

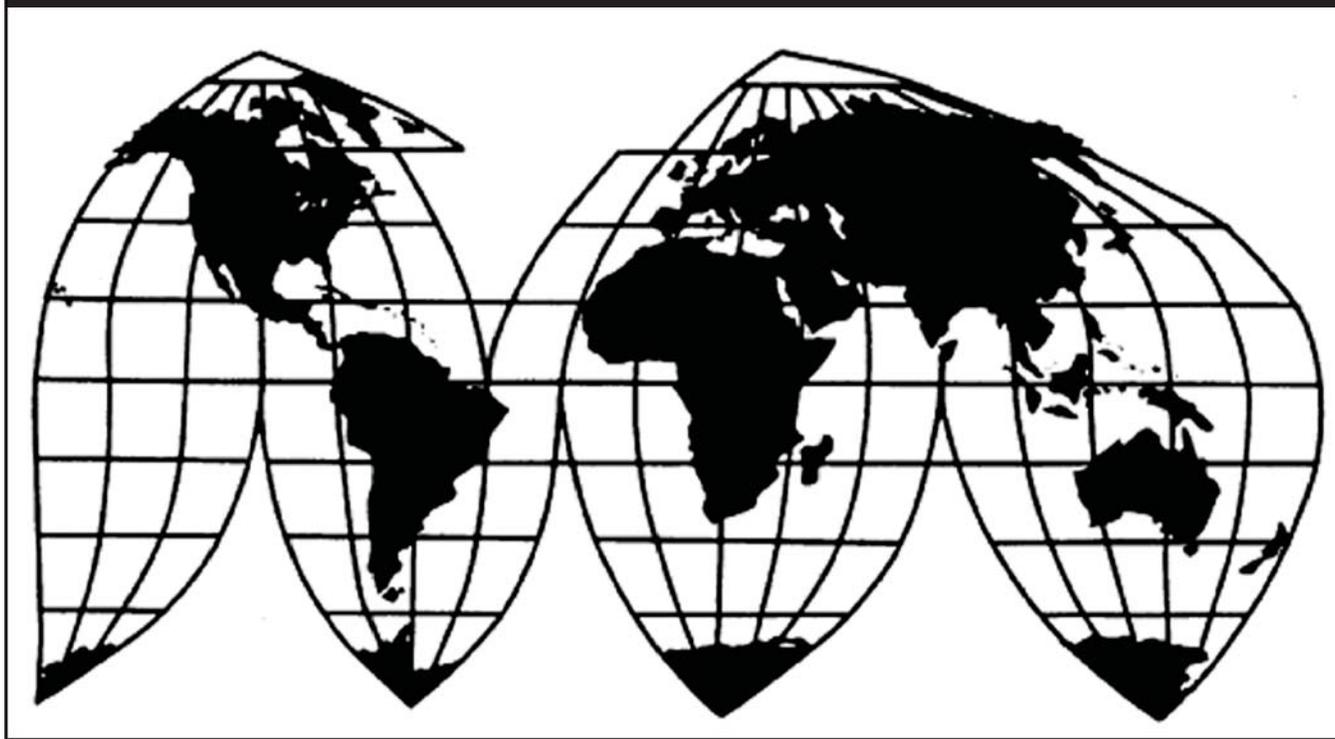
In the Matter of
**CERTAIN DRILL BITS AND PRODUCTS
CONTAINING THE SAME**

337-TA-844

Publication 4818

August 2018

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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Washington, DC 20436

U.S. International Trade Commission

Washington, DC 20436
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In the Matter of

CERTAIN DRILL BITS AND PRODUCTS CONTAINING THE SAME

337-TA-844



UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN DRILL BITS AND PRODUCTS
CONTAINING SAME**

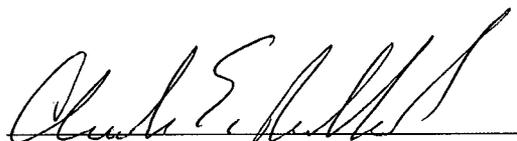
Inv. No. 337-TA-844

**NOTICE REGARDING ISSUANCE OF PUBLIC VERSION OF ORDER NO. 9: INITIAL
DETERMINATION GRANTING RESPONDENTS' MOTION FOR SUMMARY
DETERMINATION OF NO IMPORTATION**

(August 9, 2018)

The complete public version of Order No. 9 is attached hereto.

