

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN HIGH-BRIGHTNESS LIGHT
EMITTING DIODES AND PRODUCTS
CONTAINING SAME**

Investigation No. 337-TA-556

OFFICE OF THE SECRETARY
U.S. ITC
2009 JUN 27 AM 11: 59

ORDER

The Commission instituted this investigation on December 8, 2005, based on a complaint filed by Lumileds Lighting U.S., LLC (“Lumileds”) of San Jose, California. 70 *Fed. Reg.* 73026. The complaint, as amended and 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 high-brightness light emitting diodes (“LEDs”) and products containing same by reason of infringement of claims 1 and 6 of U.S. Patent No. 5,008,718 (the ‘718 patent), claims 1-3, 8-9, 16, 18, and 23-28 of U.S. Patent No. 5,376,580, and claims 12-16 of U.S. Patent No. 5,502,316. The complaint further alleges the existence of a domestic industry. The Commission’s notice of investigation named Epistar Corporation (“Epistar”) of Hsinchu, Taiwan, and United Epitaxy Company of Hsinchu, Taiwan as respondents (collectively “Epistar” as the two respondents have merged).

On April 13, 2006, the presiding administrative law judge (ALJ) issued Order No. 14 which granted Lumileds’ motion that Epistar was precluded from asserting invalidity of the ‘718 patent. The Commission determined not to review Order No. 14. The ALJ issued his final initial determination (ID) and recommended determination on remedy and bonding on January 8 and 11, 2007, respectively. The ALJ found a violation of section 337 based on his findings that Epistar’s accused LED products infringe one or more of the asserted claims of the ‘718 patent.

Upon review, the Commission found that additional accused products infringed the '718 patent and issued its opinion and limited exclusion order on May 9, 2007. 72 *Fed. Reg.* 38101-02 (July 12, 2007).

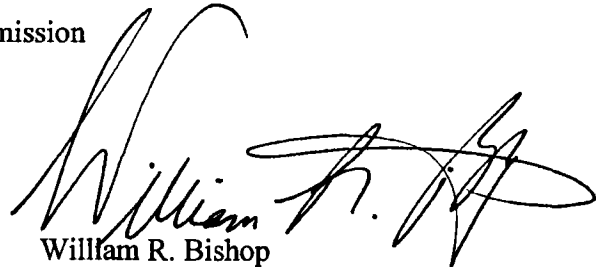
Epistar appealed the Commission's final determination to the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit"). On May 22, 2009, the Federal Circuit issued its judgment vacating the limited exclusion order, and vacating and remanding the Commission's final determination for further proceedings consistent with the Court's opinion. *Epistar Corp v. United States Int'l Trade Comm'n*, 566 F.3d 1321 (Fed. Cir. 2009). The mandate of the Court issued on July 13, 2009.

Upon consideration of this matter, it is hereby ORDERED that:

(1) The investigation is remanded to the chief administrative law judge, Judge Paul J. Luckern, for proceedings consistent with the May 22, 2009, judgment of the U.S. Court of Appeals for the Federal Circuit in *Epistar Corp v. United States Int'l Trade Comm'n*, 566 F.3d 1321 (Fed. Cir. 2009), including issuance of a final initial determination on violation and a recommended determination on remedy and bonding. The final initial determination will be processed in accordance with Commission rules 210.42(a) and 210.43-.46. The ALJ may otherwise conduct the remand proceedings as he deems appropriate, including reopening the record.

(2) The Secretary to the Commission shall serve a copy of this Order upon each party to the investigation and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and the U.S. Bureau of Customs and Border Protection.

By order of the Commission.
Marilyn R. Abbott, Secretary to the Commission



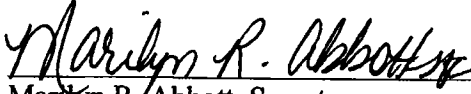
William R. Bishop
Acting Secretary to the Commission

Issued: July 27, 2009

**CERTAIN HIGH-BRIGHTNESS LIGHT-EMITTING DIODES 337-TA-556
AND PRODUCTS CONTAINING SAME**

CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **ORDER** has been served by hand upon the Commission Investigative Attorney, Thomas S. Fusco, Esq., and the following parties as indicated, on July 27, 2009.


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