

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

In the Matter of

**CERTAIN MULTIMEDIA DISPLAY
AND NAVIGATION DEVICES AND
SYSTEMS, COMPONENTS THEREOF,
AND PRODUCTS CONTAINING SAME**

Investigation No. 337-TA-694

**NOTICE OF COMMISSION DETERMINATION TO REVIEW-IN-PART A FINAL
DETERMINATION OF NO VIOLATION OF SECTION 337; SCHEDULE FOR FILING
WRITTEN SUBMISSIONS ON THE ISSUES UNDER REVIEW AND ON REMEDY,
THE PUBLIC INTEREST, AND BONDING**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review certain portions of the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on December 16, 2010 finding no violation of section 337 in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Jia Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-4737. 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: The Commission instituted the instant investigation on December 16, 2009, based on a complaint filed by Pioneer Corporation of Tokyo, Japan and Pioneer Electronics (USA) Inc. of Long Beach, California (collectively, “Pioneer”). 74 *Fed. Reg.* 66676 (Dec. 16, 2009). The complaint alleges 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 multimedia display and navigation devices and systems, components thereof, and products containing same by reason of infringement of various claims of United States Patent Nos. 5,365,448 (“the ‘448 patent”),

5,424,951 (“the ‘951 patent”), and 6,122,592 (“the ‘592 patent”). The complaint names Garmin International, Inc. of Olathe, Kansas, Garmin Corporation of Taiwan (collectively, “Garmin”) and Honeywell International Inc. of Morristown, New Jersey (“Honeywell”) as the proposed respondents. Honeywell was subsequently terminated from the investigation, leaving only the Garmin respondents remaining.

On December 16, 2010, the ALJ issued a final ID, including his recommended determination on remedy and bonding. In his final ID, the ALJ found no violation of section 337 by Garmin. Specifically, the ALJ found that the accused products do not infringe claims 1 and 2 of the ‘448 patent, claims 1 and 2 of the ‘951 patent, or claims 1 and 2 of the ‘592 patent. The ALJ further found that neither Garmin nor the Commission investigative attorney (“IA”) has established that claims 1 and 2 of the ‘592 patent are invalid for obviousness under 35 U.S.C. § 103 or for failing to comply with the written description requirement under 35 U.S.C. § 112. With respect to remedy, the ALJ recommended that if the Commission disagrees with the finding of no violation, the Commission should issue a limited exclusion order directed to multimedia display and navigation devices and systems, and the components of such devices and systems, as well as a cease and desist order. The ALJ recommended that the limited exclusion order contain a certification provision. In addition, the ALJ recommended, in the event that a violation is found, that Garmin be required to post a bond equal to 0.5 percent of the entered value of any accused products that Garmin seeks to import during the Presidential review period.

On January 5, 2011, Pioneer, Garmin, and the IA each filed a petition for review of the ALJ’s final ID. On January 9, 2011, Pioneer filed a consolidated reply to Garmin’s and the IA’s petitions for review. On the same day, Garmin filed a reply to Pioneer’s petition for review and a separate reply to the IA’s petitions for review. Also on the same day, the IA filed a consolidated reply to Pioneer and Garmin’s petitions for review.

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 (1) the claim construction of the limitation “second memory means” recited in claim 1 of the ‘951 patent, (2) infringement of claims 1 and 2 of the ‘951 patent, (3) the claim construction of the limitations “extracting means” and “a calculating device” recited in claim 1 of the ‘592 patent, (4) infringement of claims 1 and 2 of the ‘592 patent, (5) validity of the ‘592 patent under the written description requirement of 35 U.S.C. § 112, and (6) the economic prong of the domestic industry requirement. No other issues are being reviewed.

The parties should brief their positions on the issues on review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in responses to the following questions:

1. With respect to claim 1 of the ‘951 patent, does the claimed function of the limitation “second memory means” require “the read display pattern data” stored on the “second memory means” to be in the same data format with “said display pattern data . . . from said first memory mean”? Does the scope of the claimed function allow “display pattern data” stored on the “second memory means” to be derived from and to convey the same

conceptual information as “display pattern data” from the “first memory means,” even though the display pattern data may be represented in different formats? Please provide support for your claim construction in the claims, the specification, the prosecution history, and any extrinsic evidence concerning how the claim would be understood by persons skilled in the art.

