



7020-02

INTERNATIONAL TRADE COMMISSION

Investigation No. 337-TA-1119

Certain Infotainment Systems, Components Thereof, and Automobiles Containing the Same

Commission Determination to Review in Part a Final Initial Determination Finding No Violation of Section 337; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, Public Interest, and Bonding; Extension of Target Date

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 review in part the final initial determination (“FID”) of the administrative law judge (“ALJ”). The Commission requests briefing from the parties on certain issues under review, as indicated in this notice. The Commission also requests briefing from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding. The Commission has also determined to extend the target date for completion of this investigation until April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202-205-3228. 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

Information System (“EDIS”) (<https://edis.usitc.gov>). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone 202-205-1810.

SUPPLEMENTARY INFORMATION: On June 12, 2018, the Commission instituted this investigation based on a complaint filed by Broadcom Corporation (“Broadcom”) of San Jose, California. 83 *Fed. Reg.* 27349 (June 12, 2018). The complaint alleged that 19 U.S.C. 1337, as amended, (“section 337”) was violated due to the importation into the United States, sale for importation, or sale in the United States after importation of certain infotainment systems, components thereof, and automobiles containing same that purportedly infringe one or more claims of U.S. Patent Nos. 6,937,187 (“the ’187 patent”); 8,902,104 (“the ’104 patent”); 7,512,752 (“the ’752 patent”); 7,530,027 (“the ’027 patent”); 8,284,844 (“the ’844 patent”); and 7,437,583 (“the ’583 patent”) (collectively, “the Asserted Patents”). The notice of investigation named 15 respondents, including Toyota Motor Corporation of Aichi, Japan; Toyota Motor North America, Inc. of Plano, TX; Toyota Motor Sales, U.S.A., Inc. of Plano, TX; Toyota Motor Engineering & Manufacturing North America, Inc. of Plano, TX; Toyota Motor Manufacturing, Indiana, Inc. of Princeton, IN; Toyota Motor Manufacturing, Kentucky, Inc. of Erlanger, KY; Toyota Motor Manufacturing, Mississippi, Inc. of Tupelo, MS; Toyota Motor Manufacturing, Texas, Inc. of San Antonio, TX; Panasonic Corporation of Osaka, Japan; Panasonic Corporation of North America of Newark, NJ; DENSO TEN Limited of Kobe City, Japan; DENSO TEN AMERICA Limited of Torrance, CA; Renesas Electronics Corporation of Tokyo, Japan; Renesas Electronics America, Inc. of Milpitas, CA; and Japan Radio Co., Ltd. of Tokyo, Japan. *Id.* at 27349-50. The Office of Unfair Import Investigations was not named as a party. *Id.* at 27351. The complaint and notice of investigation were later amended to add ten more

respondents, including Pioneer Corporation of Tokyo, Japan; Pioneer Automotive Technologies, Inc. of Farmington Hills, MI; DENSO Corporation of Aichi, Japan; DENSO International America, Inc. of Southfield, MI; DENSO Manufacturing Tennessee, Inc. of Maryville, TN; DENSO Wireless Systems America, Inc. of Vista, CA; u-blox AG of Thalwil, Switzerland; u-blox America, Inc. of Reston, VA; u-blox San Diego, Inc. of San Diego, CA; and Socionext Inc. of Kanagawa, Japan. Order No. 14 (Oct. 3, 2018), *not rev'd in relevant part*, Comm'n Notice (Nov. 1, 2018).

Certain patent claims were subsequently withdrawn and terminated from the investigation. *See* Order No. 20 (Jan. 31, 2019), *not rev'd*, Comm'n Notice (Feb. 19, 2019); Order No. 48 (June 5, 2019), *not rev'd*, Comm'n Notice (June 18, 2019); Order No. 49 (June 13, 2019), *not rev'd*, Comm'n Notice (June 28, 2019). The claims still at issue are claims 1-3, 5, and 9 of the '187 patent; claim 12 of the '104 patent; claims 1-2 and 4-8 of the '752 patent; claims 11 and 20 of the '027 patent; claims 11 and 13 of the '844 patent; and claims 17-18 and 25-26 of the '583 patent. *See* Comm'n Notice (June 28, 2019).

On November 13, 2019, the ALJ issued the FID finding no violation of section 337. *See* FID. The ALJ recommended that, if a violation was found, then the Commission should issue a limited exclusion order and cease and desist orders to certain domestic respondents.

On November 26, 2019, Broadcom filed a petition for review of the FID and the respondents filed a contingent petition for review. On December 4, 2019, Broadcom and the respondents filed responses to each other's petitions.

On December 16, 2019, Broadcom filed a submission on the public interest pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)). That same day, respondents Toyota Motor Corporation and its subsidiaries, Renesas Electronics Corporation and Renesas

Electronics America, Inc., and Tier 1 Suppliers (DENSO Corporation, DENSO International America, Inc., DENSO Manufacturing Tennessee, Inc., and DENSO Wireless Systems America, Inc.; DENSO TEN Limited and DENSO TEN America Limited; Panasonic Corporation and Panasonic Corporation of North America; Pioneer Corporation and Pioneer Automotive Technologies, Inc.) filed their submissions on the public interest pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)). On December 18, 2019, two non-parties, Peter Morici and the Reshoring Initiative, filed submissions on the public interest in response to the Commission's notice requesting such responses. 84 *Fed. Reg.* 64104 (Nov. 20, 2019).

