UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of **COMPONENTS FOR CERTAIN ENVIRONMENTALLY-PROTECTED LCD DIGITAL DISPLAYS AND PRODUCTS CONTAINING THE SAME**	**Investigation No. 337-TA-1349**

NOTICE OF A COMMISSION DETERMINATION TO REVIEW IN PART A FINAL INITIAL DETERMINATION FINDING NO 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 has determined to review in part a final initial determination ("ID") issued by the presiding administrative law judge ("ALJ") on April 16, 2024, finding no violation of section 337 in the above referenced investigation. The Commission requests written submissions from the parties on certain issues under review, as indicated in this notice, 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: Joelle P. Justus, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 617-1998. 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: On January 10, 2023, the Commission instituted this investigation based on a complaint filed by Samsung Electronics Co., Ltd. of the Republic of Korea; Samsung Electronics America, Inc. of Ridgefield Park, New Jersey; Samsung Research America, Inc. of Mountain View, California; and Samsung International, Inc. of Chula Vista, California (collectively, "Samsung"). 88 FR 1404-05 (Jan. 10, 2023). The complaint alleged violations of section 337 based on the importation into the United States, the sale for

importation, or the sale within the United States after importation of components for certain environmentally-protected LCD digital displays and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 7,948,575 ("the '575 patent"); 8,111,348 ("the '348 patent"); RE45,117 ("the '117 patent"); 8,842,253 ("the '253 patent"); and 8,223,311 ("the '311 patent"). *Id.* The Commission's notice of investigation named Manufacturing Resources International, Inc. ("MRI") of Alpharetta, Georgia as the sole respondent. The Office of Unfair Import Investigations was not named as a party in this investigation. *Id.*

On October 10, 2023, the Commission determined not to review an ID terminating the investigation as to all asserted claims of the '575 patent; all asserted claims of the '348 patent; claim 5 of the '117 patent; claims 1, 10, 11, and 16-19 of the '253 patent; and claims 1-3 and 7-12 of the '311 patent. Order No. 22, *unreviewed by* Comm'n Notice (Oct. 10, 2023).

On April 16, 2024, the presiding ALJ issued the final ID on violation of section 337 and a recommended determination ("RD") on remedy and bond. The ID held 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 components of certain environmentally-protected LCD digital displays and products containing the same by reason of infringement of claims 1 and 2 of the '117 patent, claims 4, 6, and 13 of the '311 patent, and claim 12 of the '253 patent. As to the '117 patent, the final ID found the accused products infringe the asserted claims, the asserted claims are not invalid, and the domestic industry products practice the asserted claims. As to the '311 patent, the final ID found the accused products do not infringe any of the asserted claims, the asserted claims are invalid for indefiniteness, and the domestic industry products practice the asserted claims (if valid). And with respect to the '253 patent, the final ID found the accused products do not infringe the asserted claim, the asserted claim is invalid, and the domestic industry products do not practice the asserted claim (if valid). The final ID also found that the '311 and '253 patents are not unenforceable due to inequitable conduct or unclean hands. Finally, the final ID found that Samsung failed to satisfy the economic prong of the domestic industry requirement as to any of the asserted patents.

Samsung filed a petition for review and MRI filed a contingent petition for review on April 29, 2024. The parties filed responses to the petitions on May 7, 2024.

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 final ID. Specifically, the Commission has determined to review the final ID's findings regarding: (1) "*in personam* jurisdiction"; (2) "*in rem* jurisdiction," including importation and articles that infringe; (3) standing; (4) for the '117 patent, infringement, validity, and technical prong relating to the term "the circuit board is received in the circuit board mounting part" in claim 1 and the term "the circuit board is mounted in the circuit board mounting part" in claim 2; and (5) the economic prong of the domestic industry requirement as to each of the asserted patents.

The Commission notes that Samsung has expressly abandoned the '253 patent and the '311 patent in this investigation. Samsung Resp. to MRI Contingent Pet. for Review at 1. Therefore, the Commission has determined not to review the final ID as to these patents except as to the economic prong. Nevertheless, in reference to the analysis on page 126 of the final ID

regarding the '253 patent, the Commission clarifies that the obligation to resolve a dispute over claim scope is not limited to situations in which a term has been construed according to its plain and ordinary meaning but applies anytime there is a relevant dispute among the parties. *See Pressure Prod. Med. Supplies, Inc. v. Greatbatch Ltd.*, 599 F.3d 1308, 1316 (Fed. Cir. 2010) (finding District Court properly invoked *O2 Micro* to supplement construction of means-plus-function limitation during trial).

