

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN ACCESS CONTROL
SYSTEMS AND COMPONENTS
THEREOF**

Investigation No. 337-TA-1016

**NOTICE OF COMMISSION DETERMINATION TO REVIEW IN PART A FINAL
INITIAL DETERMINATION FINDING A VIOLATION OF SECTION 337; SCHEDULE
FOR FILING WRITTEN SUBMISSIONS ON THE ISSUES UNDER REVIEW AND ON
REMEDY, THE PUBLIC INTEREST AND BONDING;
EXTENSION OF TARGET DATE**

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 the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on October 23, 2017, finding a violation of section 337 of the Tariff Act of 1930, as amended (19 USC 1337), as to claims 1-4, 7-12, 15, and 16 of U.S. Patent No. 7,161,319 (“the ’319 patent”) and no violation of section 337 as to claim 34 of U.S. Patent No. 7,339,336 (“the ’336 patent”). The Commission has also determined to extend the target date to March 2, 2018.

FOR FURTHER INFORMATION CONTACT: 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 (<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>. 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 9, 2016, based on a complaint filed by The Chamberlain Group, Inc. of Elmhurst, Illinois (“Chamberlain” or “CGI”). 81 FR 52713 (Aug. 9, 2016). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 USC 1337), in the importation into the United States, the sale for importation, and the sale within the United States after importation of

certain access control systems and components thereof by reason of infringement of one or more of claims 1, 10–12, and 18–25 of U.S. Patent No. 7,196,611 (“the ’611 patent”); claims 1–4, 7–12, 15, and 16 of the ’319 patent; and claims 7, 11–13, 15–23, and 34–36 of the ’336 patent. *Id.* The notice of investigation named the following respondents: Techtronic Industries Company Ltd. of Tsuen Wan, Hong Kong; Techtronic Industries North America Inc. of Hunt Valley, Maryland; One World Technologies, Inc. of Anderson, South Carolina; OWT Industries, Inc. of Pickens, South Carolina; ET Technology (Wuxi). Co., Ltd. of Zhejiang, China (collectively, “Respondents”); and Ryobi Technologies Inc. of Anderson, South Carolina (“Ryobi”). *Id.* The Office of Unfair Import Investigations is not a party to the investigation.

On October 27, 2016, the Commission determined not to review the ALJ’s order (Order No. 4) granting a motion to amend the Notice of Investigation to include the following two additional respondents: Techtronic Trading Limited of Kwai Chung, Hong Kong; and Techtronic Industries Factory Outlets Inc., d/b/a Direct Tools Factory Outlet of Anderson, South Carolina (collectively, “Techtronic”). *See* Order No. 4, Comm’n Notice of Non-Review (Oct. 27, 2016).

On November 7, 2016, the Commission determined not to review the ALJ’s order (Order No. 6) terminating the investigation as to Ryobi. *See* Order No. 6, Comm’n Notice of Non-Review (Nov. 7, 2016).

On March 15, 2017, the Commission determined not to review the ALJ’s order (Order No. 15) granting a motion to terminate the investigation as to Techtronic. Order No. 15, Comm’n Notice of Non-Review (Mar. 15, 2017).

On March 20, 2017, the Commission determined not to review the ALJ’s order (Order No. 28) granting a motion to terminate the investigation as to the ’611 patent. Order No. 28; Comm’n Notice of Non-Review (Mar. 20, 2017).

On March 27, 2017, the ALJ issued Order No. 23 granting Respondents’ motion for summary determination of non-infringement of the asserted claims of the ’319 patent, stemming from the ALJ’s construction of the claim term “wall console” to mean “a wall-mounted control unit including a passive infrared detector.” *See* Order No. 13 (*Markman* Order at 80).

The ALJ held an evidentiary hearing from May 1, 2017 through May 3, 2017, on issues solely relating to the ’336 patent.

On May 3, the Commission determined to review Order No. 23 that granted Respondents’ motion for summary determination of non-infringement of the ’319 patent. On review, the Commission determined to construe “wall console” as a “wall-mounted control unit,” vacated Order No. 23, and remanded the investigation as to the ’319 patent to the ALJ for further proceedings. *See* Comm’n Op. (May 5, 2017) at 1-2.

The ALJ held a second evidentiary hearing from July 12, 2017, through July 13, 2017, on issues relating to the ’319 patent.

On November 9, 2017, the Commission determined not to review the ALJ's order (Order No. 36) granting a motion to terminate the investigation as to certain accused products and claims 19-23 of the '336 patent. Order No. 36; Comm'n Notice of Non-Review (Nov. 9, 2017).

