

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

In the Matter of

**CERTAIN STRINGED MUSICAL
INSTRUMENTS AND COMPONENTS
THEREOF**

Investigation No. 337-TA-586

**NOTICE OF COMMISSION DETERMINATION TO REVIEW A FINAL INITIAL
DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review the final initial determination (“ID”) of the presiding administrative law judge (“ALJ”) finding no violation of section 337 in the above-captioned investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“section 337”).

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3065. 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 (<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: On November 3, 2006, the Commission instituted an investigation titled *Certain Stringed Musical Instruments and Components Thereof*, Inv. No. 337-TA-586, based upon a complaint filed October 3, 2006, and supplemented October 24, 2006, by Geoffrey McCabe (“McCabe”). 71 Fed. Reg. 64738 (November 3, 2006). 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 stringed musical instruments and components thereof by reason of infringement of one or more of claims 1-6, 8, 9, and 11 of U.S. Patent No. 6,175,066 (“the ‘066 patent”); claims 1-6 of U.S. Patent No. 5,965,831; claims 1 and 14-22 of U.S. Patent No. 6,891,094 (“the ‘094 patent”); and claims 1-3, 6-10, 14, 15, 23, 27, 28, and 32 of

U.S. Patent No. 5,986,191. The complaint named as respondents Floyd Rose Guitars (Redmond, Washington) (“Rose”); Ibanez, Inc. (Hoshino) US (Bensalem, Pennsylvania); Vigier, Inc. (Grigny, France); and Schaller Electronic (Postbauer-Heng, Germany) (“Schaller”). Rose and Schaller are the only remaining respondents.

On December 3, 2007, the ALJ issued a final ID finding no violation of section 337. Only claims 8, 9, and 11 of the ‘066 patent and claims 1 and 14-22 of the ‘094 patent remained in the case as of the date of the final ID. Petitions for review were filed by McCabe and the Commission investigative attorney. A response to the petitions for review was filed by Rose.

On December 21, 2007, the Commission issued a notice extending the deadline for determining whether to review the subject ID by fifteen (15) days, to February 1, 2008.

On February 1, 2008, the Commission issued a notice extending the deadline for determining whether to review the subject ID to February 8, 2008, and extending the target date for completion of the investigation to April 10, 2008.

Having examined the relevant portions of the record in this investigation, including the final ID, the petitions for review, and the response thereto, the Commission has determined to review the final ID in its entirety.

The Commission requests briefing based on the evidentiary record on the issues on review. The Commission is particularly interested in responses to the following questions:

(1) What type and level of research and development is necessary to satisfy the economic prong of the domestic industry requirement under section 337(a)(3)(C)? Should it differ depending upon the size of the relevant marketplace or whether the patent holder is an individual versus some other entity? What is the appropriate industry market in which we should examine the economic prong of the domestic industry requirement: the market for certain guitars, all guitars, certain musical instruments, or all musical instruments or some other industry market? How do these criteria apply in this case? How is your argument supported by the record in this case? Does research and development prior to the issuance of a patent count towards the domestic industry requirement?

(2) What type and level of licensing activity is necessary to satisfy the economic prong of the domestic industry requirement under section 337(a)(3)(C)? Is the relevant time period for licensing activity before or after the filing of the complaint, or both? How do these criteria apply in this case? How is your argument supported by the record in this case? For the purposes of this question, consider whether licensing negotiations would qualify if they did not result in an actual license during a relevant period of time.

(3) Is the relevant industry in this case “in the process of being established”

pursuant to section 337(a)(2)? Was this issue properly raised before the ALJ and in the petitions for review? How is your argument supported by the record in this case? How do the criteria for an industry in the process of being established differ from the criteria for an industry that already exists?

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be concise and thoroughly referenced to the record in this investigation, including references to exhibits and testimony. The written submissions must be filed no later than the close of business on February 22, 2008. Reply submissions must be filed no later than the close of business on February 29, 2008. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original and 12 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R § 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of 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.

/s/
Marilyn R. Abbott
Secretary to the Commission

Issued: February 7, 2008