

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN MOVABLE BARRIER
OPERATION SYSTEMS AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1118

**NOTICE OF A COMMISSION FINAL DETERMINATION FINDING NO VIOLATION
OF SECTION 337 AS TO TWO PATENTS, REMANDING FOR FURTHER
PROCEEDINGS AS TO ONE PATENT, AND DENYING COMPLAINANT’S REQUEST
TO REMAND AN ORDER AWARDING MONETARY SANCTIONS; REQUEST FOR
WRITTEN SUBMISSIONS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (the “Commission”) has determined to: (1) adopt the findings of the final initial determination (“ID”) in part and find no violation of Section 337 as to U.S. Patent Nos. 8,587,404 (“the ’404 patent”) and 6,741,052 (“the ’052 patent”); (2) vacate Order No. 38 granting summary determination that the economic prong of the domestic industry requirement has been satisfied and remand the economic prong issue to the presiding administrative law judge (“ALJ”) for further proceedings with respect to U.S. Patent No. 7,755,223 (“the ’223 patent”); (3) deny complainant’s request to remand Order No. 37 awarding respondents monetary sanctions; and (4) direct the parties to supplement their previous submissions on remedy and bonding with respect to the ’223 patent, should the Commission determine there is a violation of Section 337 with respect to that patent.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2382. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket system (“EDIS”) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On June 11, 2018, the Commission instituted the present investigation based on a complaint and supplement thereto filed by The Chamberlain Group, Inc. (“CGI”) of Oak Brook, Illinois. 83 FR 27020-21 (June 11, 2018). The complaint, as supplemented, alleges a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“Section 337”), in the importation, sale for importation, or sale in the United States after importation of certain movable barrier operator systems that purportedly infringe one or more of the asserted claims of the ’404 patent, ’223 patent, and ’052 patent. *Id.* The Commission’s notice of investigation named Nortek Security & Control, LLC of Carlsbad, CA;

Nortek, Inc. of Providence, RI; and GTO Access Systems, LLC of Tallahassee, FL (collectively, “Nortek”) as respondents. 83 FR at 270721. The Office of Unfair Import Investigations was not named as a party to this investigation. *See id.*

The Commission partially terminated the investigation with respect to certain patent claims withdrawn by CGI. *See* Order No. 16 (Feb. 5, 2019), *not rev’d*, Comm’n Notice (March 6, 2019); Order No. 27 (June 7, 2019), *not rev’d*, Comm’n Notice (June 27, 2019); Order No. 31 (July 30, 2019), *not rev’d*, Comm’n Notice (Aug. 19, 2019); Order No. 32 (Sept. 27, 2019), *not rev’d*, Comm’n Notice (Oct. 17, 2019). The only asserted claims still at issue are claim 11 of the ’404 patent, claims 1 and 21 of the ’223 patent, and claim 1 of the ’052 patent.

On June 5, 2019, the presiding administrative law judge (“ALJ”) issued a *Markman* order (Order No. 25) construing the claim terms in dispute.

On December 12, 2018, CGI filed a motion for summary determination, pursuant to 19 CFR 210.18(a), that it has satisfied the economic prong of the domestic industry requirement. Nortek filed a response opposing the motion on February 11, 2019. The ALJ held a teleconference with the parties on May 31, 2019. On June 6, 2019, the ALJ issued a notice advising the parties that the motion would be granted, and a formal written order would be issued later. Order No. 26 (June 6, 2019).

The ALJ held an evidentiary hearing on June 10-14, 2019.

On November 20, 2019, the ALJ issued Order No. 37 making a “preliminary monetary sanctions award” to Nortek to compensate for travel and deposition-related expenses, court recording fees, and attorney preparation time resulting from CGI’s late production of documents.

On November 25, 2019, the ALJ issued the two subject IDs. The first ID (Order No. 38) grants CGI’s motion for summary determination that CGI has satisfied the economic prong of the domestic industry requirement, pursuant to 19 CFR 210.42(c). The second is the final ID, which finds no violation of Section 337 because: (i) Nortek has not infringed asserted claim 11 of the ’404 patent; (ii) Nortek has not infringed asserted claims 1 or 21 of the ’223 patent and CGI does not satisfy the technical prong of the domestic industry requirement with respect to that patent; and (iii) although certain accused products satisfy asserted claim 1 of the ’052 patent, that claim is invalid. ID at 1, 286-87. The final ID contains the recommended determination (“RD”) on remedy and bonding recommending that, should the Commission reverse these findings and determine there is a violation of Section 337, the Commission issue a limited exclusion order and cease and desist orders against Nortek and impose a bond of 100 percent of the entered value of covered articles during the period of Presidential review. *Id.* at 277-86.

