

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN POWERED COVER PLATES

Investigation No. 337-TA-1124

**NOTICE OF A COMMISSION DETERMINATION NOT TO REVIEW AN
INITIAL DETERMINATION GRANTING COMPLAINANT'S MOTION FOR
SUMMARY DETERMINATION REGARDING THE TECHNICAL 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 not to review an initial determination ("ID") (Order No. 40) of the presiding Administrative Law Judge ("ALJ") granting complainants' motion for summary determination regarding the technical prong of the domestic industry requirement.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, 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, 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 the investigation on July 23, 2018, based on a complaint filed by SnapRays, LLC d/b/a SnapPower of Vineyard, UT ("SnapPower"). 83 FR 34871 (July 23, 2018). The complaint, as supplemented, alleges a violation 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 powered cover plates by reason of infringement of certain claims of U.S. Patent Nos. 9,871,324; 9,917,430; and 9,882,361, and U.S. Design Patent No. D819,426 ("The Asserted Patents"). The notice of investigation named numerous respondents.

The Commission's Office of Unfair Import Investigations ("OUII") also was named as a party.

On November 28, 2018, SnapPower filed its Motion for Summary Determination that SnapPower Satisfies the Technical Prong of Domestic Industry ("MSD.") On December 10, 2018, OUII filed its response supporting SnapPower's MSD.

On July 22, 2019, the ALJ issued the subject ID. The ID "provides the rationale and evidentiary support for an oral Order that granted" complainant's MSD and that was announced during a telephone conference held on January 31, 2019. ID at 1 (citations omitted). The ID notes that SnapPower's MSD asserted that "SnapPower designs, produces, and sells the following powered cover plate products: the GuideLight, including the Original GuideLight and the GuideLight 2+, the SnapPower Charger and Charger 2, the SafeLight, the GFCI GuideLight, and the SwitchLight (collectively, the 'DI Products')," and that, according to SnapPower, the DI Products practice one or more claims of the Asserted Patents. ID at 2 (citations omitted).

The ID finds that SnapPower's MSD is supported by undisputed, material evidence, including evidence provided in the Complaint that identifies the DI Products and establishes that at least SnapPower's GuideLight DI Product practices certain claims of the Asserted Patents. ID at 13 (citing Compl. ¶¶ 5, 11, 53-56, 147, Exs. 66-69). *See also id.* at 13-39 (citations omitted).

The ID notes that while SnapPower's MSD was verbally granted during a Telephone Conference on January 31, 2019, the subject ID "provides, on a claim limitation-by-limitation basis, SnapPower's undisputed, material evidence in support of that oral Order." ID at 40 (citations omitted). Accordingly, the ID grants SnapPower's MSD. *Id.*

No party petitioned for review of the ID. The Commission has determined not to review the subject ID. The Commission notes, however, that Commission Rules 210.18(f) and 210.42(c)(1) provide that an administrative law judge shall grant a motion for summary determination by issuing an initial determination. 19 CFR 210.18(f), 210.42(c)(1). Commission Rule 210.42(d) specifies that an initial determination "shall include: an opinion stating findings (with specific page references to principal supporting items of evidence in the record) and conclusions and the reasons or bases therefor necessary for the disposition of all material issues of fact, law, or discretion presented in the record[.]" 19 CFR 210.42(d). The Commission expects all required elements of an initial determination, including both the grant of a motion and the reasons therefor, to appear in a single written document, in accordance with Commission rules. Preferably, the initial determination should be issued before the evidentiary hearing begins to permit adequate time for potential Commission review.

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.

A handwritten signature in black ink, appearing to read "Lisa R. Barton". The signature is fluid and cursive, with the first name "Lisa" being the most prominent.

Lisa R. Barton
Secretary to the Commission

Issued: August 21, 2019