



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1081]

Certain LED Light Devices, LED Power Supplies, and Components Thereof; Commission Determination to Review in Part a Final Initial Determination Finding a Violation of Section 337; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding; Extension of the 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 (“ID”) issued by the presiding administrative law judge (“ALJ”), finding a violation of section 337 of the Tariff Act of 1930. The Commission requests briefing from the parties on certain issues under review, as indicated in this notice. The Commission also requests briefing from the parties and interested persons on the issues of remedy, the public interest, and bonding. The Commission has also determined to extend the target date for the completion of the above-captioned investigation to June 18, 2019.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone (202) 708-5468. 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 (<https://www.usitc.gov>). The public record for this

investigation may be viewed on the Commission's electronic docket (EDIS) at <https://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 November 8, 2017, based on a complaint filed by Philips. 82 Fed. Reg. 51872. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale after importation within the United States after importation of certain LED devices, LED power supplies, and components thereof by reason of infringement of one or more claims of U.S. Patent Nos. 6, 586,890 (“the ’890 patent”); 7,038,399 (“the ’399 patent”); 7,256,554 (“the ’554 patent”); 7,262,559 (“the ’559 patent”); and 8,070,328 (“the ’328 patent”). *Id.* The notice of investigation named the following respondents: Feit Electric Company, Inc. of Pico Rivera, California, and Feit Electric Company, Inc. (China) of Xiamen, China (together, “Feit”); Edgewell Personal Care Brands, LLC of Shelton, Connecticut (“Edgewell”); Lowe’s Companies, Inc. of Mooresville, North Carolina (“LCI”) and L G Sourcing, Inc. of North Wilkesboro, North Carolina (“LGS”) (together, “Lowe’s”); MSi Lighting, Inc. of Boca Raton, Florida (“MSi Lighting”); Satco Products, Inc. of Brentwood, New York (“Satco”); Topaz Lighting Corp. of Holtsville, New York (“Topaz”); and Wangs Alliance Corporation d/b/a/ WAC Lighting Co. of Port Washington, New York, and WAC Lighting (Shanghai) Co. Ltd. of Shanghai, China (together, “WAC”). *Id.* The Office of Unfair Import Investigations is not a party to the investigation. *Id.*

The Commission subsequently terminated the investigation with respect to Topaz and WAC based on settlement agreements. Order No. 9 (Jan. 8, 2018), *not reviewed* Notice (Jan. 16, 2018); Order No. 42 (May 2, 2018), *not reviewed* Notice (May 18, 2018). The Commission also found MSi Lighting in default for failing to respond to the complaint and notice of investigation. Order No. 20 (Jan. 31, 2018), *not reviewed* Notice (February 26, 2018). Additionally, the Commission amended the notice of investigation to remove respondent Edgewell, who was not named in the complaint but was erroneously included in the notice of investigation. Notice (Aug. 6, 2018). Accordingly, at the time of the final ID, the remaining participating respondents were Feit, Lowe's, and Satco (collectively, "Respondents").

The Commission also terminated the investigation based on a partial withdrawal of the complaint with respect to the entire '328 patent, the entire '890 patent, certain claims of the '399 patent, and certain claims of the '554 patent. Order No. 44 (May 22, 2018), *not reviewed* Notice (June 11, 2018); Order No. 53 (June 28, 2018), *not reviewed* Notice (July 24, 2018). At the time of the final ID, Philips asserted that Respondents infringed claims 7, 8, 17-19, 34, and 35 of the '399 patent and claims 6 and 12 of the '559 patent, and that Lowe's infringed claims 1, 2, 5-7, and 12 of the '554 patent. ID at 64, 84.

The ALJ also issued a summary determination that Philips showed that its eW Cove Powercore device satisfied the technical prong of the domestic industry requirement with respect to claims 1, 2, 5-7 and 12 of the '554 patent. Order No. 55 (Aug. 1, 2018), *not reviewed* Notice (Aug. 17, 2018).