On December 4, 2019, Nortek filed a petition for review and CGI filed a contingent petition for review of Order No. 38 granting summary determination that the economic prong has been satisfied. On December 9, 2019, CGI filed a petition for review of the final ID, while Nortek filed a contingent petition for review of the final ID.

On December 16, 2019, the Commission issued a notice of its determination to extend the deadline for determining whether to review Order No. 38 to coincide with the deadline for determining whether to review the final ID. Comm’n Notice (Dec. 16, 2019).

On December 18, 2019, the Commission issued a notice soliciting comments on the public interest from the public. 84 FR 70998-99 (Dec. 26, 2019). The Commission received no responses from the public. Also, no party filed a submission on the public interest, pursuant to 19 CFR 210.50(a)(4).

On February 19, 2020, the Commission issued a notice of its determination to review Order No. 38 and the final ID in part. 85 FR 10723-26 (Feb. 25, 2020). The Commission asked the parties for further briefing on certain violation issues and on remedy, the public interest, and bonding. *Id.* The parties submitted their initial briefs in response to the Commission's notice on March 4, 2020, and their reply briefs on March 11, 2020.

On March 27, 2020, CGI filed a "request" to remand Order No. 37, the "preliminary monetary sanctions award," to the ALJ for a final ruling. Nortek filed its opposition to CGI's request on April 1, 2020.

On April 20, 2020, the Commission extended the target date for completion of this investigation to May 18, 2020.

Having reviewed the record in this investigation, including the final ID, Order Nos. 37 and 38, and the parties' submissions, the Commission has made the following determinations:

- (1) The Commission has determined to adopt the ID's findings with respect to the '404 patent that: (a) Nortek does not infringe claim 11 of the '404 patent; (b) CGI satisfies the technical prong of the domestic industry requirement with respect to that patent; and (c) there is no violation of Section 337 with respect to the '404 patent. The Commission takes no position on whether claim 11 of the '404 patent is invalid as abstract under 35 U.S.C. 101.
- (2) The Commission has determined to adopt the ID's findings with respect to the '052 patent that: (a) claim 1 is directly and indirectly infringed but only with respect to Nortek's original gate operator products (Commissioner Schmidlein does not join the majority's finding that Nortek infringes claim 1 of the '052 patent, but instead she takes no position on that question); (b) CGI satisfies the technical prong of the domestic industry requirement with respect to claim 1; (c) claim 1 is invalid as obvious under 35 U.S.C. 103; and (d) there is no violation of Section 337 with respect to the '052 patent.
- (3) The Commission has determined to vacate Order No. 38, which grants summary determination that CGI has satisfied the economic prong of the domestic industry requirement, and to remand the economic prong issue to the presiding ALJ for further proceedings with respect to the '223 patent.
- (4) The Commission has determined to deny CGI's untimely request to remand Order No. 37 for a final ruling on its "preliminary monetary sanctions award." The Commission has determined to adopt Order No. 37 as a final order.
- (5) The Commission again directs CGI to identify and explain, from the record, articles that it contends are "components of" the subject products, and thus

potentially covered by the proposed remedial orders, if imported separately from the subject products. *See* 85 FR at 10725. Failure to provide this information may result in waiver of any remedy directed to “components of” the subject products, in the event any violation may be found. The Commission further directs the parties to revise their previous submissions, if needed, regarding HTSUS subheadings under which the subject products are imported, bond rates, and domestic inventory and/or domestic operations, in the event the Commission were to find a violation only with respect to the ’223 patent. The parties are directed to brief only these issues, as may be needed, and not to brief any other issues relating to remedy or violation. The parties’ initial briefs are due 10 days after issuance of the Remand Initial Determination (“RID”) concerning the economic prong issue, pursuant to Item (3), above. The parties’ response briefs are due 5 days thereafter.

The reviewed issues with respect to the ’223 patent remain under review pending the RID on the economic prong of the domestic industry requirement.

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).

Persons filing written submissions must file the original documents electronically on or before the deadlines stated above. The Commission’s paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020).

By order of the Commission.

A handwritten signature in black ink, appearing to read "Lisa R. Barton", enclosed within a large, loopy oval flourish.

Lisa R. Barton
Secretary to the Commission

Issued: April 22, 2020