

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN PROTECTIVE CASES AND
COMPONENTS THEREOF**

Investigation No. 337-TA-780

**NOTICE OF COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL
DETERMINATION GRANTING COMPLAINANT'S MOTION FOR SUMMARY
DETERMINATION REGARDING RESPONDENT'S AFFIRMATIVE DEFENSE OF
INVALIDITY AS TO UNITED STATES PATENT NO. 7,933,122**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 29) granting Complainant's summary determination regarding Respondent's affirmative defense of invalidity of United States Patent No. 7,933,122 ("the '122 patent").

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3042. Copies of non-confidential documents filed in connection with this investigation are or will be 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, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.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 June 30, 2011, based on a complaint filed by Otter Products, LLC of Fort Collins, Colorado ("Otter"). 76 *Fed. Reg.* 38417 (June 30, 2011). The complaint alleged 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 protective cases and components thereof by reason of infringement of various claims of the '122 patent and United States Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; and D636,386; and United States Trademark Registration Nos. 3,788,534; 3,788,535; 3,623,789; and 3,795,187. The notice of

investigation named several respondents, however, except for the respondents who defaulted, only Griffin Technology, Inc. of Nashville, Tennessee ("Griffin") remains in the investigation.

On December 22, 2011, Otter filed a motion for summary determination that Griffin cannot establish its affirmative defense that the '122 patent is invalid. On January 3, 2012, Griffin filed an opposition to Otter's motion. That same day, the Commission Investigative Attorney filed a response stating that the motion be held in abeyance until the close of fact discovery on January 17, 2012, and added that the motion should be granted if Griffin fails to submit a supplemental opposition on the merits shortly after the close of fact discovery.

On March 15, 2012, the ALJ issued the subject ID, granting the summary determination motion. The ALJ found that pursuant to Commission Rule 210.18 (19 C.F.R. § 210.18), the undisputed facts establish that Griffin cannot establish its affirmative defense of invalidity of the '122 patent by clear and convincing evidence. None of the parties petitioned for review of the ID.

The Commission has determined not to review the ID. Accordingly, Griffin has failed to establish its affirmative defense of patent invalidity as to the '122 patent.

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 section 210.42 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42).

By order of the Commission.

A handwritten signature in black ink, appearing to read "J R Holbein". The signature is written in a cursive style with a large initial "J" and "R".

James R. Holbein
Secretary to the Commission

Issued: April 11, 2012