On December 19, 2018, the ALJ issued the final ID finding a violation of section

337 with respect to the '399 patent, but no violation of section 337 with respect to the '554 and '559 patents. Specifically, the ALJ found that Respondents' products infringe claims 7, 8, and 17-19 of the '399 patent; that certain Lowe's products infringed claims 1, 2, 5, 6, 7, and 12 of the '554 patent but were not shown to be imported or sold by a named respondent; that no products were shown to infringe the '559 patent; that no asserted claim was shown to be invalid; and that Philips showed a domestic industry with respect to all three remaining asserted patents.

On February 6, 2019, Philips and Respondents each filed a petition for review of the final ID. On February 14, 2019, Philips and Respondents responded to each other's petition.

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 part. Specifically, the Commission has determined to review the following issues: (1) the ID's infringement findings for the "controller" limitation of claims 7 and 8 of the '399 patent, and the ID's infringement findings for the "adjustment circuit" limitation of claims 17-19 of the '399 patent; (2) the ID's findings whether products are representative of other products with respect to infringement findings for claims 17-19 of the '399 patent and for claims 6 and 12 of the '559 patent; and (3) the ID's findings on the economic prong of the domestic industry requirement. The Commission has determined not to review any other findings presented in the final ID.

The Commission has also determined to extend the target date for the completion of the investigation until June 18, 2019.

In connection with its review, the Commission is interested in briefing on following issues:

1. In order to satisfy a means-plus-function limitation, the patent owner must show “that the relevant structure in the accused device perform[s] the identical function recited in the claim and be identical or equivalent to the corresponding structure in the specification.” *Odetics, Inc. v. Storage Tech. Corp.*, 185 F.3d 1259, 1267 (Fed. Cir. 1999). Here, the ALJ construed “controller” in claims 7 and 8 of the ’399 patent to be a means-plus-function term with the functions of (1) “receiv[ing] a power-related signal from an alternating current (A.C.) power source that provides signals other than a standard A.C. line voltage”; (2) “provid[ing] power to the at least one LED based on the power-related signal”; and (3) “variably control[ing] at least one parameter of light generated by the at least one LED in response to operation of the user interface; and (4) “variably control[ing] the at least one parameter of the light based at least on the variable duty cycle of the power-related signal.” Order No. 49 at 47 (Jun. 6, 2018). The ALJ also found that the corresponding structure for these functions is “controllers 204A and 204B shown in Figures 5 and 7.” *Id.* Please identify the portions of record that show that each of the accused products contain a structure that performs identical functions and is identical or equivalent to “controllers 204A and 204B,” or explain why the record does not show that the accused products contain such a structure. The parties are not to identify evidence or present arguments that were not previously presented to the ALJ.
2. Please identify the portions of the record that show that each accused product satisfies the limitation “an adjustment circuit to variably control the at least one parameter of light based on the varying power-related signal” found in claims 17-19 of the ’399 patent, or explain why the record does not show that the accused products satisfy this limitation. The parties are not to identify evidence or present arguments that were not previously presented to the ALJ.

The parties are invited to brief only the discrete issues described above, with reference to the applicable law and evidentiary record. 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 Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into

the United States, and/or (2) issue 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 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or 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 or disapprove the Commission's action. 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 Commission requests that the parties to the investigation file written submissions on the issues identified in this notice. The Commission encourages parties to the investigation, interested government agencies, and any other interested parties 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, which issued on December 19, 2018. The Commission further requests that Philips submit proposed remedial orders, state the date when the '399 patent expires, provide the HTSUS numbers under which the subject articles are imported, and supply a list of known importers of the subject article. The written submissions, exclusive of any exhibits, must not exceed 50 pages, and must be filed no later than close of business on April 26, 2019. Reply submissions must not exceed 25 pages, and must be filed no later than the close of business on May 3, 2019. No further submissions on 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 and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1081") 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. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. 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^[1], solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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.

Issued: April 12, 2019.

Lisa Barton,
Secretary to the Commission.

^[1] All contract personnel will sign appropriate nondisclosure agreements.

[FR Doc. 2019-07741 Filed: 4/17/2019 8:45 am; Publication Date: 4/18/2019]