SO ORDERED.



Charles E. Bullock
Chief Administrative Law Judge

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

CERTAIN DRILL BITS AND PRODUCTS
CONTAINING SAME

Inv. No. 337-TA-844

**ORDER NO. 9: INITIAL DETERMINATION GRANTING RESPONDENTS'
MOTION FOR SUMMARY DETERMINATION OF NO
IMPORTATION¹**

(July 10, 2012)

On June 11, 2012, Respondents Boyles Bros Diamantina S.A. ("Boyles Bros"), Christensen Chile S.A. ("Christensen"), Diamantina Christensen Trading Inc. ("DCT") and Intermountain Drilling Supply Corp. ("Intermountain") (hereinafter collectively "Respondents"), filed a motion for summary determination of no importation. (Motion Docket No. 844-003.) On June 21, 2012, Complainants Boart Longyear Company and Longyear TM, Inc. (hereinafter collectively "Complainants") filed a response opposing the motion. On June 26, 2012, Respondents filed a motion for leave to submit a reply, which is hereby GRANTED. (Motion Docket No. 844-004.)

Respondents allege in their motion that "[t]he undisputed facts show that there was a single importation of only 8 drill bits in [[]] before any of the three asserted patents issued and that there has been no further importation since that date." Respondents argue that the

¹ The original Order No. 9 included an incorrect title. This order corrects that error. The order otherwise remains unchanged.

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Commission lacks jurisdiction and assert that the motion presents a pure legal question. (Mot. at 1-2)

Respondents argue that § 337 of the Tariff Act of 1930, as amended, requires that “importation be the linchpin for determining whether accused activities fall within the Commission’s jurisdiction.” (Memorandum in Support of Motion at 2)²(Citing 19 U.S.C. § 1337(a)(1)(B)) Analogizing to the Patent Act (35 U.S.C. § 271(a)), Respondents argue that when an importation has occurred either before or after the term of a patent, the Commission lacks jurisdiction to hear such a dispute. (Memo at 3.) Respondents conclude that a single isolated importation that occurred years before the asserted patents were granted fails to satisfy the importation requirement.

Respondents aver that all activity related to importation occurred in [[]] years before the patents issued. Respondents note that the asserted patents were granted on November 9, 2010, January 25, 2011 and November 8, 2011. (Citing Complaint at ¶¶ 13, 19 and 25.)³ Respondents state, while the complaint alleges that Respondents have “been importing products ... since at least as early as [[]], the only actual importation alleged was the one occurring in [[]]. Respondents concede that a sale within the United States occurred on December 16, 2011. (Memo at 4, citing Complaint Ex. 15)

Respondents cite the declaration of Floridor Hernandez, which states that DCT received a purchase order in [[]] from Intermountain for 8 double bit drill bits and refers to “Exhibit B” which shows, *inter alia*, an order for a total of 8 oversize double bits dated [[]]

]]. According to the Hernandez declaration, the order was filled by Boyles Bros in

² For brevity Respondents Memorandum of Points and Authorities in support of their motion will be called “Memo” followed by a page reference.

In fact, the Complainants assert that U.S. Patent No. 7,828,090 (the ‘090 patent) was granted on November 9, 2010, U.S. patent No. 7,874,384 (the ‘384 patent) was granted on January 25, 2011, and U.S. Patent No. 8,051,929 (the ‘929 patent) was granted on November 8, 2011. (Complainants’ Response to Motion at 3)(“Response”)

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[[]]. Exhibit “A” to the Hernandez declaration is a packing list dated [[]] which includes, *inter alia*, 8 double bit drill bits. The Hernandez declaration avers that on [[]], DCT issued an invoice to Intermountain reflecting the sales of the 8 double bit drill bits and refers to Exhibit “C” as listing those drill bits as items 21-24.

Respondents include a declaration of Van Bohne, the “Co-President” of Intermountain, who states that in [[]], Intermountain issued a purchase order to DCT for 8 double bit drill bits, and in [[]], Intermountain received the 8 drill bits as requested.

Finally, Respondents attach a declaration of Fernando Buttazzoni of Christensen, who avers that Christensen does not and has not manufactured, sold or exported to the United States any double drill bits, nor has it participated in any sale of double drill bits sent to the United States.

