

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN ROBOTIC FLOOR
CLEANING DEVICES AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1252

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

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 a final initial determination (“ID”) of the presiding administrative law judge (“ALJ”) finding a violation of section 337 by the accused products of respondents. The Commission requests written submissions from the parties on the issues under review and from the parties, interested government agencies, and other interested persons on the issues of remedy, the public interest, and bonding, under the schedule set forth below. The Commission has also extended the target date for completion of the investigation to March 6, 2023.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, D.C. 20436, telephone (202) 708-2310. 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: The Commission instituted this investigation on March 2, 2021, based on a complaint filed on behalf of iRobot Corporation (“iRobot”) of Bedford, Massachusetts. 86 FR 12206-07 (Mar. 2, 2021). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain robotic floor cleaning devices and components thereof based on the infringement of certain claims of U.S. Patent Nos. 9,884,423 (“the ’423 patent”); 7,571,511 (“the ’511 patent”); 10,813,517 (“the ’517 patent”); 10,835,096 (“the ’096 patent”); and 10,296,007

(“the ’007 patent”). The Commission’s notice of investigation named SharkNinja Operating LLC, SharkNinja Management LLC, SharkNinja Management Co., SharkNinja Sales Co., and EP Midco LLC, all of Needham, Massachusetts; and SharkNinja Hong Kong Co. Ltd. of Hong Kong Island, Hong Kong as respondents (collectively, the “Respondents” or “SharkNinja”). The Office of Unfair Import Investigations is not participating in the investigation.

The ’007 patent has been terminated from the investigation. *See* Order No. 23 (Sept. 13, 2021), *unreviewed by* Comm’n Notice (Oct. 5, 2021); Order No. 38 (Jan. 4, 2022), *unreviewed by* Comm’n Notice (Jan. 25, 2022). Accordingly, at the ALJ’s evidentiary hearing, claims 9, 12, and 23 of the ’423 patent; claims 12 and 23 of the ’511 patent; claims 1 and 9 of the ’517 patent; and claims 17 and 26 of the ’096 patent were still pending.

On December 30, 2021, the ALJ issued a *Markman* Order (Order No. 37) construing the terms in dispute for all asserted patents.

On October 7, 2022, the ALJ issued the final ID finding: (1) a violation of section 337 based on infringement (*i.e.*, direct and induced) of asserted claims 9 and 12 of the ’423 patent and direct infringement of asserted claims 1 and 9 of the ’517 patent; (2) no infringement of claim 23 of the ’423 patent; (3) no violation as to claims 17 and 26 of the ’096 patent; and (4) no violation as to claims 12 and 23 of the ’511 patent. The ID further found that: (1) the second category of SharkNinja’s Series 3 redesigned products is not subject to adjudication; (2) iRobot has satisfied the domestic industry requirement with respect to all remaining patents in the investigation; (3) SharkNinja failed to prove, by clear and convincing evidence, that asserted claims 9, 12, and 23 of the ’423 patent are invalid under 35 U.S.C. 101, 102, or 103. The ALJ recommended, should the Commission find a violation, issuing a limited exclusion order directed to SharkNinja’s infringing products and a cease and desist order directed to SharkNinja and requiring a bond in the amount of twenty percent (20%) for importation of infringing articles during the period of Presidential review.

On October 24, 2022, SharkNinja and iRobot each petitioned for review of certain aspects of the final ID. On November 1, 2022, SharkNinja and iRobot each filed a response in opposition to each other’s petition for review.

On November 16, 2022, SharkNinja filed a motion to submit notice that the U.S. Patent Trial and Appeal Board (“PTAB”) issued a Final Written Decision (“FWD”) (Nov. 14, 2022) finding, *inter alia*, asserted claims 12 and 23 of the ’423 patent unpatentable. On November 18, 2022, iRobot filed a response in opposition to the motion. On December 1, 2022, SharkNinja filed a motion to submit information regarding iRobot’s failure to appeal a PTAB FWD rendering the asserted claims of the ’511 patent unpatentable. The Commission has determined to grant both motions.

