

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

In the Matter of

**CERTAIN POWER CONVERTER
MODULES AND COMPUTING
SYSTEMS CONTAINING THE SAME**

Investigation No. 337-TA-1370

**NOTICE OF A COMMISSION DETERMINATION TO REVIEW IN PART A FINAL
INITIAL DETERMINATION FINDING A VIOLATION OF SECTION 337; REQUEST
FOR 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 a final initial determination (“final ID”) issued by the presiding administrative law judge (“ALJ”) on September 24, 2024, finding a violation of section 337 in the above referenced investigation. The Commission requests written submissions from the parties on certain issues under review, as indicated in this notice, and submissions from the parties, interested government agencies, and other interested persons on the issues of remedy, the public interest, and bonding, under the schedule set forth below.

FOR FURTHER INFORMATION CONTACT: Joelle P. Justus, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2593. 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 August 17, 2023, 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 Vicor Corporation (“Complainant” or “Vicor”) of Andover, Massachusetts. *See* 88 FR 56050-51 (Aug. 17, 2023). The complaint, as supplemented, alleges a violation of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain power converter modules and computing systems containing the same by reason of the infringement of certain

claims of U.S. Patent Nos. 9,166,481; 9,516,761; and 10,199,950. *See id.* The notice of investigation names the following respondents: Delta Electronics, Inc. of Taipei, Taiwan; Delta Electronics (Americas) Ltd. of Fremont, California; Delta Electronics (USA) Inc. of Plano, Texas; Cynotec Co., Ltd. of Hsinchu, Taiwan; Quanta Computer Inc. and Quanta Cloud Technology Inc., both of Taoyuan City, Taiwan; Quanta Cloud Technology USA LLC of San Jose, California; Quanta Computer USA Inc. of Fremont, California; Hon Hai Precision Industry Co. Ltd. (d/b/a, Foxconn Technology Group) of Taipei City, Taiwan; Foxconn Industrial Internet Co. Ltd. of Shenzhen, China; FII USA Inc. (a/k/a Foxconn Industrial, Internet USA Inc.) of Milwaukee, Wisconsin; Ingrasys Technology Inc. of Taoyuan City, Taiwan; and Ingrasys Technology USA Inc. of Fremont, California (collectively, “Respondents”). *See id.* The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation. *See id.*

On January 25, 2024, the Commission partially terminated the investigation as to respondents Delta Electronics (USA) Inc., Quanta Cloud Technology Inc., and Quanta Cloud Technology USA LLC based on withdrawal of the complaint as to those respondents. *See Order No. 16 (Dec. 22, 2023), unreviewed by Comm’n Notice (Jan. 25, 2024).*

On January 26, 2024, the Commission amended the complaint and notice of investigation to add DET Logistics (USA) Corporation of Fremont, California as a respondent. *See Order No. 18 (Jan. 2, 2024), unreviewed by Comm’n Notice (Jan. 26, 2024).*

On March 22, 2024, the ALJ granted in part Respondents’ motion for summary determination, specifically as to no infringement of any patent under the doctrine of equivalents. *See Order No. 37.* The Commission determined not to review the partial grant of summary determination. *See Comm’n Notice (Apr. 23, 2024).*

On September 27, 2024, the ALJ issued the final ID finding that a violation of section 337 has occurred. The Final ID finds, *inter alia*: (1) as to the ’481 patent, the accused Cynotec products infringe asserted claim 1 but that the accused Delta products and certain asserted redesign products do not infringe claim 1, asserted claim 1 is not invalid, and certain asserted domestic industry products practice asserted claim 1; (2) as to the ’761 patent, the accused Delta products infringe asserted claims 1-7, claims 1-3 and 7 are invalid as anticipated, claims 4-6 are not invalid for obviousness or indefiniteness, and the asserted domestic industry products practice claims 1-7; (3) as to the ’950 patent, the accused Delta and Cynotec products do not infringe asserted claims 9, 13, 14, and 33-38, the asserted claims are not invalid for obviousness, and the domestic industry products do not practice any asserted claim; (4) Respondents do not have a license to practice the asserted patents; and (5) Vicor has satisfied the domestic industry requirement of section 337 with respect to each of the asserted patents.

The ALJ also issued a Recommended Determination on remedy and bonding (“RD”). The RD recommends that, if the Commission finds a violation, it should issue a limited exclusion order. The RD also recommends the issuance of cease and desist orders as to all Respondents. The RD further recommended that the Commission set no bond as to Cynotec’s

products and various bond amounts as to the other infringing products during the period of Presidential review.

On October 29, 2024, Complainant and respondent FII USA submitted public interest comments pursuant to Commission Rule 210.50(a)(4) (19 C.F.R. § 210.50(a)(4)). No submissions were filed in response to the Commission's *Federal Register* notice seeking submissions on the public interest. *See* 89 Fed. Reg. 80604-05 (Oct. 3, 2024).