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. With respect to 19 U.S.C. 337(a)(1)(B):
    a. How should the Commission define the term "consignee"? What is the standard for determining whether a person or entity is a "consignee"? Is MRI a "consignee"?
    b. What standard should the Commission apply to determine whether a respondent, who is not the importer of record, has "imported" an article?
    c. What is necessary for a person or entity to be considered "sufficiently involved" in importation (*see Comcast Corp. v. Int'l Trade Comm'n*, 951 F.3d 1301, 1309 (Fed. Cir. 2020)).
    d. Is causing an article to be imported by purchasing it and knowing it will be imported enough to show that a respondent imported the article?
    e. With citations to the record, what involvement did MRI have in the importation of the LCD Cells at issue in this investigation?
    f. For purposes of "sale after importation by the owner, importer, or consignee, of articles that … infringe," is an entity that takes title to the article after importation, an owner or a consignee of that article? Or is the statute limited to the "owner" at the time of importation?
    g. Is the sale of a downstream product that incorporates an imported article a "sale after importation" of the imported article?
    h. Did Samsung allege that MRI violates section 337 by virtue of MRI's own direct infringement of the asserted claims of the '117 patent? On what basis does the final ID find direct infringement, if any, by MRI?
    i. In reference to direct infringement of apparatus claims by a respondent, under what circumstances is the importation of a component of the claimed apparatus considered an importation of an "article that infringes"?
    j. Does section 337(a)(1)(B) extend to induced infringement of an apparatus claim wherein the accused infringer imports a component, incorporates the component into an apparatus that infringes, and sells the infringing apparatus to the end user with intent to induce infringement?
    k. With reference to *Suprema Inc. v. International Trade Commission*, 796 F.3d 1338 (Fed. Cir. 2015) (en banc), *Comcast*, *Certain High-Density Fiber Optic Equipment and Components Thereof*, Inv. No. 337-TA-1194, Comm'n Op. (Aug. 23, 2021) ("*Fiber Optic Equipment*"), and/or any other relevant legal authority, should the legal standard for induced infringement under section 337 be applied in the same manner for method and apparatus claims? Please explain the legal

standard and analysis that should be used to determine whether an imported component is an "article that infringes" under section 337(a)(1)(B), if the importer uses the article to manufacture a downstream product that it sells to customers in the United States. Discuss whether this statutory phrase is applied differently for method and apparatus claims.

l. With reference to the Additional Views of Chair Kearns Regarding "Articles that Infringe" in *Fiber Optic Equipment*, Comm'n Op. at 98, address the relevance of the following factors in an assessment of whether the imported LCD Cells at issue in this investigation constitute "articles that infringe": (a) whether the article is a material part of the invention, (b) whether it is especially designed and/or configured for use in an infringing manner, (c) whether it is a staple article and the extent to which it has noninfringing uses, and (d) the extent to which it is modified or combined with other articles after importation.

2. As to the limitation in claim 1 that "the circuit board is received in the circuit board mounting part":
   a. With citations to the intrinsic record, how should "received in" be construed?
   b. Are the circuit boards of the accused products "received in" the constricted convection plate? How do the metal tubes to which the circuit boards are affixed affect the infringement analysis of this limitation, if at all?
   c. How does the construction of "received in" effect the Final ID's invalidity analysis as to this limitation?
3. As to the limitation in claim 2 that "the circuit board is mounted in the circuit board mounting part":
   a. With citations to the intrinsic record, how should "mounted in" be construed?
   b. Are the circuit boards of the accused products "mounted in" the constricted convection plate?
   c. How does the construction of "mounted in" effect the Final ID's invalidity analysis as to this limitation?
4. As to the economic prong of the domestic industry analysis:
   a. Setting aside the origin of the parts and materials, should the payments from B2B Care to USSI for parts and materials be considered "employment of labor or capital" for purposes of section 337(a)(3)(B)? Please identify any evidence in the record as to what portion of payments from B2B Care to USSI were for U.S. labor costs as opposed to parts and materials.
   b. What quantification, if any, of the employment of labor or capital with respect to the DI products by Samsung International Inc. or Video Solutions Lab is provided in the record? Did Samsung show, or did the parties stipulate, that the DI products are representative of the OH series of digital LCD displays for purposes of the domestic industry requirement?
   c. If Samsung is seeking to rely on a comparison of its domestic labor and capital investments relating to the DI products to foreign investments to demonstrate quantitative significance, what foreign investments are relevant? Citing to the evidentiary record, what evidence is on record regarding Samsung's foreign investments?

d. Please explain how Samsung's proffered indicators of significance should be considered in determining whether Samsung's employment of labor or capital with respect to its DI products are significant under section 337(a)(3)(B).

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) a cease and desist order that could result in the respondent 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 order 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, 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 ALJ on remedy and bonding.

In its initial submission, Complainants are also requested to identify the remedy sought and to submit proposed remedial orders for the Commission's consideration. Complainants are further requested 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 **July 1, 2024**. Reply submissions must be filed no later than the close of business on **July 9, 2024**. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Opening submissions are limited to 100 pages. Reply submissions are limited to 50 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-1349) 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 June 17, 2024.

This action is taken under the authority of 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: June 17, 2024