

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

In the Matter of

**CERTAIN LASER BAR CODE
SCANNERS AND SCAN ENGINES,
COMPONENTS THEREOF, AND
PRODUCTS CONTAINING SAME**

Investigation No. 337-TA-551

**NOTICE OF COMMISSION DETERMINATION TO INSTITUTE
ADVISORY OPINION PROCEEDINGS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute an advisory opinion proceeding in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Paul M. Bartkowski, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5432. 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: This investigation was instituted on October 26, 2005, based on a complaint filed by Symbol Technologies Inc. ("Symbol") of Holtsville, New York. The complaint, as amended, alleged violations of section 337 of the Tariff Act of 1930 (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 laser bar code scanners or scan engines, components thereof, or products containing the same, by reason of infringement of various claims of United States Patent Nos. 5,457,308 ("the '308 patent"); 5,545,889 ("the '889 patent"); 6,220,514 ("the '514 patent"); 5,262,627 ("the '627 patent"); and 5,917,173 ("the '173 patent").

The complaint named two respondents: Metro Technologies Co., Ltd. of Suzhou, China, and Metrologic Instruments, Inc. of Blackwood, New Jersey (collectively, “Metrologic”).

On January 29, 2007, the ALJ issued an initial determination (“ID”) finding a violation of section 337 in the importation of certain laser bar code scanners and scan engines, components thereof, and products containing the same, in connection with certain asserted claims. The ID also issued monetary sanctions against Respondents for discovery abuses. Complainant, Respondents, and the Commission investigative attorney (“IA”) each filed petitions for review of the ID on February 8, 2007. They each filed responses to each other’s petitions on February 16, 2007.

The Commission determined to review the following issues: (1) the construction of the limitation “single, unitary, flexural component” in the ‘173 patent, and related issues of infringement, domestic industry, and validity; (2) the construction of the limitation “oscillatory support means” in the ‘627 patent, and related issues of infringement, domestic industry, and validity; (3) the construction of claims in the ‘889 patent containing “central area” limitations, and related issues of infringement, domestic industry, and validity; (4) the construction of the “scan fragment” limitation in the asserted claims of the ‘308 patent; and (5) the construction of the term “plurality” in the asserted claims of the ‘308 patent.

On May 30, 2007, the Commission determined to make the following modifications to the claim constructions set forth in the final ID: (1) in the ‘173 patent, the “single, unitary, flexural component” must include “portions integral with each other;” (2) in the ‘627 patent, the “oscillatory support means” must oscillate; (3) the limitations in the ‘889 patent containing requirements that the folding mirror be “near” or “adjacent” the central area of the collecting mirror allow for the folding mirror to be positioned close to, and either in front of or behind, the central area of the collecting mirror, but do not allow it to be mounted to the collecting mirror outside of the central area; (4) “scan fragment,” as used in the ‘308 patent, means “a scan that reads less than all of a bar code symbol and that would have been discarded before the advent of scan-stitching techniques;” and (5) the term “plurality” in the ‘308 patent means “two or more.”

These changes did not affect the ALJ’s findings on validity, infringement, or domestic industry. The Commission therefore affirmed those findings, as well as his finding of a violation of section 337 by Metrologic with regard to claim 48 of the ‘627 patent and claims 17 and 18 of the ‘173 patent. Consistent with its determination of violation, the Commission issued a Limited Exclusion Order and Cease and Desist Order related to claim 48 of the ‘627 patent and claims 17 and 18 of the ‘173 patent.

On June 18, 2007, Metrologic filed a request for an advisory opinion under Commission Rule 210.79 (19 C.F.R. § 210.79) that would declare that its new scan module does not infringe claim 17 or 18 of the ‘173 patent and claim 48 of the ‘627 patent, and therefore is not covered by the Commission’s Limited Exclusion Order or Cease and Desist Order issued on May 30, 2007. Metrologic further requested that the Commission conduct all proceedings related to the advisory

opinion in an expedited manner and on summary determination based upon the evidence presented in its request without formal hearing or discovery.

The Commission has examined Metrologic's request for an advisory opinion and has determined that it complies with the requirements for institution of an advisory opinion proceeding under Commission Rule 210.79(a). Accordingly, the Commission has determined to institute an advisory opinion proceeding. The Commission directs Symbol and the IA to state their views regarding whether they oppose Metrologic's request for an advisory opinion that the new scan module is not covered by the Limited Exclusion Order or Cease and Desist Order, and if so, whether they believe the matter should be referred to the ALJ.

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 section 210.79(a) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.79(a)).

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: August 10, 2007