

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN MOUNTING APPARATUSES
FOR HOLDING PORTABLE
ELECTRONIC DEVICES AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1086

**NOTICE OF FINAL COMMISSION DETERMINATION OF VIOLATION; ISSUANCE
OF A GENERAL EXCLUSION ORDER; TERMINATION OF THE INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has terminated the above-captioned investigation with a finding of violation of section 337, and has issued a general exclusion order (“GEO”) directed against infringing mounting apparatuses for holding portable electronic devices and components thereof. The Commission has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, 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, SW, Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://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 November 28, 2017, based on a complaint filed on behalf of National Products Inc. (“NPI”) of Seattle, Washington. 82 FR 56266-67 (Nov. 28, 2017). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by reason of infringement of certain claims of U.S. Patent Nos. 8,544,161 (“the ’161 patent”), D703,657 (“the D’657 patent”), 8,186,636 (“the ’636 patent”), D571,278 (“the D’278 patent”), D574,204 (“the D’204 patent”), and 9,568,148 (“the ’148 patent”); and U.S. Trademark Registration No. 4,254,086 (“the ’086 trademark”). The Commission’s notice of investigation named the following respondents:

Shenzhen Chengshuo Technology Co., Ltd., d/b/a WUPP (“WUPP”) of Zhejiang, China; Foshan City Qishi Sporting Goods, Technology Co., Ltd., Guangzhou Kean Products Co., Ltd., Gangzhou Kaicheng Metal Produce Co., Shenzhen Smilin Electronic Technology, Co., Ltd., and Shenzhen New Dream Intelligent Plastic, Co., Ltd., all of Guangdong, China; Chengdu MWUPP Technology Co., Ltd. of Sichuan Province, China; and Shenzhen Yingxue Technology Co., Ltd., d/b/a Yingxue Tech. (“Yingxue Technology”), Shenzhen Shunsihang Technology Co., Ltd., d/b/a BlueFire, and Prolech Electronics Limited, all of Shenzhen, China (collectively, “the defaulting respondents”). The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation. All respondents in the investigation have been found in default, and the D’278 patent has been terminated from the investigation. *See* Order No. 9 (May 8, 2018), *unreviewed by* Comm’n Notice (June 5, 2018); Order No. 10 (June 22, 2018), *unreviewed by* Comm’n Notice (July 18, 2018).

On November 28, 2018, the presiding administrative law judge (“ALJ”) issued an initial determination (“ID”) granting in part NPI’s motion (as supplemented on July 10, July 19, and September 14, 2018) for summary determination of violation of section 337 by the defaulting respondents and request for issuance of a GEO. The ID finds that all defaulting respondents met the importation requirement and that NPI satisfied the domestic industry requirement. *See* 19 U.S.C. § 1337(a)(1)(B), (a)(2), and (a)(3). The ID also finds that a violation of section 337 has occurred based on its finding that each of the defaulting respondents’ accused products infringe one or more of the asserted claims of the patents at issue (except for the ’161 patent) and infringe the ’086 trademark as established by substantial, reliable, and probative evidence in accordance with 19 U.S.C. 1337(g)(2) and Commission rule 210.16(c)(2). Regarding the ’161 patent, NPI alleged induced and contributory infringement of claim 1 of this patent with respect to the accused WUPP X-Grip Mount. The ID finds that NPI did not establish direct infringement of this claim by substantial, reliable, and probative evidence. The ID also contains the ALJ’s recommended determination (“RD”) on remedy and bonding. The RD recommends issuance of a general exclusion order with respect to the asserted intellectual property.

On March 18, 2019, the Commission issued notice of its determination: (1) to review the ID’s finding that direct infringement was not established with respect to claim 1 of the ’161 patent; and (2) on review, to reverse this finding and remand to the ALJ the issue of whether NPI has established induced and contributory infringement of this claim. The Commission determined not to review the remainder of the ID. *See* Comm’n Notice (Mar. 18, 2019); Comm’n Order (Mar. 18, 2019) (containing the Commission’s reasoning for reversing the ID in part).

On April 16, 2019, the ALJ issued a remand initial determination (“RID”) finding a violation of section 337 with respect to claim 1 of the ’161 patent. Specifically, the RID finds that NPI has shown induced and contributory infringement of this claim by respondents WUPP and Yingxue Technology by substantial, reliable, and probative evidence. No party petitioned for review of the RID.

On May 10, 2019, the Commission issued notice of its determination not to review the

RID. 84 FR 22162-64 (May 16, 2019). On the same date, the Commission requested written submissions on the issues of remedy, the public interest, and bonding from the parties and interested non-parties. *Id.* On May 17, 2019, NPI and OUII each filed a brief regarding remedy, the public interest, and bonding, and on May 24, 2019, OUII filed a reply brief.

The Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is a GEO prohibiting the unlicensed entry of mounting apparatuses for holding portable electronic devices and components thereof that infringe one or more of: claim 1 of the '161 patent; the claim of the D'657 patent; claim 1 of the '636 patent; the claim of the D'204 patent; claim 1 of the '148 patent; and the '086 trademark.

The Commission further determined that the public interest factors enumerated in section 337(d)(1) (19 U.S.C. 1337(d)(1)) do not preclude issuance of the GEO. Finally, the Commission determined that there shall be a bond in the amount of 100 percent of the entered value of the covered products to permit temporary importation during the period of Presidential review (19 U.S.C. 1337(j)). The Commission's order and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance. The Commission has terminated the investigation.

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 CFR part 210.

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: June 17, 2019