



7020-02

## INTERNATIONAL TRADE COMMISSION

### Investigation No. 337-TA-926

#### **Certain Marine Sonar Imaging Systems, Products Containing the Same, and Components Thereof**

#### **Commission Determination to Review a Final Initial Determination Finding a Violation of Section 337; Schedule for Filing Written Submissions on the Issues Under Review and 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 to review the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on July 13, 2015, finding a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), as to certain asserted patent claims in this investigation.

**FOR FURTHER INFORMATION:** Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-3042. 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 (<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 August 21, 2014, based on a complaint filed by Johnson Outdoors Inc. of Racine, Wisconsin and Johnson Outdoors Marine Electronics, Inc. of Eufaula, Alabama (collectively, "Johnson Outdoors"). 79 *Fed. Reg.* 49536 (Aug. 21, 2014). The complaint alleges 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 marine sonar imaging systems, products containing the same, and components thereof by reason of infringement of one or more of claims 1, 2, 17, 25, 26, 31, 32, 35, 36, 41-43, 53, and 56 of U.S. Patent No. 7,652,952 ("the '952 patent"); claims 1, 5, 7, 8, 21, 22, 24, 25, 28, and 29 of U.S. Patent No. 7,710,825 ("the '825 patent"); and claims 14, 18, 21-23, 25, and 33 of U.S. Patent No. 7,755,974 ("the '974 patent"). *Id.* The notice of investigation named the following respondents: Garmin International, Inc.; Garmin North America, Inc.; Garmin USA, Inc. all of Olathe, Kansas; and Garmin Corporation of New Taipei City, Taiwan (collectively, "Garmin"). *Id.* The Office of Unfair Import Investigations is not a party to the investigation.

On January 30, 2015, the parties entered into a stipulation that the domestic industry requirement was met. The parties also agreed to a stipulation regarding importation of Garmin accused products. That same day, Johnson Outdoors filed two unopposed motions for summary determination: (1) that Garmin's importation and sales satisfy the importation requirement and (2) that Johnson Outdoors satisfies the domestic industry requirement. On March 24, 2015, the ALJ granted Johnson Outdoors' summary determination motions in Order Nos. 14 and 15, respectively. The Commission determined not to review. *See* Notice of Commission

Determination Not to Review Two Initial Determinations Granting Unopposed Motions for Summary Determinations of Importation and the Existence of a Domestic Industry That Practices the Asserted Patents (April 22, 2015).

On July 13, 2015, the ALJ issued his final ID, finding a violation of section 337 by Garmin in connection with claims 14, 18, 21, 22, 23, and 33 of the '974 patent. The ALJ found no violation of section 337 in connection with the asserted claims of the '952 and '825 patents; and claim 25 of the '974 patent. Specifically, the ALJ found that the Commission has subject matter jurisdiction, *in rem* jurisdiction over the accused products, and *in personam* jurisdiction over Garmin. ID at 21. The ALJ further found that the accused products infringe asserted claims 14, 18, 21, 22, 23, and 33 of the '974 patent but do not infringe the asserted claims of the '952 and '825 patents or claim 25 of the '974 patent. *See* ID at 55-57, 58-59, 60-62. The ALJ also found that Garmin failed to establish by clear and convincing evidence that the asserted claims of the '952, '825, or '974 patents were anticipated or rendered obvious by the cited prior art references. *See id.* at 68-80, 89-100. Finally, the ALJ found that the '952, '825, and '974 patents are not unenforceable due to inequitable conduct and that the '952 patent is not invalid under 35 U.S.C. § 102(f) for derivation. ID at 80-83, 100-109.

On July 27, 2015, Garmin filed a petition for review of the ID. That same day, Johnson Outdoors filed a contingent petition for review of the ID. On August 4, 2015, the parties filed responses to the 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 to review the final ID on all issues petitioned.

The parties are requested to provide any comments they may have as to the Commission's proposed construction below with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in a response to the following:

If the Commission were to construe the claim term "mounted to a boat" to mean "proximately secured to the boat in a fixed manner," please discuss any impact this construction may have on the ID's findings.

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 one or more cease and desist orders 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 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:** The parties to the investigation are requested to file written submissions on the issues identified in this notice. 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. Complainants are requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the date that the patents expire and the HTSUS numbers under which the accused products are imported. Complainants are further requested to supply the names of known importers of the Garmin products at issue in this investigation. The written submissions and proposed remedial orders must be filed no later than close of business on September 21, 2015. Reply submissions must be filed no later than the close of business on September 28, 2015. Such submissions should address the ALJ's recommended determinations on remedy and

bonding. No further submissions on any of 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 by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-926") 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](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 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. 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 C.F.R. Part 210).

By order of the Commission.

Lisa R. Barton

Secretary to the Commission

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