

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN POLYCRYSTALLINE
DIAMOND COMPACTS AND
ARTICLES CONTAINING SAME**

Investigation No. 337-TA-1236

**NOTICE OF THE COMMISSION'S FINAL DETERMINATION FINDING NO
VIOLATION OF SECTION 337; 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 find no violation of section 337 of the Tariff Act of 1930, as amended, in this investigation. The investigation is terminated in its entirety.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, 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 December 29, 2020, based on a complaint filed by US Synthetic Corporation ("USS") of Orem, Utah. 85 FR 85661 (Dec. 29, 2020). 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 polycrystalline diamond compacts and articles containing same by reason of infringement of certain claims of U.S. Patent No. 10,507,565 ("the '565 patent"); U.S. Patent No. 10,508,502 ("the '502 patent"); U.S. Patent No. 8,616,306 ("the '306 patent"); U.S. Patent No. 9,932,274 ("the '274 patent"); and U.S. Patent No. 9,315,881 ("the '881 patent"). *Id.* The complaint further alleged that an industry in the United States exists as required by section 337. *Id.* The notice of investigation named as respondents: SF Diamond Co., Ltd., and SF Diamond USA, Inc. (collectively, "SF Diamond"); Element Six Abrasives Holdings Ltd., Element Six Global Innovation Centre, Element Six GmbH, Element Six Limited, Element Six Production (Pty) Limited, Element Six Hard Materials (Wuxi) Co. Limited, Element Six Trading (Shanghai) Co.,

Element Six Technologies US Corporation, Element Six US Corporation, ServSix US, and Synergy Materials Technology Limited (collectively, “Element Six”); Iljin Diamond Co., Ltd., Iljin Holdings Co., Ltd., Iljin USA Inc., Iljin Europe GmbH, Iljin Japan Co., and Ltd., Iljin China Co., Ltd. (collectively, “Iljin”); Henan Jingrui New Material Technology Co., Ltd. (“Jingrui”); Zhenzhou New Asia Superhard Materials Composite Co., Ltd., and International Diamond Services, Inc. (collectively, “New Asia/IDS”); CR Gems Superabrasives Co., Ltd. (“CR Gems”); FIDC Beijing Fortune International Diamond (“FIDC”); Fujian Wanlong Superhard Material Technology Co., Ltd. (“Wanlong”); Zhujau Juxin Technology (“Juxin”);¹ and Shenzhen Haimingrun Superhard Materials Co., Ltd. (“Haimingrun”) (together, “the Respondents”). *Id.* at 85662. The Office of Unfair Import Investigations did not participate in the investigation. *Id.*

USS moved to terminate the investigation as to Element Six and FIDC over the course of the investigation. All of the motions were granted by non-final initial determinations (“ID”), and the Commission did not review them. *See* Order Nos. 6 (Feb. 1, 2021), 8 (Feb. 8, 2021), 10 (Feb. 24, 2021), and 16 (Apr. 1, 2021). Thus, the only remaining respondents are Iljin, SF Diamond, New Asia/IDS, Haimingrun, Juxin, CR Gems, Jingrui, and Wanlong.

USS also moved for partial termination of the investigation with respect to certain asserted patents and claims. All the motions were granted by non-final IDs, and the Commission did not review them. *See* Order Nos. 26 (Jul. 14, 2021), 32 (Aug. 9, 2021), and 57 (Oct. 19, 2021). As such, the ’274 and ’881 patents have been terminated from the investigation. Claims 1, 2, 4, 6, and 18 of the ’565 patent; claims 1, 2, 11, 15, and 21 of the ’502 patent; and claim 15 of the ’306 patent remain in this investigation (collectively, “the Asserted Patents”).

On April 27, 2021, a technology tutorial and *Markman* hearing was held. On May 24, 2021, Order No. 23 issued, which construed certain claim terms of the patents at issue. An evidentiary hearing took place during the week of October 18-22, 2021.