Having reviewed the record in this investigation, including the ALJ's orders and FID, as well as the parties' petitions and responses thereto, the Commission has determined to review the FID in part, as follows.

With regard to the '583 patent, the Commission has determined to review the FID's construction of the term "at least one processor." The Commission has further determined to review the FID's infringement and technical prong findings regarding the '583 patent.

With regard to the '752 patent, the Commission has determined to review the FID's findings as to whether the asserted claims are invalid. The Commission has further determined to review whether the accused Pioneer head units meet the limitations of claims 2 and 5.

The Commission has determined not to review the remaining findings in the FID.

The Commission has also determined to extend the target date for completion of this investigation until April 30, 2020.

The parties are asked to provide additional briefing on the following issues regarding the '583 patent and '752 patent, with appropriate reference to the applicable law and the existing evidentiary record.

- A. With regard to claims 25 and 26 of the '583 patent, if the Commission determines that the term “at least one processor” should be construed to mean, “at least one processor separate from the hardware control block,” does this modified claim construction affect any other findings in the FID regarding the '583 patent? If there is a difference, please explain how it affects the FID’s infringement, domestic industry technical prong, invalidity, or other findings. Is this modified claim construction supported by the intrinsic and/or extrinsic evidence?
- B. With regard to the '752 patent, discuss whether there is a difference between the “data,” which the FID finds is capable of being sent over the link disclosed in U.S. Patent No. 6,240,492 to Foster, et al. (“Foster”), versus the “data stored at the addresses in the memory from the lists of addresses in the memory” as claimed. If there is a difference, please explain the difference, including how it affects the validity of claim 8.
- C. Discuss whether the link disclosed in Foster (*see* FID at 94) would need to be modified in order to meet the claim limitation “the memory access unit receives data stored at the addresses in the memory from the lists of addresses in the memory over said link” as required by claim 8 of the '752 patent. If modification is needed, how would Foster’s link need to be modified to meet the claim 8 limitation?
- D. Discuss whether the evidence of record supports a finding that Foster alone renders claims 1, 2, 4, 5, 7, and 8 of the '752 patent obvious. Further, please discuss *Realtime Data, LLC v. Iancu*, 912 F.3d 1368, 1373 (Fed. Cir. 2019).

E. Discuss whether the scope of claims 2 and 5 of the '752 patent covers hardware only or also covers a combination of hardware and software. Please identify and explain how any controlling Federal Circuit precedent regarding the infringement standard for apparatus claims, such as the cases cited in the FID and the parties' briefing, applies to the evidence in the record in this investigation. In particular, please discuss at least *Telemac Cellular Corp. v. Topp Telecom, Inc.*, 247 F.3d 1316 (Fed. Cir. 2001).

The parties are requested to brief only the discrete issues identified above, with reference to the applicable law and evidentiary record. The parties are not to brief any other issues on review, which have already been adequately presented in the parties' previous filings.

In connection with the final disposition of this investigation, the statute authorizes issuance of: (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) 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. 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, Comm'n Op. at 7-10 (December 1994). In addition, if a party seeks issuance of any cease and desist orders, the written submissions should address that request in the context of recent Commission opinions, including those in *Certain Arrowheads with*

Deploying Blades and Components Thereof and Packaging Therefor, Inv. No. 337-TA-977, Comm'n Op. (Apr. 28, 2017) and *Certain Electric Skin Care Devices, Brushes and Chargers Therefor, and Kits Containing the Same*, Inv. No. 337-TA-959, Comm'n Op. (Feb. 13, 2017).

Specifically, if Complainants seek a cease and desist order against a respondent, the written submissions should respond to the following requests:

1. Please identify with citations to the record any information regarding commercially significant inventory in the United States as to each respondent against whom a cease and desist order is sought. If Complainants also rely on other significant domestic operations that could undercut the remedy provided by an exclusion order, please identify with citations to the record such information as to each respondent against whom a cease and desist order is sought.
2. In relation to the infringing products, please identify any information in the record, including allegations in the pleadings, that addresses the existence of any domestic inventory, any domestic operations, or any sales-related activity directed at the United States for each respondent against whom a cease and desist order is sought.
3. Please discuss any other basis upon which the Commission could enter a cease and desist order.

The statute requires the Commission to consider the effects of any remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and/or cease-and-desist order 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, disapprove, or take no action on the Commission's determination. *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 are requested to file submissions on the issues under review. In addition, the parties, interested government agencies, and any other interested persons are invited to file written submissions on the issues of remedy, the public interest, and bonding. Such initial written submissions should include views on the recommended determination by the ALJ on remedy and bonding.

In its initial written submission, complainant is also requested to identify the form of the remedy sought and to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the date that the Asserted Patents expire, to provide the HTSUS subheadings under which the accused products are imported, and to supply identification information for all known importers of the products at issue in this investigation. Complainant is additionally requested to identify and explain, from the record, articles that are "components of" the subject products, and thus covered by the proposed remedial orders, if imported separately from the subject products.

Initial written submissions, including proposed remedial orders must be filed no later than the close of business on March 11, 2020. Reply submissions must be filed no later than the close of business on March 18, 2020. 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 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-1119") 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. All such requests should be directed to the Secretary to the Commission and include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. 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 personnel (all contract personnel will sign appropriate nondisclosure agreements) 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: February 26, 2020

Lisa Barton
Secretary to the Commission

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