

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN SEMICONDUCTOR DEVICES,
AND METHODS OF MANUFACTURING
SAME AND PRODUCTS CONTAINING
THE SAME**

Investigation No. 337-TA-1366

**NOTICE OF A COMMISSION DETERMINATION TO REVIEW
A FINAL INITIAL DETERMINATION FINDING A VIOLATION OF SECTION 337; REQUEST
FOR WRITTEN SUBMISSIONS ON THE ISSUES UNDER REVIEW AND ON REMEDY, THE
PUBLIC INTEREST, AND BONDING**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined to review a final initial determination (“ID”) of the presiding chief administrative law judge (“CALJ”), finding a violation of section 337 as to one asserted patent and no violation as to the other asserted patent. The Commission requests written submissions from the parties on the issues under review and submissions from the parties, interested government agencies, and other interested persons on the issues of remedy, the public interest, and bonding, under the schedule set forth below.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-3042. 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 July 3, 2023, based on a complaint filed by Efficient Power Conversion Corporation of El Segundo, California (“EPC”). 88 FR 42756–77 (Jul. 3, 2023). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based on the importation into the United States, the sale for importation, or sale within the United States after importation of certain semiconductor devices, and methods of manufacturing same, and products containing the same by reason of the infringement of one or more claims of U.S. Patent Nos. 10,312,335 (“the ’335 patent”); 8,350,294 (“the ’294 patent”); 8,404,508 (“the ’508 patent”); and 9,748,347 (“the ’347 patent”). *Id.* The complaint further alleged that a domestic industry exists. *Id.* The Commission’s notice of investigation named as respondents Innoscience (Zhuhai) Technology, Company, Ltd., of Zhuhai, Guangdong, China; and Innoscience America, Inc. of Santa Clara, California (together “Innoscience” or “Respondents”). The Office of Unfair Import Investigations was also named as a party in this investigation. *Id.*

On October 13, 2023, Chief Administrative Law Judge (“CALJ”) held a *Markman* hearing.

On December 13, 2023, the CALJ issued an initial determination (“ID”) granting a motion to terminate the investigation as to all asserted claims of the ’347 patent. Order No. 9 (Dec. 13, 2023), *unreviewed by Comm’n Notice* (Jan. 11, 2024).

On February 12, 2024, the CALJ issued an ID granting a motion to terminate the investigation as to all asserted claims of the ’335 patent. Order No. 12 (Feb. 12, 2024), *unreviewed by Comm’n Notice* (Mar. 12, 2024).

The CALJ held an evidentiary hearing from February 26, 2024 to March 1, 2024, and received post-hearing briefs thereafter.

On July 5, 2024, the CALJ issued the final ID finding a violation of section 337 as to claims 2 and 3 of the ’294 patent and no violation of section 337 as to claim 1 of the ’294 patent. The CALJ also found no violation of section 337 as to the only asserted claim of the ’508 patent, claim 1. Specifically, the ID found that by appearing and participating in the investigation, the parties have consented to personal jurisdiction at the Commission. ID at 10-11. The ID found that EPC established the importation requirement under 19 U.S.C. 1337(a)(1)(B), noting that Innoscience does not dispute importing the accused products. *Id.* at 11-12. The ID found that because the accused products have been imported into the United States, the Commission has *in rem* jurisdiction over them. *Id.* at 12. The ID found that EPC owns the patents and thus has standing to assert the patents in this investigation. *Id.* The ID found that EPC successfully proved that the accused products infringe the asserted claims of the ’294 patent (claims 1-3) but that unlike claims 2 and 3, claim 1 has been shown to be invalid for obviousness. ID at 30-51, 85-100. The ID found that EPC failed to prove that the accused products infringe claim 1 of the ’508 patent and that Respondents failed to prove the claim invalid for obviousness. *Id.* at 52-68, 103-117. Finally, the ID found that EPC established the economic prong of the domestic industry requirement for both the ’294 and ’508 patents but failed to establish the technical prong of the domestic industry requirement for the ’508 patent. ID at 120-151. Thus, the ID found the existence of a domestic industry that practices the ’294 patent as required by 19 U.S.C. 1337(a)(2) but not one that practices the ’508 patent.

