

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN SOLID STATE STORAGE
DRIVES, STACKED ELECTRONICS
COMPONENTS, AND PRODUCTS
CONTAINING SAME**

Inv. No. 337-TA-1097

ORDER NO. 3: SETTING TARGET DATE; 100-DAY PROCEDURAL SCHEDULE

(January 31, 2018)

On January 19, 2018, the Commission issued a Notice of Investigation in this matter upon a complaint alleging violations of section 337 of the Tariff Act of 1930, as amended, by reason of infringement of certain claims of U.S. Patent No. 7,826,243 (“the ’243 Patent”); U.S. Patent No. 6,529,416 (“the ’416 Patent”); U.S. Patent No. 9,135,190 (“the ’190 Patent”); and U.S. Patent No. 8,093,103 (“the ’103 Patent”). The Commission ordered that an investigation be instituted to determine:

whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain solid state storage drives, stacked electronics components, and products containing same by reason of infringement of one or more of claims 1, 2, 11, and 12 of the ’243 Patent; claims 1-20 of the ’416 Patent; claims 1-101 of the ’190 Patent; and claims 12 and 16 of the ’103 Patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

Notice of Investigation at 2. The Commission further ordered:

Notwithstanding any Commission Rules that would otherwise apply, the presiding Administrative Law Judge shall hold an early evidentiary hearing, find facts, and issue an early decision, as to whether the complainant has satisfied the economic prong of the domestic industry requirement. Any such decision shall be in the form of an initial determination (ID) The Commission expects the issuance of an early

ID relating to the economic prong of the domestic industry requirement within 100 days of institution, except that the presiding ALJ may grant a limited extension of the ID for good cause shown.

Id. The investigation was instituted upon publication of the Notice of Investigation in the *Federal Register* on Friday, January 26, 2018. 83 Fed. Reg. 3771-72 (2018); *see* 19 C.F.R. § 210.10(b).

The Complainant is BiTMICRO, LLC of Reston, Virginia. Notice of Investigation at 3. The Respondents are Samsung Electronics Co., Ltd. of the Republic of Korea, Samsung Semiconductor, Inc. of San Jose, California, Samsung Electronics America, Inc. of Ridgefield Park, New Jersey, SK Hynix Inc. of the Republic of Korea, SK Hynix America Inc. of San Jose, California, Dell Inc. and Dell Technologies Inc. of Round Rock, Texas, Lenovo Group Ltd. of Beijing, China, Lenovo (United States) Inc. of Morrisville, North Carolina, HP Inc. and Hewlett Packard Enterprise Co. of Palo Alto, California, ASUSTeK Computer Inc. of Taipei, Taiwan, ASUS Computer International of Fremont, California, Acer Inc. of New Taipei City, Taiwan, Acer America Corp. of San Jose, California, VAIO Corporation of Azumino, Japan, and Transcosmos America Inc. of Gardena, California. *Id.* at 3-4. The Office of Unfair Import Investigations (“Staff”) is also a party. *Id.* at 4.

Pursuant to the Notice of Investigation, an initial determination on the economic prong of the domestic industry requirement shall be due on Friday, May 4, 2018. To accommodate the preparation of the initial determination, a one-day hearing shall be scheduled for Thursday, March 22, 2018.

To facilitate the parties’ preparation for the March 22 hearing, discovery during the first 100 days of the investigation shall be limited to the issue of the economic prong of domestic industry. Moreover, the parties shall be required to make certain mandatory disclosures to facilitate discovery, an orderly hearing, and an expedited determination.

No later than the close of business on Friday, February 9, 2018, Complainant shall file a statement and chart of its domestic industry contentions identifying:

- Each of the “articles protected by the patent” that Complainant intends to rely upon as part of its asserted domestic industry, including an identification of which patent(s) correspond to each article, and a statement of whether the article is produced domestically or whether there are foreign activities related to the article.
- For each identified article, a description of each expenditure that Complainant intends to rely upon as part of its asserted domestic industry relating to that article, classifying each expenditure under either subsection (A), subsection (B), or subsection (C) of section 337(a)(3), and providing:
 - A description of the expenditure, including the type of expenditure, the location and timeframe, and the identity of individuals having knowledge relevant to the expenditure;
 - If an expenditure is asserted under subsection (A) or (B) of section 337(a)(3), whether all of the investment or employment is with respect to the relevant article or whether an apportionment is necessary; and
 - If an expenditure is asserted under subsection (C) of section 337(a)(3), whether all of the investment is attributable to the exploitation of the asserted patent or whether an apportionment is necessary.

