

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

In the Matter of

**CERTAIN ROBOTIC VACUUM
CLEANING DEVICES AND
COMPONENTS THEREOF SUCH AS
SPARE PARTS**

Investigation No. 337-TA-1057

**NOTICE OF COMMISSION DETERMINATION TO REVIEW
A FINAL INITIAL DETERMINATION IN PART;
SCHEDULE FOR FILING WRITTEN SUBMISSIONS ON THE ISSUES
UNDER REVIEW AND ON REMEDY, THE PUBLIC INTEREST, AND BONDING;
EXTENSION OF THE 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 review-in-part the presiding administrative law judge's final initial determination, finding a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, with respect to U.S. Patent Nos. 8,600,553 and 9,038,233 and no violation with respect to U.S. Patent Nos. 6,809,490 and 8,474,090. The Commission has also determined to extend the target date for completion of the above-captioned investigation until November 20, 2018. The Commission requests certain briefing from the parties on the issues under review, as indicated in this notice. The Commission also requests briefing from the parties and interested persons on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Lucy Grace D. Noyola, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202-205-3438. 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, DC 20436, telephone 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<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 this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on May 23, 2017, based on a complaint filed by iRobot Corporation of Bedford, Massachusetts (“iRobot”). 82 FR 23592 (May 23, 2017). The complaint alleges a violation of section 337 by reason of infringement of certain claims of U.S. Patent Nos. 6,809,490 (“the ’490 patent”); 7,155,308 (“the ’308 patent”); 8,474,090 (“the ’090 patent”); 8,600,553 (“the ’553 patent”); 9,038,233 (“the ’233 patent”); and 9,486,924 (“the ’924 patent”). The complaint names as respondents Bissell Homecare, Inc. of Grand Rapids, Michigan (“Bissell”); Hoover, Inc. of Glenwillow, Ohio and Royal Appliance Manufacturing Co., Inc. d/b/a TTI Floor Care North America, Inc. of Glenwillow, Ohio (collectively, “Hoover”); bObsweep, Inc. of Toronto, Canada and bObsweep USA of Henderson, Nevada (collectively, “bObsweep”); The Black & Decker Corporation of Towson, Maryland and Black & Decker (U.S.) Inc. of Towson, Maryland (collectively, “Black & Decker”); Shenzhen ZhiYi Technology Co., Ltd., d/b/a iLife of Shenzhen, China (“iLife”); Matsutek Enterprises Co., Ltd. of Taipei City, Taiwan (“Matsutek”); Suzhou Real Power Electric Appliance Co., Ltd. of Suzhou, China (“Suzhou”); and Shenzhen Silver Star Intelligent Technology Co., Ltd. of Shenzhen, China (“SSSIT”). The Office of Unfair Import Investigations is not a party in this investigation.

The investigation has been terminated with respect to respondents Suzhou, Black & Decker, Bissell, and Matsutek. Notice (Oct. 18, 2017) (determining not to review Order No. 23 (Sept. 26, 2017)); Notice (Jan. 31, 2018) (determining not to review Order No. 31 (Jan. 9, 2018)); Notice (Feb. 16, 2018) (determining not to review Order No. 34 (Jan. 25, 2018)). The ’924 and the ’308 patents are also no longer part of the investigation. Notice (Jan. 16, 2018) (determining not to review Order No. 29 (Dec. 14, 2017)); Notice (Mar. 15, 2018) (determining not to review Order No. 40 (Feb. 21, 2018)).

On July 16, 2018, the Commission determined that iRobot satisfied the economic prong of the domestic industry requirement under 19 U.S.C. § 1337(a)(3)(B). Notice (July 16, 2018) (determining to affirm with modifications Order No. 39 (Feb. 13, 2018)).

On June 25, 2018, the presiding administrative law judge (“ALJ”) issued a final initial determination (“ID”), finding a violation of section 337 with respect to the ’553 and ’233 patents and no violation with respect to the ’490 and ’090 patents. Specifically, with respect to the ’553 patent, the ALJ found that: (1) iLife directly infringes claim 42, but not claims 1, 12, 13, and 22; (2) iLife has not induced or contributed to infringement of the patent; (3) iRobot has satisfied the technical prong of the domestic industry requirement; (4) claim 1, but not claims 11 and 12, is invalid for anticipation; and (5) claims 4, 12, 13, and 22 are not invalid for obviousness. With respect to the ’490 patent, the ALJ found that: (1) iLife and bObsweep directly infringe claim 42, but not claims 1 and 12, and Hoover directly infringes claim 42; (2) iLife, Hoover, bObsweep, and SSSIT have not induced or contributed to infringement of the patent; (3) iRobot has satisfied the technical prong of the domestic industry requirement; (4) claim 1, but not claim 12, is invalid for anticipation; (5) claims 12 and 42 are invalid for obviousness; and (6) claims 1 and 42 are not invalid for indefiniteness. With respect to the ’090 patent, the ALJ found that: (1) iLife, Hoover, SSSIT and bObsweep directly infringe claims 1, 2, 3, 5, 7, 10, and 17; (2) iLife, Hoover, bObsweep, and SSSIT have not induced or contributed to infringement of the patent; (3) iRobot has satisfied the technical prong of the domestic industry requirement;

