



[Investigation no. 337-TA-1000 (REMAND)]

Certain Motorized Self-Balancing Vehicles;

Notice of a Commission Determination to Terminate the Investigation on Remand Due to Mootness

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to terminate the investigation on remand from the U.S. Court of Appeals for the Federal Circuit (“Federal Circuit”) due to mootness.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436, telephone (202) 708-2310. 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 May 26, 2016, based on a complaint filed on behalf of Razor USA LLC of Cerritos, California; and Inventist, Inc. and Shane Chen, both of Camas, Washington (collectively, “Razor”). 81 FR 33548-49. The complaint alleged, *inter alia*, 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 U.S. Patent No. 8,738,278 (“the ’278 patent”). The Commission’s notice of investigation named twenty-eight respondents. The Office of Unfair Import Investigations (“OUII”) also participated in the investigation. *Id.* Nine respondents (“the remaining respondents”) remained active in the investigation after every other respondent had been terminated from the investigation based on a

consent order, good cause, or else had been found in default. These remaining respondents included Hangzhou Chic Intelligent Co., Ltd. (“Chic”) of Hangzhou, China; Swagway, LLC (“Swagway”) of South Bend, Indiana; Modell’s Sporting Goods, Inc. (“Modell’s”) of New York City, New York; Powerboard a.k.a. Optimum Trading Co. (“Powerboard”) of Hebron, Kentucky; United Integral, Inc. dba Skque Products of Irwindale, California; Alibaba Group Holding Ltd. of Causeway Bay, Hong Kong and Alibaba.com Ltd. of Hangzhou, China (collectively, “Alibaba”); Jetson Electric Bikes LLC (“Jetson”) of New York City, New York; and Newegg, Inc. (“Newegg”) of City of Industry, California. On the same day that the Commission instituted this investigation, Razor sought reissue of the asserted ’278 patent.

On May 26, 2017, the presiding administrative law judge (“ALJ”) issued a final ID finding no violation of section 337. The ID found that none of the remaining respondents’ accused products infringes the asserted ’278 patent claims, but that all of the defaulting respondents’ accused products infringe the asserted claims based on allegations in the complaint. The ID also found that the technical prong of the domestic industry requirement was not satisfied.

On July 28, 2017, the Commission determined to review (1) the ID’s finding that the Commission has no jurisdiction over Alibaba, and (2) the ID’s analysis of infringement by the defaulting respondents. *See* Comm’n Notice of Review (July 28, 2017). On review, the Commission determined to (1) take no position on the ID’s finding that it has no jurisdiction over Alibaba; and (2) vacate the ID’s infringement finding as to the defaulting respondents as moot in view, *inter alia*, of the domestic industry determination. *Id.* at 3-4. The Commission determined not to review the remainder of the ID and therefore issued its final determination of no Section 337 violation and terminated the investigation. *Id.*

Razor timely appealed the Commission’s final determination to the Federal Circuit. During the appeal, the reissue application was allowed with amended claims that the Commission and Intervenor/respondent Chic argued, via a motion to dismiss, were not

“substantially identical” to the original claims on appeal, and therefore the appeal should be dismissed as moot under 35 U.S.C. 252.

On October 16, 2018, the Federal Circuit issued an order and mandate that remanded the investigation to the Commission for further proceedings consistent with its ruling. *See Razor USA LLC v. ITC*, Case No. 2017-2591, Remand Order at 4 (Oct. 16, 2018). Specifically, the Court deemed it appropriate for the Commission to have the first opportunity to determine whether the post-investigation events have rendered the case moot or whether the case may continue either on the original patent claims or reissued claims and to conduct any additional proceedings as necessary. *Id.*

On November 13, 2018, the Commission issued an Order requesting the parties to provide comments concerning what further proceedings are appropriate consistent with the Court’s judgment, including whether the matter should be referred to the ALJ. On November 27, 2018, Razor submitted comments, six respondents (Chic, Swagway, Modell’s, Jetson, Powerboard, and New Egg) filed a joint submission, and Alibaba filed a separate submission. On December 4, 2018, OUII submitted comments. On December 10, 2018, these parties submitted response comments.

On September 19, 2019, the Commission issued an Order requesting the parties to provide written responses regarding specific questions concerning the effect of the patent reissue. Razor, Jetson, four respondents (Chic, Swagway, Modell’s, and Newegg), and OUII each filed a submission. Each of these parties, except Jetson, filed a reply. On November 18, 2019, Jetson filed a reply to Razor’s reply, but which also addressed Razor’s initial submission. The Commission has determined to accept that submission, but only as to the portion that responds to Razor’s initial submission.

Having examined the record of this investigation, including the Federal Circuit’s Remand Order and the parties’ subsequent briefing, the Commission terminates this investigation as moot

pursuant to the Remand Order. The Commission has issued an opinion explaining the basis for the Commission's determination.

The Commission vote for this determination took place on January 22, 2021.

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: January 22, 2021.

Lisa Barton,
Secretary to the Commission.

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