

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN PHOTOVOLTAIC
CONNECTORS AND COMPONENTS
THEREOF**

Investigation No. 337-TA-1365

**NOTICE OF A COMMISSION DETERMINATION TO REVIEW IN PART A FINAL
INITIAL DETERMINATION; REQUEST FOR WRITTEN SUBMISSIONS ON THE
ISSUES UNDER REVIEW AND ON REMEDY, THE PUBLIC INTEREST, AND
BONDING; EXTENSION OF 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 (“FID”) issued by the presiding administrative law judge (“ALJ”). The Commission requests written submissions from the parties on the issues under review and submissions from the parties, interested government agencies, and other interested persons on the issues of remedy, the public interest, and bonding, under the schedule set forth below. The Commission has also determined to extend the target date for this investigation to January 15, 2025.

FOR FURTHER INFORMATION CONTACT: Paul Lall, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2043. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On June 9, 2023, the Commission instituted this investigation based on a complaint filed on behalf of Shoals Technologies Group, LLC (“Shoals Technologies”) of Portland, Tennessee. 88 FR 37905-06 (June 9, 2023). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based upon the importation into the United States, the sale for importation, or sale within the United States after importation of certain photovoltaic connectors and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 10,553,739 (“the ’739 patent”) and 10,992,254 (“the ’254 patent”). The Commission’s notice of investigation (“NOI”) named the following eight respondents: 1) Hikam America, Inc. of Chula Vista, California; 2) Hikam Electrónica de México, S.A. de C.V. of Mexicali, Mexico; 3) Hikam Tecnologia de Sinaloa of

Guasave, Mexico; 4) Hewtech Philippines Corp. of Laguna, Philippines; 5) Hewtech Philippines Electronics Corp. of Pampanga, Philippines; 6) Hewtech (Shenzhen) Electronics Co., Ltd. of Shenzhen, China (collectively the “Hikam Respondents”); 7) Voltage, LLC (“Voltage”) of Chapel Hill, North Carolina; and 8) Ningbo Voltage Smart Production Co. (“Ningbo Voltage”) of Ningbo, China (collectively “Respondents”). *Id.* The Office of Unfair Import Investigations (“OUII”) was also named as a party in this investigation. *Id.* at 37906.

On August 15, 2023, the Commission amended the complaint and NOI to add allegations of infringement against Voltage related to certain claims of U.S. Patent No. 11,689,153 (“the ’153 patent”). *See* Order No. 5 (Jul. 18, 2023), *unreviewed by* 88 FR 56882-83 (Aug. 21, 2023).

The presiding ALJ held a *Markman* hearing on December 13, 2023, and on February 20, 2024, issued an order addressing claim construction for the ’739, ’254, and ’153 patents. *See* Order No. 16 (Feb. 20, 2024) (“*Markman* Order”). On February 28, 2024, Shoals filed a motion for reconsideration of the *Markman* Order’s construction of the term “engaged with” in claims 1 and 10 of the ’739 patent. On March 4 and 5, 2024, Respondents and OUII filed oppositions to the motion, respectively.

On March 11, 2024, the Commission terminated the following claims from the investigation based on Shoals’ withdrawal of the complaint as to those claims: claims 2, 3, 6, 8, 9, 11, 12, and 15-18 of the ’739 patent, claims 2-4, 8-12, 14, and 15 of the ’254 patent, and claims 2, 3, 6, and 15-17 of the ’153 patent. *See* Order No. 15 (Feb. 9, 2024), *unreviewed by* Comm’n Notice (March 11, 2024).

On March 25, 2024, the Commission terminated the ’254 patent from this investigation based on Shoals’ withdrawal of the complaint as to that patent. *See* Order No. 19 (Feb. 28, 2024), *unreviewed by* Comm’n Notice (March 26, 2024).

On April 19, 2024, the Commission determined not to review the ALJ’s grant of summary determination that Shoals has not satisfied the technical prong of the domestic industry requirement for the ’739 Patent and, thus, found no violation as to the ’739 patent. Order No. 20 (March 6, 2024), *unreviewed by* Comm’n Notice (Apr. 19, 2024). In Order No. 20, the ALJ also denied Shoals’ motion for reconsideration of the *Markman* Order. *Id.* Only the ’739 patent was asserted against the Hikam Respondents. *See* Comm’n Notice (Apr. 19, 2024); Am. Compl. at ¶ 66. Accordingly, the Hikam Respondent were effectively terminated from the investigation as of the termination of the ’739 patent. On June 18, 2024, Shoals filed a notice of appeal with the U.S. Court of Appeals for the Federal Circuit appealing the Commission’s finding of no violation as to the ’739 patent. *See* Case No. 24-1991, Notice of Docketing (Fed. Cir. June 24, 2024).

On April 26, 2024, the Commission terminated this investigation with respect to asserted claim 8 of the ’153 patent based on Shoals’ withdrawal of the complaint as to that claim. *See* Order No. 29 (April 2, 2024), *unreviewed by* Comm’n Notice (Apr. 26, 2024).

The ALJ held an evidentiary hearing on March 18-22, 2024. As of the hearing, Shoals asserted claims 1, 11-14, 18, 21, 23, and 24 of the ’153 patent against the accused Voltage Trunk Bus, and Voltage sought adjudication of the Voltage Alternative Design [“AD”] Trunk Bus with

respect to and claims 21 and 24 of the '153 patent. Shoals also asserted that its domestic industry product practices claims 1 and 21 of the '153 patent for purposes of the domestic industry requirement.

