

2018), *aff'd with modification*, Comm'n Op. (Feb. 14, 2019). The ALJ also granted Xtera's motions to withdraw from the investigation all asserted claims of the '171 and '637 patents and certain asserted claims of the other asserted patents. *See* Order No. 22 (Aug. 8, 2018) (unreviewed); Order No. 47 (Nov. 20, 2018) (unreviewed); Order No. 52 (Dec. 6, 2018) (unreviewed).

An evidentiary hearing was held in this investigation from December 10–14, 2018.

On April 26, 2019, the ALJ issued his final initial determination ("ID") finding no violation of section 337 with respect to asserted claims 13, 15, and 19 of the '798 patent and claims 8, 9, and 12 of the '403 patent by Respondents Nokia Corporation; Alcatel Submarine Networks; and Nokia of America Corporation (collectively "Nokia"); and NEC Corporation; NEC Networks & System Integration Corporation; and NEC Corporation of America (collectively "NEC"). Specifically, with respect to the '798 patent, the ID found that Xtera produced no evidence at the evidentiary hearing to show a violation of section 337 based on infringement of claims 13, 15, and 19. Accordingly, the ID found that Xtera has not established a violation of section 337 based on infringement of the '798 patent. With respect to the '403 patent, the ID found that Respondents do not infringe and Xtera's domestic industry products do not practice claims 8, 9, and 12 of the '403 patent. The ID also found that claims 8, 9, and 12 of the '403 patent are invalid as anticipated by U.S. Patent No. 6,430,336 ("Frankel"). The ID further found that Xtera had not established that its investments and activities satisfied the domestic industry requirement with respect to the articles protected by the '403 patent.

On May 13, 2019, Xtera filed a petition for review of the final ID. On the same day, Respondents filed a contingent petition for review of the final ID. Thereafter, the parties filed responses to the petitions for review and public interest comments pursuant to Commission Rule 210.50(a)(4).

On July 24, 2019, the Commission determined to review in part the final ID and to extend the target date in this investigation to September 30, 2019. 84 FR 36935–937 (Jul. 30, 2019). Specifically, the Commission determined to review the ID's findings with respect to the '403 patent in their entirety, including domestic industry. *Id.* at 36936. The Commission also determined that Xtera had effectively withdrawn its allegations with respect to claim 13 of the '403 patent and the '798 patent. *Id.* The Commission asked

the parties to brief certain issues under review. *Id.* The parties filed their respective initial submissions on August 7, 2019, and their respective reply submissions on August 14, 2019.

Of the patent claims that formed the basis for institution of this investigation, only claims 8, 9 and 12 of the '403 patent remain in dispute.

Having reviewed the parties' submissions and the record evidence, the Commission has determined to affirm with modifications the ID's finding of no violation of section 337 with respect to the '403 patent. Specifically, the Commission has determined to modify the ID's construction of the "means for producing" limitation in claim 8 of the '403 patent. In particular, the Commission adopts the ID's claimed function for the "means for producing" limitation and clarifies that the claimed function does not require the production of "narrow" optical pulses, *i.e.*, pulses of a particular bit rate. The Commission finds the specification clearly links or associates pulsed laser light sources (*e.g.*, active mode locked laser 20 in Figure 2), CW lasers modulated to create a periodic series of optical pulses (*e.g.*, CW laser 10 and first modulator 11 in Figure 1), and equivalents thereof to the claimed function. Applying that construction, the Commission affirms with modifications the ID's findings that (i) the accused products do not infringe claims 8, 9 and 12; (ii) the asserted claims are invalid as anticipated by Frankel; and (iii) Xtera has not established the existence of a domestic industry with respect to the '403 patent. The Commission's reasoning in support of its determinations is set forth in its concurrently issued opinion.