Respondents concede that the Commission’s authorizing statutory grant does allow for investigations concerning sales after importation; but they argue that the importation requirement cannot be read out of that language. Respondents reiterate that the importation and sale must both occur during the term of the patent. Respondents cite *State Indus. V. A.O. Smith Corp.*, 751 F.2d 1226 (Fed. Cir. 1985) to say that a patent has no retroactive effect. (Citing 35 U.S.C. § 271(a))

Complainants allege that Respondents admit to importation, and assert that there are “significant disputed issues of material fact” which preclude summary determination. (Resp. at 1.) Complainants add that summary determination may be refused when discovery is necessary to establish facts essential to a party’s opposition. (*Id.* at 2.)

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Complainants argue that there is “no dispute that ... Intermountain ... sold drill bits that were imported into the United States.” Complainants state that the sale occurred on December 16, 2011, which was subsequent to the granting of the asserted patents.

Complainants argue that the Commission has already confronted and rejected the argument that “a single isolated importation that happened years before the asserted patents were granted fails to satisfy the importation requirement of section 337.” (Citing *Certain Ground Fault Circuit Interrupters & Prods. Containing Same*, Inv. No. 337-TA-615, 2010 ITC LEXIS 682, 32-36 (Sept. 24, 2008) (“*Ground Fault Circuit Interrupters*”), (reviewed in part in *Notice of Commission Determination to Review in Part a Final Determination on Violation of Section 337*, 73 FR 75768.) Complainants assert that in *Ground Fault Circuit Interrupters*, the respondent admitted importing the accused product prior to the issuance of the asserted patents and argued that the Commission lacked subject matter jurisdiction “on the ground that it ceased to manufacture and sell for importation” the product before the issue dates of the asserted patents. (Citing *id.* at *33-34.) Complainants say that this argument was rejected because, even if the respondent’s importing of the accused product stopped before the asserted patents were granted, the respondent could still be subject to the investigation. (Citing *id.* at *33.)

Complainants also contend that there are several genuine issues of disputed facts which preclude summary determination. Complainants “dispute that there has been a single isolated importation.” Complainants counter that they purchased two examples of accused products from Intermountain on December 16, 2011. Complainants aver that in December 2011, “a representative of Intermountain” stated concerning the bits at issue, “Peru is behind on production, and we are having a hard time keeping these on the shelf.” (Resp. 6-7, citing declaration of [[Attachment 1 to Resp., ¶ 4.) Complainants argue that their

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evidence disputing Respondents' assertions presents a genuine issue of disputed fact which precludes summary determination. (Resp. at 7.)

Complainants reiterate that discovery is needed on these issues, and they conclude that summary determination will not dispose of the investigation in its entirety, because there is no dispute that Intermountain sold accused products during the term of the asserted patents, and there is no dispute that those products were imported.

In their reply memorandum, Respondents contend that Investigation No. 337-TA-491, *Certain Display Controllers and Products Containing Same*, is on point. Respondents say that the position that there is no temporal limitation to "importation" was rejected. Respondents assert that in *Certain Display Controllers* the patentee did not own the patent before May 29, 2003, and it was argued that the Commission lacked authority to find a violation. Respondents note that the Administrative Law Judge "agreed that the importation requirement contained a temporal limitation, and said "only importation that occurred after May 29, 2003 is relied upon for determining whether the importation element has been proven." (*Id.* at 50-51.)

Respondents counter Complainants' argument concerning *Ground Fault Circuit Interrupters*, saying the ALJ in that case rejected the jurisdictional challenge on procedural grounds, finding that the respondents failed to raise the issue in the post-hearing brief.

On the question of whether or not there is a genuine issue of material fact in dispute, Respondents reply that "[i]ssues of fact are genuine only if the evidence is such that a reasonable [fact finder] could return a verdict for the nonmoving party." (Citing Resp. at 2 (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). Respondents argue that Complainants have offered no evidence upon which I could return a verdict for the Complainants. Respondents say

that Complainants “offer a litany of speculation, attorney argument, and a declaration that fails to set forth any material facts.” (Reply at 4-5)

I. Applicable Law

The Commission Rules permit a party to “move with any necessary supporting affidavits for a summary determination in its favor upon all or any part of the issues to be determined in the investigation.” 19 CFR § 210.18(a). Summary determination “shall be rendered if pleadings and any depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a summary determination as a matter of law.” 19 CFR § 210.18(b). Summary determination under Commission Rule 210.18 is analogous to summary judgment under Federal Rule of Civil Procedure 56. *See Certain Asian-Style Kamaboko Fish Cakes*, Inv. No. 337-TA-378, Order No. 15 at 3 (U.S.I.T.C., May 21, 1996) (unreviewed initial determination).

