

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1187]

Certain Electronic Devices With Optical Filters and Optical Sensor Systems and Components Thereof; Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation Based on Settlement; Termination of the Investigation

AGENCY: International Trade
Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined not to review an initial determination (“ID”) (Order No. 23) of the presiding administrative law judge (“ALJ”) granting a joint motion to terminate the investigation in its entirety based on settlement.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-5468. 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 on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 27, 2019, based on a complaint filed by Viavi Solutions Inc. of San Jose, California (“Viavi”). 84 FR 71464 (Dec. 27, 2019). The complaint, as supplemented, 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 within the United States after importation of certain electronic devices with optical filters and optical sensor systems and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 9,588,269; 9,945,995; and 10,222,526. *Id.* The Commission’s notice of investigation named as respondents Optrontec Inc. of Changwon, Republic of Korea (“Optrontec”); and LG Electronics, Inc. of Seoul, Republic of

Korea; LG Innotek Co., Ltd. of Seoul, Republic of Korea; and LG Electronics U.S.A., Inc. of Englewood Cliffs, New Jersey (collectively, “LG”). *Id.* The Office of Unfair Import Investigations (“OUII”) is participating in this investigation. *Id.*

The Commission previously terminated the investigation with respect to LG based on settlement. Order No. 9 (Feb. 27, 2020), *not reviewed* Notice (Mar. 18, 2020). Optrontec was thus the sole remaining respondent in the investigation.

On June 19, 2020, Viavi and Optrontec jointly moved to terminate the investigation based on settlement. On June 25, 2020, OUII filed a response in support of the motion.

On July 13, 2020, the ALJ issued the subject ID, granting the motion and terminating the investigation based on settlement. No petitions for review of the ID were filed.

The Commission has determined not to review the subject ID. The investigation is hereby terminated in its entirety.

The Commission vote for this determination took place on July 31, 2020.

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 31, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020-17140 Filed 8-5-20; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-854 (Remand)]

Certain Two-Way Global Satellite Communication Devices, System, and Components Thereof; Notice of Commission Determination To Deny a Petition To Rescind or Modify a Civil Penalty Order; Termination of Remand Proceeding

AGENCY: International Trade
Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to (1) deny a petition to rescind, or in the alternative, modify a civil penalty order; and (2) terminate the proceeding on

remand from the U.S. Court of Appeals for the Federal Circuit.

FOR FURTHER INFORMATION CONTACT:

Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-2310. 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: The Commission instituted Inv. No. 337-TA-854 (Enforcement Proceeding) on May 24, 2013, based on an enforcement complaint filed on behalf of BriarTek IP, Inc. (“BriarTek”) of Alexandria, Virginia. 78 FR 31576-77 (May 24, 2013). The complaint alleged violations of the April 5, 2013, consent order (“the Consent Order”) issued in the underlying investigation by the continued practice of prohibited activities such as selling or offering for sale within the United States after importation any two-way global satellite communication devices, system, or components thereof that infringe one or more claims of U.S. Patent No. 7,991,380 (“the ‘380 patent”). The Commission’s notice of institution of the enforcement proceeding named as respondents DeLorme Publishing Company, Inc. and DeLorme InReach LLC (collectively, “DeLorme”), now known as BDN Holding, Inc. and BDN LLC, all of Yarmouth, Maine. The Office of Unfair Import Investigations (“OUII”) was also a party to the enforcement proceeding. *Id.*

On June 10, 2014, following review of the presiding administrative law judge’s enforcement initial determination in the enforcement proceeding, the Commission issued a civil penalty order in the amount of \$6,242,500 for DeLorme’s violation of the Consent Order on 227 separate days. DeLorme appealed the Commission’s final determination to the U.S. Court of Appeals for the Federal Circuit. During the pendency of the appeal, the U.S. District Court for the Eastern District of Virginia (“EDVA”) granted summary judgment in a declaratory judgment action filed by DeLorme against the patentee, finding the relevant claims of

the '380 patent to be invalid. After requesting and receiving supplemental briefing on the issue of the effect, if any, of affirming the EDVA summary judgment on the Commission's final determination, the Federal Circuit, on the same date, affirmed both the \$6,242,500 Commission civil penalty order and the EDVA summary judgment of invalidity. *See DeLorme v. ITC*, 805 F.3d 1328 (Fed. Cir. 2015) ("*DeLorme I*"); *DeLorme Publishing Co. v. BriarTek IP, Inc.*, 622 Fed.Appx. 912 (Fed. Cir. 2015).

