

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

In the Matter of

CERTAIN AUTOMOTIVE PARTS

Investigation No. 337-TA-557

**NOTICE OF COMMISSION DETERMINATION TO WAIVE RECONSIDERATION
RULE DEADLINE AND TO EXTEND TARGET DATE**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to waive the deadline for filing a motion for reconsideration and to extend the target date in the above-captioned investigation from May 4, 2007 to June 6, 2007. Extension of the target date will permit the Commission to consider a motion for reconsideration of its determination not to review the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on December 4, 2006, regarding whether there is a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337.

FOR FURTHER INFORMATION CONTACT: Jonathan Engler, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3112. 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 January 4, 2006, based on a complaint filed by Ford Global Technologies, LLC (“Ford”) of Dearborn, Michigan. An amended complaint was filed on December 12, 2005, and a supplemental letter was filed on December 22, 2005. The amended complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain automotive parts by reason of infringement of U.S. Design Patent Nos. D496,890 (“the ‘890 patent”), D493,552 (“the ‘552 patent”), D497,579 (“the ‘579 patent”), D503,135 (“the ‘135 patent”), D496,615 (“the

'615 patent"), D502,561 ("the '561 patent"), D492,044 ("the '044 patent"), D491,119 ("the '119 patent"), D503,912 ("the '912 patent") and D495,979 ("the '979 patent"). The complaint named the following as respondents: Keystone Automotive Industries, Inc. of Pomona, California; U.S. Autoparts Network, Inc. of Carson, California; Gordon Auto Body Parts Co., Ltd. of Taiwan; Y.C.C. Parts Manufacturing Co., Ltd. of Taiwan; TYC Brother Industrial Co., Ltd. of Taiwan; and Depo Auto Parts Ind. Co., Ltd. of Taiwan (collectively "the Respondents"). The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337. On August 3, 2006, the Commission issued a notice not to review an ID granting partial termination of this investigation as to the '801, '685, '299, '658 patents.

On December 4, 2006, the ALJ issued the final ID, finding that the '119, '912, and '979 patents are invalid due to public use; that the '890, '552, '135, '579, '561, '044, and '615 patents are not invalid, are enforceable, and are infringed; and that there is a domestic industry involving the patents in issue. Thus, he found a violation of section 337 of the Tariff Act of 1930, as amended.

On December 15, 2006, Ford and the Respondents filed petitions for review. Ford sought review of the ALJ's finding that the '119, '912 and '979 patents are invalid as anticipated. The Respondents petitioned for review of the ALJ's findings that patents '119, '912, '979, '890, '552, '579, '135, '615, '561, and '044 were not anticipated, obvious or unenforceable, and of Orders No. 7 and 12, in which the ALJ denied certain affirmative defenses. The Office of Unfair Import Investigations opposed both petitions for review. On December 15, 2006, all parties filed responses to the petitions for review.

On December 26, 2006, the Commission determined to extend the deadline for determining whether to review the ALJ's ID by 60 days to March 20, 2007, and to extend the target date for completion of the investigation by 60 days to May 4, 2007.

On March 20, 2007, the Commission issued a notice of its decision not to review the ID. The notice indicated that the Commission sought comments from the parties to the investigation, interested government agencies, and any other interested parties on the issues of remedy, the public interest, and bonding. On March 20, 2007, the Commission issued a notice of its decision not to review the ID. The notice indicated that the Commission sought comments from the parties to the investigation, interested government agencies, and any other interested parties on the issues of remedy, the public interest, and bonding.

On March 30, 2007, the Commission received comments from Ford, the Respondents, the IA, and from interested parties including Public Citizen Inc., the Center for Auto Safety, the Automotive Aftermarket Association, the National Association of Mutual Insurance Companies, and Property Casualty Insurers Association of America. The investigation is currently before the Commission for determinations on remedy, public interest and bonding.

On May 1, 2007, the Commission received a petition from the Respondents requesting that in light of the Supreme Court's April 30, 2007 decision in *KSR International Co. v. Teleflex Inc.*, 530 U.S. ____ (2007) ("KSR"), the Commission reconsider its determination not to review the ALJ's final ID finding that the '890, '552, '135, '579, '561, '044, and '615 patents were not obvious and therefore not invalid. The Respondents contend that the Supreme Court's decision in *KSR* significantly alters the legal framework applicable to patent obviousness determinations, including those reached in this investigation. Accordingly, they characterize the subject matter of the petition as relating to a "new question" to which the Respondents "had no opportunity to submit arguments." See, Commission Rule 210.47. The Respondents state that they filed the petition for reconsideration as soon as possible after the Supreme Court handed down its decision in *KSR*.

Having considered the Respondents' request for leave to file a petition for review beyond the deadline of Commission Rule 210.47, which requires petitions for reconsideration to be filed within 14 days after service of a Commission determination, the Commission has determined to waive Commission Rule 210.47 and to accept the Respondents' petition for reconsideration. The Commission has also determined to extend the target date for this investigation to June 6, 2007 to permit the Commission to consider the Respondents' motion.

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 210.4 and 210.51 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.4, 210.51).

By order of the Commission.

/s/
Marilyn R. Abbott
Secretary to the Commission

Issued: May 4, 2007