

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.**

In the Matter of

**CERTAIN LOCATION-SHARING
SYSTEMS, RELATED SOFTWARE,
COMPONENTS THEREOF, AND
PRODUCTS CONTAINING SAME**

**Inv. No. 337-TA-_____
(Docket No. 337-TA-3655)**

**PROPOSED LENOVO RESPONDENTS' REQUEST FOR DENIAL OF
INSTITUTION IN-PART**

Pursuant to the Commission’s Notice,¹ the Lenovo Respondents² request that the Commission deny in-part institution of ITC Complaint Docket No. 337-TA-3655 filed by AGIS.³ The Commission should decline to institute as to proposed Respondents LGL and Lenovo US based on AGIS’s complete failure to plead facts supporting a violation of Section 337 by anyone other than Motorola.

Section 337 prohibits the “importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of articles that . . . infringe.” 19 U.S.C. § 1337(a)(1)(B)(i); *Certain Carbon and Alloy Steel Products*, Inv. No. 337-TA-1002, Initial Determination at 33 (Oct. 2, 2017) (“[A] complainant must prove that a respondent actually imported or sold for importation the articles at issue.”). Consistent with the express statutory language, the Commission’s regulations require that each complaint include “a statement of *facts* constituting the alleged” Section 337 violation, and a “*showing that each person named* as violating section 337 . . . is importing or selling the article covered by . . . each involved U.S. Patent.” 19 C.F.R. § 210.12(a)(2), (a) (9)(viii) (emphasis added). Recent Commission precedent demonstrates that a complaint’s failure to plead such facts as to a specific proposed respondent justifies non-institution as to that entity. *See, e.g., Certain Electronic Devices, Semiconductor Devices*, 337-TA-1340, Letter from K. Hiner to A. Pratt, EDIS Doc. ID. 784017, (Nov. 8, 2022) (denying institution as to Qualcomm) (“1340 Non-institution Letter”).

AGIS’s Complaint falls well short of the requirements of 19 C.F.R. § 210.12. Rather than make the required “showing” that LGL or Lenovo US are “importing or selling” the accused

¹ *See* Notice of Receipt of Complaint and Solicitation of Comments Relating to the Public Interest, 87 *Fed. Reg.* 72509 (Nov. 25, 2022).

² The Lenovo Respondents include Lenovo Group Ltd (“LGL”); Lenovo (United States), Inc. (“Lenovo US”); and Motorola Mobility LLC (“Motorola”).

³ “AGIS” is Advanced Ground Information Svstems. Inc. and AGIS Software Development LLC.

products, AGIS simply states in conclusory fashion—without any factual support or citing a single document—that “[o]n information and belief, Lenovo Group manufactures, imports, sells for importation, offers for sale, and/or sells within the United States after importation the Lenovo Accused Products.” Compl., ¶ 29. The only factual support regarding importation and sale in the Complaint relates exclusively to Motorola. All of the exhibits pertaining to what AGIS calls “the Lenovo Accused Products” concern Motorola’s activities relating to the Motorola Edge (2021) phone. *See* Compl., Ex. 97 (shipment from Motorola without reference to LGL), Ex. 99 (packing list showing Motorola without reference to LGL or Lenovo US), Ex. 96 (packaging referring to Motorola without reference to LGL or Lenovo US).

The Complaint lacks any factual allegations regarding importation or sale by LGL or Lenovo US because, in fact, these entities are not involved in any of the activities AGIS alleges on “information and belief.” While LGL is the ultimate parent of Lenovo US and Motorola, it is “a holding company that does not produce goods or services itself” as the U.S. District Court for the District of Delaware found in dismissing LGL from a patent infringement action in 2019.⁴ In fact, LGL has repeatedly established, in the context of procuring its dismissal from patent litigation, that it “does not make, use, sell, offer to sell, have sold, [or] import” products in the United States.⁵ LGL, Motorola, and Lenovo US are distinct corporate entities with distinct operations. This is why the Commission has, in the past, instituted Section 337 investigations against Motorola without naming LGL and Lenovo US. *See, e.g., Certain LTE-Compliant Cellular Communication Devices*, Inv. No. 337-TA-1253, Notice of Institution, EDIS Doc. ID. 735638, (Mar. 2, 2021) (naming

⁴ *3G Licensing, S.A. et al. v. Lenovo Group Ltd. et al.*, CA 17-84-LPS, Report and Recommendation (D.I. 308) (Aug. 22, 2019) *adopted in* D.I. 312 (finding a lack of personal jurisdiction over LGL)

⁵ *See, e.g., Tela Innovations, Inc. v. Lenovo Group, Ltd. et al.*, C.A. No. 18-2025 (RGA), Joint Stipulation of Dismissal of Defendant Lenovo Group Ltd. (D.I. 9) (April 17, 2019).

Motorola without LGL and Lenovo US).

Just a few months ago, the Commission declined to institute the 1340 Investigation against Qualcomm because “[t]he information provided with the complaint, supplement, and exhibits . . . does not sufficiently describe the specific instance(s) of importation or sale” for Qualcomm.⁶ Significantly, the Commission cited the very same regulations that dictate the outcome here: 19 C.F.R. §§ 210.12(a)(3) and (a)(9)(viii). Similarly, in 2019, the Commission declined to institute an investigation against SK Battery Hungary Kft. in *Lithium Ion Batteries*, Inv. 337-TA-1159 after the complainant could not establish “at least one specific instance of importation of articles . . . into the United [sic] States or in the sale of such articles by the owner, importer, or consignee . . .”⁷ The outcome should be no different here: AGIS has failed to satisfy 210.12(a)(3) and (9)(viii).

* * *

Section 337 investigations should not be automatic. A complainant must comply with the statute and the applicable regulations before the ITC commits public resources to conduct an investigation. And, while Section 337 provides that “[t]he Commission shall investigate any alleged violation of this section,” 19 U.S.C. § 1337(b)(1), the Commission must retain and exercise discretion to decide after an *informal* pre-institution investigation that a *formal* Section 337 investigation is not justified especially where a complainant fails to follow Commission Rules like AGIS has done here.

⁶ 1340 Non-Institution Letter.

⁷ *Compare* Letter from A. Beverina (OUII) to M. Hogge, EDIS Doc. ID. 676345, (May 13, 2019) with Notice of Institution, EDIS Doc. ID. 677297, (May 29, 2019) (internal quotations omitted).

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Respectfully submitted,

/s/ Daniel Valencia

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