determination of no domestic industry and supported and incorporated by reference Respondents’ opposition and cross-motion. On May 8, 2014, Optical filed its opposition to the cross-motion of Panasonic and Nintendo. On May 20, 2014, Optical filed its opposition to Respondents’ cross-motion.

On May 28, 2014, the ALJ issued Order No. 82, requiring Optical to show cause why the respondents’ motions for summary determination on lack of economic prong should not be granted. Order No. 82 (May 28, 2014). On June 4, 2014, Optical responded to the order to show cause. On June 11, the respondents filed a joint response to the order to show cause. On June 23, 2014, Optical filed a motion for leave to reply to the respondents’ submission in response to Order No. 82.

On July 17, 2014, the ALJ issued the subject ID, granting the respondents’ motions for summary determination on lack of domestic industry and terminating the investigation in its entirety. The ID finds that Optical could not establish a domestic industry under subsections (A) or (B) of section 337(a)(3) based on the activities of its licensees as a matter of law because Optical’s domestic investments concern only revenue-driven licenses. The ID also finds that Optical failed to show the existence of a domestic industry under subsection (C) of section 337(a)(3) where it failed to offer any proof of its licensing expenditures. The ALJ also granted Optical’s motion for leave to reply to Respondents’ submission in response to Order No. 82.

No petitions for review of the subject ID were filed.

The Commission has determined pursuant to section 210.44 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.44) to review the ALJ's grant of respondents' cross-motions for summary determination that Optical has failed to satisfy the economic prong of the domestic industry requirement. On review, the Commission vacates the ALJ's ruling and remands the investigation for further proceedings consistent with the Commission's concurrently issued remand order.

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', written in a cursive style.

Lisa R. Barton  
Secretary to the Commission

Issued: September 3, 2014