The Commission received no public interest comments from the public in response to the Commission's Federal Register notice seeking comment on the public interest. 87 FR 62451-52 (Oct. 14, 2022). iRobot submitted public interest comments pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)).

Having reviewed the record of the investigation, including the final ID, the parties' submissions to the ALJ, and the parties' briefing to the Commission, the Commission has determined to review the final ID in part. Specifically, the Commission has determined to review the ID's findings that: (1) for the '511 patent, estoppel applies to the Trilobite prior art device and claims 1, 10, 12, and 23 are invalid based on the PTAB's finding that the claims are unpatentable; (2) for the '423 patent, (i) claim 9 of the '423 patent is practiced by the domestic industry products; (ii) SharkNinja's accused robots with forward-docking, *i.e.*, the IQ, AI, and AI-WD products, do not infringe claim 23 of the '423 patent; (iii) the prior art Dottie robot does not anticipate claim 23 of the '423 patent; (iv) the prior art combination of Dottie and Everett and the prior art combination of Dottie and Kim do not render claims 12 or 23, respectively, of the '423 patent obvious under 35 U.S.C. 103; (v) iRobot presented insufficient evidence of secondary considerations of non-obviousness with respect to claim 23; and (vi) claim 23 of the '423 patent is directed to patent-eligible subject matter under 35 U.S.C. 101; (3) for the '517 patent, (i) the "receiving system" for claims 1 and 9 is not means-plus-function; (ii) claims 1 and 9 are infringed by SharkNinja's accused products; (iii) claims 1 and 9 are practiced by iRobot's domestic industry products; and (iv) claims 1 and 9 are not anticipated by the asserted prior art (Kawakami); and (4) for all remaining asserted patents, *i.e.*, the '511, '423, '517, and '096 patents, iRobot satisfied the economic prong of the domestic industry requirement.

The Commission has determined not to review the remainder of the final ID, including the final ID's finding of no violation as to the '096 patent.

The Commission has also determined to extend the target date for completion of the investigation to March 6, 2023.

In connection with its review, Commission requests responses to the following questions. The parties are requested to brief their positions with reference to the applicable law and the existing evidentiary record.

1. With respect to claim 12 of the '423 patent, assuming that a person of ordinary skill in the art would have been familiar with the interchangeability of sonar and infrared signals, is there evidence in the record (please cite specifically) that suggests that a person of ordinary skill in the art would have been motivated to combine the Dottie robot with the left and right signal docking system disclosed in Everett? Please also include (by citing specifically to the record) any relevant evidence of secondary considerations of non-obviousness with respect to claim 12.
2. If the Commission were to agree with SharkNinja's argument in its petition for review that the "receiving system" term of the asserted claims of the '517 patent

should be construed as means-plus-function, (i) what would be the function and the corresponding structure (and equivalents thereof) described in the specification, and (ii) what is the impact on infringement, the technical prong of the domestic industry requirement, and invalidity (*i.e.*, anticipation by Kawakami)?

The parties are invited to brief only the discrete issues requested above. 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 results in the exclusion of the subject articles from entry into the United States, and/or (2) issue a cease and desist order 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, Comm'n Op. at 7-10 (December 1994).

When 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.

When the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* section 337(j), 19 U.S.C. § 1337(j) and the 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. 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.

In its initial submission, Complainant is also requested to identify the remedy sought and is requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to provide the HTSUS subheadings under which the accused products are imported and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on **January 18, 2023**. Reply submissions must be filed no later than the close of business on **January 25, 2023**. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Opening submissions are limited to 30 pages. Reply submissions are limited to 20 pages. 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. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1252) 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 by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed with the Commission and served on any parties to the investigation within two business days of any confidential filing. 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, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on January 4, 2023.

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.

A handwritten signature in cursive script, appearing to read "Katherine M. Hiner".

Katherine M. Hiner
Acting Secretary to the Commission

Issued: January 4, 2023