

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN MOVABLE BARRIER
OPERATOR SYSTEMS AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1118
(Bond Return)

**NOTICE OF A COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL
DETERMINATION DENYING RESPONDENTS' MOTION FOR RETURN OF BONDS;
TERMINATION OF BOND RETURN PROCEEDING**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (the "Commission") has determined not to review an initial determination ("ID") (Order No. 45) denying a motion filed by respondents Nortek Security & Control, LLC of Carlsbad, California; Nortek, Inc. of Providence, Rhode Island; and GTO Access Systems, LLC of Tallahassee, Florida (collectively, "Nortek") for return of bonds posted in the above-captioned investigation. The bond return proceeding is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2382. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket system ("EDIS") at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 11, 2018, based on a complaint, as supplemented, filed by The Chamberlain Group, Inc. ("CGI") of Oak Brook, Illinois. 83 FR 27020-21 (June 11, 2018). The complaint alleges a violation of section 337 the Tariff Act, as amended, 19 U.S.C. 1337 ("Section 337") in the importation, sale for importation, or sale in the United States after importation of certain movable barrier operator ("MBO") systems that purportedly infringe one or more of the asserted claims of U.S. Patent Nos. 7,775,223 ("the '223 patent"); 8,587,404 ("the '404 patent"); and 6,741,052 ("the '052 patent"). *Id.* The Commission's notice of investigation named Nortek as respondents. *Id.* The Office of Unfair Import Investigations was not named as a party to this investigation. *See id.*

The Commission subsequently terminated the investigation with respect to certain patent claims withdrawn by CGI. *See* Order No. 16 (Feb. 5, 2019), *unreviewed by* Comm'n Notice (March 6, 2019); Order No. 27 (June 7, 2019), *unreviewed by* Comm'n Notice (June 27, 2019);

Order No. 31 (July 30, 2019), *unreviewed by Comm'n Notice* (Aug. 19, 2019); Order No. 32 (Sept. 27, 2019), *unreviewed by Comm'n Notice* (Oct. 17, 2019).

On November 25, 2019, the ALJ issued the final Initial Determination on Violation of Section 337 (“Final ID”) and Recommended Determination on Remedy and Bond (“RD”), finding no violation of Section 337 because the asserted claims of the ’223 and ’404 patents are not infringed and the asserted claim of the ’052 patent is invalid. The RD sets forth the ALJ’s recommendations on remedy and bond.

On the same date, the ALJ issued Order No. 38, granting CGI’s motion for summary determination that it satisfied the economic prong of the domestic industry requirement, pursuant to Section 337(a)(3)(B) (19 U.S.C. 1337(a)(3)(B)). Order No. 38 (Nov. 25, 2019).

On February 19, 2020, the Commission issued a notice of its determination to review Order No. 38 and to partially review the Final ID with respect to certain issues relating to each of the three asserted patents. 85 FR 10723-26 (Feb. 25, 2020).

On April 22, 2020, the Commission issued its final determination, affirming the ID’s finding that there was no violation with respect to either the ’404 patent or ’052 patent. Comm’n Notice at 3 (April 22, 2020). The Commission also vacated Order No. 38 and remanded the economic prong issue to the ALJ for further proceedings while the Commission continued to review issues relating to the ’223 patent. *Id.*; Order Vacating and Remanding Order No. 38 (April 22, 2020) (“Remand Order”).

On July 10, 2020, the ALJ issued the Remand Initial Determination (“Remand ID”), finding that CGI satisfied the economic prong of the domestic industry requirement. Remand ID (July 10, 2020). On September 9, 2020, the Commission determined to review the Remand ID. 85 FR 57249-51 (Sept. 15, 2020).

On December 3, 2020, the Commission determined to affirm the Remand ID, reversed the ID’s finding that Nortek did not infringe the ’223 patent, and found that Nortek violated Section 337 by way of infringing claims 1 and 21 of the ’223 patent. The Commission issued a limited exclusion order and cease and desist orders and directed Nortek to pay a bond equal to 100 percent of the entered value of the covered products imported during the period of Presidential review.

On June 16, 2020, CGI filed its notice of appeal from the final determination in the present investigation. The U.S. Court of Appeals for the Federal Circuit (“Federal Circuit”) docketed CGI’s appeal as Appeal No. 20-1965. On April 1, 2021, Nortek filed its cross-appeal, which the Federal Circuit docketed as Appeal No. 21-1829 and consolidated with Appeal No. 20-1965. The appeals are presently pending before the Federal Circuit.

On June 8, 2021, Nortek filed a motion for return of the bonds it posted in connection with products imported during the period of Presidential review, pursuant to Commission Rule 210.50(d)(1). On June 23, 2021, CGI filed an opposition to Nortek’s motion.

On October 22, 2021, the ALJ issued the subject ID (Order No. 45), denying Nortek’s motion as untimely because it was not filed within 90 days of the expiration of the Presidential

review period as well as premature because it was not filed within 30 days after the resolution of the appeal from the final determination. Order No. 45 (Oct. 22, 2021).

No party filed a petition for review of the subject ID.

Having reviewed the Remand ID, the parties' submissions, and the evidence of record, the Commission has determined not to review the subject ID.

The bond return proceeding is terminated.

The Commission voted to approve these determinations on December 8, 2021.

The authority for the Commission's determinations 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 CFR part 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton
Secretary to the Commission

Issued: December 8, 2021