

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN POWERED COVER PLATES

Investigation No. 337-TA-1124

**NOTICE OF A COMMISSION DETERMINATION NOT TO REVIEW A
REMAND INITIAL DETERMINATION; SCHEDULE FOR FILING WRITTEN
SUBMISSIONS 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 not to review a remand initial determination (“RID”) issued by the presiding administrative law judge (“ALJ”) in the above-captioned investigation granting a motion for summary determination regarding whether certain redesigns infringe the asserted patents. The Commission requests briefing from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone (202) 205-3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.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 the investigation on July 23, 2018, based on a complaint filed by SnapRays, LLC d/b/a SnapPower of Vineyard, UT (“SnapPower,” or Complainant). 83 FR 34871 (July 23, 2018). The complaint, as supplemented, alleges a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain powered cover plates by reason of infringement of certain claims of U.S. Patent Nos. 9,871,324 (“the ’324 patent”); 9,882,361 (“the ’361 patent”); 9,917,430 (“the ’430 patent”); and U.S. Design Patent

No. D819,426 (“the Design Patent,” or “the ’D426 patent”) (collectively, “the Asserted Patents”). *Id.* at 34872. The notice of investigation named thirteen respondents: (1) Ontel Products Corporation of Fairfield, New Jersey; (2) Dazone, LLC of Ontario, Canada; (3) Shenzhen C-Myway of Shenzhen, Guangdong, China; (4) E-Zshop4u LLC of Howey in the Hills, Florida; (5) Desteny Store of Fort Meyers, Florida; (6) Zhongshan Led-Up Light Co., Ltd. of Zhongshan, Guangdong, China; (7) AllTrade Tools LLC of Cypress, California; (8) Guangzhou Sailu Info Tech. Co., Ltd. of Guangzhou, Guangdong, China; (9) Zhejiang New-Epoch Communication Industry Co., Ltd. of Yueqing, Zhejiang, China; (10) KCC Industries of Eastvale, California; (11) Vistek Technology Co., Ltd. of Fuyong, Baoan, Shenzhen, China (“Vistek”); (12) Enstant Technology Co., Ltd. of Xixiang Baoan District, Shenzhen, China (“Enstant”); and (13) Manufacturers Components Incorporated of Pompano Beach, Florida. *Id.* The Commission’s Office of Unfair Import Investigations (“OUII”) was also named as a party.

The Commission previously terminated the investigation as to, or found in default, all named respondents except Enstant and Vistek. Order No. 5 (Sept. 26, 2018), *non-reviewed* Notice (Oct. 29, 2018); Order No. 6 (Sept. 26, 2018), *non-reviewed* Notice (Oct. 29, 2018); Order No. 8 (Sept. 28, 2018), *non-reviewed* Notice (Oct. 23, 2018); Order No. 12 (Oct. 2, 2018), *non-reviewed* Notice (Nov. 27, 2018); Order No. 18 (Nov. 28, 2018), *non-reviewed* Notice (Dec. 21, 2018); Order, No. 36 (Apr. 11, 2019), *non-reviewed* Notice (May 8, 2019)

On August 12, 2019, the ALJ issued her “Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond,” finding a violation of section 337. The final ID found that a violation of section 337 occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation, of certain powered cover plates that infringe the asserted claims of the ’361 patent by Enstant and Vistek (collectively, “Enstant/Vistek,” or “Enstant”). *See id.* at 125-26.

The final ID noted that “Respondents Enstant and Vistek filed a motion for summary determination of non-infringement (‘Redesign SD Motion’) of [the ’361 patent] by Redesign Models P001 (Smart Wall Plate Charger, Decor Outlet, with USB charger) and P002 (Smart Wall Plate Charger, Duplex Outlet with USB charger).” Final ID at 14. In the Redesign SD Motion, Enstant sought summary determination that powered cover plate model numbers P001 and P002 (“Enstant’s Redesigns”) do not infringe claims 1, 3-4, 10, 14, 17, 21, and 23-24 of the ’361 patent. Redesign SD Motion at 16. The final ID found, however, that “Enstant’s and Vistek’s Redesign SD Motion was effectively rendered moot by rulings on Motions in Limine” *Id.*

On October 11, 2019, the Commission determined to review in part and to remand the investigation to the ALJ for a remand initial determination (“RID”) to address the final ID’s finding that Enstant/Vistek’s Redesign SD Motion is moot. 84 FR 55985-86 (October 18, 2019). The Commission issued an “Order: Remand of a Final Initial Determination In Part” directing the ALJ to expeditiously issue an RID as to this finding and to “extend the target date for termination of the investigation by ID pursuant to 19 CFR 210.51(a)(1) to three months after the issuance of the RID.” Commission Order at 5 (October 11, 2019).

On January 30, 2020, the ALJ issued the subject RID granting Enstant's Redesign SD Motion. The ALJ found that Enstant's Redesigns are properly at issue in this investigation because (1) Enstant's Redesigns are within the scope of this investigation and within the Commission's jurisdiction, RID at 10-12; (2) Enstant's Redesigns are fixed in design and not "hypothetical," RID at 12-13; and (3) the parties exchanged discovery regarding the Redesigns, RID at 13-15. The ALJ also found that there is no dispute that Enstant's Redesigns do not infringe claims 1, 3-4, 10, 14, 17, 21, and 23-24 of the '361 patent – the only patent asserted against Enstant's Redesigns. RID at 15-20. No party petitioned for review of the RID.

The Commission has determined not to review the subject RID.

In connection with the final disposition of this investigation, the statute authorizes issuance of: (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) one or more 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 are 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). In addition, if a party seeks issuance of any cease and desist orders, the written submissions should address that request in the context of recent Commission opinions, including those in *Certain Arrowheads with Deploying Blades and Components Thereof and Packaging Therefor*, Inv. No. 337-TA-977, Comm'n Op. (Apr. 28, 2017) and *Certain Electric Skin Care Devices, Brushes and Chargers Therefor, and Kits Containing the Same*, Inv. No. 337-TA-959, Comm'n Op. (Feb. 13, 2017). Specifically, if Complainant seeks a cease and desist order against a respondent, the written submissions should respond to the following requests:

1. Please identify with citations to the record any information regarding commercially significant inventory in the United States as to each respondent against whom a cease and desist order is sought. If Complainant also relies on other significant domestic operations that could undercut the remedy provided by an exclusion order, please identify with citations to the record such information as to each respondent against whom a cease and desist order is sought.
2. In relation to the infringing products, please identify any information in the record, including allegations in the pleadings, that addresses the existence of any domestic inventory, any domestic operations, or any sales-related activity directed at the United States for each respondent against whom a cease and desist order is sought.

3. Please discuss any other basis upon which the Commission could enter a cease and desist order.

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 action. *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: 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 initial written submissions should include views on the recommended determination on remedy and bonding issued on August 12, 2019, by the ALJ.

In its initial written submission, Complainant is also requested to identify the form of the remedy sought and to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the expiration date of the '324, '361, '430, and 'D426 patents, the HTSUS subheadings under which the accused articles are imported, and to supply identification information for all known importers of the accused products. Initial written submissions, including proposed remedial orders must be filed no later than the close of business on March 30, 2020. Reply submissions must be filed no later than the close of business on April 6, 2020. No further submissions on 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 and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1124") in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures*, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronicfiling.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. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. 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 non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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', with a stylized flourish at the end.

Lisa R. Barton
Secretary to the Commission

Issued: March 11, 2020