

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of
CERTAIN PASSIVE OPTICAL NETWORK
EQUIPMENT

Investigation No. 337-TA-1384

NOTICE OF A COMMISSION DETERMINATION TO EXTEND THE
DEADLINE FOR DETERMINING WHETHER TO REVIEW A FINAL
INITIAL DETERMINATION FINDING NO VIOLATION

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend to March 11, 2025, the deadline for determining whether to review a final initial determination (“FID”) of the presiding administrative law judge (“ALJ”) finding no violation of section 337 in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-3228. 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: The Commission instituted this investigation on December 29, 2023, based on a complaint filed by Optimum Communications Services, Inc. of Jersey City, New Jersey (“Optimum”). 88 FR 90200-01 (Dec. 29, 2023). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based upon the importation into the United States, the sale for importation, and the sale in the United States after importation of certain passive optical network equipment by reason of the infringement of certain claims of U.S. Patent Nos. 7,333,511 (“the ’511 patent”) and 7,558,260 (“the ’260 patent”). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The Commission’s notice of investigation (“NOI”) names the following respondents: (i) Hangzhou Softel Optic Co., Ltd. of Hangzhou, China; (ii) Hangzhou DAYTAI Network Technologies Co., Ltd. of Hangzhou, China; and (iii) Hangzhou Sumlo Industrial Co., Ltd. of Hangzhou, China (collectively, “Defaulting Respondents”). *Id.* at 90201. The Office of Unfair Import Investigations (“Staff”) is also a party to this investigation. *Id.*

On May 9, 2024, the Commission found the Defaulting Respondents in default. Order No. 12 (April 10, 2024), *unreviewed by Comm’n Notice* (May 9, 2024).

Optimum and Staff opted to have the ALJ decide the investigation on the briefs rather than hold an evidentiary hearing. Order No. 13 (May 9, 2024).

On May 21, 2024, Optimum filed its brief on the issues of violation, remedy, and bonding, which was titled, “Complainant’s Pre-hearing Brief.” On June 7, 2024, Staff filed its brief. On June 10, 2024, Optimum also filed a reply brief.

Almost two months after the parties’ briefing was completed, proposed intervenor, Xenogenic Development, LLC (“Xenogenic”), moved to intervene in this investigation, to stay all proceedings, and to terminate the investigation. On August 16, 2024, Optimum filed a response to Xenogenic’s motion to intervene. On August 19, 2024, Staff filed a response to Xenogenic’s motion to intervene. On August 22, 2024, Xenogenic filed a reply brief.

On December 19, 2024, the ALJ issued the FID finding no violation of section 337 with respect to claims 1 and 12-14 of the ’511 patent and claims 1 and 3 of the ’260 patent. The FID includes the ALJ’s recommended determination (“RD”) on remedy, the public interest, and bonding should the Commission find a violation of section 337. The FID also grants-in-part Xenogenic’s motion to intervene for the limited purpose of addressing ownership-related issues in the event of Commission review.

On December 24, 2024, Optimum filed a petition for review. On January 7, 2025, Staff filed a response to Optimum’s petition. Xenogenic did not file a response to Optimum’s petition.

On January 21, 2025, the Commission published its post-RD Federal Register notice seeking submissions on public interest issues raised by the relief recommended by the ALJ should the Commission find a violation. 90 FR 7158-59 (Jan. 21, 2025).

The Commission has determined to extend the deadline for determining whether to review the FID to March 11, 2025.

The Commission vote for this determination took place on February 12, 2025.

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: February 12, 2025