

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN VIDEO PROCESSING
DEVICES AND COMPONENTS
THEREOF**

Investigation No. 337-TA-1343

**NOTICE OF A COMMISSION DETERMINATION TO REVIEW IN PART A
FINAL INITIAL DETERMINATION FINDING NO VIOLATION OF SECTION 337
AND, ON REVIEW, TO AFFIRM THE FINDING OF NO VIOLATION;
TERMINATION OF THE INVESTIGATION**

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 a final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on May 29, 2024, finding no violation of section 337 in the above-referenced investigation and, on review, to affirm the finding of no violation. The investigation is terminated.

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) 205-2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (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 on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 29, 2022, based on a complaint filed on behalf of DivX, LLC (“DivX”) of San Diego, CA. 87 FR 73328 (Nov. 29, 2022). The complaint alleges 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, or the sale within the United States after importation of certain video processing devices and components thereof by reason of infringement of claims 1-7 and 10-16 of U.S. Patent No. 11,050,808 (“the ’808 patent”); claims 1, 2, and 4 of U.S. Patent No. 8,832,297 (“the ’297 patent”); claims 29-32 of U.S. Patent No. 7,295,673 (“the ’673 patent”); claims 1-11 of U.S. Patent No. 10,225,588 (“the ’588 patent”); and claims 11-13 and 15-17 of U.S. Patent

No. 11,102,553 (“the ’553 patent”). *Id.* The complaint further alleges that a domestic industry exists. *Id.* at 62568. The Commission’s notice of investigation named Amazon.com, Inc. (“Amazon”) of Seattle, WA and VIZIO, Inc. (“VIZIO”) of Irvine, CA as respondents. *Id.* The Office of Unfair Import Investigations is not a party in this investigation. *Id.*

DivX’s allegations with respect to the ’808 patent were terminated as to respondent Amazon. *See* Order No. 30 (Aug. 21, 2023), *unreviewed by* Comm’n Notice (Sept. 18, 2023).

Respondent VIZIO was terminated from the investigation. *See* Order No. 33 (Sept. 11, 2023), *unreviewed by* Comm’n Notice (Oct. 11, 2023).

DivX’s allegations were terminated with respect to claims 12, 13, 15, and 16 of the ’553 patent; claims 3, 4, 8, 9, and 10 of the ’588 patent; claim 4 of the ’297 patent; and claim 31 of the ’673 patent. *See* Order No. 53 (Dec. 20, 2023), *unreviewed by* Comm’n Notice (Jan. 9, 2024).

On May 29, 2024, the ALJ issued a final ID on violation of section 337 and a recommended determination on remedy and bond. The final ID found that no violation of section 337 has occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation, of certain video processing devices and components thereof by reason of infringement of claims 29, 30, and 32 of the ’673 patent; claims 1 and 2 of the ’297 patent; claims 1, 2, 5, 6, and 7 of the ’588 patent; and claims 11 and 17 of the ’553 patent.

The ID found that the accused products do not infringe the asserted claims of any of the asserted patents. The ID also found that the domestic industry requirement (both technical and economic prongs) has not been satisfied with respect to the ’673, ’297, ’588, and ’553 patents.

The ID further found that it has not been shown by clear and convincing evidence that the asserted claims of the ’673, ’297, ’588, and ’553 patents are invalid.

On June 10, 2024, complainant DivX filed “Complainant DivX, LLC’s Petition for Review of the Initial Determination.” Likewise, on June 10, 2024, respondent Amazon filed “Contingent Petition for Review of May 29, 2024, Initial Determination by Respondent Amazon.com, Inc.” Subsequently, on June 18, 2024, DivX filed “Complainant DivX, LLC’s Response to Contingent Petition for Review of May 29, 2024, Initial Determination by Respondent Amazon.com, Inc.,” and Amazon filed “Response to Complainant’s Petition for Review of May 29, 2024 Initial Determination by Respondent Amazon.com, Inc.”

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 in part the ID and, on review, to affirm the final ID with the following modifications. Specifically, the Commission has determined to review section IV of the final ID, JURISDICTION (*see* ID at 15-16). On review and as discussed more fully in the Commission Opinions recently issued in Inv. Nos. 337-TA-1355 and 337-TA-1362, the Commission clarifies that the terms “subject matter jurisdiction,” “personal jurisdiction,” and “*in rem* jurisdiction” are not necessarily applicable to

the Commission’s investigative authority under section 337. *See Certain Liquid Transfer Devices with an Integral Vial Adapter*, Inv. No. 337-TA-1362, Comm. Op. at 9 (Jul. 26, 2024); *Certain Compact Wallets and Components Thereof*, Inv. No. 337-TA-1355, Comm. Op. at 11-12 (Aug. 13, 2024). The Commission is “a creature of statute.” *Kyocera v. Int’l Trade Comm’n*, 545 F.3d 1340, 1355 (Fed. Cir. 2008). Accordingly, pursuant to its enabling statute, the Commission has statutory authority to investigate an alleged violation of section 337 where a complaint alleges that the named respondents have imported, sold for importation, or sold after importation articles that, *inter alia*, infringe a valid and enforceable U.S. patent. 19 U.S.C. 1337(a)(1)(B). The Commission likewise has authority over accused products based on their alleged importation, sale for importation, or sale after importation into the United States.

Second, the Commission has determined to review the economic prong of domestic industry requirement in its entirety, and on review, affirm a finding of no domestic industry under modified reasoning. Specifically, on review, the Commission finds that DivX has failed to establish a domestic industry based upon the finding that DivX failed to satisfy the technical prong of the domestic industry requirement for the Asserted Patents (ID at 39, 47, 69). When a section 337 investigation is based on allegations of patent infringement, the complainant must show that “an industry in the United States, relating to the articles protected by the patent . . . exists or is in the process of being established.” 19 U.S.C. 1337(a)(2). Because there are no articles protected by the Asserted Patents, DivX failed to satisfy the domestic industry requirement.

The Commission has also determined to review sections VI.D (validity with respect to the ’673 patent, ID at 47-53); VII.D (validity with respect to the ’297 patent, ID at 69-84); VIII.D (validity with respect to the ’553 patent, ID at 101-104); IX.D (validity with respect to the ’588 patent, ID at 116-121), and X (Amazon’s defenses, ID at 121-127), and on review, the Commission takes no position. *See Beloit Corp. v. Valmet Oy*, 742 F.2d 1421, 1423 (Fed. Cir. 1984).

Finally, the Commission notes a typographical error in the third sentence on page 1 of the final ID. The Commission interprets that sentence to mean:

The complaint alleges a violation of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain video processing devices and components thereof by reason of the infringement of certain claims of U.S. Patent Nos. 8,832,297 (the “’297 patent”); 7,295,673 (the “’673 patent”); 10,225,588 (the “’588 patent”); 11,102,553 (the “’553 patent”); and 11,050,808 (“the ’808 patent”).

The Commission has determined not to review the remainder of the ID, including the ID’s finding of no violation of section 337 in this investigation.

The investigation is hereby terminated.

The Commission vote for this determination took place on August 30, 2024.

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.



Lisa R. Barton
Secretary to the Commission

Issued: August 30, 2024