

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN REPLACEMENT
AUTOMOTIVE LAMPS II**

Investigation No. 337-TA-1292

**NOTICE OF COMMISSION DETERMINATION TO REVIEW A FINAL INITIAL
DETERMINATION FINDING A VIOLATION OF SECTION 337; SCHEDULE FOR
FILING WRITTEN SUBMISSIONS 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 has determined to review a final initial determination (“FID”) issued by the presiding Chief Administrative Law Judge (“CALJ”) finding a violation of section 337 of the Tariff Act of 1930. The Commission requests briefing from the parties on the issues under review and from the parties, interested government agencies, and interested persons on remedy, the public interest, and bonding based on the schedule set forth below. The Commission has also determined to extend the target date for the completion of the above-captioned investigation to September 26, 2023.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-3228. 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: On January 24, 2022, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based on a complaint filed by Hyundai Motor Company of Seoul, Republic of Korea and Hyundai Motor America, Inc. of Fountain Valley, CA (collectively, “Hyundai”). *See* 87 FR 3583-84 (Jan. 24, 2022). The complaint alleges a violation of section 337 based upon the importation into the United States, sale for importation, or sale after importation into the United States of certain replacement automotive lamps by reason of infringement of certain claims of U.S. Design Patent Nos. D617,478; D618,835; D618,836; D631,583; D637,319; D640,812; D655,835; D664,690; D709,217; D736,436; D738,003; D739,057; D739,574; D740,980;

D759,864; D759,865; D771,292; D780,351; D818,163; D829,947; and D834,225 (collectively, “Asserted Patents”). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The notice of investigation names four respondents: 1) TYC Brother Industrial Co., Ltd. of Tainan, Taiwan; 2) Genera Corporation (dba. TYC Genera) of Brea, California; 3) LKQ Corporation of Chicago, Illinois; and 4) Keystone Automotive Industries, Inc. of Exeter, Pennsylvania (collectively, “Respondents”). *Id.* The Office of Unfair Import Investigations is not named as a party.

On February 7, 2022, the CALJ ordered an evidentiary hearing for both Inv. Nos. 337-TA-1291 and 337-TA-1292 on the economic prong of the domestic industry requirement pursuant to the Commission’s pilot program for interim initial determinations (“IID”). *See* Order No. 7 (Feb. 7, 2022). The combined evidentiary hearing was held on April 20, 2022. On July 1, 2022, the CALJ issued an IID finding that Hyundai has satisfied the economic prong of the domestic industry requirement with respect to all of the asserted design patents. On August 24, 2022, the Commission determined to review the IID. *See* Comm’n Notice (Aug. 24, 2022).

On January 24, 2023, the CALJ issued the subject FID finding a violation of section 337 by Respondents based on infringement of each of the Asserted Patents. The FID also finds that no Asserted Patent is invalid as anticipated or obvious. The FID further finds that Hyundai has satisfied the technical prong as to certain representative domestic industry products. Concerning the economic prong of the domestic industry requirement, the FID reduces Hyundai’s alleged investments due to Hyundai’s failure to establish that certain of its alleged domestic industry products are representative of other alleged domestic industry products. The FID then finds that the economic prong of the domestic industry requirement is satisfied for all of the Asserted Patents based on the reduced investments. The CALJ also simultaneously issued a recommended determination on remedy and bonding (“RD”) recommending that, if the Commission finds a violation, it should issue a limited exclusion order but not issue any cease and desist order against any of the Respondents.

On February 6, 2023, Respondents filed a petition for review challenging the FID’s findings on the economic prong of the domestic industry requirement, infringement, and validity. Also on February 6, 2023, Hyundai filed a petition for review challenging the RD’s recommendations and contingently petitioning regarding the FID’s findings concerning non-satisfaction of the technical prong of the domestic industry requirement for certain non-representative products. On February 14, 2023, Respondents and Hyundai filed responses to each other’s petitions.

Having examined the record of this investigation, including the CALJ’s FID, the petitions for review, and the responses thereto, the Commission has determined to review the FID in its entirety. The Commission has also determined to extend the target date for the completion of the investigation until September 26, 2023.

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, the existing evidentiary record, and the parties’ submissions during the investigation.

1. Please identify, with citations to the record prior to the FID, where Hyundai satisfied its burden of proof to establish infringement of each asserted patent by applying the ordinary observer test. As a part of your discussion, please discuss:
 - a. the impact, if any, of the FID's statement that "rejecting Mr. Schiavone's testimony would not change [the] determination regarding infringement." FID at 25, n.10.
 - b. what evidence and argument beyond side-by-side images of the patented designs and accused products, if anything, is needed to satisfy the burden of proof, and whether Hyundai provided that proof, in this investigation. For example, was Hyundai required to provide a written explanation in its prehearing and/or post hearing briefs discussing how the accused products and each asserted patent are "substantially the same" from the perspective of the ordinary observer?
2. Please identify, with citation to the record prior to the FID, where Hyundai satisfied its burden of proof to establish the technical prong of the domestic industry requirement for each asserted patent. As part of your discussion, please discuss what evidence and argument beyond side-by-side images of the patented designs and asserted domestic industry products, if anything, is needed to satisfy the burden of proof, and whether Hyundai provided that proof, in this investigation. For example, was Hyundai required to provide a written explanation in its prehearing and/or post hearing briefs discussing how the asserted domestic industry products and each asserted patent are "substantially the same" from the perspective of the ordinary observer?
3. Please discuss whether Hyundai satisfied its burden of proof to establish that it has satisfied the economic prong of the domestic industry requirement through significant investments in plant and equipment based on the revised patent-by-patent investments to account for the non-representative products. Please also identify, with citations to the record prior to the FID, where Hyundai satisfied its burden of proof as to the significance of the revised investments for each patent.
4. Please address whether the FID, in finding infringement or satisfaction of the technical prong as to the asserted design patents despite complainants' failure to provide a written explanation regarding similarity between the accused products and asserted design from the standpoint of the ordinary observer, is consistent with relevant legal authority. Please specifically address whether the FID, by providing such a written explanation in the first instance, presents issues under the Administrative Procedure Act.

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 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 **May 25, 2023**. Reply submissions must be filed no later than the close of business on **June 1, 2023**. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Opening submissions are limited to 50 pages. Reply submissions are limited to 30 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 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1292) 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 vote for this determination took place on May 11, 2023.

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: May 11, 2023