The ID included the CALJ’s recommended determination on remedy and bonding (“RD”). The RD recommended, should the Commission find a violation, issuance of a limited exclusion order and cease and desist orders against the Respondents. ID/RD at 154-157. The RD also recommended imposing a bond in the amount of five percent of entered value for infringing products imported during the period of Presidential review. *Id.* at 158-159.

On July 19, 2024, EPC and Innoscience filed respective petitions for review of the ID. On July 29, 2024, the parties, including OUII, filed responses to the petitions.

Having reviewed the record of the investigation, including the final ID, the parties’ submissions to the CALJ, the petitions for review, and the responses thereto, the Commission has determined to review the ID in its entirety.

In connection with its review, the Commission requests responses to the following questions. The parties are requested to brief their positions with reference to the applicable law and the existing evidentiary record.

(1) If the Commission were to adopt the construction, proposed by OUII, of the limitation “compensated GaN layer” recited in claim 1 of the ’294 patent to mean “a GaN layer in which one type of impurity cancels the electric effects of another type of impurity,” how does that construction affect the ID’s infringement, invalidity, and technical prong of the domestic industry analyses?

(2) Did the CALJ correctly find that Uemoto fails to disclose element [1b] “a set of III-N transition layers above the substrate” recited in claim 1 of the ’294 patent, even though neither EPC nor OUII disputed Respondents’ assertion that Uemoto disclosed this limitation? *See ID at 73.*

(3) Please explain whether claim 1 of the ’508 patent is limited to using a single mask to etch both the gate contact and doped GaN layer based on the ’508 patent’s description of the “present invention.” Please also explain whether performance of the claimed steps in the order [1f] – [1g] – [1i] – [1h] (as permitted under the ID’s construction of the order of steps) requires the use of a single mask to perform both etching steps or otherwise allows the use of two separate masks. If the Commission were to construe claim 1 of the ’508 patent to require the claimed steps be performed in the recited order ([1f] – [1g] – [1h] – [1i]), how does that affect the ID’s infringement, invalidity, and technical prong of the domestic industry analyses?

(4) Please clarify whether EPC’s “total operating expenditures” identified on page 129 of the ID includes foreign manufacturing expenses for the domestic industry products.

The parties are invited to brief only the discrete issues requested above. The parties are not to brief other issues on review, which are adequately presented in the parties’ existing filings.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia*, (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States; and/or (2) cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. 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 *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm’n Op. at 7-10 (Dec. 1994).

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and 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. In addition, the Commission requests responses to the following question regarding the public interest:

Please provide specific facts and data with respect to Respondents’ assertion that “an exclusion order would have significant impacts on U.S. consumers and economy at large” and that

“[w]ithout a delay in the effective date of an exclusion order, an immediate and potentially multi-year shortage across a wide variety of industries could not be averted given alternative suppliers’ existing production capacities and a lack of readily available GaN semiconductor devices.” Resp. PI Stmt. at 2. Please include in your discussion, the shares of the U.S. market for EPC and Respondents, as well as other suppliers and whether these suppliers have the capability to supply U.S. demand in the event of an exclusion order and/or cease and desist orders.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission’s determination. *See* Presidential Memorandum of July 21, 2005, 70 FR 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 parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the CALJ on remedy and bonding.

In its initial submission, Complainant is also requested to identify the remedy sought and Complainant and OUII are requested to submit proposed remedial orders for the Commission’s consideration. Complainant is further requested to state the dates that the Asserted Patents expire, to provide the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on September 19, 2024. Reply submissions must be filed no later than the close of business on September 26, 2024. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Opening submissions are limited to 50 pages. Reply submissions are limited to 30 pages. No further submissions on any of 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. The Commission’s paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1366) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.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 by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed with the Commission and served on any parties to the investigation within two business days of any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the

Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on September 5, 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.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', enclosed within a large, loopy oval shape.

Lisa R. Barton
Secretary to the Commission

Issued: September 5, 2024