



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1081]

Certain LED Lighting Devices, LED Power Supplies, and Components Thereof

Commission's Final Determination of No Violation of Section 337 by the Participating Respondents, and Final Determination of a Violation of Section 337 by a Defaulted Respondent; Issuance of a Limited Exclusion Order and a Cease and Desist Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found no violation of section 337 of the Tariff Act of 1930, as amended, by participating respondents Feit Electric Company, Inc. of Pico Rivera, California and Feit Electric Company, Inc. (China) of Xiamen, China (together, "Feit"); Lowe's Companies, Inc. of Mooresville, North Carolina and L G Sourcing, Inc. of North Wilkesboro, North Carolina (together, "Lowe's"); and Satco Products, Inc. of Brentwood, New York ("Satco"). The Commission has found a violation of section 337 by defaulting respondent MSi Lighting, Inc. of Boca Raton, Florida ("MSi Lighting"), and has determined to issue a limited exclusion order and a cease and desist order against that respondent. The investigation is terminated.

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 complainants Philips Lighting North America Corp. and Philips Lighting Holding B.V. (together, "Complainants"). 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: Edgewell Personal Care Brands, LLC of Shelton, Connecticut ("Edgewell"); Feit; Lowe's; MSi Lighting; 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 (Feb. 26, 2018). Additionally, the Commission amended the notice of investigation to remove respondent Edgewell, which 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, Complainants 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 Complainants 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. The ID found, *inter alia*, 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 Complainants showed a domestic industry with respect to all three remaining asserted patents.

On April 12, 2019, the Commission determined to review the following issues:

1. the ID's infringement findings for the "controller" limitation of recited in claims 7 and 8 of the '399 patent, and the ID's infringement findings for the "adjustment circuit" limitation recited in claims 17-19 of the '399 patent;
2. the ID's findings regarding whether products are representative of other products with respect to its 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.

Notice, 84 FR 16280-82 (Apr. 18, 2019). The Commission also sought briefing on whether the record shows that the accused products satisfy the "controller" and "adjustment circuit" limitations of the '399 patent, as well as briefing on remedy, the public interest, and bonding. *Id.* at 16282. The Commission received written submissions from Complainants and Respondents on April 26, 2019, and reply written submissions from Complainants and Respondent on May 3, 2019. The Commission also received submissions on remedy and the public interest from Good Earth Lighting, Inc.; Evolution Lighting, LLC; American Lighting, Inc.; Jiawei Technology (USA) Ltd.; Blue

Sky Wireless, LLC; GE Lighting; and Litex Industries, Ltd.

Having examined the record of this investigation, including the ALJ's final ID, the petitions, responses, and other submissions from the parties and the public, the Commission has determined that Complainants have not proven a violation of section 337 by Respondents. Specifically, the Commission has determined that Complainants failed to show that any accused product satisfies the "controller" limitation of claims 7 and 8 of the '399 patent and failed to show that any accused product satisfies the "adjustment circuit" limitation of the claims 17-19 of the '399 patent. Consequently, the Commission finds that Complainants failed to establish that any of Respondents' accused products infringes any claim of the '399 patent. The Commission further finds that Complainants failed to show that any of Respondents' accused products is representative of any other accused product. Finally, the Commission has determined to take no position on the ID's findings that Complainants satisfied the economic prong of the domestic industry requirement through investments under section 337(a)(3)(A) and (B) with respect to the '399 patent, and the ID's findings that Complainants satisfied the economic prong of the domestic industry requirement through investments under section 337(a)(3)(C) with respect to the '554 patent.

With respect to defaulted respondent MSi Lighting, Complainants request a remedy only with respect to the '399 patent. Under section 337(g)(1) (19 U.S.C. 1337(g)(1)), the Commission presumes that the allegations in the complaint are true, including the allegations that MSi Lighting infringes claims 1, 2, 4, and 5 of the '399 patent and that Complainants satisfied the domestic industry requirement with respect to the '399 patent. The Commission has determined that the appropriate form of

relief in this investigation is a limited exclusion order and a cease and desist order prohibiting MSi Lighting from importing, selling, offering for sale, marketing, advertising, distributing, offering for sale, transferring (except for exportation), or soliciting U.S. agents or distributors of imported LED devices, LED power supplies, and components that infringe claims 1, 2, 4, and 5 of the '399 patent. *Id.* The Commission has further determined that the public interest factors enumerated in section 337(g)(1) (19 U.S.C. 1337(g)(1)) do not preclude the issuance of the limited exclusion order and cease and desist order. Finally, the Commission has determined that the bond for importation during the period of Presidential review shall be in the amount of three percent of the entered value of the imported subject articles of MSi Lighting.

The parties also have several pending motions and requests. On February 6, 2019, Complainants moved to amend the complaint and notice of investigation to reflect a corporate name change, as Philips Lighting North American Corporation changed its name to Signify North America Corporation and Philips Lighting Holding B.V. changed its name to Signify Holding B.V. No party opposed the motion. The Commission grants Complainants' motion for good cause shown. The term "Complainants" refers to both Signify North America Corporation and Signify Holding B.V., as well as their previous names, Philips Lighting North American Corporation and Philips Lighting Holding B.V.

On May 7, 2019, Respondents filed a letter stating that Complainants inappropriately attached a version of an expert witness statement that contains stricken material and that was not admitted into evidence. The Commission clarifies that it has relied upon only the version of the expert witness statement that was admitted into evidence.

On May 23, 2019, Respondents filed a letter requesting to conduct post-hearing discovery concerning alleged perjury based on statements that occurred nine months earlier during the evidentiary hearing on August 20, 2018. On May 31, 2019, Complainants filed a letter in response. The Commission denies Respondents' tardy request for post-hearing discovery for failure to establish an adequate basis for their requested relief.

Accordingly, the Commission has determined that Complainants have failed to show a violation of section 337 by Respondents with respect to the '399, '559, and '554 patents. The Commission has also determined to issue a limited exclusion order and a cease and desist order against MSi Lighting pursuant to section 337(g)(1) (19 U.S.C. 1337(g)(1)). The Commission's determinations are explained more fully in the accompanying Opinion. All other findings in the ID under review that are consistent with the Commission's determinations are affirmed.

The Commission's notice, orders, and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance. The Commission has also notified the Secretary of the Treasury and Customs and Border Protection of the order. The investigation is hereby terminated.

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: July 1, 2019

Lisa Barton,
Secretary to the Commission.

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