

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

In the Matter of

**CERTAIN LIGHT-EMITTING DIODES
AND PRODUCTS CONTAINING THE
SAME**

Investigation No. 337-TA-784

**NOTICE OF A COMMISSION DETERMINATION TO REVIEW A FINAL INITIAL
DETERMINATION IN PART AND SET A SCHEDULE FOR FILING WRITTEN
SUBMISSIONS ON THE ISSUES UNDER REVIEW AND 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 to review in part the final initial determination ("ID") issued by the presiding administrative law judge ("ALJ") on July 9, 2012, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., 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, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <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: The Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on July 11, 2011, based on two complaints filed by OSRAM GmbH of Munich, Germany ("OSRAM"), alleging, *inter alia*, a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain light-emitting diodes and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 6,849,881 ("the '881 patent"); 6,975,011 ("the '011 patent"); 7,106,090 ("the '090 patent"); 7,151,283 ("the '283 patent"); and 7,271,425 ("the '425 patent"). 76 *Fed. Reg.* 40746 (July 11, 2011). Subsequently, the '881, the '090, and the '011, as well as certain claims of the '283 and '425 patents, were terminated from the investigation. The respondents are LG Electronics and LG Innotek Co., Ltd., both of Seoul,

Republic of Korea; LG Electronics U.S.A., Inc. of Englewood Cliffs, New Jersey; and LG Innotek U.S.A., Inc. of San Diego, California (collectively, "LG"). *Id.* The Office of Unfair Import Investigations was not named as a party to the investigation.

The evidentiary hearing in this investigation was held from April 26 through May 2, 2012. On July 9, 2012, the ALJ issued the final ID finding a violation of section 337. The ALJ issued his recommended determination on remedy and bonding on July 23, 2012. Respondent LG filed a timely petition for review of various portions of the final ID, and complainant OSRAM filed a timely response to the petition.

Having examined the record in this investigation, including the ALJ's final ID, the petition for review, and the response thereto, the Commission has determined to review:

- (I) The ALJ's determination that OSRAM met the economic prong of the domestic industry requirement with respect to both asserted patents;
- (II) With respect to the '283 patent:
 - (a) the ALJ's determination that claims 1, 3, 4, 6, 8, 22, 24, 25, 26, 29, 32, 33, and 34 of the '283 patent are not rendered obvious in view of prior art references Japanese Patent ("JP") 345, JP 609, JP 794, and Hewes;
 - (b) the ALJ's determination that claim 34 of the '283 patent is not rendered obvious in view of prior art references Nikkei Article, Stevenson, Blasse, and Hewes;
 - (c) the ALJ's determination that claim 34 of the '283 patent is not rendered obvious in view of prior art references JP 609, Nikkei Article, Blasse, and Hewes.

The Commission has determined not to review the remainder of the final ID. The parties are requested to brief their positions on only the following issues, with reference to the applicable law and the evidentiary record:

- (1) With respect to the economic prong of the domestic industry requirement:
 - (a) Please identify the record evidence showing that the products on which OSRAM relies for the purpose of demonstrating that it met the economic prong of the domestic industry requirement are protected by the '283 patent, as required by 19 U.S.C. § 1337(a)(3);
 - (b) Please identify the record evidence showing that, with respect to its products protected by the '283 patent, OSRAM made qualifying investments in the '283 patent's exploitation, including engineering, research and development, as required by 19 U.S.C. § 1337(a)(3)(C);
 - (c) Please identify the record evidence showing that OSRAM's qualifying investment in the '283 patent's exploitation, including engineering, research and development, with respect to OSRAM's products protected by the '283 patent is substantial, as required by 19 U.S.C. § 1337(a)(3)(C).

(2) With respect to the '283 patent:

(a) Does the record evidence, including the disclosure in JP 609 (*see* RX-105), and OSRAM's arguments made before the European Patent Office (*see* RX-118) and USPTO (*see* RX-10002), show that JP 609 teaches a "partial conversion" of light?

(b) Does the record evidence, including the disclosure in the Nikkei Article (*see* RX-108), and OSRAM's arguments made before the European Patent Office (*see* RX-118), show that the Nikkei Article teaches a "partial conversion" of light?

(c) Assuming the evidence demonstrates that JP 609 or the Nikkei Article discloses partial conversion, please identify the record evidence that demonstrates that one of ordinary skill in the art would have been motivated to combine: (i) JP 345 (*see* RX-107), JP 609, JP 794 (*see* RX-106), and Hewes (*see* RX-101); (ii) the Nikkei Article, Stevenson (*see* RX-109), Blasse (*see* RX-110), and Hewes; or (iii) JP 609, the Nikkei Article, Blasse, and Hewes, to arrive at the claimed inventions of the '283 patent.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent 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).

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 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.

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. 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 recommended determination by the ALJ on remedy and bonding. Complainant is also requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to provide the expiration date of the '283 patent and state the HTSUS subheading(s) under which the accused articles are imported. The written submissions and proposed remedial orders must be filed no later than the close of business on September 21, 2012. Reply submissions must be filed no later than the close of business on September 28, 2012. 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 C.F.R. 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-784") 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_electronic_filing.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 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. 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 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.



Lisa R. Barton
Acting Secretary to the Commission

Issued: September 7, 2012