

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN VIDEO SECURITY
EQUIPMENT AND SYSTEMS, RELATED
SOFTWARE, COMPONENTS THEREOF,
AND PRODUCTS CONTAINING SAME**

Investigation No. 337-TA-1281

**NOTICE OF A COMMISSION DETERMINATION TO REVIEW IN PART A FINAL
INITIAL DETERMINATION FINDING A VIOLATION OF SECTION 337; REQUEST
FOR WRITTEN SUBMISSIONS ON ISSUES UNDER REVIEW AND ON REMEDY,
THE PUBLIC INTEREST, AND BONDING; EXTENSION OF TARGET DATE**

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 (“FID”) issued by the presiding administrative law judge (“ALJ”), finding a violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation. The Commission requests briefing from the parties on certain issues under review, as indicated in this notice. The Commission also requests written submissions from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding. The Commission has further determined to extend the target date in the above-captioned investigation to March 23, 2023.

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: On September 14, 2021, 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 Motorola Solutions, Inc. of Chicago, Illinois (“Motorola Solutions”); Avigilon Corporation of British Columbia, Canada; Avigilon Fortress Corporation of British Columbia, Canada; Avigilon Patent Holding 1 Corporation of British Columbia, Canada (“Avigilon Patent Holding”); and Avigilon Technologies Corporation of

British Columbia, Canada (collectively, “Complainants”). *See* 86 FR 51182-83 (Sept. 14, 2021). The complaint alleges a violation of section 337 based upon the importation into the United States, sale for importation, or sale after importation into the United States of certain video security equipment and systems, related software, components thereof, and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 7,868,912 (“the ’912 patent”); 10,726,312 (“the ’312 patent”); and 8,508,607 (“the ’607 patent”) (collectively, “the Asserted Patents”). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The notice of investigation (“NOI”) names Verkada Inc. of San Mateo, California as the only respondent. *Id.*

The complaint and NOI were previously amended to reflect the transfer of all right, title, and interest in: (1) the ’312 patent from Avigilon Corporation to Motorola Solutions; (2) the ’912 patent from Avigilon Fortress Corporation to Motorola Solutions; and (3) the ’607 patent from Avigilon Patent Holding to Motorola Solutions. Order No. 7 (Dec. 28, 2021), *unreviewed by* 87 FR 4658-59 (Jan. 28, 2022). The complaint and NOI were further amended to add a new licensee, Avigilon USA Corporation of Dallas, Texas, as an additional complainant. *Id.*

The Commission previously terminated the investigation as to claims 4 and 10-12 of the ’312 patent based on Complainants’ partial withdrawal of the complaint. Order No. 58 (June 14, 2022), *unreviewed by* Comm’n Notice (June 30, 2022). The Commission also previously terminated the investigation as to claims 6, 15, 25, and 26 of the ’607 patent based on Complainants’ partial withdrawal of the complaint. Order No. 59 (July 13, 2022), *unreviewed by* Comm’n Notice (Aug. 4, 2022).

On October 24, 2022, the presiding ALJ issued the FID, finding that a violation of section 337 has occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation, of certain video security equipment and systems, related software, components thereof, and products containing same that infringe claims 6-11 of the ’912 patent. The FID further finds no violation of section 337 with respect to the remaining asserted claims of the ’912 patent, or as to the ’312 patent or the ’607 patent. The FID includes the ALJ’s recommended determination on remedy, the public interest, and bonding should the Commission find a violation of section 337.

On November 7, 2022, Complainants filed a contingent petition requesting review of the FID’s findings of non-infringement as to asserted claims 1-4, 12-22, 26-28, 30 of the ’912 patent, the asserted claims of the ’312 patent, and the asserted claims of the ’607 patent, as well as Verkada’s proposed redesigns. That same day, respondent Verkada filed a combined petition and contingent petition requesting review of the FID’s findings that the accused products include an imported “article” that infringes asserted claims 6-11 of the ’912 patent, certain accused products infringe asserted claims 6-11 of the ’912 patent, and asserted claims 6-11 of the ’912 patent are not anticipated or rendered obvious by the prior art. Verkada also seeks contingent review of the FID’s findings that the accused products include an imported “article” that infringes claims 24-25, 27-28, 32-33, and 35-36 of the ’912 patent; additional non-infringement bases for the asserted claims of the ’912 patent; claims 1-4 and 12-36 of the ’912 patent are not anticipated or rendered obvious by the asserted prior art; claims 1, 5, 6, 9, 13, and

16 of the '312 patent are not anticipated or rendered obvious by the asserted prior art; additional non-infringement bases for the asserted claims of the '607 patent; and claims 1-4, 7, 10-13, 16, 19-21, and 29 of the '607 patent are not rendered obvious by the asserted prior art. On November 15, 2022, Complainants and Verkada filed their respective responses to the petitions for review.

On November 23, 2022, Complainants and Verkada each filed a submission on the public interest pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)). No submissions were received in response to the Commission notice seeking public interest submissions. 87 FR 65827-28 (Nov. 1, 2022).

Having reviewed the record of the investigation, including the FID, the parties' submissions to the ALJ, the petitions for review, and the responses thereto, the Commission has determined to review the FID in part. Specifically, the Commission has determined to review: 1) the FID's findings regarding "subject matter jurisdiction"; 2) the FID's findings that certain accused products infringe claims 6-11 of the '912 patent and finding a violation of section 337 as to those claims; and 3) the FID's finding that asserted claims 6-11 of the '912 patent are not invalid as anticipated or obvious. The Commission has determined not to review any other findings presented in the FID.

The Commission has also determined to extend the target date for completing this investigation to March 23, 2023.

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. Please address whether, under the framework set forth by Commissioner Kearns in his Additional Views in *Certain High-Density Fiber Optic Equipment and Components Thereof*, Inv. No. 337-TA-1194, Comm'n Op. at 98-104 (Aug. 3, 2021), Verkada's imported cameras should be considered "articles that infringe" for purposes of finding a violation of section 337 by Verkada's direct infringement of claims 6-11 of the '912 patent.
2. Regarding claims 6-11 of the '912 patent, given the uncontested claim constructions and differences between claim 1 and claims 6-11, please address whether the existing evidentiary record supports the FID's finding that "Event Detection and Analysis from Video Streams" by Medioni et al., published in the IEEE Transactions on Pattern Analysis and Machine Intelligence, Vol. 23, No. 8 in August 2001 (RX-302) does not disclose either (1) a processor that receives detected/determined attributes over a communications channel, or (2) attributes which are independent of events. Please also address whether the differences between claim 1 and claims 6-11 affect the anticipation analysis, and if so, please explain how.

3. Please provide a status update regarding which of the adjudicated design(s) and/or redesign(s) are currently implemented in the accused products that are being sold or offered for sale by Verkada. In addition, please address whether, if the Commission finds a violation as to only the accused products that the FID finds infringing with respect to claims 6-11 of the '912 patent, a consent order could resolve the parties' remaining issues with respect to that patent.

The parties are invited to brief only these discrete issues for the specific claims identified. 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 a 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 their initial submission, Complainants are also requested to identify the remedy sought and Complainants are requested to submit proposed remedial orders for the Commission's consideration. Complainants are further requested to state the dates that the Asserted Patents expire, 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 **January 27, 2023**. Reply submissions must be filed no later than the close of business on **February 3, 2023**. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. 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 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1281) 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 January 12, 2023.

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 "Katherine M. Hiner". The signature is fluid and cursive, with the first name being the most prominent.

Katherine M. Hiner
Acting Secretary to the Commission

Issued: January 12, 2023