

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN TWO-WAY GLOBAL
SATELLITE COMMUNICATION
DEVICES, SYSTEM AND
COMPONENTS THEREOF**

**Investigation No. 337-TA-854
(Enforcement Proceeding)**

**ISSUANCE OF CIVIL PENALTY AND TERMINATION OF ENFORCEMENT
PROCEEDING**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to issue a civil penalty order in the amount of \$6,242,500 directed against respondents DeLorme Publishing Company, Inc. and DeLorme InReach LLC (collectively, “DeLorme”), both of Yarmouth, Maine, for a violation of the April 5, 2013, consent order (“the Consent Order”).

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2310. 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 enforcement proceeding on May 24, 2013, based on an enforcement complaint filed on behalf of BriarTek IP, Inc. (“BriarTek”) of Alexandria, Virginia. *78 Fed. Reg.* 31576-77. The complaint alleged violations of 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 accused two-way global satellite communication devices, system, or components thereof that infringe one or more of claims 1, 2, 5, 10–12, and 34 of U.S. Patent No. 7,991,380 (“the ’380 patent”). The Commission’s notice of institution of enforcement proceeding named DeLorme as respondents. *78 Fed. Reg.* 31577. The Office of Unfair Import Investigations was also named as

a party. *Id.* Claims 5, 11-12, and 34 have been terminated from the enforcement proceeding.

On March 7, 2014, the presiding administrative law judge (“ALJ”) issued an enforcement initial determination (“EID”) finding a violation of the Consent Order. The ALJ concluded that, after issuance of the consent order, DeLorme has sold or offered for sale within the United States after importation accused InReach 1.5 devices that infringe, via inducement, claims 1 and 2 of the ’380 patent. The ALJ also found no induced infringement and therefore no violation of the Consent Order with respect to accused InReach SE devices. The ALJ also found no induced infringement and therefore no violation of the Consent Order with respect to any accused InReach devices sold before, and activated after, the effective date of the Consent Order. The ALJ also recommended a civil penalty of \$637,500 against DeLorme as an enforcement measure for the violation. On March 20, 2014, BriarTek, DeLorme, and the Commission investigative attorney (“IA”) each filed a petition for review of the EID. On March 27, 2014, BriarTek, DeLorme, and the IA each filed a response to opposing petitions.

On April 23, 2014, the Commission issued notice of its determination to review the EID in part, and on review, the Commission determined to reverse-in-part and vacate-in-part the EID’s findings. Specifically, the Commission determined not to review the ALJ’s finding of a violation of the Consent Order with respect to the infringing InReach 1.5 devices. The Commission also determined to reverse the ALJ’s finding of no induced infringement and no violation of the Consent Order with respect to accused InReach SE devices, which resulted in a finding of a violation of the Consent Order with respect to these InReach devices. The Commission also determined to reverse the ALJ’s finding of no induced infringement with respect to accused InReach devices that were sold before, and activated after, the effective date of the Consent Order. This action did not change the ALJ’s finding of no violation with respect to these InReach devices sold before, and activated after, the effective date of the Consent Order. The Commission further determined to vacate the portion of the ALJ’s analysis that relied on *Akamai Techs., Inc. v. Limelight Networks, Inc.*, 692 F.3d 1301, 1305 (Fed. Cir. 2012) (*en banc*), *cert. granted*, *Limelight Networks, Inc. v. Akamai Techs., Inc.*, 134 S. Ct. 895 (2014), to find direct infringement of claims 1 and 2 of the ’380 patent through “use” of the claimed system by an end user. The Commission also determined to vacate the portion of the ALJ’s analysis concerning specific intent for induced infringement of these claims based on *Akamai*. *See* EID at 85-86, 92.

The Commission also requested the parties to provide briefing on the amount of the civil penalty to be imposed and on the public interest. On April 30, 2014, BriarTek, DeLorme, and the IA each filed a brief responding to the Commission’s request for written submissions. On May 7, 2014, the parties filed reply briefs.

Having examined the record in this enforcement proceeding, including the EID and the parties’ submissions, the Commission has determined to impose a civil penalty of \$6,242,500 on DeLorme for violation of the Consent Order on 227 separate days.

The Commission has terminated the enforcement proceeding. 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 C.F.R.

Part 210.

By order of the Commission.

A handwritten signature in black ink, appearing to read "Lisa R. Barton". The signature is stylized and cursive.

Lisa R. Barton
Secretary to the Commission

Issued: June 9, 2014