

**UNITED STATES INTERNATIONAL TRADE COMMISSION**  
**Washington, D.C. 20436**

**In the Matter of**

**CERTAIN LASER BAR CODE  
SCANNERS AND SCAN ENGINES,  
COMPONENTS THEREOF, AND  
PRODUCTS CONTAINING SAME**

**Investigation No. 337-TA-551**

**NOTICE OF COMMISSION DETERMINATION TO REVIEW A FINAL  
DETERMINATION ON VIOLATION OF SECTION 337; SCHEDULE FOR  
BRIEFING ON THE ISSUES ON REVIEW AND ON REMEDY,  
PUBLIC INTEREST, AND BONDING; DENIAL OF  
MOTION FOR STAY OF SANCTIONS ORDER**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review in part the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on November 20, 2006, regarding whether there is a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in the above-captioned investigation. The Commission has also determined to deny respondents’ motion for stay of the ALJ’s sanctions order.

**FOR FURTHER INFORMATION CONTACT:** Paul M. Bartkowski, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5432. 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:** This investigation was instituted on October 26, 2005, based on a complaint filed by Symbol Technologies Inc. (“Symbol”) of Holtsville, New York. The complaint, as amended, alleged violations of section 337 of the Tariff Act of 1930

(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 laser bar code scanners or scan engines, components thereof, or products containing the same, by reason of infringement of various claims of United States Patent Nos. 5,457,308 (“the ‘308 patent”); 5,545,889 (“the ‘889 patent”); 6,220,514 (“the ‘514 patent”); 5,262,627 (“the ‘627 patent”); and 5,917,173 (“the ‘173 patent”). The complaint named two respondents: Metro Technologies Co., Ltd. of Suzhou, China; and Metrologic Instruments, Inc. of Blackwood, New Jersey (collectively, “Metrologic”).

On January 29, 2007, the ALJ issued an ID finding a violation of Section 337 in the importation of certain laser bar code scanners and scan engines, components thereof, and products containing the same, in connection with certain asserted claims. The ID also issued monetary sanctions against Respondents for discovery abuses. Complainant, Respondents, and the Commission investigative attorney (IA) each filed petitions for review on February 8, 2007. They each filed responses to each other’s petitions on February 16, 2007.

Meanwhile, on February 8, 2007, Metrologic filed a motion for stay of the ALJ’s sanctions order. The IA and Symbol filed oppositions to the motion on February 20, 2007. Upon consideration of the parties’ filings, the Commission has determined to deny Metrologic’s motion for stay.

On February 21, 2007, the Commission extended the deadline for determining whether to review the subject ID by fifteen (15) days, to March 30, 2007.

Having examined the record of this investigation, including the ALJ’s final ID and the submissions of the parties, the Commission has determined to review the final ID in part. Specifically, the Commission has determined to review: (1) the construction of “single, unitary, flexural component” in the ‘173 patent, and related issues of infringement, domestic industry, and validity; (2) the construction of “oscillatory support means” in the ‘627 patent, and related issues of infringement, domestic industry, and validity; (3) the construction of claims containing the so-called “central area” limitations in the ‘889 patent, and related issues of infringement, domestic industry, and validity; (4) the construction of the “scan fragment” limitation in the ‘308 patent; and (5) the construction of the term “plurality” in the ‘308 patent. The Commission requests briefing based on the evidentiary record on certain of the issues on review. The Commission is particularly interested in responses to the following questions:

Regarding the ‘173 patent:

(1) What is the effect of Symbol’s statement in the prosecution history that “[c]laim 70 [issued claim 17] also contains the feature of allowable claim 58” on a proper claim construction?

(2) If Symbol’s statement limited the scope of the claim, what is the effect on claim construction, infringement, domestic industry, and validity issues as they relate to the ‘173 patent?

(3) If Symbol's statement limits the scope of the claim by providing that the component have "spring portions integral with each other," what would be the effect, if any, on the analysis? In other words, if a flexural component is "single," and "unitary," does it necessarily have "spring portions integral with each other"?

Regarding the '627 patent:

(1) How should the modifier "oscillatory" be construed in the limitation "oscillatory support means"?

(2) How does the construction of the word "oscillatory" affect infringement, domestic industry, and validity as those issues relate to the '627 patent?

Regarding the '889 patent:

(1) What effect does Symbol's statements during prosecution history such that the smaller mirror is "centrally positioned" with respect to the larger mirror have on claim construction?

(2) If such statements limit claim scope, what effect does that limitation have on claim construction, infringement, domestic industry, and validity as those issues relate to the '889 patent?

Furthermore, in connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 *Fed. Reg.* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

**WRITTEN SUBMISSIONS:** The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be concise and thoroughly referenced to the record in this investigation, including references to exhibits and testimony. Additionally, parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainants and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the dates that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on April 9, 2007. Reply submissions must be filed no later than the close of business on April 16, 2007. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

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 210.42-46 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42-46).

By order of the Commission.

/s/  
Marilyn R. Abbott  
Secretary to the Commission

Issued: March 30, 2007