

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

In the Matter of

**CERTAIN ACCESS CONTROL
SYSTEMS AND COMPONENTS
THEREOF**

**Investigation No. 337-TA-1016
(Modification Proceeding)**

**NOTICE OF COMMISSION DETERMINATION TO REVIEW A RECOMMENDED
DETERMINATION; SCHEDULE FOR FILING WRITTEN SUBMISSIONS ON THE
ISSUES UNDER REVIEW**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined to review the Recommended Determination (“RD”) issued in the above-captioned modification proceeding.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone (202) 205-2382. 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, SW, Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://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 the underlying investigation on August 9, 2016, based on a complaint filed by The Chamberlain Group, Inc. (“Chamberlain”) of Elmhurst, Illinois. 81 FR 52713 (Aug. 9, 2016). The complaint alleged a violation of 19 U.S.C. 1337, as amended (“Section 337”), in the importation, sale for importation, or sale in United States after importation of certain access control systems and components thereof that allegedly infringe one or more claims of U.S. Patent No. 7,161,319 (“the ’319 patent”) and U.S. Patent No. 7,339,336 (“the ’336 patent”). A third patent, U.S. Patent No. 7,196,611, was initially asserted but later terminated from the investigation. Order No. 28 (*not reviewed*, Comm’n Notice (May 31, 2017)).

The notice of investigation named Techtronic Industries Co., Techtronic Industries North America, Inc., One World Technologies, Inc., and OWT Industries, Inc., and ET Technology (Wuxi) Co. (collectively “Techtronic”) among the respondents. Ryobi Technologies, Inc. was

initially named as a respondent but was later terminated. Order No. 6 (*not reviewed*, Comm'n Notice (Nov. 7, 2016)). The Office of Unfair Import Investigations was not named as a party.

On October 23, 2017, the then-presiding administrative law judge ("ALJ") issued a final initial determination ("ID") in the original investigation, in which he found that Techtronic violated Section 337 by importing garage door openers that infringe the asserted claims of the '319 patent. The ID found no infringement and hence no violation with respect to the '336 patent. The ID found none of the claims invalid as obvious, but found claim 34 of the '336 patent invalid under 35 U.S.C. 101 ("Section 101").

On December 22, 2017, the Commission determined to review in part the ALJ's findings on non-obviousness but not infringement. 82 FR 61792 (Dec. 29, 2017). The Commission ultimately affirmed the ID's finding that none of the claims is invalid as obvious and took no position on invalidity under Section 101. The Commission found a violation of Section 337 by reason of infringement of the '319 patent but not the '336 patent, and issued a limited exclusion order and cease and desist orders against Techtronic. 83 FR 13517 (Mar. 29, 2018); Comm'n Op. at 1-2, 13-31, 35-36 (Mar. 23, 2018). Chamberlain and Techtronic have cross-appealed the Commission's final determination to the U.S. Court of Appeals for the Federal Circuit. *The Chamberlain Group, Inc. v. International Trade Comm'n*, Appeal Nos. 18-2002, 18-2191 (consolidated).

On August 2, 2018, Techtronic filed a petition with the Commission to institute a modification proceeding to determine whether its redesigned wireless garage door openers infringe the '319 patent and are covered by the Commission's remedial orders. Chamberlain filed its opposition to the petition on August 13, 2018. On September 4, 2018, the Commission issued a notice of its determination to institute the modification proceeding. 83 FR 45676 (Sept. 10, 2018); Comm'n Order (Sept. 9, 2018).

On December 12, 2018, the chief administrative law judge ("CALJ") held an evidentiary hearing on the issues raised by the parties. The parties filed their post-hearing briefs on December 21, 2018, and their reply briefs on January 30, 2019. In view of the partial shutdown of the federal government in January 2019, the CALJ issued an ID (Order No. 48) on January 31, 2019, to revise the procedural schedule and extend the deadline for issuance of the RD from March 11, 2019, to April 22, 2019. The Commission determined not to review the ID and extended the target date for completion of this modification proceeding to July 22, 2019. Comm'n Notice (Mar. 5, 2019).

On April 22, 2019, the CALJ issued the subject RD recommending modification of the remedial orders so that they do not apply to Techtronic's redesigned garage door openers. The CALJ, in making this recommendation, took judicial notice of briefs and other legal documents that were submitted during the U.S. Patent and Trademark Office's *inter partes* review ("IPR") of the subject '319 patent but were not admitted into the record in the present proceeding. On May 3, 2019, Chamberlain filed its comments on the RD asking the Commission to review and reverse the subject RD. Techtronic did not file a reply to Chamberlain's comments.

The Commission has determined to review the subject RD. The Commission asks the parties to provide additional briefing on the following issues regarding the '319 patent:

- A. Please explain whether the wireless connection between the wall console and head unit in Techtronic's redesigned garage door openers is "a conductor or group of conductors which convey[s] digital data," which is the present construction of a "digital data bus."
- B. Explain whether the arguments Chamberlain made regarding the digital data bus and wireless connections in the documents from the *inter partes* review ("IPR") (RD Exs. A-D), as discussed in the RD at 39-45, are substantially the same as the arguments Chamberlain made about those subjects in documents in this investigation's evidentiary record from earlier in the IPR proceedings, during the patent's prosecution history, or elsewhere. If those arguments are substantially different, explain how they differ from Chamberlain's earlier arguments.

The parties are asked to brief only the discrete issues identified above, with reference to the applicable law and evidentiary record. The parties are not to brief any other issues on review, which have already been adequately presented in the parties' previous filings. For each argument presented, the parties' submissions should set forth whether and/or how that argument was presented and preserved in the proceedings before the CALJ or ALJ, in conformity with the CALJ's Ground Rules (Order No. 38), with citations to the record. For purposes of this review, the parties may cite only to material that was included in the evidentiary record submitted in the underlying investigation or modification proceeding.

Written submissions must be filed no later than the close of business on June 20, 2019. Reply submissions must be filed no later than the close of business on June 27, 2019. Opening submissions are limited to 25 pages. Reply submissions are limited to 20 pages. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day, pursuant to section 210.4(f) of the Commission's Rule of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1016 (Modification Proceeding)") in a prominent place on the cover page and/or first page. (See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations

relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel^[1] solely for cybersecurity purposes. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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 part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', with a stylized flourish at the end.

Lisa R. Barton
Secretary to the Commission

Issued: June 7, 2019

¹ All contract personnel will sign appropriate nondisclosure agreements.