

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN POWERED COVER PLATES

Investigation No. 337-TA-1124

**NOTICE OF A COMMISSION DETERMINATION TO REVIEW IN PART AND
TO REMAND A FINAL INITIAL DETERMINATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part and remand in part the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on August 12, 2019, finding a violation of section 337 in the above-referenced investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone (202) 205-3115. 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, SW, Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://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 the investigation on July 23, 2018, based on a complaint filed by SnapRays, LLC d/b/a SnapPower of Vineyard, UT (“SnapPower”). 83 FR 34871 (July 23, 2018). The complaint, as supplemented, alleges a violation 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 within the United States after importation of certain powered cover plates by reason of infringement of certain claims of U.S. Patent Nos. 9,871,324 (“the ’324 patent”); 9,882,361 (“the ’361 patent”); 9,917,430 (“the ’430 patent”); and U.S. Design Patent No. D819,426 (“the Design Patent,” or “the ’D426 patent”) (collectively, “the Asserted Patents”). *Id.* at 34872. The notice of investigation named thirteen respondents: (1) Ontel Products Corporation of Fairfield, New

Jersey (“Ontel”); (2) Dazone, LLC of Ontario, Canada (“Dazone”); (3) Shenzhen C-Myway of Shenzhen, Guangdong, China (“C-Myway”); (4) E-Zshop4u LLC of Howey in the Hills, Florida (“E-ZShop4u”); (5) Desteny Store of Fort Meyers, Florida (“Desteny”); (6) Zhongshan Led-Up Light Co., Ltd. of Zhongshan, Guangdong, China (“Led-Up”); (7) AllTrade Tools LLC of Cypress, California (“Alltrade”); (8) Guangzhou Sailu Info Tech. Co., Ltd. of Guangzhou, Guangdong, China (“Guangzhou Sailu”); (9) Zhejiang New-Epoch Communication Industry Co., Ltd. of Yueqing, Zhejiang, China (“NEPCI”); (10) KCC Industries of Eastvale, California (“KCC”); (11) Vistek Technology Co., Ltd. of Fuyong, Baoan, Shenzhen, China (“Vistek”); (12) Enstant Technology Co., Ltd. of Xixiang Baoan District, Shenzhen, China (“Enstant”); and (13) Manufacturers Components Incorporated of Pompano Beach, Florida (“MCI”) (collectively, “the Respondents”). *Id.* The Commission’s Office of Unfair Import Investigations (“OUII”) was also named as a party.

The evidentiary hearing on the question of violation of section 337 was held April 8-9, 2019. As of the date of the evidentiary hearing, as well as of the date of the issuance of the ID, the status of all 13 of the named Respondents was as follows:

Ontel – terminated by settlement (Order No. 12, *non-reviewed* Nov. 27, 2018);
E-Zshop4U – terminated by Consent Order (Order No. 5, *non-reviewed* Oct. 29, 2018);
KCC – terminated by Consent Order (Order No. 6, *non-reviewed* Oct. 29, 2018);
Alltrade – terminated by settlement (Order, No. 36, *non-reviewed* May 8, 2019);
Dazone – found in default (Order No. 18, *non-reviewed* Dec. 21, 2018);
Desteny – found in default (Order No. 18, *non-reviewed* Dec. 21, 2018);
NEPCI – found in default (Order No. 18, *non-reviewed* Dec. 21, 2018);
MCI – found in default (Order No. 18, *non-reviewed* Dec. 21, 2018);
Myway – Complaint withdrawn due to inability to serve this respondent (Order No. 8, *non-reviewed* October 23, 2018);
Led-Up – complaint withdrawn due to inability to serve this respondent (Order No. 8, *non-reviewed* October 23, 2018);
Guangzhou Sailu – complaint withdrawn due to inability to serve this respondent (Order No. 8, *non-reviewed* October 23, 2018);
Enstant – actively participated in all proceedings, and
Vistek – actively participated in all proceedings. *See* ID/RD at 11-12.

Complainant SnapPower, respondents Enstant and Vistek (collectively, “Enstant/Vistek,” or “the Participating Respondents”), and the Commission investigative attorney (“the IA”) participated in the hearing. *See id.* at 11.

We note that Respondents Enstant and Vistek chose not to contest importation and infringement. Similarly, there were no genuine disputes of material fact with respect to the technical prong of the domestic industry (“DI”) requirement. As a result, these legal issues have been decided against Enstant and Vistek and against a category of Respondents identified by the ID as the “Defaulting Respondents” through summary determination (“SD”) orders. ID/RD at 2-3 (citing Order Nos. 39 (July 10, 2019) (Importation and Infringement), 40 (July 22, 2019) (Technical DI)). In particular, Order No. 39 explains the rationale and evidentiary basis

for granting SnapPower's Infringement SD Motion. *Id.* at 12-13 (citing Order No. 39, Doc. ID No. 680751 (July 10, 2019)). Order No. 39 became the Commission's determination on August 1, 2019, pursuant to Commission Rule 210.42(h)(3), 19 CFR 210.42(h)(3).

On August 12, 2019, the ALJ issued her "Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond," finding a violation of section 337. The ID finds that a violation of section 337 occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation, of certain powered cover plates that infringe the asserted claims of the '361 patent by Enstant/Vistek. *See id.* at 125-26. The ID also finds, *inter alia*, that "Respondents Enstant and Vistek filed a motion for summary determination of non-infringement ('Redesign SD Motion') of [the '361 patent] by Redesign Models P001 (Smart Wall Plate Charger, Decor Outlet, with USB charger) and P002 (Smart Wall Plate Charger, Duplex Outlet with USB charger)." ID at 14. Further, the ID states that "Enstant's and Vistek's Redesign SD Motion was effectively rendered moot by rulings on Motions in Limine" *Id.*

In her Recommended Determination ("RD"), the ALJ recommended that the Commission should issue a General Exclusion Order, Cease and Desist Orders, and impose a one hundred percent bond during the period of Presidential Review. *Id.* at 126.

On August 26, 2019, Participating Respondents Enstant/Vistek jointly filed a timely petition for review of various portions of the ID. The IA likewise timely filed a petition for review of the ID in part. On September 3, 2019, Snappower timely filed a response to Enstant/Vistek's and the IA's petitions for review. The IA likewise timely filed a response to Enstant/Vistek's petition for review.

Having examined the record in this investigation, including the final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in part. In particular, the Commission has determined: (1) to review the final ID's finding that Enstant/Vistek's redesign summary determination motion is moot, *see id.* at 14-15, and on review, to remand the final ID on this issue; (2) to review the ID's finding that Complainant's R&D investment with respect to the '361 patent is substantial under Section 337 (a)(3)(C), ID at 97, and on review, to take no position with regard to this determination; (3) to review, and on review to strike, the third paragraph on page 56 of the ID; and (4) to correct the ID's misstatements regarding the asserted claims of the '361 patent, *see id.* at 3-4, Table 1; *id.* at 125 ¶¶ 3, 6, to the effect that the asserted claims of the '361 patent include claims 1, 4, 10, 14, 21, 23, and 24. The Commission has determined not to review the remainder of the ID.

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".

Lisa R. Barton
Secretary to the Commission

Issued: October 11, 2019