Sample Initial Domestic Industry Chart – '123 Patent			
Domestic Industry Article	Plant & Equipment (subsection A)	Labor or Capital (subsection B)	Exploitation (subsection C)
Widget X (manufactured domestically)	Portion of rental expenditures in Springfield 2016-17 (Waylon Smithers)	Portion of salaries in Springfield 2016-17 (Homer Simpson, Lenny Leonard, Carl Carlson)	N/A
	Entire cost of Acme Equipment in Springfield 2016-17 (Waylon Smithers)		N/A
Widget Y (manufactured abroad with domestic R&D)	N/A	N/A	Portion of research and development expenditures in Project Z (Waylon Smithers)

- A list of any witnesses that Complainant intends to call to the March 22 hearing, including:
 - The name and address of each witness;
 - A brief description of the testimony that the witness is expected to provide; and
 - For any expert witness, the area of expertise and a *curriculum vitae*.

No later than the close of business on Friday, February 16, 2018, Respondents and Staff shall file an identification of any witnesses that they intend to call to the March 22 hearing, including:

- The name and address of each witness;
- A brief description of the testimony that the witness is expected to provide; and
- For any expert witness, the area of expertise and a *curriculum vitae*.

All the disclosures made pursuant to this order shall be filed in accordance with Commission Rule 210.4, including the representations set forth in Rule 210.4(c). Filing boilerplate contentions or raising contentions or disputes without evidentiary support may result in the striking of a party's contentions. Any amendments to the disclosures required in this order will only be allowed with a showing of good cause.

Any fact witness under a party's control whom it intends to call at the March 22 hearing shall be made available for deposition prior to March 2, 2018.

The expert report requirements of Ground Rule 6.2 shall be waived with respect to the March 22 hearing, but any expert who submits a witness statement shall be made available for deposition no later than Friday, March 16, 2018.

No later than the close of business on Friday, March 2, 2018, Complainant shall file a final statement and chart of domestic industry expenditures, narrowing its domestic industry contentions to only those that it intends to rely upon at hearing, and for each asserted expenditure

remaining in the chart, stating the amount (in dollars) for each year that it is asserting as part of its domestic industry, explaining any relevant allocation. If there are relevant foreign activities related to the asserted articles, Complainant shall quantify the foreign expenditures in comparison to the domestic expenditures. In this filing, Complainant shall also list all witnesses it will call at the hearing.

Also on Friday, March 2, 2018, Complainant shall serve on the other parties its direct exhibits and a direct exhibit list consistent with Ground Rule 9.4.8, including witness statements consistent with Ground Rule 9.3, and outlines of testimony for adverse witnesses pursuant to Ground Rule 9.3.2. Pursuant to Ground Rule 9.3.1.3, the total length of a party's witness statements shall not exceed 100 pages.

If any party seeks to introduce evidence at the hearing through deposition designation pursuant to Ground Rule 9.4.14.2, a designated transcript shall be served on the other parties on Friday, March 2, 2018. Counter-designations may be served on Friday, March 9, 2018.

No later than the close of business on Friday, March 9, 2018, Respondents and Staff shall file responses to Complainant's final statement and chart of domestic industry expenditures, stating for each of the asserted expenditures whether they dispute the expenditure (the amount, the apportionment, or whether it qualifies under the relevant subsection of section 337(a)(3)) and the reason for the dispute. In this filing, Respondents and Staff shall also list all witnesses they will call at the hearing.

Also on Friday, March 9, 2018, Respondents and Staff shall serve on the other parties a rebuttal exhibit list consistent with Ground Rule 9.4.8 and rebuttal witness statements consistent with Ground Rule 9.3, and outlines of testimony for adverse witnesses pursuant to Ground Rule

9.3.2. Pursuant to Ground Rule 9.3.1.3, the total length of each party’s witness statements shall not exceed 100 pages.

On Tuesday, March 13, 2018, all direct and rebuttal exhibits shall be served on the Administrative Law Judge pursuant to Ground Rule 9.4.2.

Also on Tuesday, March 13, 2018, all parties shall file a pre-hearing brief pursuant to Ground Rule 8.2. These briefs shall be no longer than 50 pages.

On Thursday, March 15, 2018, the parties may file a statement of high priority objections pursuant to Ground Rule 8.3. A party’s statement shall not exceed five (5) pages.