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: October 3, 2019.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2019–22033 Filed 10–8–19; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1179]

### Certain Pouch-Type Battery Cells, Battery Modules, and Battery Packs, Components Thereof, and Products Containing the Same; Institution of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 3, 2019, under section 337 of the Tariff Act of 1930, as amended, on behalf of SK Innovation Co., Ltd. of the Republic of Korea and SK Battery America, Inc. of Atlanta, Georgia. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain pouch-type battery cells, battery modules, and battery packs, components thereof, and products containing the same by reason of infringement of certain U.S. Patent No. 10,121,994 ("the '994 patent"). The complaint further alleges that an industry in the United States is in the process of being established as required by the applicable Federal Statute.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is 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, Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at <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>.

**FOR FURTHER INFORMATION CONTACT:** Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S.

International Trade Commission, telephone (202) 205-2560.

**SUPPLEMENTARY INFORMATION:**

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2019).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on October 3, 2019, Ordered That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, 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 products identified in paragraph (2) by reason of infringement of one or more of claims 1-36 of the '994 patent; and whether an industry in the United States is in the process of being established as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is "batteries that provide the electrical power for electric vehicles, *i.e.*, EV battery cells, battery modules, and battery packs, components thereof, and products containing the same";

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

SK Innovation Co., Ltd., 26 Jong-Ro, Jongno-Gu Seoul 03188, Republic of Korea.

SK Battery America, Inc., 201 17th Street NW, Suite 1700, Atlanta, GA 30363.

(b) The respondents are the following entities alleged to be in violation of section 337, and is/are the parties upon which the complaint is to be served:

LG Chem, Ltd., 128 Yeoui-daero, Yeongdeungpo-gu Seoul 07336, Republic of Korea.

LG Chem Michigan, Inc., 1 LG Way, Holland, MI 49423.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge,

U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: October 4, 2019.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2019-22057 Filed 10-8-19; 8:45 am]

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**INTERNATIONAL TRADE COMMISSION**

**[Investigation No. 731-TA-1427 (Final)]**

**Refillable Stainless Steel Kegs from Mexico**

**Determination**

On the basis of the record<sup>1</sup> developed in the subject investigation, the United States International Trade Commission ("Commission") determines, pursuant to the Tariff Act of 1930 ("the Act"), that the establishment of an industry in the United States is materially retarded by reason of imports of refillable stainless steel kegs from Mexico, provided for in subheadings 7310.10 and 7310.29 of the Harmonized Tariff Schedule of the United States, that have

<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

been found by the U.S. Department of Commerce ("Commerce") to be sold in the United States at less than fair value ("LTFV").<sup>2,3,4</sup>

**Background**

The Commission, pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)), instituted this investigation effective September 20, 2018, following receipt of a petition filed with the Commission and Commerce by American Keg Company, LLC, Pottstown, Pennsylvania. The Commission scheduled the final phase of the investigation following notification of preliminary determinations by Commerce that imports of refillable stainless steel kegs were being subsidized by the government of China<sup>5</sup> within the meaning of section 703(b) of the Act and that imports of refillable stainless steel kegs from China,<sup>6</sup> Germany,<sup>7</sup> and Mexico<sup>8</sup> were being sold at LTFV within the meaning of section 733(b) of the Act. Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 17, 2019 (84 FR 28070). The hearing was held in Washington, DC, on August 14, 2019, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made this determination pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)). It completed and filed its determination in this investigation on October 3, 2019. The views of the Commission are contained in USITC Publication 4976 (October 2019), entitled *Refillable Stainless Steel Kegs from Mexico: Investigation No. 731-TA-1427 (Final)*.

By order of the Commission.

<sup>2</sup> 84 FR 42894 (August 19, 2019) (final determination).

<sup>3</sup> The Commission also finds that imports subject to Commerce's affirmative critical circumstances determination are not likely to undermine seriously the remedial effect of the antidumping duty order on Mexico.

<sup>4</sup> Commissioners Randolph J. Stayin and Amy A. Karpel did not participate in this investigation.

<sup>5</sup> 84 FR 13634 (April 5, 2019) (preliminary determination and alignment).

<sup>6</sup> 84 FR 25745 (June 4, 2019) (preliminary determination and postponement).

<sup>7</sup> 84 FR 25736 (June 4, 2019) (preliminary determination and postponement).

<sup>8</sup> 84 FR 25738 (June 4, 2019) (preliminary determination).