2. Assume that the scope of the claimed function of the “second memory means” limitation recited in claim 1 of the ‘951 patent encompasses “display pattern data” stored on the “second memory means” that are derived from and represented in a different format than the “display pattern data” from the “first memory means,” where both “display pattern data” represent the same conceptual information. Do the accused product combinations, *i.e.*, the product combinations identified at the top of page 3 of complainant’s petition for review, meet the “second memory means” limitation?
3. Assuming that the accused product combinations meet all of the recited limitations of claim 1 of the ‘951 patent, do they also meet dependent claim 2’s limitation “wherein said second memory means has a plurality of memory locations to store said position coordinate data and said position display data to indicate said display pattern as a pair?” Please cite to all evidence in the record for support.
4. With respect to the proper construction of the function of the “extracting means” limitation recited in claim 1 of the ‘592 patent, does claim 1 require that the recited “plurality of locations” be physically segregated into different categories in memory in view of the intrinsic evidence (see, *e.g.*, ‘592 patent, Figure 27 and Col. 16).
5. If the answer to question 4 is yes, do the accused devices meet the “extracting means” limitation of the ‘592 patent? Please cite to all evidence in the record for support.
6. With respect to the proper construction of the corresponding structure of the “extracting means” limitation recited in claim 1 of the ‘592 patent, should the Commission modify the corresponding structure identified by the ALJ from the specification as “CPU programmed to read location data from memory and a CD-ROM drive, *wherein the memory is RAM configured to store the location data as depicted in Figure 27.*” Please provide support for your claim construction in the claims, the specification, the prosecution history, and any extrinsic evidence concerning how the claim would be understood by persons skilled in the art.

7. If the answer to question 6 is yes, do the accused devices meet the “extracting means” limitation of the ‘592 patent? Please cite to all evidence in the record for support.
8. With respect to the proper construction of the limitation “a calculating device” recited in claim 1 of the ‘592 patent, does the intrinsic evidence require that the recited term “said locations” refer to the plurality of locations of the selected category that has been *extracted* by the “extracting means,” rather than all locations of the selected category?
9. If the answer to question 8 is yes, do the “Search Near” mode and the “GPS Simulator” mode of the accused device meet the limitation “a calculating device.” Please cite to all evidence in the record for support.
10. With respect to the functionality discussed on page 124, n. 19 of the ID, please cite to all evidence of record indicating how this feature operates and how this feature does or does not meet the “a calculating device” limitation of claim 1. Please cite to all evidence in the record for support.
11. Assuming that the specification of the ‘592 patent provides adequate support for the “extracting means” limitation of claim 1 and assuming that claim 1 is not directed to the disparaged problem in the prior art, does the specification provide adequate support for “a selector device” and “a location name display device” recited in claim 1 to satisfy the written description requirement of 35 U.S.C. § 112?
12. With respect to the economic prong of the domestic industry requirement, what is Pioneer’s investment as opposed to DVA’s investment for Pioneer’s licensing activities with the entity identified on page 148 of the ID?
13. With respect to Pioneer’s licensing negotiation efforts with the entity identified on page 151 of the ID, what is the contribution by Pioneer’s U.S. employees?
14. Do payments made to outside counsel by complainant prior to filing the instant investigation constitute investment in exploitation of the patent under section 337(a)(3)(C)?
15. With respect to the table provided on pages 87-88 of complainant’s post-hearing brief and adopted by the ALJ on pages 157-158 of the ID, please identify the targeted licensee for each entry.
16. Is Pioneer’s investment in exploitation of the asserted patents through licensing “substantial” under section 337(a)(3)(C), in light of the Commission’s holding on page 31, first paragraph, of *Certain Printing*

and Imaging Devices and Components Thereof, 337-TA-690, Comm'n Op. (Feb. 1, 2011)?

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 a 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 United States 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 identified in this notice. 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. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the date that the patent expires 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 March 9, 2011. Reply submissions must be filed no later than the close of business on March 18, 2011. The written submissions must be no longer than 100 pages and the reply submissions must be no longer than 50 pages. 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 non-confidential 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 sections 210.42-46 and 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42-46 and 210.50).

By order of the Commission.

/s/
William R. Bishop
Hearings and Meetings Coordinator

Issued: February 23, 2011