On Monday, March 19, 2018, the parties may file responses to high priority objections, which shall not exceed five (5) pages.

On Monday, April 2, 2018, all parties shall file a post-hearing brief pursuant to Ground Rule 11.1, including the submission of final exhibits and exhibit lists. These briefs shall be no longer than 50 pages. No reply post-hearing briefs shall be filed.

The dates in the Procedural Schedule are set forth below:

Event	Deadline
File initial domestic industry chart – Complainant	Friday, February 9, 2018
File witness identification – Respondents and Staff	Friday, February 16, 2018
Fact discovery cutoff and completion	Friday, March 2, 2018
File final domestic industry chart – Complainant	Friday, March 2, 2018
Exchange proposed direct exhibits (including witness statements), with physical and demonstrative exhibits available – Complainant	Friday, March 2, 2018
Exchange deposition designations – all parties	Friday, March 2, 2018
File rebuttal to domestic industry chart – Respondents and Staff	Friday, March 9, 2018

Exchange proposed rebuttal exhibits (including witness statements, with physical and demonstrative exhibits available – Respondents and Staff	Friday, March 9, 2018
File pre-hearing briefs	Tuesday, March 13, 2018
Submit proposed exhibits to Administrative Law Judge	Tuesday, March 13, 2018
File high priority objections	Thursday, March 15, 2018
Expert discovery cutoff and completion	Friday, March 16, 2018
File responses to high priority objections	Monday, March 19, 2018
Hearing on domestic industry	Thursday, March 22, 2018
File post-hearing briefs	Monday, April 2, 2018
100-Day initial determination due date	Friday, May 4, 2018
Target date	Friday, May 24, 2019

Pursuant to Commission Rule 210.51(a)(1), the target date in this investigation shall be set for Friday, May 24, 2019, which is less than sixteen months after the institution of the investigation. Additional dates in the procedural schedule shall be set, if necessary, after the issuance of the initial determination on domestic industry.

SO ORDERED.



Dee Lord
Administrative Law Judge

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served by hand upon the Commission Investigative Attorney, **Reginald Lucas, Esq.**, and the following parties as indicated, on January 31, 2018.



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

On Behalf of Complainants BiTMICRO, LLC:

Jonathan J. Engler, Esq.
ADDUCI, MASTRIANI & SCHAUMBERG, L.L.P.
1133 Connecticut Avenue, N.W.
Washington, DC 20036

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

**On Behalf of Respondents Samsung Electronics Co., Ltd.,
Samsung Semiconductor, Inc., and Samsung Electronics
America, Inc.:**

Paul F. Brinkman
KIRKLAND & ELLIS LLP
655 Fifteenth Street NW
Washington, DC 20005

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

**On Behalf of Respondent Transcosmos America Inc. and
VAIO Corporation:**

Eric J. Fues
FINNEGAN, HENDERSON, FARABOW, GARRETT &
DUNNER, LLP
901 New York Avenue, NW
Washington, DC 20001

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

CERTAIN SOLID STATE STORAGE DRIVES, STACKED
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CONTAINING SAME

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Certificate of Service – Page 2

**On Behalf of Respondents SK Hynix Inc. and SK Hynix
America Inc.:**

Indranil Mukerji
FISH & RICHARDSON PC
The McPherson Building
901 15th Street NW, 7th Floor
Washington, DC 20005

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

**On Behalf of Respondents Lenovo Group Ltd. and Lenovo
(United States) Inc. :**

Stephen M. Hankins
RILEY SAFER HOLMES & CANCELIA LLP
456 Montgomery Street, 16th Floor
San Francisco, CA 94105

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Respondents:

Dell Inc.
1 Dell Way
Round Rock, TX 78682

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Dell Technologies Inc.
1 Dell Way
Round Rock, TX 78682

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

HP Inc.
1501 Page Mill Road
Palo Alto, CA 94304

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Hewlett Packard Enterprise Co.
3000 Hanover Street
Palo Alto, CA 94304

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

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Certificate of Service – Page 3

ASUSTeK Computer Inc.
No. 15, Li-Te Road, Peitou
Taipei 112, Taiwan

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

ASUS Computer International
800 Corporate Way
Fremont, CA 94539

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Acer Inc.
8F, 88, Sec. 1, Sintai 5th Rd. Xizhi
New Taipei City 221,
Taiwan

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Acer America Corp.
333 West San Carlos Street, Suite 1500
San Jose, CA 95110

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____