On October 23, 2017, the ALJ issued his final ID, finding a violation of section 337 by Respondents in connection with claims 1-4, 7-12, 15, and 16 of the '319 patent. Specifically, the ALJ found that the Commission has subject matter jurisdiction, *in rem* jurisdiction over the accused products, and *in personam* jurisdiction over Respondents. ID at 24-26. The ALJ also found that Chamberlain satisfied the importation requirement of section 337 (19 U.S.C. § 1337(a)(1)(B)). *Id.* The ALJ further found that the accused products directly infringe asserted claims 1-4, 7-12, 15, and 16 of the '319 patent, and that Respondents induce infringement of those claims. *See* ID at 130-141, 144. The ALJ also found that Respondents failed to establish that the asserted claims of the '319 patent are invalid for obviousness. ID at 151-212. With respect to the '336 patent, the ALJ found that Respondents do not directly or indirectly infringe asserted claim 34 and that claim 34 is not invalid as obvious. ID at 72-74, 105-119. The ALJ further found that claims 15, 19, and 34 of the '336 patent are invalid under 35 U.S.C. § 101 for reciting unpatentable subject matter and that claim 15 is invalid for anticipation but that claims 12, 14, and 19 have not been shown invalid for anticipation. ID at 74-103. Finally, the ALJ found that Chamberlain established the existence of a domestic industry that practices the asserted patents under 19 U.S.C. § 1337(a)(2). *See* ID at 257-261, 288-294.

Also on October 23, 2017, the ALJ issued his recommended determination on remedy and bonding. Recommended Determination on Remedy and Bonding ("RD"). The ALJ recommends that in the event the Commission finds a violation of section 337, the Commission should issue a limited exclusion order prohibiting the importation of Respondents' accused products and components thereof that infringe the asserted claims of the '319 patent. RD at 2. The ALJ also recommends issuance of cease and desist orders against respondents Techtronic Industries Company Ltd., Techtronic Industries North America Inc., One World Technologies, Inc., and OWT Industries, Inc. based on the presence of commercially significant inventory in the United States. RD at 5. With respect to the amount of bond that should be posted during the period of Presidential review, the ALJ recommends that the Commission set a bond in the amount of zero (*i.e.*, no bond) during the period of Presidential review. RD at 6-7.

On November 6, 2017, Respondents filed a petition for review as to the '319 patent and a contingent petition for review as to the '336 patent. *See* Respondents' Petition for Review. Also on November 6, 2017, Chamberlain filed a petition for review of the ID, primarily challenging the ALJ's findings of no violation of section 337 as it pertains to the '336 patent. *See* Complainant's Petition for Review of Initial Determination on Violation of Section 337.

On November 14, 2017, Chamberlain and Respondents filed their respective responses to the petitions for review. *See* Complainant's Response to Respondents' Petition for Review of Initial Determination on Violation of Section 337; Respondents' Response to Complainant's Petition for Review.

Having examined the record of this investigation, including the ALJ's final ID, the petition for review, and the response thereto, for the '319 patent the Commission has determined

to review (1) the ID's finding that a combination of prior art references Doppelt, Jacobs, and Gilbert fail to render the asserted claims obvious; and (2) the ID's finding that a combination of prior art references Matsuoka, Doppelt, and Eckel fail to render the asserted claims obvious. For the '336 patent the Commission has determined to review (1) the ID's finding that claim 34 recites ineligible patent subject matter under 35 U.S.C. § 101; and (2) the ID's finding that Pruessel, either alone or in combination with Koestler, fails to render claim 34 obvious.

In connection with its review, the Commission is interested in responses to the following question:

1. Given the ALJ's finding that Matsuoka, Doppelt, and Eckel are analogous references to the '319 patent, please discuss whether they disclose all elements of the asserted claims of the '319 patent. In particular please discuss motivations to combine them, if any.
2. Discuss whether Pruessel, either alone or in combination with Koestler, renders claim 34 of the '336 patent obvious.

The parties are requested to brief only the discrete issues above, with reference to the applicable law and evidentiary record. The parties are not to brief other issues on review, which are adequately presented in the parties' existing filings.

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 the 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 *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 U.S. 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. Complainants are requested to submit proposed remedial orders for the Commission’s consideration. Complainants are also requested to state the date that the patent expires and the HTSUS numbers under which the accused products are imported. Complainants are further requested to supply the names of known importers of the Respondents’ products at issue in this investigation. The written submissions and proposed remedial orders must be filed no later than close of business on January 5, 2018. Reply submissions must be filed no later than the close of business on January 12, 2018. Opening submissions are limited to 50 pages. Reply submissions are limited to 25 pages. Such submissions should address the ALJ’s recommended determinations on remedy and bonding. No further submissions on any of 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 eight 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-1016”) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.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 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel^[1], solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The Commission has also determined to extend the target date for completion of the above-captioned investigation to March 2, 2018.

^[1] All contract personnel will sign appropriate nondisclosure agreements.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 USC 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

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: December 22, 2017