On March 3, 2022, the administrative law judge (“ALJ”) issued his final ID, finding no violation of section 337 by Respondents. Specifically, the ID found at least one accused product infringes all asserted claims of the Asserted Patents, but those claims are invalid under 35 U.S.C. 101 and/or 102. The ID also found that Complainant has shown that the domestic industry requirement has been satisfied with respect to the Asserted Patents. Complainant and Respondents filed separate petitions for review and responses to the petitions for review. On March 31, 2022, Iljin submitted a public interest statement.

On May 9, 2022, the Commission determined to review the ID in part. 87 FR 29375-377 (May 13, 2022). Specifically, the Commission determined to review: (1) the ID’s finding that the asserted claims are invalid under 35 U.S.C. 101; (2) the ID’s finding that the asserted claims of the ’565 patent are not entitled to an earlier priority date and, thus, they are invalid as anticipated by the sale of the CT-57 product; (3) the ID’s finding that the Mercury product anticipates claims 1 and 2 of the ’565 patent and claims 1 and 11 of the ’502 patent; (4) the ID’s

¹ On February 8, 2021, Guangdong Juxin Materials Technology Co., Inc. was substituted in place of Zhuhai Juxin Technology. *See* Order No. 8 (Feb. 8, 2021).

finding that Respondents did not prove that the asserted claims are not enabled; and (5) the ID's findings regarding the economic prong of the domestic industry requirement (including the ruling allowing USS to supplement its domestic industry contentions with a revenue-based allocation method). The Commission determined not to review any other findings presented in the ID, including the ID's finding of no violation of section 337 with respect to the '306 patent. The Commission requested briefing from the parties on certain issues under review and on remedy, the public interest, and bonding. Complainant and Respondents filed their opening written submissions on May 23, 2022, and their responsive written submissions on May 31, 2022. The Commission did not receive comments from the public on public interest issues raised by the ALJ's recommended relief.

Having reviewed the record of the investigation, including the final ID and the parties' submissions, the Commission has found no violation of section 337 as to claims 1, 2, 4, 6, and 18 of the '565 patent and claims 1, 2, 11, 15, and 21 of the '502 patent. Specifically, the Commission affirms with modifications the ID's finding that the asserted claims of the '502, '565, and '306 patents are directed to an abstract idea and, thus, are patent ineligible under 35 U.S.C. 101. The Commission also affirms with modifications the ID's finding that the asserted claims of the '565 patent are not entitled to an earlier priority date and, thus, the claims are anticipated by the prior art CT-57. The Commission reverses the ID's finding that the Mercury PDC, manufactured by Diamond Innovations, Inc., anticipates claims 1 and 2 of the '565 patent and claims 1 and 11 of the '502 patent. The Commission affirms with modifications the ID's finding that Respondents have not proven that the asserted claims of the '502, '565, and '306 patents are not enabled. Having affirmed the ID's findings that the asserted claims are invalid, the Commission has determined to take no position on the economic prong of the domestic industry requirement.

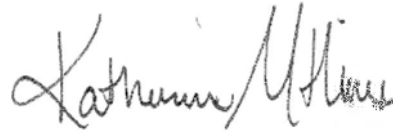
Commissioner Schmidlein joins the Commission's decision affirming the ID's section 102 findings as modified in the Majority opinion but dissents from the Majority's decision to affirm the ID's section 101 findings as explained in her dissenting views. She would also affirm with modifications the ID's conclusion that USS established the economic prong of the domestic industry requirement for the '565 patent and the '502 patent under subsections (A), (B), and (C) of section 337(a)(3). Accordingly, she would find a violation based on infringement of claims 1, 2, 11, 15, and 21 of the '502 patent.

The investigation is terminated with a finding of no violation. The Commission's reasoning in support of its determinations is set forth more fully in its opinion issued concurrently herewith.

The Commission vote for this determination took place on October 3, 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.

A handwritten signature in black ink, appearing to read "Katherine M. Hiner". The signature is written in a cursive style with a large initial "K" and a long, sweeping underline.

Katherine M. Hiner
Acting Secretary to the Commission

Issued: October 3, 2022