On October 11, 2024, Vicor filed a petition for review of the Final ID's findings concerning: (1) as to the '481 patent, no infringement by the Delta accused products, and certain aspects of the Final ID's validity analysis; (2) as to the '761 patent, that certain claims are invalid as anticipated and certain subsidiary aspect of the Final ID's remaining validity analysis; (3) as to the '950 patent, no infringement, no technical domestic industry, and certain aspects of the Final ID's economic prong analysis; and (4) as to all patents, no copying (secondary indicia of non-obviousness). Also on October 11, 2024, Respondents filed a petition for review of the Final ID's findings concerning: (1) as to the '481 patent, that claim 1 is not invalid as obvious; (2) as to the '761 patent, that the accused products infringe the asserted claims and claims 4-6 are not invalid as obvious; (3) as to the '950 patent, that the asserted claims are not invalid as obvious; (4) certain of the ALJ's pre-hearing orders; and (5) that Vicor has satisfied the economic prong as to each Asserted Patent. On October 21, 2024, OUII filed a combined response to the petitions. On October 22, 2024, Vicor and Respondents each filed responses to the other party's petition.

Having examined the record in this investigation, including the final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in part. Specifically, the Commission has determined to review the final ID's findings regarding: (1) as to the '481 patent, whether the accused Delta products¹ infringe claim 1 and whether Vicor has demonstrated commercial success to overcome a finding of prima facie obviousness; (2) as to the '761 patent, whether the accused Delta products infringe asserted claims 1-7 and whether the asserted claims are valid; (3) as to the '950 patent, whether the accused Delta and Cyntec products and redesigned products infringe asserted claims 9, 13, 14, and 33-36 and whether Vicor has satisfied the technical prong of the domestic industry requirement; (4) whether Vicor has satisfied the economic prong of the domestic industry requirement as to all of the asserted patents; and (5) the license defense asserted by respondents FII USA, Inc., Ingrasys Technology, Inc., and Ingrasys Technology USA Inc. (collectively, "Foxconn"). The Commission has determined not to review the remainder of the Final ID's findings.

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 and the existing evidentiary record.

¹ Unless otherwise indicated "accused products" does not include redesigned products. *See* Final ID at 9-10.

1. With respect to the '761 patent:
 - a. What is the proper claim construction of the term “magnetically coupled”? Applying the proper construction, do the accused products infringe claim 1?
 - b. Do the terms “dissipate power” and “heat generation” as recited in claim 1 have distinct meanings? Do the accused products practice both limitations?
 - c. With reference to *Fox Factory, Inc. v. SRAM, LLC*, 944 F.3d 1366 (Fed. Cir. 2019), are the domestic industry products “coextensive” with the claimed invention for purposes of commercial success?
2. With respect to the '950 patent:
 - a. What is the proper claim construction of the terms “input circuit” and “output circuit” as recited in the asserted claims? Applying the proper construction, do the accused and redesigned products infringe the asserted claims?
 - b. How, if at all, is the phase of operation relevant to the determination of whether the accused and redesigned products satisfy the limitation that “an input voltage V_{IN} is applied to the input circuit”?
3. With respect to the economic prong of the domestic industry requirement:

Does the record permit allocation of the overall payments made by Complainant to foreign IC Vendors, *see* Final ID at 198, to the DI products for each of the Asserted Patents? If so, please provide such allocations.
4. With respect to Foxconn’s license defense:
 - a. With citation to legal authority (binding or persuasive) interpreting Massachusetts General Law (“MGL”) 106 section 2-207, Uniform Commercial Code section 2-207, or any other relevant provision, is there a binding agreement between Complainant and the Foxconn respondents that includes the license provision set forth in General Term 10 of the Foxconn purchase orders (*see* RX-1630C.0002; RX-1635C.0002; RX-16359.0002)? If such an agreement exists, does MGL 106 section 2-207(2) or 2-207(3) govern what terms are part of the agreement?
 - b. In addition to any issues the parties deem relevant, the parties should address whether the purported acceptance of the alleged offers was “sent within a reasonable time” (MGL 106 section 2-207(1)) in light of Note 3 of the Foxconn purchase orders (*see* RX-1630C.0001; RX-1635C.0001; RX-1639C.0001).
 - c. If there is a binding agreement between Complainant and the Foxconn respondents including the license provision, to which Respondents, Asserted Patents, and accused products does that license apply?

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) a cease and desist order 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 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 order 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 ALJ 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 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 **December 18, 2024**. Reply submissions must be filed no later than the close of business on **December 27, 2024**. 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 (Mar. 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1370) 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 December 4, 2024.

This action is taken under the authority of 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: December 4, 2024