

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

**In the Matter of**

**CERTAIN TWO-WAY GLOBAL  
SATELLITE COMMUNICATION  
DEVICES, SYSTEM AND  
COMPONENTS THEREOF**

**Investigation No. 337-TA-854  
(Enforcement Proceeding)**

**NOTICE OF A COMMISSION DETERMINATION TO REVIEW IN PART AN  
ENFORCEMENT INITIAL DETERMINATION FINDING A VIOLATION OF THE  
APRIL 5, 2013 CONSENT ORDER, ON REVIEW TO REVERSE-IN-PART AND  
VACATE-IN-PART THE DETERMINATION; REQUEST FOR WRITTEN  
SUBMISSIONS ON CIVIL PENALTY FOR VIOLATION OF CONSENT ORDER**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review in part an enforcement initial determination (“EID”) of the presiding administrative law judge (“ALJ”) finding a violation of the April 5, 2013 consent order (“the Consent Order”) by respondents DeLorme Publishing Company, Inc. and DeLorme InReach LLC (collectively, “DeLorme”), both of Yarmouth, Maine. On review, the Commission has determined to reverse-in-part and vacate-in-part the EID. The Commission is also requesting written submissions regarding the civil penalty for violation of the Consent Order.

**FOR FURTHER INFORMATION CONTACT:** Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., 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, 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 this enforcement proceeding on May 24, 2013, based on an enforcement complaint filed on behalf of BriarTek IP, Inc. (“BriarTek”) of Alexandria, Virginia. 78 *Fed. Reg.* 31576-77. The complaint alleged violations of the Consent Order issued in the underlying investigation by the continued practice of prohibited activities such as selling or offering for sale within the United States after importation accused two-way global satellite communication devices, system, or components thereof that infringe one or more of claims 1, 2, 5, 10–12, and 34 of U.S. Patent No. 7,991,380 (“the ’380 patent”). The Commission’s notice of institution of enforcement proceeding named DeLorme as respondents. The Office of Unfair Import Investigations was also named as a party. Claims 5, 11-12, and 34 have been terminated from the enforcement proceeding.

On March 7, 2014, the ALJ issued her EID finding a violation of the Consent Order. She concluded that, after issuance of the consent order, DeLorme has sold or offered for sale within the United States after importation accused InReach 1.5 devices that infringe, via inducement, claims 1 and 2 of the ’380 patent. The ALJ also found the following: no induced infringement and therefore no violation of the Consent Order with respect to accused InReach SE devices; and no induced infringement and therefore no violation of the Consent Order with respect to any accused InReach devices sold before, and activated after, the effective date of the Consent Order. The ALJ also recommended a civil penalty of \$637,500 against DeLorme as an enforcement measure for the violation. On March 20, 2014, BriarTek, DeLorme, and the Commission investigative attorney (“IA”) each filed a petition for review of the EID; and on March 27, 2014, BriarTek, DeLorme, and the IA each filed a response to opposing petitions.

Having examined the record in this investigation, including the EID and the parties’ filings, the Commission has determined to review the EID in part. On review, the Commission has determined to reverse-in-part and vacate-in-part the EID’s findings. Specifically, the Commission has determined to reverse the ALJ’s finding of no induced infringement and no violation of the Consent Order with respect to accused InReach SE devices. This action results in a finding of a violation of the Consent Order with respect to accused InReach SE devices. The Commission also has determined to reverse the ALJ’s finding of no induced infringement with respect to accused InReach devices that were sold before, and activated after, the effective date of the Consent Order. This action does not change the ALJ’s finding of no violation with respect to these InReach devices sold before, and activated after, the effective date of the Consent Order. The Commission further determines to vacate the following: the portion of the ALJ’s analysis of direct infringement of claims 1 and 2 of the ’380 patent through “use” of the claimed system by an end user based on *Akamai Techs., Inc. v. Limelight Networks, Inc.*, 692 F.3d 1301, 1305 (Fed. Cir. 2012) (*en banc*), *cert. granted*, *Limelight Networks, Inc. v. Akamai Techs., Inc.*, 134 S. Ct. 895 (2014); and the portion of the ALJ’s analysis concerning specific intent for induced infringement of these claims based on *Akamai*. See EID at 85-86, 92.

The Commission may levy a civil penalty for violation of the Consent Order. When calculating a proportionate penalty, the Commission considers, *inter alia*, the six factors set forth in *Certain Erasable Programmable Read Only Memories (“EPROMs”)*, Inv. No. 337-TA-276 (Enforcement), Comm’n Op. at 23-24, 26 (July 19, 1991). See generally *Certain DC-DC*

*Controllers and Products Containing the Same*, Inv. No. 337-TA-698 (Enforcement), Comm'n Op. at 36-37 (Jan. 4, 2013).

**WRITTEN SUBMISSIONS:** The parties to the investigation are requested to file written submissions on the amount of civil penalty to be imposed for the violation of the Consent Order by the infringing InReach 1.5 and InReach SE devices, including whether the proposed civil penalty amount is appropriately proportionate to the value of the infringing InReach devices. The parties' submissions should cite all evidence in support of such amounts and shall address the factors set forth in *EPROMs*. The parties' submissions regarding the *EPROMs* public interest factor should discuss the potential effect of a civil penalty on the public health and welfare. Parties are also requested to provide detailed information regarding sales of infringing InReach devices after the effective date of the Consent Order relevant to calculating the amount of civil penalties and the total number of days in violation of the Consent Order. Specifically, for each day of sale after importation of the specific infringing InReach devices, please provide the following information: (1) identity of the device(s) sold; (2) number of devices sold; and (3) value of the devices sold. The written submissions must be filed no later than close of business on April 30, 2014. Reply submissions must be filed no later than the close of business on May 7, 2014. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-854") in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures*, [http://www.usitc.gov/secretary/fed\\_reg\\_notices/rules/handbook\\_on\\_electronic\\_filing.pdf](http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf)). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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 C.F.R. Part 210.

By order of the Commission.

A handwritten signature in black ink, appearing to read "Lisa R. Barton". The signature is fluid and cursive, with a large initial "L" and "B".

Lisa R. Barton  
Secretary to the Commission

Issued: April 23, 2014