

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

In the Matter of

**CERTAIN THERMOPLASTIC-
ENCAPSULATED ELECTRIC
MOTORS, COMPONENTS THEREOF,
AND PRODUCTS AND VEHICLES
CONTAINING SAME II**

Investigation No. 337-TA-1073

**NOTICE OF COMMISSION DETERMINATION
TERMINATING THE INVESTIGATION
WITH A FINDING OF NO VIOLATION OF SECTION 337**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to terminate the above-captioned investigation with a finding of no violation of section 337 of the Tariff Act of 1930.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202-708-2532. 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 October 11, 2017, based on a complaint filed on September 5, 2017, by Intellectual Ventures II LLC of Bellevue, Washington ("IV"). 82 FR 47250 (Oct. 11, 2017). The complaint alleges a violation of section 337 by reason of infringement of certain claims of U.S. Patent Nos. 7,683,509 ("the '509 patent"); 7,928,348 ("the '348 patent"); 7,154,200 ("the '200 patent"); 7,067,944 ("the '944 patent"); and 7,067,952 ("the '952 patent"). The notice of investigation names as respondents Aisin Seiki Co., Ltd. of Aichi, Japan; Aisin Holdings of America, Inc. of Seymour, Indiana;

Aisin Technical Center of America, Inc. of Northville, Michigan; and Aisin World Corporation of America of Northville, Michigan (collectively, “Aisin” or “Aisin Seiki”); Bayerische Motoren Werke AG of Munich, Germany, BMW of North America, LLC of Woodcliff Lake, New Jersey and BMW Manufacturing Co., LLC of Greer, South Carolina (collectively, “BMW”); Denso Corporation of Aichi, Japan and Denso International America, Inc. of Southfield, Michigan (“collectively, DENSO”); Honda Motor Co., Ltd. of Tokyo, Japan; Honda North America, Inc., of Torrance, California; American Honda Motor Co., Inc. of Torrance, California; Honda of America Mfg., Inc. of Marysville, Ohio; Honda Manufacturing of Alabama, LLC of Lincoln, Alabama; and Honda R&D Americas, Inc. of Torrance, California (collectively, “Honda”); Mitsuba Corporation of Gunma, Japan and American Mitsuba Corporation of Mount Pleasant, Michigan (collectively, “Mitsuba”); Nidec Corporation of Kyoto, Japan and Nidec Automotive Motor Americas, LLC of Auburn Hills, Michigan (collectively, “Nidec”); and Toyota Motor Corporation of Aichi Prefecture, Japan; Toyota Motor North America, Inc. of New York, New York; Toyota Motor Sales, U.S.A., Inc. of Torrance, California; Toyota Motor Engineering & Manufacturing North America, Inc. of Erlanger, Kentucky; Toyota Motor Manufacturing, Indiana, Inc. of Princeton, Indiana; and Toyota Motor Manufacturing, Kentucky, Inc. of Georgetown, Kentucky (collectively, “Toyota”). The Office of Unfair Import Investigations (“OUII”) was also named a party in this investigation.

The Commission previously terminated the investigation in part with respect to respondents BMW, DENSO, Mitsuba, and Nidec, as well as the ’200, ’944, and ’952 patents. Notice (Apr. 18, 2018) (determining not to review Order No. 22 (Mar. 16, 2018)); Notice (May 4, 2018) (determining not to review Order No. 29 (Apr. 10, 2018)); Notice (May 4, 2018) (determining not to review Order No. 31 (Apr. 16, 2018)); Notice (May 11, 2018) (determining not to review Order No. 33 (Apr. 23, 2018)); Notice (June 19, 2018) (determining not to review Order No. 39 (May 21, 2018)); Notice (Aug. 15, 2018) (determining not to review Order No. 46 (July 19, 2018)); Notice (Aug. 15, 2018) (determining not to review Order No. 47 (July 24, 2018)); Notice (Aug. 27, 2018) (determining not to review Order No. 48 (Aug. 13, 2018)). Thus, the remaining respondents in this investigation are Aisin, Honda, and Toyota (collectively, “Respondents”), and the remaining asserted patents are the ’509 and ’348 patents (collectively, the “asserted patents”).

On November 13, 2018, the presiding administrative law judge (“ALJ”) issued a final initial determination (“ID”), finding no violation of section 337 with respect to the ’509 and ’348 patents. Specifically, the ID finds that the accused products infringe claims 14 and 15 of the ’509 patent, but do not infringe claims 24-27 of the ’348 patent. With respect to both patents, the ID finds that IV has not satisfied the domestic industry requirement of section 337(a)(2) & (a)(3), nor have Respondents established that any asserted claim is invalid for obviousness.

On November 27, 2018, the ALJ issued a Recommended Determination (“RD”) on remedy, the public interest, and bonding, recommending, should the Commission find a violation: (1) the issuance of a limited exclusion order directed to certain infringing thermoplastic-encapsulated electric motors, components thereof, and products and vehicles containing same; (2) the issuance of cease and desist orders against Aisin and Toyota; and (3) imposition of a bond of zero percent for infringing products that are imported during the period of Presidential review.

Also, on November 27, 2018, IV filed a petition for review, and Respondents filed a contingent petition for review, each challenging various findings in the final ID. On December 6, 2018, IV, Respondents, and OUII filed responses to the petitions for review.

On December 14, 2018, Respondents filed a notice that, on December 12, 2018, the Patent Trial and Appeal Board of the U.S. Patent and Trademark Office issued four final written decisions finding that every claim asserted against Respondents in this investigation is unpatentable on invalidity grounds.

On January 7, 2019, the Alliance of Automobile Manufacturers and the Association of Global Automakers filed a joint public-interest submission.

On February 19, 2019, the Commission determined to review the ID in its entirety, and solicited further briefing from the parties on certain issues, and briefing from the parties and the public on remedy, the public interest and bonding. On March 1, 2019, the parties filed opening briefs, and on March 8, 2019, the parties filed reply briefs.

Having examined the record of this investigation, including the final ID and the parties' submissions, the Commission has determined that IV has failed to satisfy the domestic industry requirement of section 337(a)(2) & (a)(3), 19 U.S.C. 1337(a)(2) & (a)(3). Accordingly, the Commission has determined to terminate the investigation with a finding of no violation of section 337. The Commission, therefore, does not reach and takes no position on the other issues raised in the parties' petitions for Commission review.

The reasons for the Commission's determination are set forth more fully in the Commission's opinion.

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.



Lisa R. Barton
Secretary to the Commission

Issued: July 19, 2019