The moving party bears the initial burden of establishing that there is an absence of a genuine issue of material fact and that it is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). When such an initial showing is established, the burden shifts to the opposing party, who “must set forth specific facts showing that there is a genuine issue for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). To avoid summary judgment, the non-moving party must produce evidence of sufficient caliber to support judgment in its favor. *See Anderson*, 477 U.S. at 252. Such evidence must be real and substantial, not merely colorable. *Id.* at 249-50; *Matsushita Elec. Indus. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (“[The non-moving party] must do more than simply show that there is some metaphysical doubt as to the material facts.”). If the responding party fails to make such a

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showing, the moving party is then entitled to judgment as a matter of law. *See Celotex*, 477 U.S. at 325.

When ruling on a motion for summary judgment, courts must examine all the evidence in the light most favorable to the non-moving party. *Anderson*, 477 U.S. at 255. All “justifiable inferences” are to be drawn in the non-moving party’s favor. *Id.*

The Commission has subject matter jurisdiction over certain acts of unfair importation, namely:

[t]he importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee of articles that . . . infringe a valid and enforceable United States patent

19 U.S.C § 1337(a)(1)(B)(i); *see Amgen, Inc. v. United States Int’l Trade Comm’n*, 902 F.2d 1532, 1536 (Fed. Cir. 1990).

To meet its burden of proof with respect to “importation into the United States,” a complainant need only prove importation of a single infringing product. *Certain Purple Protective Gloves*, Inv. No. 337-TA-500, Order No. 17 at 5 (Sept. 23, 2004) (unreviewed); *Certain Trolley Wheel Assemblies*, Inv. No. 337-TA-161, Views of the Commission at 7-8 (Aug. 29, 1984) (Importation of a single infringing trolley wheel assembly was adequate to show importation.)

With regard to a “sale for importation,” a complainant must prove that a respondent sold infringing articles and knew or should have known that those articles would be subsequently exported to the United States. *See Certain Sputtered Carbon Coated Computer Disks & Products Containing Same, Including Disk Drives*, Inv. No. 337-TA-350, Comm’n Opinions (Views of Vice Chairman Watson, and Commissioners Brunsdale and Crawford) (Oct. 27, 1993).

II. Analysis

The language of 19 U.S.C § 1337(a)(1)(B)(i) makes clear that jurisdiction is granted to the Commission in cases involving the importation or sale for importation of products that infringe a valid and enforceable United States patent. This provision has been broadly applied by the Commission when determining its jurisdiction. *See, e.g., Certain Variable Speed Wind Turbines and Components Thereof*, Inv. No. 337-TA-376, Initial Det., 1996 ITC LEXIS 251 at *31 (May 30, 1996), *aff'd sub nom, Enercom GmbH v. United States Int'l Trade Comm'n*, 151 F.3d 1376 (Fed. Cir. 1998).

Amgen, Inc. v. United States Int'l Trade Comm'n, 902 F.2d 1532 (Fed. Cir. 1990) is instructive. In *Amgen*, the Commission decided that it did not have jurisdiction to hear a matter in which the Complainant alleged that the Respondent was importing a product made according to a process covered by the Complainant's patent. The Commission found that the claims of the patent did not cover a process, and basing their ultimate determination on this finding, they found a lack of jurisdiction. In reviewing the Commission's decision, the Federal Circuit said that the Commission's finding clearly reached the merits of the Complaint. The Federal Circuit criticized the Commission's use of jurisdiction to terminate the case and said that the Commission should have ruled on the merits.

Amgen distinguishes cases in which the determination is one that should be on the merits from those that are clearly jurisdictional. Here, the facts clearly demonstrate the lack of existence of the patents-in-suit at the time the accused products were imported and/or sold for importation into the United States. It is not necessary for the Commission to treat the merits of this case in order to reach the jurisdictional issue. Here, there is no interpretation of the claims, and no analysis of the accused products to determine whether or not they practice the patents.

