



INTERNATIONAL TRADE COMMISSION

INVESTIGATION No. 337-TA-805

**CERTAIN DEVICES FOR IMPROVING UNIFORMITY USED IN A BACKLIGHT
MODULE AND COMPONENTS THEREOF AND PRODUCTS CONTAINING SAME**

**COMMISSION DECISION TO REVIEW A FINAL INITIAL DETERMINATION
FINDING NO VIOLATION OF SECTION 337; REMAND-IN-PART OF THE
INVESTIGATION TO THE ADMINISTRATIVE LAW JUDGE**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review the presiding administrative law judge's ("ALJ") final initial determination ("ID") issued on October 22, 2012, finding no violation of section 337 of the Tariff Act of 1930, (as amended), 19 U.S.C. § 1337 ("section 337"), in the above-captioned investigation. The Commission has also determined to remand-in-part the investigation to the ALJ.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2301. 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, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The

public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://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 September 14, 2011, based on a complaint filed by Industrial Technology Research Institute of Hsinchu, Taiwan and ITRI International Inc. of San Jose, California (collectively "ITRI"). 76 *Fed. Reg.* 56796-97 (Sept. 14, 2011). The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain devices for improving uniformity used in a backlight module and components thereof and products containing same by reason of infringement of certain claims of U.S. Patent No. 6,883,932 ("the '932 patent"). The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named as respondents LG Corporation of Seoul, Republic of South Korea; LG Electronics, Inc. of Seoul, Republic of South Korea; and LG Electronics, U.S.A., Inc. of Englewood Cliffs, New Jersey. The Office of Unfair Import Investigation was named as a participating party. The complaint was later amended to add respondents LG Display Co., Ltd. of Seoul, Republic of South Korea and LG Display America, Inc. of San Jose, California to the investigation. Notice (Feb. 2, 2012); Order No. 11 (Jan. 19, 2012). The Commission later terminated LG Corporation from the investigation. Notice (July 13, 2012); Order No. 18 (June 22, 2012).

On October 22, 2012, the ALJ issued his ID, finding no violation of section 337 as to the '932 patent. The ID included the ALJ's recommended determination ("RD") on remedy and bonding. In particular, the ALJ found that claims 6, 9 and 10 of the '932 patent are not infringed literally or under the Doctrine of Equivalents by the accused products under his construction of

the claim limitation “structured arc sheet” found in claim 6. The ALJ also found that ITRI’s domestic industry product does not satisfy the technical prong of the domestic industry requirement. The ALJ did find, however, that ITRI has satisfied the economic prong of the domestic industry requirement under 19 U.S.C. § 1337(a)(3)(A) and (B). Because he found no infringement and no domestic industry, the ALJ did not reach the issues of patent validity or enforceability. In the event the Commission found a violation of section 337, the ALJ recommended that the appropriate remedy is a limited exclusion order barring entry of LG’s infringing products. The ALJ also recommended issuance of cease and desist orders against LG Electronics USA and LG Display America. The ALJ further recommended that LG be required to post a bond of one percent of the entered value of each infringing product for the importation of products found to infringe during the period of Presidential review.

On November 5, 2012, ITRI filed a petition for review of certain aspects of the final ID. Also on November 5, 2012, participating respondents LG Electronics, Inc., LG Electronics U.S.A., Inc., LG Display Co., Ltd., and LG Display America, Inc. (collectively “LG”) filed a contingent petition for review of certain aspects of the ID. On November 13, 2012, ITRI filed a response to LG’s contingent petition for review. Also on November 13, 2012, LG filed a response to ITRI’s petition for review. Further on November 13, 2012, the Commission investigative attorney filed a combined response to ITRI’s and LG’s petitions. No post-RD statements on the public interest pursuant to Commission Rule 210.50(a)(4) or in response to the post-RD Commission Notice issued on October 24, 2012, were filed. *See 77 Fed. Reg. 65579* (Oct. 29, 2012).

Having examined the record of this investigation, including the ALJ’s final ID, the petitions for review, and the responses thereto, the Commission has determined to review the

final ID in its entirety. The Commission does not seek further briefing at this time. The Commission also remands the investigation to the ALJ to consider parties' invalidity and unenforceability arguments and make appropriate findings.¹ In light of the remand, the ALJ shall set a new target date consistent with the Remand Order.

Briefing, if any, on remanded and reviewed issues will await Commission consideration of the remand ID. The current target date for this investigation is February 28, 2013.

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 sections 210.42-46 and 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42-46 and 210.50).

By order of the Commission.

Lisa R. Barton
Acting Secretary to the Commission

Issued: December 21, 2012

[FR Doc. 2012-31330 Filed 12/28/2012 at 8:45 am; Publication Date: 12/31/2012]

¹ The ALJ should have resolved these issues given the procedural posture of this investigation (*i.e.*, post-hearing), and the absence of an extraordinary fact situation that would weigh heavily against resolving these material issues presented in the record. *See Certain Video Game Systems and Wireless Controllers and Components Thereof*, Inv. 337-TA-770, Comm'n Op. at n.1 (Nov. 6, 2012).