

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN POWER INVERTERS AND
CONVERTERS, VEHICLES CONTAINING
THE SAME, AND COMPONENTS THEREOF**

Investigation No. 337-TA-1267

**NOTICE OF A COMMISSION DETERMINATION TO EXTEND THE DEADLINE FOR
DETERMINING WHETHER TO REVIEW A FINAL INITIAL DETERMINATION
AND THE TARGET DATE FOR COMPLETION OF THIS INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (the “Commission”) has determined to extend the deadline for determining whether to review a final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) in this investigation to December 7, 2022, and the target date to February 6, 2023.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2382. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket system (“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, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On June 28, 2021, the Commission instituted this investigation based on a complaint filed on behalf of Arigna Technology Limited of Carrickmines, Ireland (“Arigna”). 86 FR 34042-43 (Jun. 28, 2021). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain power inverters and converters, vehicles containing the same, and components thereof that infringe one or more claims of U.S. Patent Nos. 8,247,867 (“the ’867 patent”) and 8,289,082 (“the ’082 patent”). *Id.* at 34042. The complaint also alleged that a domestic industry (“DI”) exists or is in the process of being established. *Id.* The Commission’s notice of investigation named sixteen respondents: Porsche AG, of Stuttgart, Germany; Porsche Cars North America, Inc. of Atlanta, Georgia (collectively, “Porsche”); Volkswagen AG of Wolfsburg, Germany; Volkswagen Group of America, Inc., of Herndon, Virginia (collectively, “Volkswagen”); Audi AG of Ingolstadt, Germany; Audi of America, LLC, of Herndon, Virginia; Bentley Motors Limited of Crewe, United Kingdom; Bentley Motors, Inc., of Reston, Virginia;

Automobili Lamborghini America, LLC, of Herndon, Virginia; Automobili Lamborghini S.p.A., of Sant'Agata, Italy; Daimler AG of Stuttgart, Germany; Mercedes-Benz USA, LLC of Sandy Springs, Georgia; Bayerische Motoren Werke AG of Munich, Germany; BMW of North America, LLC, of Woodcliff Lake, New Jersey (collectively, "BMW"); and General Motors Company of Detroit, Michigan and General Motors LLC of Detroit, Michigan ("GM") (all collectively, "Respondents"). *Id.* at 34043. The Office of Unfair Import Investigations ("OUII") is also participating in this investigation. *Id.*

The ALJ held a *Markman* hearing on December 1, 2021. The ALJ issued a *Markman* order (Order No. 30) on January 18, 2022, construing certain claims of the '082 and '867 patents.

On January 18, 2022, the Commission partially terminated the investigation with respect to General Motors Company based on a partial withdrawal of the complaint. Order No. 23 (Dec. 20, 2021), *unreviewed by* Comm'n Notice (January 18, 2022).

On March 15, 2022, the Commission terminated the '867 patent from the investigation as asserted against BMW. *See* Order No. 37 (Feb. 18, 2022), *unreviewed by* Comm'n Notice (Mar. 15, 2022). On April 25, 2022, the Commission terminated claims 2-6 and 18-22 of the '082 patent and claims 1, 2, and 9 of the '867 patent based on a partial withdrawal of the complaint. *See* Order No. 50 (Apr. 6, 2022), *unreviewed by* Comm'n Notice (Apr. 25, 2022).

On May 17, 2022, the Commission partially terminated the investigation with respect to Porsche based on a settlement agreement. Order No. 53 (April 29, 2022), *unreviewed by* Comm'n Notice (May 17, 2022).

The ALJ held an evidentiary hearing on April 4-8, 2022. The parties timely filed their initial post-hearing briefs on April 25, 2022, and their post-hearing reply briefs on May 4, 2022.

On August 12, 2022, the presiding ALJ issued a final ID, finding no violation of Section 337 with respect to the '082 patent. Specifically, the final ID finds that: (1) the accused products do not infringe asserted claims 1, 13, 17, or 29; (2) claims 1, 13, 17, and 29 are invalid as anticipated and/or obvious under 35 U.S.C. 102, 103; and (3) Arigna satisfied both the technical and economic prongs of the domestic industry requirement with respect to the '082 patent. The final ID also finds no violation with respect to the '867 patent. Specifically, the final ID finds that: (1) the accused products do not infringe asserted claim 8; (2) claim 4 is invalid as anticipated under 35 U.S.C. 102, but claim 8 was not proven to be invalid as obvious under 35 U.S.C. 103; and (3) Arigna satisfied the technical prong but not the economic prong of the domestic industry requirement with respect to the '867 patent.

On August 26, 2022, the presiding ALJ issued a Recommended Determination on Remedy, Bonding, and the Public Interest ("RD"), recommending that, in the event the Commission finds a violation, the Commission should issue a limited exclusion order with a six-month delay in implementation as well as cease and desist orders against certain of the remaining respondents. The RD recommends that no bond be imposed during the period of Presidential review. The RD also recommends finding that the public interest factors do not weigh against issuing the remedial orders, other than a six-month delay in implementation, mentioned above.

On August 26, 2022, complainant Arigna filed a petition for review of the final ID's finding of no violation with respect to the '082 patent, including claim construction, non-infringement, and invalidity. Arigna did not petition for review of any of the ID's findings relating to the '867 patent.

On August 26, 2022, respondent GM filed a contingent petition for review with respect to the ID's finding that asserted claim 8 of the '867 patent is not invalid. No other party filed a petition for review with respect to the '867 patent.

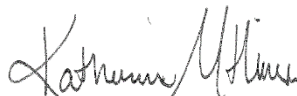
On September 6, 2022, Respondents filed their opposition to Arigna's petition for review of the Final ID. Also on September 6, 2022, OUII filed its respective responses to Arigna's petition and to GM's contingent petition.

The Commission has determined to extend the deadline for determining whether to review the final ID to December 7, 2022, and the target date for completion of the investigation to February 6, 2023.

The Commission voted to approve this determination on October 18, 2022.

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.



Katherine M. Hiner
Acting Secretary to the Commission

Issued: October 18, 2022