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There is merely the clear absence of a patent at the time of importation. A decision to terminate the investigation on jurisdictional grounds is, therefore, correct in this case.⁴

In the case at bar, the complaint alleges that the Respondents “have violated and continue to violate section 337 through the importation, sale for importation, and/or the sale within the United States after importation of certain drill bits that infringe” the ‘090 patent, the ‘384 patent and/or the ‘929 patent. (Complaint at ¶ 3.) The complaint alleges that Broyles Bros has been importing products into the United States “since at least as early as [[]].” (Complaint at ¶ 8.) The complaint identifies two products as having been imported, [[]].⁵ (Complaint at ¶ 36.) Complainants do not set forth any facts that support a finding of any ongoing importation or sale(s) for importation by any Respondent.

The Respondents assert that there was one importation of 8 drill bits into the United States that occurred in [[]], which is prior to the issuance of any of the three patents-in-suit. Their assertion is supported by declarations and documentation of the sale and shipment of the 8 drill bits. (Hernandez and Van Bohne declarations in support of the motion and exhibits thereto.)

While Complainants state that they dispute the assertion that there was only one importation, they do not provide any evidence or allegations of specific facts to contravene the Respondents’ assertion. Instead they argue that the Commission has already confronted and rejected the argument that “a single isolated importation that happened years before the asserted patents were granted fails to satisfy the importation requirement of section 337.” (Citing *Ground*

⁴ Respondents’ citation to *Certain Display Controllers*, 337-TA-491, is not instructive, because that case involved the issue of “standing” to bring an action under section 337, which did not attach until the Complainant obtained ownership of the patent-in-suit. The determination limiting importation to that occurring after the purchase date, May 29, 2003, does not have application here. In fact, in *Certain Display Controllers* there was no dispute about whether or not the patent had issued.

⁵ The complaint states that these two product numbers are designators of Intermountain and correspond to Broyles Bros designator “[[]]” respectively.

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Fault Circuit Interrupters.) In fact, the decision of the ALJ in *Ground Fault Circuit Interrupters*, did address the argument of one Respondent that claimed a “lack of subject matter jurisdiction” on the ground that it ceased to manufacture and sell for importation the accused product on, or shortly after, July 28, 2006, which was before the issue dates of the patents-in-suit. Complainant is incorrect to state that the argument was “rejected” on its merits. The argument was rejected on the ground that the Respondent had waived it by failing to include the argument in its post-hearing brief. (*Ground Fault Circuit Interrupters* at 21-22.)⁶

Although Complainants contend they should be given leave to conduct discovery, their argument that ongoing sales are likely to be occurring is based upon speculation without any supporting facts. The sole showing made by Complainants on this issue is a single reference in the declaration attached to Complainants’ opposition in which [[]], an employee of Complainant Boart Longyear Company, states that he was told that Intermountain’s Salt Lake City store did not have the bits so they had them delivered from Intermountain’s Elko, Nevada store. [[]] said, “[o]n that same day I was also told by Intermountain personnel that the reason the Salt Lake City store did not have the double bits was that ‘Peru is behind on production, and we are having a hard time keeping these on the shelf.’” ([[]] decl. ¶¶ 3-4.) [[]] also stated that he “saw between 30-40 boxes of other types of drill bits bearing the Diamanta Christensen logo” while he was in Salt Lake City. [[[]] decl. ¶ 5)

⁶ I recognize that the ALJ also said that even if the Respondent has ceased to import the accused products, they *could* nonetheless be subject to the investigation. The ALJ said, “It has long been recognized by the Commission that “[m]ere voluntary cessation of allegedly illegal conduct does not moot a case; if it did the courts would be compelled to leave the defendant ... free to return to his old ways.” The ALJ cited three cases, all of which addressed the cessation of allegedly illegal conduct *after commencement of an investigation*. *None of the cited cases turned on conduct prior to the existence of a valid United States patent*. I cannot agree with the ALJ in *Ground Fault Circuit Interrupters* that the two fact situations are analogous, and I must reject his reasoning. See *Certain Integrated Circuit Telecomms. Chips*, Inv. No. 337-TA-337, Comm’n Op., 1993 ITC LEXIS 854 at *36-37 (Aug. 1993); *Certain Variable Speed Wind Turbines and Components Thereof*, Inv. No. 337-TA-376, Initial Det., 1996 ITC LEXIS 251 at *31 (May 30, 1996), *aff’d sub nom, Enercom GmbH v. United States Int’l Trade Comm’n*, 151 F.3d 1376 (Fed. Cir. 1998). Here the basis for a lack of jurisdiction is a complete absence of a patent at the time of importation and/or sale for importation.

