7020-02

INTERNATIONAL TRADE COMMISSION

Investigation No. 337-TA-968

Certain Radiotherapy Systems and Treatment Planning Software, and Components Thereof

Commission Determination to Grant a Joint Motion to Terminate the Investigation on the Basis of a Settlement Agreement; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (the "Commission") has determined to grant a joint motion to terminate the above-captioned investigation based on a settlement agreement.

FOR FURTHER INFORMATION, CONTACT: Ron Traud, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-3427. 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, DC 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 October 30, 2015, based on a complaint filed by Varian Medical Systems, Inc. of Palo Alto, California; and Varian Medical Systems International AG of ZG, Switzerland (collectively, "Varian"). 80 FR 66934 (Oct. 30, 2015). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337"), in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain radiotherapy systems and treatment planning software, and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 7,945,021 ("the '021 patent"); 8,116,430 ("the '430 patent"); 8,867,703 ("the '703 patent"); 7,880,154 ("the '154 patent"); 7,906,770 ("the '770 patent"); and 8,696,538 ("the '538 patent"). *Id.* The notice of investigation named as respondents Elekta AB of Stockholm, Sweden; Elekta Ltd. of Crawley, United Kingdom; Elekta GmbH of Hamburg, Germany; Elekta Inc. of Atlanta, Georgia; IMPAC Medical Systems, Inc. of Sunnyvale, California; Elekta Instrument (Shanghai) Limited of Shanghai, China; and Elekta Beijing Medical Systems Co. Ltd. of Beijing, China (collectively, "Elekta"). The Office of Unfair Import Investigations ("OUII") also was named as a party to the investigation. *Id.*

Prior to the evidentiary hearing, Varian withdrew its allegations as to certain patent claims and also added additional claims. *See* Notice of Commission Determination Not to Review an Initial Determination Granting a Motion to Amend the Complaint and Notice of Investigation (Apr. 4, 2016). Varian proceeded at the evidentiary hearing on the following patents and claims: claims 1, 4, 9, and 15 of the '021 patent; claims 6 and 18 of the '430 patent; claim 1 of the '703 patent; claims 23 and 26 of the '154 patent; claims 61, 67, and 68 of the '770 patent; and claims 26 and 41 of the '538 patent.

On October 27, 2016, the administrative law judge (the "ALJ") issued his final initial determination (the "Final ID"), which found a violation of section 337 by Elekta as to claims 23 and 26 of the '154 patent; claims 26 and 41 of the '538 patent; and claim 67 of the '770 patent. The Final ID found no violation of section 337 in connection with claim 61 of the '770 patent; claims 1, 4, 9, and 15 of the '021 patent; claims 6 and 18 of the '430 patent; and claim 1 of the '703 patent. *See* Final ID at 462-63. The parties each petitioned for review of the Final ID. On January 13, 2017, the Commission determined to review the Final ID's conclusion that the claims asserted for infringement and/or domestic industry of the '154 patent, the '770 patent, and the '538 patent are not invalid as obvious. 82 FR 7856 (Jan. 23, 2017). As to this issue, the Commission remanded the investigation to the ALJ. *Id.* The Commission also determined to review the Final ID's determinations regarding (1) the obviousness of the asserted claims of the '021 patent, the '430 patent, and the '703 patent; (2) the claim construction of the claim term "communications network," as found in the asserted claims of the '021 and '430 patents; (3) the anticipation of claim 18 of the '430 patent by the Jaffray MICCAI 2001 reference; and (4) the infringement of claim 18 of the '430 patent and the asserted claims of the '154, '538, and '770 patents. *Id.* On March 31, 2017, the ALJ issued his remand initial determination (the "Remand ID"), finding the claims subject to the remand to be nonobvious. Remand ID at 27.

On April 14, 2017, the private parties filed a Joint Motion to Terminate the Investigation Based on a Settlement Agreement (the "Motion") and a confidential and a public version of the settlement agreement (the "Agreement"). On April 25, 2017, OUII filed a response supporting the Motion.

The Commission has determined that the Motion complies with the requirements of section 210.21(b)(1) of the Commission's Rules of Practice and Procedure (19 CFR 210.21(b)(1)), and that there are no extraordinary circumstances that would prevent the requested termination. The Commission also finds that granting the Motion would not be contrary to the public interest pursuant to section 210.50(b)(2) of the Commission's Rules of Practice and Procedure (19 CFR 210.50(b)(2)). Accordingly, the Commission hereby grants the Motion. This investigation is terminated.

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

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