On August 30, 2024, the presiding ALJ issued the FID, finding that there has been a violation of section 337 in the importation into the United States, the sale for importation, and/or the sale in the United States after importation of certain photovoltaic connectors and components thereof with respect to certain claims of the '153 patent. Specifically, the FID finds as to the '153 patent that: 1) the Voltage Trunk Bus and Voltage AD Trunk Bus have been imported into the United States, sold for importation, and/or sold within the United States after importation; 2) the Voltage Trunk Bus satisfies claims 1, 11-14, and 18; 3) the Voltage Trunk Bus does not satisfy claims 21, 23, and 24; 4) the Voltage AD Trunk Bus does not satisfy claims 1, 11-14, 18, 21, 23, and 24; 5) Shoals has satisfied the technical prong of the domestic industry requirement; 6) Shoals has satisfied the economic prong of the domestic industry requirement; and 7) Voltage has not shown that claims 1, 11-14, 18, 21, 23, and 24 are invalid.

On September 13, 2024, the presiding ALJ issued a Recommended Determination on Remedy and Bonding ("RD"). The RD recommends that the Commission issue a limited exclusion order in the event it finds a violation of section 337 and impose a bond of 100 percent during the period of Presidential Review.

On October 15 and 16, 2024, Shoals and Voltage, respectively, filed a statement on the public interest pursuant to Commission Rule 210.50(a)(4), 19 CFR 210.50(a)(4). On October 2 and October 15, 2024, American Wire Group of Miami, Fla. and Strata Clean Energy of Durham, N.C. respectively filed statements on the public interest in response to the Commission's *Federal Register* notice. See 89 FR 76869-70 (Sept. 19, 2024).

On September 16, 2024, Shoals filed a petition for review of the FID. In its petition, Shoals Technologies argued that the ALJ should not have considered respondents' redesign product, the Voltage AD Trunk Bus, as being within the scope of the investigation.

On the same day, Respondents also filed a petition for review of several of the FID's findings, including: (1) the FID's construction of the term "aperture, recited in the asserted claims of the '153 patent" as defined by the "Modified Cable Test"; (2) the FID's finding that the asserted claims of the '153 patent are not invalid for lack of written description and/or indefiniteness; (3) the FID's finding that Shoals has a domestic industry with respect to an article protected by the '153 patent; and (4) the ALJ's determination to exclude the testimony of their invalidity expert.

Also on the same day, OUII filed a petition for review of the FID, seeking review of several of the FID's findings, including: (1) the FID's construction of the three "aperture" terms recited in the asserted claims of the '153 patent; (2) the FID's finding that Shoals' asserted domestic industry products satisfy the technical prong of the domestic industry requirement; and (3) the ALJ's determination to exclude the testimony of Respondents' invalidity expert.

On September 24, 2024, Shoals, Voltage and OUII each filed responses to the respective

petitions for review. On October 4, 2024, Voltage filed a notice of supplemental authority and on October 7, 2024, Shoals filed a response.

Having reviewed the record of the investigation, including the FID, the parties' petitions for review and related submissions, the Commission has determined to review the FID's: (1) construction of the "aperture" terms recited in the asserted claims of the '153 Patent; (2) finding that the accused products infringe the asserted claims of the '153 patent; (3) finding that the asserted claims of the '153 patent are not invalid under 35 USC 112 for lack of written description and/or indefiniteness; and (4) finding that Shoals' domestic industry products satisfy the domestic industry requirement of section 337, including the FID's findings concerning the technical prong and the economic prong.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia*, (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States; and/or (2) cease and desist orders that could result in the respondents 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, Comm'n Op. at 7-10 (Dec. 1994). In connection with these findings, the Commission requests responses from the parties to the following questions:

- (1) Please identify whether and where in the record Shoals presented arguments with supporting evidence that the accused products infringe any asserted claim of the '153 patent under OUII's proposed construction of the "aperture" terms.
- (2) Please identify whether and where in the record Shoals presented arguments with supporting evidence that its domestic industry products satisfy the technical prong of the domestic industry requirement of Section 337 under OUII's proposed construction of the "aperture" terms.

The parties are invited to brief only the discrete issues requested above. The parties are not to brief other issues on review, which are adequately presented in the parties' existing filings.

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and cease and desist orders 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, disapprove, or take no action on the

Commission's determination. *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 parties are requested to file written submissions on the questions identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged 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.

In its initial submission, Complainant is also requested to identify the remedy sought and Complainant and OUII are requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to state the dates that the Asserted Patents expire, to provide the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions must be filed no later than close of business on **November 27, 2024**. Reply submissions must be filed no later than the close of business on **December 5, 2024**. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Opening submissions are limited to 50 pages. Reply submissions are limited to 25 pages. No further submissions on any of 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. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number ("Inv. No. 337-TA-1365") 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 by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed with the Commission and served on any parties to the investigation within two business days of any confidential filing. 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, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission has determined to extend the target date for this investigation to January 15, 2025.

The Commission's vote on this determination took place on November 13, 2024.

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.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', enclosed within a thin black rectangular border.

Lisa R. Barton
Secretary to the Commission

Issued: November 13, 2024