

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN MARINE SONAR IMAGING
SYSTEMS, PRODUCTS CONTAINING
THE SAME, AND COMPONENTS
THEREOF**

Investigation No. 337-TA-926

**NOTICE OF THE COMMISSION'S FINAL DETERMINATION FINDING A
VIOLATION OF SECTION 337; ISSUANCE OF A LIMITED EXCLUSION ORDER
AND CEASE AND DESIST ORDERS; 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 found a violation of section 337 in this investigation and has (1) issued a limited exclusion order prohibiting importation of infringing marine sonar imaging systems, products containing the same, and components thereof and (2) issued cease and desist orders directed to the domestic respondents. The investigation is terminated.

FOR FURTHER INFORMATION: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-3042. 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 (<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 investigation on August 21, 2014, based on a complaint filed by Johnson Outdoors Inc. of Racine, Wisconsin and Johnson Outdoors Marine Electronics, Inc. of Eufaula, Alabama (collectively, "Johnson Outdoors"). 79 *Fed. Reg.* 49536 (Aug. 21, 2014). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (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 marine sonar imaging systems, products containing the same, and components thereof by reason of infringement of one or more of claims 1, 2, 17, 25, 26, 31, 32, 35, 36, 41-43, 53, and 56 of

U.S. Patent No. 7,652,952 (“the ’952 patent”); claims 1, 5, 7, 8, 21, 22, 24, 25, 28, and 29 of U.S. Patent No. 7,710,825 (“the ’825 patent”); and claims 14, 18, 21-23, 25, and 33 of U.S. Patent No. 7,755,974 (“the ’974 patent”). *Id.* The notice of investigation named the following respondents: Garmin International, Inc.; Garmin North America, Inc.; Garmin USA, Inc. all of Olathe, Kansas; and Garmin Corporation of New Taipei City, Taiwan (collectively, “Garmin”). *Id.* The Office of Unfair Import Investigations is not a party to the investigation.

On January 30, 2015, the parties entered into a stipulation that the domestic industry requirement was met. The parties also agreed to a stipulation regarding importation of Garmin accused products. That same day, Johnson Outdoors filed two unopposed motions for summary determination: (1) that Garmin’s importation and sales satisfy the importation requirement and (2) that Johnson Outdoors satisfies the domestic industry requirement. On March 24, 2015, the ALJ granted Johnson Outdoors’ summary determination motions in Order Nos. 14 and 15, respectively. The Commission determined not to review these orders. *See* Notice of Commission Determination Not to Review Two Initial Determinations Granting Unopposed Motions for Summary Determinations of Importation and the Existence of a Domestic Industry That Practices the Asserted Patents (April 22, 2015).

On July 13, 2015, the ALJ issued his final ID, finding a violation of section 337 by Garmin in connection with claims 14, 18, 21, 22, 23, and 33 of the ’974 patent. The ID found no violation of section 337 in connection with the asserted claims of the ’952 and ’825 patents; and claim 25 of the ’974 patent. Specifically, the ID found that the Commission has subject matter jurisdiction, *in rem* jurisdiction over the accused products, and *in personam* jurisdiction over Garmin. ID at 21. The ID further found that the accused products infringe asserted claims 14, 18, 21, 22, 23, and 33 of the ’974 patent but do not infringe the asserted claims of the ’952 and ’825 patents or claim 25 of the ’974 patent. *See* ID at 55-57, 58-59, and 60-62. The ID also found that Garmin failed to establish by clear and convincing evidence that the asserted claims of the ’952, ’825, or ’974 patents were anticipated or rendered obvious by the cited prior art references. *See id.* at 68-80, 89-100. Finally, the ID found that the ’952, ’825, and ’974 patents are not unenforceable due to inequitable conduct and that the ’952 patent is not invalid under 35 U.S.C. § 102(f) for derivation. ID at 80-83, 100-109.

On July 27, 2015, Garmin filed a petition for review of the ID. That same day, Johnson Outdoors filed a contingent petition for review of the ID. On August 4, 2015, the parties filed responses to the petitions.

On August 25, 2015, the Commission determined to review the final ID on all issues petitioned. 80 *Fed. Reg.* 55872-74 (Sept. 17, 2015). Specifically, the Commission asked the parties to discuss any impact on the ID’s findings if it were to construe the claim term “mounted to a boat” to mean “proximately secured to the boat in a fixed manner.”

On September 21, 2015, the parties filed written submissions on the issues under review, remedy, the public interest, and bonding. On September 28, 2015, the parties filed reply submissions.

Having examined the record of this investigation, including the final ID, and the parties' submissions, the Commission has determined to modify the ID's construction of the claim term "mounted to a boat," a claim term recited in each of the asserted claims of the '952, '974, and '825 patents (save for asserted claim 29 of the '825 patent), which the ID construed as "attached to a bottom surface of the boat." Instead, the Commission adopts the construction proposed by complainants before the ALJ and construes the limitation to mean "proximately secured to the boat in a fixed manner." The Commission finds that the record evidence supports the ID's findings on infringement and invalidity based on this construction. The Commission has determined to affirm the ID's finding of no violation of section 337 in connection with the asserted claims of the '952 patent, '825 patent, and claim 25 of the '974 patent. The Commission further finds a violation of Section 337 with respect to claims 14, 18, 21-23, and 33 of the '974 patent. The Commission adopts the ID's findings to the extent they are not inconsistent with the Commission opinion issued herewith.

Having found a violation of section 337 in this investigation, the Commission has determined that the appropriate form of relief is: (1) a limited exclusion order prohibiting the unlicensed entry of marine sonar imaging systems, products containing the same, and components thereof that infringe one or more of claims 14, 18, 21, 22, 23, and 33 of the '974 patent that are manufactured by, or on behalf of, or are imported by or on behalf of Garmin or any of its affiliated companies, parents, subsidiaries, agents, or other related business entities, or their successors or assigns; and (2) cease and desist orders prohibiting domestic respondents Garmin International, Inc.; Garmin North America, Inc.; and Garmin USA, Inc. from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, transferring (except for exportation), and soliciting U.S. agents or distributors for, marine sonar imaging systems, products containing the same, and components thereof covered by claims 14, 18, 21, 22, 23 and 33 of the '974 patent. The proposed cease and desist orders include the following exemptions: (1) if in a written instrument, the owner of the patents authorizes or licenses such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

The Commission has also determined that the public interest factors enumerated in section 337(d) and (f) (19 U.S.C. §§ 1337(d) and (f)) do not preclude issuance of the limited exclusion order or cease and desist orders. Finally, the Commission has determined that a bond in the amount of zero is required to permit temporary importation during the period of Presidential review (19 U.S.C. § 1337(j)) of marine sonar imaging systems, products containing the same, and components thereof that are subject to the remedial orders. The Commission's orders and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

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', with a stylized flourish at the end.

Lisa R. Barton
Secretary to the Commission

Issued: November 18, 2015