

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN NETWORKING
EQUIPMENT SUPPORTING NETCONF**

Investigation No. 337-TA-1391

**NOTICE OF THE COMMISSION'S DETERMINATION TO REVIEW AND AFFIRM
ORDER NO. 19 GRANTING SUMMARY DETERMINATION FINDING NO
INFRINGEMENT, REVIEW AND VACATE ORDER NO. 23, AND GRANT IN PART
THIRD PARTY XENOGENIC DEVELOPMENT, LLC'S MOTION TO INTERVENE;
TERMINATION OF THE INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission ("Commission") has determined that no violation of section 337 in the above-captioned investigation has occurred. The Commission has determined to review an initial determination granting summary determination of non-infringement (Order No. 19) and affirm the Order No. 19 finding of no infringement with supplemented reasoning. The Commission has further determined to review and vacate Order No. 23, and grant in part third party Xenogenic Development, LLC's ("Xenogenic") motion to intervene. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Jonathan Link, Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-3103. 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 March 4, 2024, based on a complaint filed by Optimum Communications Services, Inc. of Jersey City, New Jersey ("Complainant"). 89 FR 15611-12 (Mar. 4, 2024). The complaint, as supplemented, 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 network equipment supporting NETCONF by reason of

infringement of certain claims of U.S. Patent Nos. 10,567,474 and 10,848,546 (“Asserted Patents”). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The Commission’s notice of investigation named as respondents: Changsha Silun Network Technology Co., Ltd. of Hunan, China; Hunan Maiqiang Network Technology Company Limited of Hunan, China; Hunan Zikun Information Technology Co., Ltd. of Hunan, China; and Guangzhou Qiton Electronics Technology Co., Ltd. of Guangdong, China (collectively, “Respondents”). *Id.* OUII is participating as a party in this investigation. *Id.*

On June 13, 2024, the Commission found the Respondents in default for failing to respond to the complaint, notice of investigation, or previous order to show cause (Order No. 8). Order No. 9, *unreviewed by* Comm’n Notice (June 13, 2024).

On June 28, 2024, Complainant filed a motion for summary determination of violation and requested the issuance of a general exclusion order. On July 10, 2024, OUII filed a confidential response opposing the summary determination motion.

On September 19, 2024, the Commission determined not to review an initial determination declassifying OUII’s response to Complainant’s motion for summary determination and supporting memorandum. Order No. 13, *unreviewed by*, Comm’n Notice (September 20, 2024).

On August 8, 2024, third party Xenogenic Development LLC (“Xenogenic”) filed a motion to intervene, stay the proceedings on the merits, and dismiss the investigation. On August 16, 2024, Complainant filed a response opposing the motion. On August 20, 2024, OUII filed a response in support of Xenogenic’s motion to intervene and for termination of the investigation but opposed a stay of the investigation. On August 23, 2024, Xenogenic filed a reply in support of its motion. On August 27, 2024, Complainant filed a sur-reply opposing the motion.

On September 18, 2024, OUII filed a motion for summary determination arguing that Complainant cannot show that the accused products infringe the asserted claims of the Asserted Patents, and that the investigation should be terminated with a finding of no violation of section 337. On September 26, 2024, Complainant filed an opposition to the motion. OUII filed its reply on October 1, 2024.

On October 18, 2024, the ALJ issued Order No. 19 granting-in-part OUII’s motion for summary determination and finding no violation. On October 25, 2024, Complainant filed a petition for review of the ID in Order No. 19. On November 1, 2024, OUII filed a response to Complainant’s petition for review of the ID in Order No. 19.

On October 18, 2024, the ALJ also issued Order No. 20, asking the parties to brief whether the investigation should be terminated in its entirety and whether all remaining motions are moot and/or withdrawn in light of Order No. 19. On October 28, 2024, Complainant responded to Order No. 20, opposing terminating the investigation. On October 28, 2024, OUII responded to Order No. 20 supporting termination of the investigation and Xenogenic responded requesting the ALJ to grant its motion to intervene. On November 4, 2024, Complainant filed a

reply regarding Order No. 20, opposing terminating the investigation.

On November 8, 2024, the ALJ issued Order No. 23 granting Xenogenic’s motion to intervene and terminating the investigation. On November 9, 2024, Complainant filed a petition to review the ID in Order No. 23. On November 18, 2024, OUII filed a response in opposition to Complainant’s petition to review of Order No. 23.

Having considered the record in this investigation, including the complaint, the filings before the ALJ and the Commission, the Commission has determined to review Order No. 19. On review, the Commission affirms Order No. 19 finding no infringement of the asserted patents with the following supplementation: (1) on page 18 of the ID, the Commission supplements the citation to 19 CFR §§210.18(a)-(b) to also include 19 CFR §210.18(c); and (2) on page 26 of the ID, the Commission adds a citation to Exhibit 14 of OUII’s motion for summary determination, which is RFC 7950 entitled “The YANG 1.1 Data Modeling Language” (in addition to already cited Exhibits 13, 15, and 16 from OUII’s motion for summary determination).

The Commission has further determined to review and vacate Order No. 23. Order No. 19 finds that there is no infringement of the Asserted Patents and that no violation of section 337 has occurred. Affirmance of Order No. 19 would result in termination of the investigation, and thereby, the Commission finds that as of the time of issuance of Order No. 23 the investigation was already pending before the Commission. However, the Commission has determined to grant third party Xenogenic’s motion to intervene for the limited purpose of addressing ownership of the Asserted Patents. Regardless of ownership, the Commission’s finding of no infringement results in a finding of no violation and the investigation is terminated.

The Commission vote for this determination took place on December 4, 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: December 4, 2024