

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN LIGHT-EMITTING DIODE
PRODUCTS, SYSTEMS, AND
COMPONENTS THEREOF (III)**

Investigation No. 337-TA-1168

**NOTICE OF A COMMISSION DETERMINATION TO REVIEW IN PART A FINAL
INITIAL DETERMINATION FINDING NO VIOLATION OF SECTION 337 AND, ON
REVIEW, TO AFFIRM THE FINAL INITIAL DETERMINATION'S FINDING OF NO
VIOLATION; TERMINATION OF THE INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that, on June 26, 2020, the presiding administrative law judge ("ALJ") issued a combined final initial determination ("ID") and recommended determination ("RD") on remedy and bonding. The final ID finds no violation of section 337 in the above-captioned investigation. The Commission has determined to review the final ID in part and, on review, has determined to affirm the final ID's finding of no violation. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3179. 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 June 25, 2019, the Commission instituted Investigation No. 337-TA-1163 ("the 1163 investigation"), based on a complaint, as amended, filed by Lighting Science Group Corporation and Health Inc., both of Cocoa Beach, Florida, and Global Value Lighting, LLC of West Warwick, Rhode Island (collectively, "LSG"). 84 FR 29877 (June 25, 2019). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) ("section 337"), based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain light-emitting diode products, systems, and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 7,098,483 ("the '483 patent"), 7,095,053 ("the '053 patent"), 7,528,421 ("the '421 patent"), 8,506,118, and 8,674,608. *Id.* The complaint further alleges that

a domestic industry exists. *Id.* The notice of investigation names the following entities as respondents: Nichia Corporation of Tokushima, Japan and Nichia America Corporation of Wixom, Michigan (together, “Nichia”); Cree, Inc. of Durham, North Carolina; Cree Hong Kong, Limited of Shatin, Hong Kong; Cree Huizhou Solid State Lighting Co., Ltd. of Guangdong, China; OSRAM GmbH and OSRAM Licht AG, both of Munich, Germany; OSRAM Opto Semiconductors GmbH of Regensburg, Germany; OSRAM Opto Semiconductors, Inc. of Sunnyvale, California; Lumileds Holding B.V. of Schipol, Netherlands and Lumileds, LLC of San Jose, California (together, “Lumileds”); Signify N.V. (f/k/a Philips Lighting N.V.) of Eindhoven, Netherlands; Signify North America Corporation (f/k/a Philips Lighting North America Corporation) of Somerset, New Jersey; MLS Co., Ltd. of Zhongshan City, China; LEDVANCE GmbH of Garching, Germany; LEDVANCE LLC of Wilmington, Massachusetts; General Electric Company of Boston, Massachusetts; Consumer Lighting (U.S.), LLC (d/b/a GE Lighting, LLC) of Cleveland, Ohio; Current Lighting Solutions, LLC of Cleveland, Ohio; Acuity Brands, Inc. of Atlanta, Georgia; Acuity Brands Lighting, Inc. of Conyers, Georgia; Leedarsen Lighting Co., Ltd. of Xiamen, China; and Leedarsen America, Inc. of Smyrna, Georgia (collectively, the “Respondents”). *Id.* at 29878. The Office of Unfair Import Investigations is not a party to this investigation. *Id.*

On July 10, 2019, the ALJ severed from the 1163 investigation the present investigation, Investigation No. 337-TA-1168, which concerns whether there is a violation of section 337 based on allegations of infringement of the ’483, ’053, and ’421 patents. Order No. 5 at 2 (July 10, 2019).

On January 20, 2020, the Commission terminated this investigation as to claim 7 of the ’421 patent. Order No. 18 (Dec. 30, 2019), *unreviewed by Comm’n Notice* (Jan. 29, 2020). On February 7, 2020, the Commission terminated this investigation as to respondents MLS Co., Ltd. and Ledvance GmbH. Order No. 24 (Jan. 14, 2020), *unreviewed by Comm’n Notice* (Feb. 7, 2020). On February 26, 2020, the Commission terminated this investigation as to: (1) claims 2 and 10 of the ’421 patent; (2) claims 4, 16-20, 22, and 26-30 of the ’053 patent; and (3) as to Lumileds only, claims 1-5 and 12 of the ’053 patent. Order No. 26 (Jan. 29, 2020), *unreviewed by Comm’n Notice* (Feb. 26, 2020).

On February 14, 2020, the ALJ issued an initial determination granting in part Respondents’ motion for summary determination on non-infringement and failure to meet the technical prong of the domestic industry requirement. Order No. 32 (Initial Determination) (Feb. 14, 2020). The Commission declined to review that determination and subsequently terminated the investigation as to: (1) all asserted claims of the ’483 patent; and (2) asserted claims 7 and 11-15 of the ’053 patent. *See Comm’n Notice* (Apr. 7, 2020). That determination is currently on appeal. Appeal No. 20-1907 (Fed. Cir.).

On June 26, 2020, the ALJ issued a combined final ID and RD on remedy and bonding. The final ID finds no violation of Section 337. *See Final ID.*

On July 15, 2020, LSG filed a petition for review of certain findings in the final ID, and Respondents filed a contingent-in-part petition for review. On July 28, 2020, the parties filed responses to each other’s petitions.

On July 27, 2020, the Commission received submissions on the public interest pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)) from the following Respondents: (1) Acuity Brands, Inc. and Acuity Brands Lighting, Inc.; and (2) General Electric Co. and Consumer Lighting (U.S.), LLC (d/b/a GE Lighting, LLC). On July 28, 2020, the Commission received a submission on the public interest from LSG. No submissions were filed in response to the Commission's Federal Register notice. *See* 85 FR 40318-19 (July 6, 2020).

Having reviewed the record in this investigation, including the ALJ's orders and final ID, as well as the parties' petitions and responses thereto, the Commission has determined to review the final ID in part. Specifically, the Commission has determined to review the following issues: (1) whether the accused Nichia products and the alleged domestic industry product satisfy the limitation "and thermally coupled through the metal base to the thermal connection pad" of claim 1 of the '053 patent; (2) whether the accused products and the alleged domestic industry products satisfy the additional limitation "wherein the thermally conducting base includes a metal base" of claim 6 of the '421 patent; (3) whether the asserted claims of the '421 patent are invalid as obvious; and (4) whether LSG satisfied the economic prong of the domestic industry requirement. On review, the Commission has determined to take no position on these issues.

Further on review, the Commission has determined to correct two typographical errors in the final ID: in the fourth line of page 34, "does recite" is replaced with "does not recite"; and in the fifth line of page 40, "a thermal via" is replaced with "thermal coupling."

The Commission has determined not to review the remaining findings in the final ID, in particular that the asserted claims of the '053 and '421 patents have not been infringed, that the technical prong of the domestic industry requirement has not been satisfied with respect to either the '053 or '421 patent, and that the asserted claims of the '421 patent have been shown invalid as anticipated and for lacking written description support.

Accordingly, the Commission has determined to affirm the final ID's finding of no violation of section 337. The investigation is terminated.

The Commission vote for these determinations took place on October 1, 2020.

The authority for the Commission's determinations 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).

While temporary remote operating procedures are in place in response to COVID-19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the Complainant(s) complete service for any party/parties without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton'.

Lisa R. Barton
Secretary to the Commission

Issued: October 1, 2020