



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-860]

Certain Optoelectronic Devices for Fiber Optic Communications, Components Thereof, and Products Containing the Same;

Commission Final Determination of Violation of Section 337; Issuance of Remedial orders; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that there is a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) by respondents IPtronics A/S of Roskilde, Denmark; IPtronics Inc. of Menlo Park, California; FCI USA, LLC, of Eppers, Pennsylvania; FCI Deutschland GmbH of Berlin, Germany; FCI SA of Guyancourt, France; Mellanox Technologies, Inc. of Sunnyvale, California; and Mellanox Technologies Ltd. of Yokneam, Israel (collectively, “Respondents”) in the above-captioned investigation. The Commission has issued remedial orders directed to the Respondents’ infringing products and has terminated the investigation.

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 <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: This investigation was instituted on October 30, 2012, based upon a complaint filed by Avago Technologies Fiber IP (Singapore) Pte. Ltd. of Singapore;

Avago Technologies General IP (Singapore) Pte. Ltd. of Singapore; and Avago Technologies U.S. Inc. of San Jose, California (collectively, "Complainants"), alleging a violation of section 337 of the Tariff Act of 1930, as amended, (19 U.S.C. 1337) in the importation, sale for importation, or sale within the United States after importation of certain optoelectronic devices for fiber optic communications, components thereof, and products containing the same by reason of infringement of certain claims of U.S. Patent Nos. 6,947,456 ("the '456 patent") and 5,596,595 ("the '595 patent"). 77 FR 65713 (Oct. 30, 2012). In addition to the private parties named as respondents, the Commission named the Office of Unfair Import Investigations as a party in this investigation.

The final Initial Determination ("ID") on violation was issued on December 13, 2013.

The ALJ issued his recommended determination on remedy, the public interest and bonding on the same day. The ALJ found 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 optoelectronic devices for fiber optic communications, components thereof, and products containing the same by reason of infringement of certain claims of the '595 patent. All the parties to this investigation filed timely petitions for review of various portions of the final ID, as well as timely responses to the petitions. The ALJ recommended that the Commission issue a limited exclusion order directed to Respondents' accused products that infringe the '595 patent. The ALJ also recommended that the Commission issue cease and desist orders against the Mellanox and FCI respondents.

On January 15, 2014, Complainants filed a post-RD statement on the public interest pursuant to Commission Rule 201.50(a)(4). On the same day, respondents Mellanox Technologies, Inc. and Mellanox Technologies, Ltd. also filed a submission pursuant to the rule. No responses from the public were received in response to the post-RD Commission Notice issued on December 16, 2013. *See* Notice of Request for Statements on the Public Interest (Dec. 16, 2013).

On February 12, 2014, the Commission issued notice of its determination to review the final ID in part ("the Commission Notice"). 79 *FR* 9764-65 (Feb. 20, 2014). In the Notice, the Commission also set a schedule for the filing of written submissions on the issues under review, including certain questions posed by the Commission, and on remedy, the public interest, and bonding. The Commission also invited briefing from the parties,

interested government agencies, and other interested parties with respect to the issues of remedy, the public interest, and bonding. The parties have briefed, with initial and reply submissions, the issues under review and the issues of remedy, the public interest, and bonding. No other submissions were received regarding remedy, the public interest, or bonding.

Having examined the record in this investigation, including the parties' submissions filed in response to the Commission's Notice, the Commission has determined as follows:

(I)) With respect to the '595 patent:

(a) to affirm the ALJ's claim construction of the limitation "current-spreading layer" and infringement and domestic industry (technical prong) determinations relating to that limitation with certain modifications; and

(b) to affirm the ALJ's finding that the Complainants met the economic prong under

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U.S.C. 1337(a)(3)(C), and thus not reach the issue of whether the economic prong was met under 19 U.S.C. 1337(a)(3)(A) and (B).

(II) With respect to the '456 patent:

(a) to affirm the ALJ's infringement and domestic industry (technical

prong) determinations with certain modifications in his rationale; and

(b) to affirm the ALJ's finding that the Complainants met the economic prong under

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U.S.C. 1337(a)(3)(C), and thus not reach the issue of whether the economic prong was met under 19 U.S.C. 1337(a)(3)(A) and (B).

The Commission has determined that the appropriate relief in this investigation includes:

(1) A limited exclusion order prohibiting the unlicensed entry of certain optoelectronic devices for fiber optic communications, components thereof, and products containing the same covered by one or more of claims 14 and 19 of U.S. Patent No. 5,596,595 and that are manufactured abroad by or on behalf of, or imported by or on behalf of, respondents IPtronics A/S; IPtronics Inc.; FCI SA; FCI Deutschland GmbH; FCI USA, LLC; Mellanox Technologies, Ltd.; and Mellanox Technologies, Inc.; and (2) cease and desist orders prohibiting importing, selling, marketing, advertising, distributing, transferring (except for exportation), and soliciting U.S. agents or distributors for, optoelectronic devices for fiber optic communications, components thereof, and products containing the same covered by one or more of claims 14 and 19 of U.S. Patent No. 5,596,595 and that are manufactured abroad by or on behalf of, or imported by or on behalf of, respondents FCI USA, LLC and Mellanox Technologies, Inc.

The Commission has further determined that the public interest factors enumerated in section 337(d)(1) and (f)(1) (19 U.S.C. 1337(d)(1), (f)(1)) do not preclude issuance of the limited exclusion order. Finally, the Commission determined that Respondents are required to post a bond in the amount of 3 percent of the entered value of the products covered by the exclusion order and cease and desist orders during the period of Presidential review. The Commission's orders were delivered to the President and the United States Trade Representative on the day of their issuance.

The Commission has therefore terminated this investigation. 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 Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).By order of the Commission.

By order of the Commission.

Issued: April 17, 2014.

Lisa R. Barton,

Acting Secretary to the Commission.