



7020-02

INTERNATIONAL TRADE COMMISSION

Investigation No. 337-TA-807

CERTAIN DIGITAL PHOTO FRAMES AND IMAGE DISPLAY DEVICES AND COMPONENTS THEREOF

COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL DETERMINATION EXTENDING THE TARGET DATE AND FINDING THE REMAINING RESPONDENT PANDIGITAL, INC. IN DEFAULT AND IN VIOLATION OF SECTION 337; AND REQUEST FOR SUBMISSIONS

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 an initial determination (“ID”) (Order No. 48) of the presiding administrative law judge (“ALJ”): (1) extending the target date for completion of the above-captioned investigation by nine days to March 7, 2013; and (2) finding the remaining respondent Pandigital, Inc. (“Pandigital”) of Dublin, California in default and in violation of section 337. The Commission also is requesting written submissions including submissions on remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 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, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS)

at <http://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 27, 2011, based on a complaint filed by Technical Properties Limited, LLC ("TPL") of Cupertino, California. *76 Fed. Reg.* 59737-38. The complaint alleges a violation 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 digital photo frames and image display devices and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 6,976,623 ("the '623 patent"); 7,162,549; 7,295,443; and 7,522,424. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named twenty respondents including Nextar Inc. of La Verne, California; WinAccord Ltd. of Taipei, Taiwan; and WinAccord U.S.A., Inc. of San Jose, California (collectively, "the WinAccord respondents"); Aiptek International Inc. ("Aiptek") of Hsinchu, Taiwan; and Pandigital. All other respondents have been terminated from the investigation by consent order stipulation or settlement agreement. The '623 patent was terminated from the investigation with respect to Pandigital by consent order stipulation. The complaint and notice of investigation were served on all respondents including Aiptek and the WinAccord respondents on September 22, 2011. *See* Notice of Investigation, Certificate of Service (Sept. 22, 2011) (EDIS Document 459720). No Commission investigative attorney is participating in the investigation.

On December 6 and 22, 2011, respectively, the ALJ issued IDs finding the WinAccord respondents and Aiptek in default, pursuant to 19 C.F.R. §§ 210.13 and 210.16, because these respondents did not respond to the complaint and notice of investigation, or to Order Nos. 13

and/or 15 to show cause. On January 3 and 9, 2012, respectively, the Commission determined not to review the IDs finding the WinAccord respondents and Aiptek in default.

On March 8, 2012, complainant TPL filed a declaration requesting immediate relief against the defaulting respondent Aiptek under Commission rule 210.16(c)(1), 19 C.F.R. § 210.16(c)(1), which it later withdrew.

On October 9, 2012, the ALJ issued Order No. 47 to Pandigital show cause why it should not be found in default and in violation of section 337 pursuant to 19 C.F.R. § 210.17 because respondent did not file a pre-hearing statement and brief as required by the ALJ's Procedural Schedule. As of November 7, 2012, Pandigital had not responded to Order No. 47 and the ALJ issued the subject ID finding Pandigital in default and in violation of section 337. The ID also extended the target date of the investigation by nine days from February 26, 2013 to March 7, 2013. The ID also contained the ALJ's recommended determination on remedy. Specifically, the ALJ recommended issuance of a limited exclusion order, cease and desist order, and a bond in the amount of 100 percent of the covered products during the period of Presidential review with respect to Pandigital. No party petitioned for review of the ID.

The Commission has determined not to review the subject ID. The Commission notes that in the subject ID, the ALJ retroactively extended the target date by nine days, to account for the delay in the issuance of his final ID finding Pandigital in default and in violation of section 337. The delay was caused by TPL's failure to properly serve its motion seeking default against Pandigital. Extension of the target date in this circumstance was not necessary because the Commission did not require additional time to complete this investigation. In any event, we note that an ID extending the target date must be issued in advance of the final ID, rather than retroactively.

Section 337(g)(1) (19 U.S.C. § 1337(g)(1)) and Commission Rule 210.16(c) (19 C.F.R. § 210.16(c)) authorize the Commission to order limited relief against respondents, such as Aiptek and the WinAccord respondents, found in default for failure to respond to the complaint and notice of investigation, unless after consideration of the public interest factors, it finds that such relief should not issue. With respect to Pandigital, 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 one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. *See* 19 U.S.C. § 337(d)(1). 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 In the Matter of 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 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.

The Commission also requests additional briefing from TPL addressing the following issues:

- (1) Assuming TPL requests a cease and desist order ("CDO") against Aiptek, does the evidence support a finding that Aiptek maintains a commercially significant inventory of accused products in the United States or otherwise has significant domestic ties sufficient to warrant imposition of a CDO as to this foreign respondent? *See Certain Agricultural Tractors, Lawn Tractors, Riding Lawnmowers, and Components Thereof*, Inv. No. 337-TA-486, Comm'n Op. at 17 (Aug. 19, 2003).
- (2) In its previous briefing of March 8 and April 23, 2012, TPL previously asserted that section 337(j)(3) does not permit importation under bond with respect to a defaulting respondent under section 337(g). Does TPL maintain that position?
- (3) What evidence does Complainant rely upon in support of a bond amount for Aiptek, Pandigital, and the WinAccord respondents? In your answer, please address the applicability of Order Nos. 9, 12, 16, 18-20, 23, and 28.

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 as well as issues concerning whether respondents found in default under section 337(g) may import under bond during the period of Presidential review.

Complainant is also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the dates that the asserted patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on December 21, 2012. Reply submissions must be filed no later than the close of business on December 28, 2012. 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 Commission rule 210.4(f), 19 C.F.R. § 210.4(f). Submissions should refer to the investigation number ("Inv. No. 337-TA-807") 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).

Any person desiring to submit a document (or portion thereof) 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 section 201.6 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

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 sections 210.17, 210.42-46, and 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.17, 210.42-46, and 210.50).

By order of the Commission.

Lisa R. Barton
Acting Secretary to the Commission

Issued: December 7, 2012

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