

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN BATTERIES AND
ELECTROCHEMICAL DEVICES
CONTAINING COMPOSITE
SEPARATORS, COMPONENTS
THEREOF, AND PRODUCTS
CONTAINING SAME**

Investigation No. 337-TA-1087

**NOTICE OF COMMISSION DECISION TO REVIEW, AND ON REVIEW
TO AFFIRM WITH MODIFICATION, AN INITIAL DETERMINATION GRANTING
COMPLAINANTS' MOTION FOR PARTIAL SUMMARY DETERMINATION AS TO
THE ECONOMIC PRONG OF THE DOMESTIC INDUSTRY REQUIREMENT**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review, and on review to affirm with modification, an initial determination (“ID”) (Order No. 32) of the presiding administrative law judge (“ALJ”) granting Complainants’ motion for partial summary determination as to the economic prong of the domestic industry requirement.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708-4716. 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 this investigation on November 28, 2017, based on a complaint, as supplemented, filed by LG Chem, Ltd. of South Korea; LG Chem Michigan Inc. of Holland, Michigan; LG Chem Power Inc. of Troy, Michigan; and Toray Industries, Inc. of Japan (collectively, “Complainants” or “LG”). *See* 82 FR 56265 (Nov. 28, 2017). The complaint alleges violations of section 337 of the Tariff Act of 1930, as

amended (19 U.S.C. 1337), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain batteries and electrochemical devices containing composite separators, components thereof, and products containing same, by reason of infringement of claims 1, 2, 5-15, and 18 of U.S. Patent No. 7,662,517 (“the ’517 patent”); claims 1-5, 9-12, 14-31, and 33-36 of U.S. Patent No. 7,638,241 (“the ’241 patent”); and claims 1-13 and 16-20 U.S. Patent No. 7,709,152 (“the ’152 patent”). *See id.* The notice of institution names Amperex Technology Limited of Hong Kong; DJI Technology Co., Ltd. of Shenzhen, China; DJI Technology, Inc. of Burbank, California; Guangdong OPPO Mobile, Telecommunications Corp., Ltd. of Guangdong, China; and OPPO Digital, Inc. of Menlo Park, California as respondents in this investigation. *See id.* The Office of Unfair Import Investigations is not a party to this investigation. *See id.*

On June 12, 2018, Complainants filed a motion for partial summary determination as to the economic prong of the domestic industry requirement (*DI Motion*). On June 22, 2018, Respondents filed a response in opposition to the *DI Motion*. On July 3, 2018, Complainants filed a motion for leave to file a reply in support of the *DI Motion*. On July 16, 2018, Respondents filed a response in opposition to Complainants’ motion for leave to file a reply in support of the *DI Motion*. On August 8, 2018, the ALJ issued the subject ID (Order No. 32) granting Complainants’ *DI Motion* and motion for leave to file a reply in support of the *DI Motion*. On August 15, 2018, Respondents filed a petition for review of the subject ID. On August 22, 2018, Complainants filed a response to the petition.

The Commission has determined to affirm the ID with the following modification. The Commission clarifies that the ID’s findings are consistent with the Commission’s long-standing principle that domestic industry (including the definition of the article protected by the patent under section 337(a)(3), 19 U.S.C. 1337(a)(3)) is not determined by a rigid formula, but by an examination of the facts in each investigation, the article of commerce, and realities of the marketplace.

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: September 7, 2018