

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN ICEMAKING MACHINES
AND COMPONENTS THEREOF**

Investigation No. 337-TA-1369

**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; EXTENSION OF THE
TARGET DATE**

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 chief administrative law judge (“CALJ”), finding a violation of section 337 in this investigation. 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. The Commission has also determined to extend the target date for completion of this investigation to February 13, 2025.

FOR FURTHER INFORMATION CONTACT: Benjamin S. Richards, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5453. 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, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On August 16, 2023, the Commission instituted this investigation based on a complaint filed by Hoshizaki America, Inc. of Peachtree City, Georgia (“Hoshizaki”). 88 FR 55721-22 (Aug. 16, 2023). The complaint alleges 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, or the sale within the United States after importation of certain icemaking machines and components thereof by reason of the infringement of one or

more of claims 1-3, 6-8, and 11-20 of U.S. Patent No. 10,107,538 (“the ’538 patent”); claims 1-4, 10-13, and 16 of U.S. Patent No. 10,113,785 (“the ’785 patent”); and claims 1, 2, 5-9, and 11-14 of U.S. Patent No. 10,458,692 (“the ’692 patent”). *Id.* at 5572. The Commission’s notice of investigation named as respondents Blue Air FSE LLC of Gardena, California; and Bluenix Co., Ltd. of Gyeonggi-do, Republic of Korea (collectively, “Bluenix”). The Office of Unfair Import Investigations was also named as a party in this investigation, but ceased participating on October 13, 2023. *Id.*; *see also* EDIS Doc. ID 805894.

The CALJ issued IDs terminating the following claims from the investigation at Hoshizaki’s request: claims 2, 8, 11–18, and 20 of the ’538 patent; claims 2–4, 11–13, and 16 of the ’785 patent; and claims 2, 6–8, and 11–14 of the ’692 patent. Order No. 9 (Dec. 19, 2023), *unreviewed*, Comm’n Notice, EDIS Doc. ID 811832 (Jan. 11, 2024); Order No. 15 (Apr. 8, 2024), *unreviewed*, Comm’n Notice, EDIS Doc. ID 819782 (Apr. 26, 2024).

On April 25, 2024, the CALJ issued an ID granting Hoshizaki’s unopposed motion for summary determination that Hoshizaki satisfied the domestic industry requirement. Order No. 16 (Apr. 25, 2024). The Commission reviewed and then affirmed that ID. Comm’n Notice, EDIS Doc. ID 822414 (May 29, 2024).

The CALJ conducted an evidentiary hearing from May 6, 2024, through May 10, 2024.

On August 30, 2024, the CALJ issued his final ID on violation. That ID found that a violation of section 337 had occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain icemaking machines and components thereof that infringe certain claims of the ’538, ’785, and ’692 patents. On September 16, 2024, Bluenix filed a petition for review of the ID, and Hoshizaki filed a contingent petition for review of the ID. On September 23, 2024, Bluenix filed a response to Hoshizaki’s contingent petition for review. On September 24, 2024, Hoshizaki filed a response to Bluenix’s petition for review.

Having reviewed the record of the investigation, including the final ID, the parties’ submissions to the CALJ, the evidentiary record, and the parties’ petitions for review and responses thereto, the Commission has determined to review the ID in part. Specifically, the Commission has determined to review the ID’s infringement findings for the ’785 and ’692 patents.

