

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN BIOMETRIC SCANNING
DEVICES, COMPONENTS THEREOF,
ASSOCIATED SOFTWARE, AND
PRODUCTS CONTAINING THE SAME

Inv. No. 337-TA-720

Notice To The Parties

The Final Initial and Recommended Determinations (ID) were filed on June 17, 2011. Attached are the title page, conclusions of law and the order, which are not confidential and which form a portion of said determinations. For receiving said ID, see Commission rules 210.6 and 210.7. Counsel for complainant, respondents and the staff received a copy of this notice on June 17, 2011.


Paul J. Luckern
Chief Administrative Law Judge

Issued: June 17, 2011

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN BIOMETRIC SCANNING
DEVICES, COMPONENTS THEREOF,
ASSOCIATED SOFTWARE, AND
PRODUCTS CONTAINING THE SAME

Inv. No. 337-TA-720

Final Initial and Recommended Determinations

This is the administrative law judge's Final Initial Determination under Commission rule 210.42. The administrative law judge, after a review of the record developed, finds inter alia that there is jurisdiction and that there is a violation of section 337 of the Tariff Act of 1930, as amended.

This is also the administrative law judge's Recommended Determination on remedy and bonding, pursuant to Commission rules 210.36(a) and 210.42(a)(1)(ii). Should the Commission find a violation, the administrative law judge recommends the issuance of limited exclusion orders barring entry into the United States of infringing biometric scanning devices, components thereof, associated software, and products containing the same as well as the issuance of an appropriate cease and desist order. Also should a violation be found, the administrative law judge recommends a bond of 100% of entered value during the Presidential Review period.

CONCLUSIONS OF LAW

1. The Commission has in personam, in rem and subject matter jurisdiction.
2. There has been an importation of accused biometric scanning devices, components thereof, associated software and products containing the same into the United States which are the subject of the unfair trade allegations.
3. It has not been established that the asserted claims of any of the '993, '344, or '562 patents are invalid.
4. Complainant has established that the RealScan-10 and RealScan-10F accused products infringe asserted claims 10, 12, and 15 of the '993 patent.
5. Complainant has not established that any accused products infringe asserted claims 11, 17, or 18 of the '993 patent.
6. Complainant has not established that asserted claims of the '562 patent are infringed by any of the accused products.
7. Complainant has established that asserted claim 19 of the '344 patent is infringed by the RealScan-10, RealScan-10F, RealScan-D, and RealScan-DF accused products, when used with Mentalix' Fed Submit software.
8. Complainant has not established that asserted claims 1, 7, 41, 42, 43, and 45 of the '344 patent are infringed by any of the accused products.
9. Complainant has established a domestic industry.
10. The evidence establishes that there is a violation of section 337.
11. In the event a violation of section 337 is found, a limited exclusion order and an appropriate cease and desist order are recommended. Also a bond of 100% of entered

value during the Presidential Review period is recommended.

ORDER

Based on the foregoing, and the record as a whole, it is the administrative law judge's Final Initial Determination that there is a violation of section 337 in the importation into the United States, sale for importation, and sale within the United States after importation of certain biometric scanning devices, components thereof, associated software and products containing the same. It is also the administrative law judge's recommendation, should a violation be found, that a limited exclusion order issue barring entry into the United States of infringing biometric scanning devices, components thereof, associated software and products containing the same and that an appropriate cease and desist order should also issue. The administrative law judge further recommends a bond of 100% of entered value during Presidential review period should a violation be found.

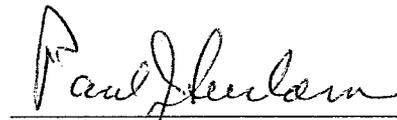
The administrative law judge hereby CERTIFIES to the Commission his Final Initial and Recommended Determinations. The briefs of the parties, filed with the Secretary, are not certified, since they are already in the Commission's possession in accordance with Commission rules.

Further it is ORDERED that:

1. In accordance with Commission rule 210.39, all material heretofore marked in camera because of business, financial and marketing data found by the administrative law judge to be cognizable as confidential business information under Commission rule 201.6(a), is to be given in camera treatment continuing after the date this investigation is terminated.

2. Counsel for the parties shall have in the hands of the administrative law judge those portions of the final initial and recommended determinations which contain bracketed confidential business information to be deleted from any public version of said determinations, no later than June 30, 2011. Any such bracketed version shall not be served via facsimile on the administrative law judge. If no such bracketed version is received from a party, it will mean that the party has no objection to removing the confidential status, in its entirety, from these initial and recommended determinations.

3. The initial determination portion of the Final Initial and Recommended Determinations, issued pursuant to Commission rules 210.42(a) and 210.42-46, shall become the determination of the Commission, unless the Commission, shall have ordered its review of certain issues therein or by order has changed the effective date of the initial determination portion. The recommended determination portion, issued pursuant to Commission rule 210.42(a)(1)(ii), will be considered by the Commission in reaching a determination on remedy pursuant to Commission rule 210.50(a).



Paul J. Luckern
Chief Administrative Law Judge

Issued: June 17, 2011