

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

In the Matter of

**CERTAIN LED PHOTOGRAPHIC
LIGHTING DEVICES AND
COMPONENTS THEREOF**

Investigation No. 337-TA-804

**NOTICE OF THE COMMISSION'S DETERMINATION TO REVIEW IN PART
THE 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 the final initial determination ("ID") issued by the presiding administrative law judge ("ALJ") on September 7, 2012, finding a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in this investigation.

FOR FURTHER INFORMATION CONTACT: Amanda S. Pitcher, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2737. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>, and 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 September 7, 2011, based on a complaint filed by Litepanels, Inc. and Litepanels, Ltd. (collectively, "Litepanels"). 76 *Fed. Reg.* 55416 (Sept. 7, 2011). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain LED photographic lighting devices and components thereof that infringe certain claims of U.S. Patent Nos. 7,429,117 (terminated from the

investigation); 7,510,290 (terminated from the investigation); 7,972,022 (“the ’022 patent”); 7,318,652 (“the ’652 patent”); and 6,948,823 (“the ’823 patent”). The Notice of Institution named respondents Flolight, LLC. of Campbell, California; Prompter People, Inc. of Campbell, California; IKAN Corporation of Houston, Texas; Advanced Business Computer Services, LLC d/b/a Cool Lights, USA of Reno, Nevada; Elation Lighting, Inc. of Los Angeles, California; Fotodiox, Inc. of Waukegan, Illinois; Fuzhou F&V Photographic Equipment Co., Ltd. of Fujian, China; Yuyao Lishuai Photo-Facility Co., Ltd. of Zhejiang Province, China; Yuyao Fotodiox Photo Equipment Co., Ltd. of Zhejiang Province, China; Shantou Nanguang Photographic Equipment Co., Ltd. of Guangdong Province, China; Visio Light, Inc. of Taipei, Taiwan; Tianjin Wuqing Huanyu Film and TV Equipment Factory of Tianjin, China; Stellar Lighting Systems of Los Angeles, California; and Yuyao Lily Collection Co., Ltd. of Yuyao, China. The Commission Investigative Attorney (“IA”) of the Office of Unfair Import Investigations also participated in this investigation.

On September 7, 2012, the ALJ issued the subject final ID finding a violation of section 337. The ALJ held that a violation occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain LED photographic lighting devices and components thereof that infringe one or more of claims 1, 57-58, and 60 of the ’022 patent; claims 1, 2, 5, 16, 18, 19, 25 and 27 of the ’652 patent; and claim 19 of the ’823 patent. ID at ii. The ALJ further held that no 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 LED photographic lighting devices and components thereof that infringe claims 17 and 28 of the ’823 patent because claims 17 and 28 are anticipated. *Id.* at ii, 81.

Litepanels petitions for review of the ALJ’s construction of the preamble of claim 17 of the ’823 patent and asserts that the ALJ incorrectly found that independent claim 17 and dependent claim 28 of the ’823 patent were invalid based on his incorrect construction. The IA petitioned for review of the ALJ’s finding that claims 17, 19 and 28 of the ’823 patent are infringed based on the construction of the term “an integrated power source” of independent claim 17. Respondents petitioned for review of most of the ALJ’s invalidity findings (including public use, and obviousness), the construction of “focusing element” of claim 1 of the ’652 patent, and the exclusion of claim charts.

The Commission has determined to review the ID in part. The Commission has determined to review (1) the ALJ’s construction of the preamble of the asserted independent claims of the ’652 patent, the ’823 patent and the ’022 patent; (2) the ALJ’s findings of infringement; (3) the ALJ’s findings of obviousness and anticipation; (4) the ALJ’s construction of “an integrated power source” of claim 17 of the ’823 patent; and (5) the ALJ’s findings on the technical prong of domestic industry. The Commission has determined not to review the remainder of the ID.

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 responses to the following questions:

- (1) If the Commission were to determine that the preambles of the asserted independent claims of the '652 patent, the '823 patent and the '022 patent are limitations and should be interpreted based on their plain and ordinary meaning (*see* ID at 44), what impact, if any, does this have on the ALJ's findings regarding anticipation and obviousness for the asserted patents? Please cite to record evidence to support your position.
- (2) If the Commission were to determine that the preambles of the asserted independent claims of the '652 patent, the '823 patent and the '022 patent are limitations and should be interpreted based on their plain and ordinary meaning (*see* ID at 44), do the accused products and domestic industry products meet the preamble limitation of each of the asserted independent claims? Please cite to record evidence to support your position. Have the Respondents waived the ability to challenge a finding that the preambles of the asserted independent claims, interpreted based on their plain and ordinary meaning, are met by the accused products?

In connection with the final disposition of this investigation, the Commission may issue an order that could result in the exclusion of the subject articles from entry into the United States. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. The Commission is particularly interested in responses to the following questions:

- (1) Please discuss the technical and qualitative interchangeability of Litepanels and its licensees' products with the products that would be excluded under a general exclusion order. Please discuss the evidence that supports your position.
- (2) Discuss whether Litepanels and its licensees have sufficient capability to meet the demand for any products that would be excluded under a general exclusion order. Please discuss the evidence that supports your position, including evidence regarding current manufacturing capacity and product interchangeability.
- (3) What lead time would be required for existing manufacturers to modify their allegedly infringing products to be noninfringing? Please discuss the evidence that supports your position.
- (4) Please discuss specific evidence pertaining to any specialized requirements of the film, video, photographic industries, or any other industries, that cannot be met by the products of Litepanels or its licensees, but are only met by the products that would be excluded under a general exclusion order.

- (5) Please provide specific evidence regarding the impact, if any, of a general exclusion order on public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers.

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 U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005, 70 *Fed. Reg.* 43251 (July 26, 2005). 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 if a remedy is ordered.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding, as well as respond to the questions posed herein relating to remedy and the public interest. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant and IA are also requested to submit proposed remedial orders for the Commission's consideration.

Complainant is also requested to state the dates that the '853, '022 and '652 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 Wednesday, November 28, 2012. Reply submissions must be filed no later than the close of business on Wednesday, December 5, 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-804") 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. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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 sections 210.42-46 and 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42-46 and 210.50).

By order of the Commission.



Lisa R. Barton
Acting Secretary to the Commission

Issued: November 13, 2012