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) For the ’785 and ’692 patents, please address whether the “function” of the “inner flat portion” limitation for purposes of the doctrine of equivalents analysis should include the overall function of making ice or be more narrowly defined to just the separation of active and passive cavities. As a legal matter, should the doctrine of equivalents analysis focus on the specific function of the claim limitation or the overall function

- of the claimed invention? *See AquaTex Indus., Inc. v. Techniche Sols.*, 479 F.3d 1320, 1326–27 (Fed. Cir. 2007) (finding error where the identified function of promoting evaporation was for the filler layer as a whole rather than the specific function of the “fiberfill batting material” limitation). As a factual matter, please address what role, if any, the inner flat portions play with respect to the formation and harvesting of ice in the claimed invention. *See, e.g.*, ‘785 patent at 5:23-27 (“The degree to which ice extends over the inner flat portions 30 and the adjacent second protrusions 38 is determined, at least in part, by the length of time that water is applied to the front and rear plates 14, 16 during the ice forming cycle.”).
- (2) Please address whether the difference between an inner flat portion (as claimed) and a slightly curved inner portion (as found in the accused products) will affect the “way” in which ice is formed (i.e., by preventing the formation of “boundary layers,” or due to less surface area of contact between the plates and the water that forms ice during the cooling and harvesting cycles, or due to the shape of the surrounding tubing coil). *See* RRB at 18–20.
 - (3) Please address the “result” that should be considered for purposes of the doctrine of equivalents analysis, e.g., the efficiency of the icemaking process or the quantity or quality of ice produced from the icemaking machine. Please address whether the difference between an inner flat portion (as claimed) and a slightly curved inner portion (as found in the accused products) will affect that result.
 - (4) Assuming that the icemaking function should be considered in determining equivalency, please address the expert testimony and other supporting evidence for or against your positions in response to the questions above (and in particular why the final ID found Dr. Tanbour’s testimony to be more credible than Bluenix’s expert). *See* ID at 72 n.20.
 - (5) Please address any evidence of record indicating what constitutes “slightly curved inner portions” in the accused products as characterized in the ID. ID at 69. Will the degree of curvature of the inner portion make a difference in an assessment of whether an accused product is equivalent to the claimed “inner flat portion”?
 - (6) For purposes of applying the function-way-result test for equivalence, if you contend that that function of the claimed “inner flat portions” is something other than “separat[ing] active and passive cavities, which are, in turn, interspersed so as to define ice forming sites,” ID at 70, indicate whether and where you raised that contention in the post-hearing briefing before the CALJ. Similarly, indicate whether and where you raised that contention in your petition for review of the ID. If you did not contend before the CALJ or in a petition for review that the function of the “inner flat portions” is something other than the function identified in the ID, explain why that contention has or has not now been forfeited, waived, or abandoned.

- (7) Do you contend that the asserted claims of the '785 and '692 patents are limited to evaporators comprising oval-shaped refrigerant conduits? If so, explain where that limitation appears in the '785 and '692 patents.
- (8) Do you contend that the asserted claims of the '785 and '692 patents limit the surface area of the claimed "inner flat portions" to a particular size or range of sizes? If so, explain where that limitation appears in the '785 and '692 patents.
- (9) Do you contend that the asserted claims of the '785 and '692 patents are limited to evaporators that meet a certain efficiency threshold? If so, explain where that limitation appears in the '785 and '692 patents.
- (10) Do you contend that the evaporators claimed in the asserted claims of the '785 and '692 patents are limited to the dimensions shown in figure 2 of those patents? If so, explain why your contention is not in conflict with *Hockerson-Halberstadt, Inc. v. Avia Grp. Int'l, Inc.*, 222 F.3d 951, 956 (Fed. Cir. 2000) ("[I]t is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue.").
- (11) In testifying regarding a lack of equivalence between the claimed "inner flat portions" of the '785 and '692 patents and the accused structures in the accused products, *see* tr. 521:2–526:13, did Bluenix's expert witness treat the dimensions shown in figure 2 of the '785 and '692 patents as limiting?

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/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, 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 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 **December 9, 2024**. Reply submissions must be filed no later than the close of business on **December 16, 2024**. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Opening submissions are limited to **75** pages. Reply submissions are limited to **60** 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-1369) 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 has also determined to extend the target date for completion of this investigation to February 13, 2025.

The Commission vote for this determination took place on November 25, 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', written in a cursive style.

Lisa R. Barton
Secretary to the Commission

Issued: November 25, 2024