



INTERNATIONAL TRADE COMMISSION

Investigation No. 337-TA-965

Certain Table Saws Incorporating Active Injury Mitigation Technology and Components Thereof

Commission Determination Not to Review a Final Initial Determination Finding a Violation of Section 337; Schedule for Briefing on Remedy, the Public Interest, and Bonding

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 a final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”), finding a violation of section 337 of the Tariff Act of 1930, as amended. The Commission has also set a schedule for briefing on remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone (202) 708-5468. 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, SW, 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 September 1, 2015, based on a complaint filed by SawStop, LLC, and SD3, LLC (together, "SawStop"). 80 FR 52791-92 (Sept. 1, 2015). The amended complaint alleged 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 table saws incorporating active injury mitigation technology and components thereof by reason of infringement of certain claims of United States Patent Nos. 7,225,712 ("the '712 patent"); 7,600,455 ("the '455 patent"); 7,610,836 ("the '836 patent"); 7,895,927 ("the '927 patent"); 8,011,279 ("the '279 patent"); and 8,191,450 ("the '450 patent"). The notice of investigation named as respondents Robert Bosch Tool Corp. of Mount Prospect, Illinois, and Robert Bosch GmbH of Baden-Wuerttemberg, Germany (together, "Bosch"). *Id.* at 52792. The Office of Unfair Import Investigations is not a party to the investigation. *Id.*

The Commission terminated the investigation with respect to the '836 and '450 patents based on SawStop's withdrawal of allegations concerning those patents. Order No. 8 (Mar. 10, 2016), *not reviewed*, Notice (Apr. 4, 2016); Order No. 13 (May 3, 2016), *not reviewed*, Notice (May 23, 2016).

On January 27, 2016, SawStop moved for a summary determination that it satisfied the economic prong of the domestic industry requirement. On February 8, 2016, Bosch indicated that it did not oppose the motion. On March 22, 2016, the ALJ granted the unopposed motion and determined that SawStop satisfied the economic prong of the

domestic industry requirement. Order No. 10 (Mar. 22, 2016), *not reviewed*, Notice (Apr. 21, 2016).

On September 9, 2016, the ALJ issued his final initial determination finding a violation of section 337 with respect to the '927 and '279 patents, and no violation of section 337 with respect to the '712 and '455 patents. Specifically, he found that Bosch did not directly or contributorily infringe the '712 and '455 patents, but found that Bosch's REAXX table saw directly infringed the '927 and '279 patents and that Bosch's activation cartridges contributorily infringed the '927 and '279 patents. He also found that Bosch had failed to show that any of the patent claims were invalid, and that SawStop satisfied the domestic industry requirement with respect to all four patents. Based on these findings, the ALJ recommended that a limited exclusion order issue against Bosch, that a cease and desist order issue against Robert Bosch Tool Corp., and that the bond during the period of Presidential review be set at zero percent. He also recommended that the scope of the exclusion order and cease and desist order specifically cover the contributorily infringing activation cartridges.

On September 26, 2016, SawStop and Bosch each petitioned for review of the ID. On October 4, 2016, the parties opposed each other's petitions. Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined not to review the final ID.

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 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 (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 a cease and desist order 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. The Commission is particularly interested in briefing on the following issues:

1. The parties dispute whether SawStop would be able to satisfy the market demand for table saws with active injury mitigation technology if the Commission issues a remedy against Bosch. Please discuss whether SawStop would be able to satisfy that demand quantitatively and qualitatively. How could remedial orders be tailored to address any concerns about the ability of SawStop (or other suppliers) to satisfy demand?
2. Bosch requests that any Commission remedial order have a service and repair provision allowing Bosch to import and sell replacement parts, including its activation cartridges. Please discuss whether such a provision is appropriate.

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 FR 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: 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, which issued on September 20, 2016. SawStop is also requested to submit proposed remedial orders for the Commission's consideration. SawStop is additionally requested to state the date that the '927 and '279 patents expire, the HTSUS numbers under which the subject articles are imported, and to supply a list of known importers of the subject articles. The written submissions, exclusive of any exhibits, must not exceed 20 pages, and must be filed no later than close of business on November 22, 2016. Reply submissions must not exceed 10 pages, and must be filed no later than the close of business on December 2, 2016. No further submissions on 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 8 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 CFR § 210.4(f)). Submissions should refer to the investigation number (“Inv. No. 337-TA-965”) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.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.

^[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 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: November 10, 2016

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