

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN AUDIO PLAYERS AND
CONTROLLERS, COMPONENTS
THEREOF, AND PRODUCTS
CONTAINING THE SAME**

Investigation No. 337-TA-1191

**NOTICE OF COMMISSION DETERMINATION TO REVIEW AND AFFIRM AN
INITIAL DETERMINATION GRANTING SUMMARY DETERMINATION THAT THE
ECONOMIC PRONG OF THE DOMESTIC INDUSTRY REQUIREMENT IS SATISFIED**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (“ID”) (Order No. 35) of the presiding chief administrative law judge (“CALJ”) granting summary determination that the economic prong of the domestic industry requirement is satisfied.

FOR FURTHER INFORMATION CONTACT: Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3179. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (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: On February 11, 2020, the Commission instituted this investigation based on a complaint filed by Sonos, Inc. (“Sonos”) of Santa Barbara, California. 85 FR 7783 (Feb. 11, 2020). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), based on the importation into the United States, the sale for importation, or the sale within the United States after importation of certain audio players and controllers, components thereof, and products containing the same by reason of infringement of certain claims of U.S. Patent Nos. 9,195,258; 10,209,953; 8,588,949 (“the ’949 patent”); 9,219,959; and 10,439,896. *Id.* The complaint further alleges that a domestic industry exists. *Id.* The notice of investigation named as respondents Google LLC (“Google”) and Alphabet Inc.

(“Alphabet”), both of Mountain View, California. *Id.* The Office of Unfair Import Investigations (“OUII”) is also named as a party. *Id.*

On September 21, 2020, the Commission determined to terminate the investigation as to Alphabet based on withdrawal of the allegations in the complaint directed to Alphabet. Order No. 18 (Sept. 1, 2020), *unreviewed by Comm’n Notice* (Sept. 21, 2020). On November 24, 2020, the Commission determined that the importation requirement has been satisfied. Order No. 27 (Oct. 27, 2020), *unreviewed by Comm’n Notice* (Nov. 24, 2020). On February 2, 2021, the Commission determined that the technical prong of the domestic industry requirement has been satisfied as to the ’949 patent. Order No. 32 (Jan. 4, 2021), *unreviewed by Comm’n Notice* (Feb. 2, 2021).

On December 4, 2020, Sonos filed a motion for summary determination that the economic prong of the domestic industry requirement is satisfied as to all asserted patents. The motion states that “Google does not oppose the motion.” *See Mot.* at 2. Neither Google nor OUII filed a response to the motion.

On January 14, 2021, the CALJ issued the subject ID granting the motion. The ID finds that, in light of the undisputed evidence presented, “no genuine issue of material fact [] remains and a summary determination that the economic prong of the domestic industry requirement is satisfied is appropriate.” ID at 4. No petitions for review of the subject ID were filed.

The Commission has determined to review and affirm the subject ID. Chair Kearns notes that it remains an open question to him whether an economic prong analysis should include all expenditures, including expenditures for foreign manufacturing, rather than just those concerning a single category like R&D. *See Certain Movable Barrier Operator Systems and Components Thereof*, Inv. No. 337-TA-1118, Separate Views of Chair Kearns Regarding Economic Prong Issues (Jan. 12, 2021). In affirming the ALJ’s grant of summary determination here, he finds that given the apparent importance of R&D to this industry and the large share of R&D occurring in the United States, it is unlikely that information on other types of investments would cause him to question the existence of a domestic industry.

The Commission vote for this determination took place on February 16, 2021.

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 CFR Part 210).

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: February 16, 2021