



[Investigation No. 337-TA-1118]

Certain Movable Barrier Operator Systems and Components Thereof

Final Determination Finding a Violation of Section 337; Issuance of a Limited Exclusion Order and Cease and Desist Orders; Termination of the Investigation

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: (1) find that respondents Nortek Security & Control, LLC of Carlsbad, California; Nortek, Inc. of Providence, Rhode Island; and GTO Access Systems, LLC of Tallahassee, Florida (collectively, “Nortek”) have violated Section 337 by way of infringing claims 1 and 21 of U.S. Patent No. 7,755,223 (“the ’223 patent”); and (2) issue a limited exclusion order and cease and desist orders against each Nortek respondent, and set a bond in the amount of 100 percent of the entered value of the covered products during the period of Presidential review. The investigation is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2382. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket system (“EDIS”) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.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: The Commission instituted this investigation on June 11, 2018, based on a complaint, as supplemented, filed by The Chamberlain Group, Inc. (“CGI”) of Oak Brook, Illinois. 83 FR 27020-21 (June 11, 2018). The complaint alleges a violation of

section 337 the Tariff Act, as amended, 19 U.S.C. 1337 (“Section 337”) in the importation, sale for importation, or sale in the United States after importation of certain movable barrier operator (“MBO”) systems that purportedly infringe one or more of the asserted claims of the ’223 patent and U.S. Patent Nos. 8,587,404 (“the ’404 patent”) and 6,741,052 (“the ’052 patent”). *Id.* The Commission’s notice of investigation named Nortek as respondents. *Id.* The Office of Unfair Import Investigations was not named as a party to this investigation. *See id.*

The Commission subsequently terminated the investigation with respect to certain patent claims withdrawn by CGI. *See* Order No. 16 (Feb. 5, 2019), *unreviewed by* Comm’n Notice (March 6, 2019); Order No. 27 (June 7, 2019), *unreviewed by* Comm’n Notice (June 27, 2019); Order No. 31 (July 30, 2019), *unreviewed by* Comm’n Notice (Aug. 19, 2019); Order No. 32 (Sept. 27, 2019), *unreviewed by* Comm’n Notice (Oct. 17, 2019).

On June 5, 2019, the presiding administrative law judge (“ALJ”) issued a *Markman* order (Order No. 25) construing the claim terms in dispute.

On December 12, 2018, CGI filed a motion for summary determination that it satisfied the economic prong of the domestic industry requirement. Nortek opposed the motion. On June 6, 2019, the ALJ issued a notice advising the parties that the motion would be granted and a formal written order would be issued later. Order No. 26 (June 6, 2019).

The ALJ held an evidentiary hearing on the issues in dispute on June 10-14, 2019.

On November 25, 2019, the ALJ issued Order No. 38, finding no issue of material fact that CGI’s investments in labor and capital relating to its domestic industry products were “significant” and that CGI has satisfied the economic prong of the domestic industry requirement pursuant to Section 337(a)(3)(B) (19 U.S.C. 1337(a)(3)(B)). Order No. 38 (Nov. 25, 2019). Order No. 38 also finds that genuine issues of material fact precluded entry of summary determination with respect to CGI’s investments in plant and equipment, under Section 337(a)(3)(A) (19 U.S.C. 1337(a)(3)(A)). *Id.*

On the same date, the ALJ issued the final Initial Determination on Violation of Section 337 (“Final ID”) and Recommended Determination on Remedy and Bond (“RD”), finding no violation of Section 337 because the asserted claims of the ’223 and ’404 patents, if valid, are not infringed and the asserted claim of the ’052 patent is invalid, even if infringed. The RD sets forth the ALJ’s recommendations on remedy and bond.

On February 19, 2020, the Commission issued a notice of its determination to review Order No. 38 and to partially review the Final ID with respect to certain issues relating to each of the three asserted patents. 85 FR 10723-26 (Feb. 25, 2020). The Commission directed the parties to brief questions on violation and requested briefing from the parties, the public, and any interested government entities on remedy, the public interest, and bonding. *Id.* at 10725. The parties submitted initial responses and replies in response to the notice. The Commission did not receive any comments from third parties in response to its notice.

On April 22, 2020, the Commission issued a determination finding no violation with respect to the ’404 and ’052 patents. Comm’n Notice at 3 (April 22, 2020). The Commission also vacated Order No. 38 and remanded the economic prong issue to the presiding ALJ for further proceedings while the Commission continued to review issues relating to the ’223 patent. *Id.*; Order Vacating and Remanding Order No. 38 (April 22, 2020) (“Remand Order”).

On May 15, 2020, the ALJ issued Order No. 39, seeking additional information from the parties in light of the Commission’s Remand Order. Order No. 39 (May 15, 2020). On July 10, 2020, the ALJ issued the subject Remand Initial Determination (“Remand ID”), finding that CGI has made significant investments, both quantitatively and qualitatively, in plant and equipment and labor and capital, pursuant to Section 337(a)(3)(A) and (B) (19 U.S.C. 1337(a)(3)(A), (B)), respectively. Remand ID (July 10, 2020). The Remand ID concludes that CGI has satisfied the economic prong of the domestic industry requirement in relation to the ’223 patent, pursuant to Sections 337(a)(3)(A) and (B). *Id.*

On July 20, 2020, Nortek filed a petition for review of the Remand ID. CGI filed its opposition to Nortek's petition for review on July 27, 2020. On September 9, 2020, the Commission determined to review the Remand ID and directed the parties to brief a number of questions with respect to the economic prong of the domestic industry requirement. 85 FR 57249-51 (Sept. 15, 2020). The Commission also allowed the parties to update their prior submissions on remedy, the public interest, and bonding, if necessary, and invited interested government entities and other interested parties to file written submissions on those issues as well. *Id.* at 57251.

The parties filed their initial responses to the Commission's questions on September 23, 2020. The parties filed their respective replies on September 30, 2020. The Commission did not receive any comments from third parties in response to its notice.

Having reviewed the Remand ID, the parties' submissions, and the evidence of record, the Commission has determined to find that Nortek violated Section 337 with respect to the '223 patent. In particular, the Commission finds that Nortek infringed claims 1 and 21 of the '223 patent; CGI practiced at least claim 1 of the patent; and CGI satisfied the economic prong of the domestic industry requirement with respect to the '223 patent under both Sections 337(a)(3)(A) and (B). The Commission has determined to issue a limited exclusion order and cease and desist orders against each Nortek respondent and to impose a bond in the amount of 100 percent of the entered value of the covered products during the period of Presidential review. The Commission has further determined that the statutory public interest factors do not preclude issuance of a remedy. The investigation is hereby terminated.

The Commission voted to approve these determinations on December 3, 2020.

The authority for the Commission's determinations 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: December 3, 2020.

Lisa Barton,
Secretary to the Commission.

[FR Doc. 2020-27010 Filed: 12/8/2020 8:45 am; Publication Date: 12/9/2020]