



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-979]

Certain Radio Frequency Identification (“RFID”) Products and Components Thereof

Commission Determination Finding No Violation of Section 337; Termination 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 find no violation of section 337 of the Tariff Act of 1930, in the above-identified investigation. The investigation is terminated in its entirety.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone (202) 205-2392. 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 at <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 January 11, 2016, based on a complaint filed by Neology, Inc. of Poway, California (“Neology”).

81 FR 1205-06 (Jan. 11, 2016). The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain radio frequency identification (“RFID”) products and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 8,325,044 (“the ’044 patent”); 7,119,664 (“the ’664 patent”); and 8,587,436 (“the ’436 patent”). The complaint further alleges that an industry in the United States exists as required by 19 U.S.C. § 1337(a)(2). The notice of investigation named numerous respondents. Respondents Kapsch TrafficCom IVHS, Inc. of McLean, Virginia; Kapsch TrafficCom Holding Corp. of McLean, Virginia; Kapsch TrafficCom Canada, Inc. of Mississauga, Ontario, Canada; Star Systems International, Ltd. of Kwai Chung, Hong Kong; and STAR RFID Co., Ltd. of Bangkok, Thailand (collectively, “Respondents”) remain in the investigation. The Office of Unfair Import Investigations is also a party in this investigation.

All asserted claims of the ’664 patent and certain asserted claims of the ’044 patent and the ’436 patent have been terminated from the investigation. *See* Comm’n Notice (Sept. 27, 2016). Only claims 13, 14, and 25 of the ’044 patent and claims 1, 2, and 4 of the ’436 patent remain in the investigation (collectively, “the Asserted Claims”).

On June 22, 2017, the ALJ issued her final ID finding no violation of section 337 by the Respondents in connection with the Asserted Claims. The final ID found that all of the Asserted Claims are invalid on multiple grounds. Had the Asserted Claims not been found invalid, the final ID also found that the accused products infringe the Asserted Claims; that Neology’s domestic industry products practice claim 25 of the ’044 patent and claims 1, 2, and 4 of the ’436 patent; and that Neology has satisfied the economic prong of the domestic industry requirement as

to the '044 and the '436 patents.

Neology filed a timely petition for review of the final ID, challenging the final ID's finding that the Asserted Claims are invalid. That same day, the Commission's Investigative Attorney ("IA") filed a contingent petition for review of the final ID and Respondents filed a joint contingent petition for review of the final ID. Neology and the IA both challenge certain of the final ID's findings with respect to the economic prong of the domestic industry requirement as to the '436 patent. Respondents also challenge the final ID's finding that the Asserted Claims are not invalid under 35 U.S.C. § 101. On July 13, 2017, the parties each filed a timely response to the petitions for review. On July 24, 2017, Respondents filed their public interest comments pursuant to Commission Rule 210.50(a)(4). Two days later, Neology filed a response to Respondents' public interest comments. The Commission also received public interest comments from multiple non-parties.

On August 16, 2017, the Commission determined to review-in-part the final ID. Specifically, the Commission determined to review the following findings in the final ID: (1) the Asserted Claims are not entitled to claim priority to an earlier filing date; (2) the Asserted Claims are invalid under 35 U.S.C. §§ 102, 103, and/or 112; (3) the Asserted Claims are not invalid under 35 U.S.C. § 101; and (4) Neology has satisfied the economic prong of the domestic industry requirement with respect to the '436 patent. The Commission requested briefing from the parties on certain issues under review. The Commission did not solicit briefing from the parties and from the public on the issues of remedy, bonding, and the public interest.

Having reviewed the parties' submissions and the record evidence, the Commission has determined to affirm, with modified reasoning, the ID's finding of no violation of section 337 by

the Respondents in connection with the Asserted Claims because Respondents have shown that the Asserted Claims are invalid under 35 U.S.C. §§ 102, 103 and/or 112. The Commission has also determined to affirm with modifications the ID's finding that the Asserted Claims are not entitled to claim priority to an earlier filing date. The Commission has further determined to take no position on the ID's findings that the Asserted Claims are directed at patent eligible subject matter under 35 U.S.C. § 101 and that Neology has satisfied the economic prong of the domestic industry requirement with respect to the '436 patent. A Commission opinion will be issued shortly.

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 C.F.R. Part 210.

By order of the Commission.

Issued: October 23, 2017.

Lisa R. Barton,
Secretary to the Commission.

[FR Doc. 2017-23366 Filed: 10/26/2017 8:45 am; Publication Date: 10/27/2017]