On December 22, 2015, following issuance of the Federal Circuit's decision in *DeLorme I*, DeLorme filed a petition to rescind, or in the alternative, to modify the civil penalty order under Commission Rule 210.76(a)(1) because of "changed conditions," *i.e.*, the EDVA invalidity judgment and the affirmance of that judgment. Stating that the arguments raised by DeLorme involved issues that could have been raised in *DeLorme I* or were raised and rejected by the Federal Circuit in *DeLorme I*, the Commission denied DeLorme's petition based on *res judicata*. DeLorme appealed the Commission's final determination denying its petition to the Federal Circuit. The Court reversed the Commission's final determination and remanded the case for consideration of DeLorme's petition. *See DBN Holding, Inc. v. ITC*, 755 Fed.Appx. 993, 2018 WL 6181653 (Fed. Cir. Nov. 27, 2018) ("*DeLorme II*") (finding that although there is no requirement that the civil penalty be rescinded because of the invalidity finding, the Commission nevertheless should have considered DeLorme's petition). The Federal Circuit issued its mandate on January 18, 2019.

On March 27, 2019, the Commission issued an order to the parties requesting briefing regarding whether the Commission should rescind or modify the civil penalty order in light of the final judgment of invalidity of the relevant claims of the '380 patent in accordance with *DeLorme II*. DeLorme, BriarTek, and OUII filed their initial submissions on April 25, April 26, and April 26, 2019, respectively. These parties filed their response submissions on May 12, May 13, and May 12, 2019, respectively.

Having reviewed the record in this investigation, including the parties' written submissions, the Commission has determined to deny DeLorme's petition to rescind, or in the alternative, modify the civil penalty order. The Commission has also issued an opinion explaining the basis for the Commission's action and has terminated the proceeding on remand from the Federal Circuit.

The Commission vote for this determination took place on July 31, 2020.

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 31, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020-17139 Filed 8-5-20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89439; File No. SR-NYSEAMER-2020-60]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Rule 6800 Series

July 31, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 27, 2020, NYSE American LLC ("NYSE American" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Rule 6800 Series, the Exchange's compliance rule ("Compliance Rule") regarding the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan")³ to be consistent with an amendment to the CAT NMS Plan recently approved by the Commission. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at

¹ 15 U.S.C. 78a.

² 17 CFR 240.19b-4.

³ Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Compliance Rule.

the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend the Rule 6800 Series, the Compliance Rule regarding the CAT NMS Plan, to be consistent with an amendment to the CAT NMS Plan recently approved by the Commission.⁴ The Commission approved an amendment to the CAT NMS Plan to amend the requirements for Firm Designated IDs in four ways: (1) To prohibit the use of account numbers as Firm Designated IDs for trading accounts that are not proprietary accounts; (2) to require that the Firm Designated ID for a trading account be persistent over time for each Industry Member so that a single account may be tracked across time within a single Industry Member; (3) to permit the use of relationship identifiers as Firm Designated IDs in certain circumstances; and (4) to permit the use of entity identifiers as Firm Designated IDs in certain circumstances (the "FDID Amendment"). As a result, the Exchange proposes to amend the definition of "Firm Designated ID" in Rule 6810 to reflect the changes to the CAT NMS Plan regarding the requirements for Firm Designated IDs.

Rule 6810(r) defines the term "Firm Designated ID" to mean "a unique identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member for each business date."

⁴ See Securities Exchange Act Release No. 89397 (July 24, 2020) (Federal Register publication pending).