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While hearsay is admissible in this matter, the hearsay must be reliable. I cannot find that the purported statement of an unidentified person who states that Intermountain in Salt Lake City is having trouble obtaining products from an unnamed source amounts to a showing of genuine facts in dispute as required by *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986).

[[]] was involved in a purchase of products for a Complainant in this case, which products are being used to show importation and sale of infringing products. When he was purportedly told that “Peru” is behind in production, he did not inquire further. He does not, therefore, state that “Peru” represented any of the Respondents. The uninquisitive [[]] did not even identify the person at Intermountain who made the remark. Next, he observed 30-40 boxes of “other types” of drill bits bearing the DCT logo. He did not determine, however, what those other types of drill bits actually were. Consequently, he does not assert that the other types of drill bits are in any way similar to the accused drill bits.

I conclude that Complainants’ expressed concerns about Respondents’ ongoing importation and sale for importation of the accused products is based solely upon speculation without supporting facts.

For the sole purpose of deciding this motion, I assume the following to be proven:

1. U.S. Patent No. 7,828,090 (the ‘090 patent) was granted on November 9, 2010; U.S. patent No. 7,874,384 (the ‘384 patent) was granted on January 25, 2011; and U.S. Patent No. 8,051,929 (the ‘929 patent) was granted on November 8, 2011.
2. The ‘090 patent, the ‘384 patent and the ‘929 patent are valid and enforceable.
3. The accused products infringe the asserted claims of the ‘090 patent, the ‘384 patent and the ‘929 patent.

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4. The accused products were imported by and/or sold for importation by Broyles Bros, Christensen and DCT in a single transaction in [[]].
5. Two of the accused products were sold by Intermountain in the United States on December 16, 2011.
6. It is possible that Intermountain retains a quantity of the accused products.

In my view, the grant of jurisdiction to the Commission in 19 U.S.C. § 1337 is based upon the importation into the United States or sale for import into the United States of products that infringe a valid U.S. patent. A proper interpretation of the statute requires that it be read as a whole, and when it speaks of a sale after importation, it speaks in one breath of a sale by the owner, importer, or consignee of products that infringe a patent. It follows that the sale of an infringing product contemplated by 19 U.S.C. § 1337 is the sale of a product that was imported or sold for importation at a time when it infringed a valid U.S. patent.

Based upon the foregoing, I find that there are no facts asserted upon which a finding could be made in favor of the Complainant that the accused products were imported or sold for importation into the United States at a time when they “infringed” a valid U.S. patent. The only evidence of importation upon which facts can be asserted are the documents that show importation in [[]], which is two years prior to the grant of the patents-in-suit.⁷ I find, too, that jurisdiction of the Commission does not attach because a product, that was imported or sold for importation into the United States at a time prior to the grant of the patent(s)-in-suit, is sold after importation occurred.⁸

Inasmuch as, the basis for Complainants’ assertion that they are entitled to discovery to further develop their claim of importation is the unreliable hearsay contained in the Webster

⁷ In the case of Christensen, there are *no* facts shown that there was ever an importation by that party.

⁸ The sale of the two products on December 16, 2011 by Intermountain is the sole basis stated in the complaint for asserting jurisdiction against that respondent.

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declaration, I find that the contention that there are other importations involved in this case is pure speculation. The Respondents have stated in declarations that there was one importation, and they have provided documents that support their assertion that the accused products purchased by the Complainant were the same as those imported in [[]]. There is no evidence to support a finding to the contrary. There is no justification to allow discovery.

ORDER

It is my Initial Determination that Motion No. 844-003 is hereby GRANTED.

Investigation No. 337-TA-844 is hereby terminated in its entirety.

This Initial Determination, along with supporting documentation, is hereby certified to the Commission. Pursuant to 19 C.F.R. § 210.42(h), this Initial Determination shall become the determination of the Commission unless a party files a petition for review of the Initial Determination pursuant to 19 C.F.R. § 210.43(a), or the Commission, pursuant to 19 C.F.R. § 210.44, orders, on its own motion, a review of the Initial Determination or certain issues herein.

Within seven (7) days of the date of this Order, each party shall submit to the Office of the Administrative Law Judges a statement as to whether or not it seeks to have any portion of this document deleted from the public version. The parties' submissions may be made by facsimile and/or hard copy by the aforementioned date.

