

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

In the Matter of

**CERTAIN REFRIGERATORS
AND COMPONENTS THEREOF**

Investigation No. 337-TA-632

**NOTICE OF THE COMMISSION'S FINAL DETERMINATION OF NO VIOLATION
OF SECTION 337, EXTENSION OF TARGET DATE, 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 determined that there is no violation of Section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) by LG Electronics, Inc.; LG Electronics, USA, Inc.; and LG Electronics Monterrey Mexico, S.A., De, CV. The target date of the investigation is extended to February 12, 2010. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2301. Copies of the presiding Administrative Law Judge's ("ALJ") Initial Determinations ("ID") and all other 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: On February 26, 2008, the Commission instituted this investigation, based on a complaint filed by Whirlpool Patents Company of St. Joseph, Michigan; Whirlpool Manufacturing Corporation of St. Joseph, Michigan; Whirlpool Corporation of Benton Harbor, Michigan; and Maytag Corporation of Benton Harbor, Michigan (collectively, "Whirlpool"). The complaint, as supplemented, alleged 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 refrigerators and components thereof that infringe certain claims of U.S. Patent Nos. 6,082,130 ("the '130 patent"); 6,810,680 ("the '680 patent"); 6,915,644 ("the '644 patent"); 6,971,730 ("the '730 patent"); and 7,240,980 ("the '980 patent").

Whirlpool named LG Electronics, Inc.; LG Electronics, USA, Inc.; and LG Electronics Monterrey Mexico, S.A., De, CV (collectively, “LG”) as respondents. The complaint, as supplemented, further alleged that an industry in the United States exists as required by subsection (a)(2) of Section 337 and requested that the Commission issue an exclusion order and cease and desist orders.

On May 1, 2008, Whirlpool filed a motion to partially terminate the investigation based on their withdrawal of the ‘730 patent and the ‘980 patent. LG supported the motion. On June 9, 2009, the ALJ issued an ID, Order No. 8, terminating the investigation, in part, as to the ‘730 and ‘980 patents. On June 24, 2008, the Commission determined not to review Order No. 8. On September 11, 2008, Whirlpool and LG filed a joint motion seeking termination of this investigation with respect to the ‘680 patent and the ‘644 patent on the basis of a settlement agreement. On September 25, 2008, the ALJ issued an ID, Order No. 10, terminating the investigation, in part, as to the ‘680 and ‘644 patents. No petitions for review were filed. On October 27, 2008, the Commission determined not to review Order No. 10. The ‘130 patent is the sole patent remaining in this investigation.

On October 17, 2008, Whirlpool filed a motion for summary determination that it had satisfied the importation requirement. On November 20, 2008, the ALJ issued an ID, Order No. 14, granting complainant’s motion for summary determination of importation. No petitions for review were filed. On December 15, 2008, the Commission issued notice that it had determined not to review Order No. 14.

On July 24, 2008, Whirlpool filed a motion seeking leave to amend the complaint and notice of investigation to (1) remove references to patents that had been withdrawn from this investigation; (2) add a reference to a non-exclusive license that relates to two patents at issue; and (3) update the current state of the domestic industry. On November 25, 2008, the ALJ issued Order No. 15, in which he granted Whirlpool’s motion as to (1) and (3) above and denied it with respect to (2). No petitions for review were filed. The Commission determined not to review the subject ID on December 15, 2008.

On February 26, 2009, the ALJ issued a final ID, in which he found no violation of Section 337. On March 11, 2009, Whirlpool filed a petition for review, and LG filed a contingent petition for review. Whirlpool, LG and the Commission investigative attorney (“IA”) filed responses. On April 27, 2009, the Commission determined to review the final ID in its entirety. *74 Fed. Reg.* 20345-6 (May 1, 2009). In particular, the Commission was concerned with the ALJ’s claim construction of the terms “freezer compartment,” “disposed within the freezer compartment,” and “ice storage bin having a bottom opening.” The Commission asked the parties to address several questions concerning claim construction.

After receiving briefing from the parties, the Commission determined to modify the ALJ’s claim constructions of the terms “freezer compartment,” “disposed within the freezer compartment,” and “ice storage bin having a bottom opening,” determined to affirm the ALJ’s construction of the term “ice maker,” and determined to remand the investigation to the ALJ to

make findings regarding infringement, validity, and domestic industry consistent with the Commission's claim constructions. The Commission further ordered the ALJ to issue a remand ID ("RID") on violation and a recommended determination on remedy and bonding. The Commission also issued an Opinion detailing its reasons for modifying the claim constructions.

On July 22, LG filed a petition for reconsideration of the Commission's decision to modify the ALJ's claim constructions of the phrases "freezer compartment" and "disposed within the freezer compartment." On August 28, 2009, the Commission denied LG's petition.

On October 9, 2009, the ALJ issued his RID, in which he found no violation of Section 337. Specifically, the ALJ found that the accused refrigerators and components thereof do not infringe claims 1, 2, 4, 6, 8, and 9 of the '130 patent literally or under the doctrine of equivalents. The ALJ also found that claims 1, 2, 4, 6, and 9 of the '130 patent are invalid under 35 U.S.C. § 103 for obviousness, but that claim 8 of the '130 patent is not invalid under 35 U.S.C. § 103. The ALJ further found that a domestic industry exists.

On October 26, 2009, Whirlpool filed a petition for review challenging the RID's conclusion of non-infringement and obviousness. LG also filed a contingent petition for review challenging the ALJ's findings concerning non-obviousness and his conclusion that a domestic industry exists. On November 3, 2009, LG filed a response to Whirlpool's petition. On November 4, 2009, Whirlpool filed a response to LG's petition. On November 6, 2009, the IA filed a combined response to both petitions.

On December 14, 2009, the Commission issued a Notice determining to review the RID in its entirety and requesting written submissions from the parties regarding the issues under review, particularly concerning the validity of claim 2 of the '130 patent, as well regarding issues of remedy, the public interest, bonding. *74 Fed. Reg. 67250-1* (Dec. 18, 2009). The parties filed initial submissions in response to the Commission's Notice on December 30, 2009, and reply submissions on January 7, 2010.

Having examined the record of this investigation, including the ALJ's final RID, the Commission has determined to affirm the RID's determination of no violation of the '130 patent.

Specifically, the Commission has determined to modify the ALJ's implied construction of the claim limitations "the auger moves ice pieces from the ice storage bin through the bottom opening for dispensing from the ice storage bin" and "ice crushing region." The Commission has also determined to reverse a portion of the ALJ's determination of non-infringement and find that the accused side-by-side models infringe claims 1, 2, 4, 6, and 9 of the '130 patent.

The Commission has determined to affirm the remainder of the ALJ's findings. Specifically, the Commission affirms the ALJ's finding that the accused side-by-side model refrigerators do not infringe claim 8 of the '130 patent. The Commission also affirms the ALJ's finding that the accused French Door model refrigerators do not infringe any of the asserted claims of the '130 patent. The Commission further affirms the ALJ's finding that claims 1, 2, 4,

6, and 9 of the '130 patent are invalid for obviousness with several modifications to the analysis concerning claims 1 and 2. The Commission also affirms the ALJ's finding that claim 8 is not invalid for obviousness. Finally, the Commission affirms the ALJ's finding that there is a domestic industry.

The target date of the investigation was February 9, 2010. Due to inclement weather, the federal government was closed from Monday, February 8 through Thursday, February 11, 2010. The target date is, therefore, extended to Friday, February 12, 2010, pursuant Commission Rule 210.51(a) (19 C.F.R. § 210.51(a)).

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 sections 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: February 12, 2010

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