(4) claims 1, 5, 7, 10, and 17 are not invalid for anticipation; and (5) claims 1, 2, 3, 4, 5, 7, 10, and 17 are invalid for obviousness in view of certain prior art combinations, but not others. With respect to the '233 patent, the ALJ found that: (1) iLife and bObsweep directly infringe claims 1, 10, 11, 14, 15, and 16 and Hoover directly infringes the same claims with respect to the Hoover Quest 1000 products, but not the Hoover Rogue/Y1 and Hoover Y2 products; (2) iLife, Hoover, bObsweep, and SSSIT have not induced or contributed to infringement of the patent; (3) iRobot has satisfied the technical prong of the domestic industry requirement; and (4) claims 1, 10, 11, 14, 15, and 16 of the '233 patent are not invalid for anticipation, obviousness, nor lack of written description.

The ALJ also issued a Recommended Determination on Remedy and Bond ("RD"), recommending, if the Commission finds a section 337 violation, the issuance of (1) a limited exclusion order against certain robotic vacuum cleaning devices and components thereof that are imported, sold for importation, and/or sold after importation by Hoover, bObsweep, SSSIT, and iLife, (2) cease and desist orders against Hoover and iLife, and (3) imposition of a bond of 18.89 percent for iLife products, 48.65 percent for bObsweep products, and 41.35 percent for Hoover products that are imported during the period of Presidential review.

On July 25, 2018, iRobot filed post-RD statements on the public interest under Commission Rule 210.50(a)(4). The Commission did not receive any post-RD public interest comments from Respondents pursuant to Commission Rule 210.50(a)(4). The Commission did not receive comments from the public in response to the Commission notice issued on July 10, 2018. 83 FR 31977 (July 10, 2018).

On July 9, 2018, iRobot and Respondents each filed a petition for review challenging various findings in the final ID. On July 17, 2018, iRobot and Respondents each filed responses to the other party's petition for review.

Having examined the record of this investigation, including the final ID, the Commission has determined to review in part the ALJ's determination of a section 337 violation. Specifically, the Commission has determined to review the ALJ's findings on: (1) induced and contributory infringement with respect to the '553, '490, '090, and '233 patents; (2) anticipation with respect to the asserted claims of the '553 patent; (3) obviousness with respect to the asserted claims of the '553 patent; (4) direct infringement of the '090 patent by Respondents; (5) anticipation with respect to the asserted claims of the '090 patent; (6) obviousness with respect to the asserted claims of the '090 patent; (7) anticipation with respect to the asserted claims of the '233 patent; and (8) consideration of U.S. Patent No. 6,594,844 as prior art under 35 U.S.C. § 102(a) and concerning obviousness under 35 U.S.C. § 103.

The Commission has determined not to review the remaining issues decided in the final ID.

The Commission has also determined to extend the target date for completion of the investigation until November 20, 2018.

In connection with its review, the Commission requests responses to the following questions. The parties are requested to brief their positions with reference to the applicable law and the existing evidentiary record.

1. Before the ALJ, did Respondents assert invalidity of claims 1 and 12 of the '553 patent under 35 U.S.C. § 102(b) based on a theory that the invention was “described in a printed publication” or that the invention was “in public use”? *See* ID at 57.
2. What is the theory under section 102(b) (*i.e.*, “described in a printed publication” or “in public use”) addressed by the final ID to find claim 1 of the '553 patent invalid as anticipated by Suckmaster and to find claim 12 not invalid as anticipated by Suckmaster? *See* ID at 57-70.
3. Assuming Respondents argued before the ALJ invalidity of claim 12 of the '553 patent based on “public use” under section 102(b):
 - a. Does there need to be a showing that the Suckmaster robot was used in public to practice the steps of claim 12 to find anticipation of that claim based on a public use theory?
 - b. Does the record evidence show that the Suckmaster robot performed the steps of claim 12 during the Atlanta Hobby Robot Club Vacuum Contest?
4. Describe the principle of operation of U.S. Patent No. 5,995,884 (“Allen”) and discuss whether modifying Allen with a “control module” as required by the asserted claims of the '090 patent would change that principle of operation.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue a cease and desist order that could result in the respondents Hoover and iLife being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (Dec. 1994), Comm'n Opinion.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist order would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore

interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on all of the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant is also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the date that the asserted patents expire and the HTSUS numbers under which the accused products are imported, and provide identification information for all known importers of the subject articles. Initial written submissions and proposed remedial orders must be filed no later than close of business on **Monday, September 24, 2018**. Reply submissions must be filed no later than the close of business on **Monday, October 1, 2018**. No further submissions on 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 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 Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number (Inv. No. 337-TA-1057) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary at (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 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 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 nonconfidential 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 C.F.R. part 210).

^[1] All contract personnel will sign appropriate nondisclosure agreements.

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton'.

Lisa R. Barton
Secretary to the Commission

Issued: September 12, 2018