

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

In the Matter of

**CERTAIN VARIABLE SPEED WIND
TURBINES AND COMPONENTS THEREOF**

Investigation No. 337-TA-641

**NOTICE OF COMMISSION DETERMINATION TO REVIEW A FINAL INITIAL
DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review the final initial determination (“ID”) of the presiding administrative law judge (“ALJ”) in the above-captioned investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“section 337”). The ALJ found a violation of section 337.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3065. 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, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://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: This investigation was instituted on March 31, 2008, based upon a complaint filed on behalf of General Electric Company (“GE”) of Fairfield, Connecticut on February 7, 2008. The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain variable speed wind turbines and components thereof that infringe claims 121-125 of U.S. Patent No. 5,083,039 (“the ‘039 patent”) and claims 1-12, 15-18, and 21-28 of U.S. Patent No. 6,921,985 (“the ‘985 patent”).

The notice of investigation named as respondents Mitsubishi Heavy Industries, Ltd. (“MHI”) of Tokyo, Japan; Mitsubishi Heavy Industries America, Inc. (“MHIA”) of New York, New York; and Mitsubishi Power Systems, Inc. (“MPSA”) of Lake Mary, Florida.

On October 8, 2008, the Commission issued notice of its determination not to review an ID (Order No. 10) granting GE's motion to amend its complaint and the notice of investigation to add claims 1-19 of United States Patent No. 7,321,221 ("the ‘221 patent") to this investigation.

On April 21, 2009, the Commission issued notice of its determination not to review an ID (Order No. 30) granting GE's amended motion for summary determination that it had satisfied the economic prong of the domestic industry requirement with respect to all three asserted patents.

The ALJ conducted an evidentiary hearing commencing on May 11, 2009. At the hearing, GE narrowed the number of asserted claims to: claim 121 of the ‘039 patent; claims 5, 7, and 8 of the ‘221 patent; and claim 15 of the ‘985 patent.

On August 7, 2009, the ALJ issued a final ID finding a violation of section 337 in this investigation. The ALJ found that there was a violation in the sale for importation, importation, or sale after importation by respondents MHI and MPSA with respect to claim 121 of the ‘039 patent and claim 15 of the ‘985 patent. The ALJ found that there was no violation with respect to these claims by MHIA. The ALJ also found that there was no violation of section 337 by any party with respect to claims 5, 7, and 8 of the ‘221 patent.

On August 24, 2009, the parties filed three petitions and/or contingent petitions for review: (1) MHI, MPSA, and MHIA; (2) GE; and (3) the Commission investigative attorney. On September 1, 2009, each of the parties filed responses thereto.

Having examined the final ID, the petitions for review, the responses thereto, and the relevant portions of the record in this investigation, the Commission has determined to review the final ID, except the issue of importation and the intent finding underlying the ALJ's inequitable conduct determination.

The Commission requests briefing based on the evidentiary record on the issues on review. The Commission is particularly interested in responses to the following questions:

(1) If the Commission were to adopt the claim constructions presented to the administrative law judge by Mitsubishi or the Commission investigative attorney, would the Mitsubishi Wind Turbines or the GE Wind Turbines satisfy these claim constructions under the doctrine of equivalents?

(2) Does the Commission need to address the issue of inventorship to determine whether GE has standing to assert infringement of the ‘985 patent?

(3) Does claim 15 of the '985 patent require that the device shunt current away from both the inverter and the generator rotor? Can the shunt circuit be located within the inverter?

In connection with the final disposition of this investigation, the Commission may issue (1) an 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 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 information, see the Commission Opinion, *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The 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 President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount to be 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.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be concise and thoroughly referenced to the record in this investigation, including references to exhibits and testimony. Additionally, the parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the ALJ's recommended determination on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is requested to supply the expiration dates of the patents at issue and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than the close of business on October 22, 2009. Reply submissions must be filed no later than the close of business on November 2, 2009. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original and 12 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R § 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and under sections 210.42 - .46 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42 - .46).

By order of the Commission.

/s/
Marilyn R. Abbott
Secretary to the Commission

Issued: October 8, 2009