



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1086]

Certain Mounting Apparatuses for Holding Portable Electronic Devices and Components Thereof; Notice of a Commission Determination Not to Review a Remand Initial Determination Finding a Violation of Section 337; Request for Written Submissions on Remedy, Bonding, and the Public Interest; 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 not to review a remand initial determination (“RID”) (Order No. 16) of the chief administrative law judge (“ALJ”), finding a violation of section 337 with respect to U.S. Patent No. 8,544,161 (“the ’161 patent”). The Commission is requesting written submissions on remedy, bonding, and the public interest and has extended the target date for completion of the investigation to June 13, 2019.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-2310. 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 November 28, 2017, based on a complaint filed on behalf of National Products Inc. ("NPI") of Seattle, Washington. 82 FR 56266-67. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by reason of infringement of certain claims of the '161 patent, U.S. Patent Nos. D703,657; 8,186,636; D571,278 ("the D'278 patent"); D574,204; and 9,568,148; and U.S. Trademark Registration No. 4,254,086. The Commission's notice of investigation named ten respondents, including Shenzhen Chengshuo Technology Co., Ltd., d/b/a WUPP ("WUPP") of Zhejiang, China; Foshan City Qishi Sporting Goods, Technology Co., Ltd., Guangzhou Kean Products Co., Ltd., Gangzhou Kaicheng Metal Produce Co., Shenzhen Smilin Electronic Technology, Co., Ltd., and Shenzhen New Dream Intelligent Plastic, Co., Ltd., all of Guangdong, China; Chengdu MWUPP Technology Co., Ltd. of Sichuan Province, China; and Shenzhen Yingxue Technology Co., Ltd., d/b/a Yingxue Tech. ("Yingxue Technology"), Shenzhen Shunsihang Technology Co., Ltd., d/b/a BlueFire ("BlueFire"), and Prolech Electronics Limited, all of Shenzhen, China. The Office of Unfair Import Investigations ("OUII") is also a party to the investigation. All respondents in the investigation have been found in default, and the D'278 patent has been terminated from the investigation. *See* Comm'n Notice (June 5, 2018); Comm'n Notice (July 18, 2018).

On November 28, 2018, the ALJ issued an ID granting in part NPI's motion (as supplemented on July 10, July 19, and September 14, 2018) for summary determination of

violation of section 337 by the defaulting respondents and request for issuance of a general exclusion order (“GEO”). Regarding the ’161 patent, NPI alleged induced and contributory infringement of claim 1 of this patent with respect to the accused WUPP X-Grip Mount. The ALJ found that NPI did not establish direct infringement of this claim by substantial, reliable, and probative evidence.

On March 18, 2019, the Commission issued notice of its determination: (1) to review the ID’s finding that direct infringement was not established with respect to claim 1 of the ’161 patent; and (2) on review, to reverse this finding and remand to the ALJ the issue of whether NPI has established induced and contributory infringement of this claim. The Commission determined not to review the remainder of the ID.

On April 16, 2019, the ALJ issued an RID finding a violation of section 337 with respect to claim 1 of the ’161 patent. Specifically, the ALJ found that NPI has shown induced and contributory infringement of this claim by respondents WUPP and Yingxue Technology by substantial, reliable, and probative evidence. No party petitioned for review of the subject RID.

Having reviewed the record, the Commission has determined not to review the RID and has extended the target date for completion of the investigation to June 13, 2019.

As noted above, ten respondents have been found in default. Section 337(g) and Commission Rule 210.16(c) authorize the Commission to issue relief against respondents found in default unless, after considering the public interest, it finds that such relief should not issue. In its motion for summary determination, NPI requested a GEO.

In connection with the final disposition of this investigation, 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).

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 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.

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 *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 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.

Complainant and OUII are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the date that the asserted patents expire, the HTSUS numbers under which the accused products are imported, and to supply the names of known importers of the products at issue in this investigation. The written submissions and proposed remedial orders must be filed no later than close of business on May 17, 2019. Reply submissions must be filed no later than the close of business on May 24, 2019. 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 eight true paper copies to the Office of the Secretary 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-1086") in a prominent place on the cover page and/or the first page. (*See Handbook on Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary at (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with 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 personnel¹, solely for cybersecurity purposes. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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.

Issued: May 10, 2019.

Katherine Hiner,

Acting Secretary to the Commission.

¹ All contract personnel will sign appropriate nondisclosure agreements.

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