

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN SMART THERMOSTATS,
SMART HVAC SYSTEMS, AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1185

NOTICE OF INSTITUTION OF INVESTIGATION

Institution of investigation pursuant to 19 U.S.C.1337

AGENCY: U.S. International Trade Commission

ACTION: Notice

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 23, 2019, under section 337 of the Tariff Act of 1930, as amended, on behalf of EcoFactor, Inc. of Palo Alto, California. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain smart thermostats, smart HVAC systems, and components thereof by reason of infringement of certain claims of U.S. Patent No. 8,131,497 (“the ’497 patent”); U.S. Patent No. 8,423,322 (“the ’322 patent”); U.S. Patent No. 8,498,753 (“the ’753 patent”); and U.S. Patent No. 10,018,371 (“the ’371 patent”). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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., Room 112, Washington, D.C. 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (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>.

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2560.

SUPPLEMENTARY INFORMATION:

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 C.F.R. 210.10 (2019).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on November 21, 2019, ORDERED THAT –

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1-12 of the '497 patent; claims 1-7 of the '322 patent; claims 1-20 of the '753 patent; and claims 1-24 of the '371 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 C.F.R. 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is "smart thermostats, smart HVAC (heating, ventilation, and air conditioning) systems, and components thereof";

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

EcoFactor, Inc.
441 California Avenue, Number 2
Palo Alto, CA 94301

(b) The respondents are the following entities alleged to be in violation of section 337, and is/are the parties upon which the complaint is to be served:

Ecobee Ltd.
207 Queens Quay West, Suite 600
Toronto, ON M5J 1A7

Ecobee, Inc.
207 Queens Quay West, Suite 600
Toronto, ON M5J 1A7

Google LLC
1600 Amphitheatre Parkway
Mountain View, CA 94043

Alarm.com Incorporated
8281 Greensboro Drive
Suite 100
Tysons, VA 22102

Alarm.com Holdings, Inc.
8281 Greensboro Drive
Suite 100
Tysons, VA 22102

Daikin Industries, Ltd.
Umeda Center Bldg., 2-4-12,
Nakazaki-Nishi,
Kita-ku, Osaka 530-8323
Japan

Daikin America, Inc.
20 Olympic Drive
Orangeburg, NY 10962

Daikin North America LLC
5151 San Felipe, Suite 500
Houston, TX 77056

Schneider Electric USA, Inc.
800 Federal Street
Andover, MA 01810

Schneider Electric SE
35, rue Joseph Monier –CS 30323
F-92506 Rueil-Malmaison Cedex
France

Vivint, Inc.
4931 North 300 West
Provo, UT 84604

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Suite 401, Washington, D.C. 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and

Procedure, 19 C.F.R. 210.13. Pursuant to 19 C.F.R. 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

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: November 22, 2019