**UNITED STATES INTERNATIONAL TRADE COMMISSION**
**WASHINGTON, D.C.**
**Before the Honorable Clark S. Cheney**
**Chief Administrative Law Judge**

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| **In the Matter of**<br><br>**CERTAIN SEMICONDUCTOR DEVICES, AND METHODS OF MANUFACTURING SAME AND PRODUCTS CONTAINING THE SAME** | Investigation No. 337-TA-1366 |

# COMPLAINANT'S SUPPLEMENTAL RESPONSES TO RESPONDENTS' SUPPLEMENTAL INVALIDITY CONTENTIONS

Consistent with the United States International Trade Commission's Rule of Practice and Procedure, 19 C.F.R. §§ 210.27 and 210.29, and the Ground Rules (Order No. 2) and Procedural Schedule (Order No. 7) of this Investigation, Complainant Efficient Power Conversion Corporation ("EPC" or "Complainant"), provides these Responses to Respondents' Invalidity Contentions.

## I. PRELIMINARY STATEMENT AND RESERVATION OF RIGHTS

In Respondents' Invalidity Contentions served on September 1, 2023, Respondents contend that each of the claims asserted by EPC is invalid under 35 U.S.C. §§ 102, 103, and/or 112. Complainant expressly reserves the right to amend, correct, and/or supplement Complainant's Responses to Respondents' Invalidity Contentions in accordance with Commission Rules and the Ground Rules and Procedural Schedule governing this Investigation. This includes, for example, the right pursuant to 19 C.F.R. § 210.27(c) to address any additional information that is located or otherwise becomes available.

These Responses to Respondents' Invalidity Contentions are based, *inter alia*, on Respondents' unclear theories set out in Respondents Invalidity Contentions. For example, while Respondents identify over 80 specific combinations of prior art for the '294 patent, over 15



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specific combinations of prior art for the ‘508 patent, over 120 specific combinations of prior art for the ‘347 patent, and over 130 specific combinations of prior art for the ‘335 patent, Respondents indicate that these combinations are merely exemplary. Moreover, despite Respondents shockingly vast number of identified combinations, Respondents provide insufficient guidance as to how the prior art in each of those combinations is definitively being used to allegedly arrive at the claimed inventions. Complainant reserves all rights to disclose new or supplemental responses to Respondents’ invalidity contentions, including to address any changed, new, or more clearly defined theories of invalidity, and any newly discovered evidence obtained through continued discovery, both formal and informal. Moreover, a specific reference to a limitation missing from one of the voluminous number of specific alleged prior art references and/or the over 200 combinations is not an admission that other limitations are not missing.

These contentions are not intended to be limited to Complainant’s claim interpretations. Because the Chief Administrative Law Judge has not yet construed any of the claims in this investigation, Complainant’s responses to Respondents’ invalidity contentions may reflect alternative positions as to claim construction and scope. By providing these responses, Complainant is neither waiving nor limiting its rights to make arguments in the future about the proper scope of the claims. Complainant expressly reserves the right to argue for appropriate claim constructions during the course of this Investigation and to supplement these Responses to Respondents’ Invalidity Contentions after receiving any claim construction ruling.

Further, these Responses to Respondents’ Invalidity Contentions reflect Complainant’s knowledge, investigation, and discovery as of the date of service. Complainant reserves the right to supplement these Responses as appropriate and for any permissible reason. For example,

burden of establishing indefiniteness by clear and convincing evidence. *Sonix Tech. Co., Ltd. v. Publ'ns. Int'l, Ltd.*, 844 F.3d 1370, 1377 (Fed. Cir. 2017).

The Federal Circuit has repeatedly confirmed that patent claims are not required to recite terms with absolute numerical precision as long as the terms inform a person of ordinary skill in the art of the scope of the invention with reasonable certainty. *One-E-Way, Inc. v. Int'l Trade Comm'n*, 859 F.3d 1059, 1063 (Fed. Cir. 2017) ("The Supreme Court articulated the test for indefiniteness as requiring that a patent's claims, viewed in light of the specification and prosecution history, inform those skilled in the art about the scope of the invention with reasonable certainty. This test mandates clarity, while recognizing that absolute precision is unattainable." (cleaned up)); *Deere & Co. v. Bush Hog, LLC*, 703 F.3d 1349, 1359 (Fed. Cir. 2012) ("This court has repeatedly confirmed that relative terms such as 'substantially' do not render patent claims so unclear as to prevent a person of skill in the art from ascertaining the scope of the claim."); *Mentor Graphics Corp. v. EVE-USA, Inc.*, 851 F.3d 1275, 1290 (Fed. Cir. 2017) ("Definiteness requires clarity, though absolute precision is unattainable." (cleaned up)).

## III. The Level of Ordinary Skill in the Art

A person of ordinary skill in the art would have possessed at least a four-year degree in electrical engineering, physics, or material science, with course work in semiconductor materials, and three years of professional work experience in the epitaxial growth, design, and fabrication of semiconductor electronic devices, including those of GaN. Relevant graduate education could substitute for the professional work experience.