Any party seeking to have any portion of this document deleted from the public version thereof must submit to this office a copy of this document with red brackets indicating any portion asserted to contain confidential business information. The parties' submissions

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concerning the public version of this document need not be filed with the Commission Secretary.

SO ORDERED.



Robert K. Rogers, Jr.
Administrative Law Judge

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the **PUBLIC VERSION ORDER NO. 9** was served upon the following parties via overnight delivery on **8/9/2018**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street SW, Room 112
Washington, DC 20436

**On Behalf of Complainant Bogart Longyear Company and
Longyear TM, Inc.:**

James Coughlan, Esq.
PERKINS COIE LLP
700 Thirteenth Street, NW
Washington, DC 20005

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

**On Behalf of Respondents Intermountain Drilling Supply
Corp.; Boyles Bros Diamantina S.A.; Christensen Chile S.A.;
Diamantina Christensen Trading, Inc.:**

Steven E. Adkins, Esq.
MCGUIRE WOODS
2001 K Street, NW
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- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.**

In the Matter of

**CERTAIN DRILL BITS AND PRODUCTS
CONTAINING SAME**

Investigation No. 337-TA-844

**NOTICE OF COMMISSION DETERMINATION TO REVIEW AN INITIAL
DETERMINATION GRANTING SUMMARY DETERMINATION OF NO
IMPORTATION; ON REVIEW, AFFIRMANCE OF GRANT OF SUMMARY
DETERMINATION OF NO IMPORTATION ON THE MERITS; TERMINATION OF
THE INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review an initial determination ("ID") (Order No. 9) of the presiding administrative law judge ("ALJ") granting summary determination of no importation and terminating the investigation. On review, the Commission has determined to affirm the ALJ's grant of summary determination of no importation on the merits and terminates the investigation.

FOR FURTHER INFORMATION CONTACT: 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 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 June 4, 2012, based on a complaint filed by Boart Longyear Company and Longyear TM, Inc. both of South Jordan, Utah. 76 *Fed. Reg.* 32997 (June 4, 2012). The complaint alleged 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 drill bits and products containing the same by reason of infringement of certain claims of United States Patent Nos. 7,828,090; 7,874,384; and 8,051,929. The notice of investigation named the following entities as respondents: Boyles Bros Diamantina S.A. of Lima, Peru; Christensen Chile S.A. of Santiago, Chile; Diamantina Christensen Trading Inc. of Panama; and Intermountain Drilling Supply Corp. of West Valley City, Utah.

On June 11, 2012, Respondents filed a motion for summary determination of no importation pursuant to 19 U.S.C. §1337(a)(1)(B). On June 21, 2012, Complainants filed an opposition to the motion. On July 10, 2012, the ALJ issued the subject ID, granting Respondents' motion for summary determination of no importation and terminating the investigation.

On July 24, 2012, Complainants filed a petition for review of the ID. Respondents filed an opposition to Complainants' petition on July 31, 2012.

Having examined the record of this investigation, including the ALJ's ID, the petition for review, and the response thereto, the Commission has determined to review the ID. On review, the Commission affirms the ALJ's grant of summary determination of no importation but does not adopt any statements in the ID to the effect that the determination is on jurisdictional grounds. Specifically, the Commission finds that the ALJ's determination appropriately considers the merits, and the Commission affirms the ALJ's determination on the merits. Complainants may re-file their complaint if they can make an allegation of importation into the United States, the sale for importation, or the sale within the United States after importation of accused products after issuance of the asserted patents.

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 sections 210.42-46 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42-46).

By order of the Commission.



Lisa R. Barton
Acting Secretary to the Commission

Issued: August 22, 2012

**CERTAIN DRILL BITS AND PRODUCTS CONTAINING THE 337-TA-844
SAME**

CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served by hand upon the Commission Investigative Attorney, Esq., and the following parties as indicated, on **August 22, 2012**



Lisa R. Barton, Acting Secretary
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

On Behalf of Complainants:

James B. Coughlan, Esq.
PERKINS COIE LLP
700 13th Street NW
Washington, D.C. 20005

() Via Hand Delivery
() Via Overnight Mail
 Via First Class Mail
() Other: _____

On Behalf of Respondents:

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ALLEN & OVERY LLP
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() Via Hand Delivery
() Via Overnight Mail
 Via First Class Mail
() Other: _____