

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN MOVABLE BARRIER
OPERATOR SYSTEMS AND
COMPONENTS THEREOF**

**Investigation No. 337-TA-1118
(Bond Return)**

**NOTICE OF A COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL
DETERMINATION GRANTING A MOTION FOR RETURN OF A BOND**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (the “Commission”) has determined not to review an initial determination (“ID”) (Order No. 47) issued by the presiding administrative law judge (“ALJ”) granting the respondents’ motion for the return of a bond.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2382. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket system (“EDIS”) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On June 11, 2018, the Commission instituted this investigation based on a complaint, as supplemented, filed by The Chamberlain Group, Inc. (“Chamberlain”) of Oak Brook, Illinois. 83 FR 27020-21 (June 11, 2018). The complaint alleges a violation of section 337 the Tariff Act, as amended, 19 U.S.C. 1337 (“section 337”), by way of the importation, sale for importation, or sale in the United States after importation of certain movable barrier operator systems that allegedly infringe one or more of the asserted claims of U.S. Patent Nos. 7,755,223 (“the ’223 patent”); 8,587,404 (“the ’404 patent”); and 6,741,052 (“the ’052 patent”). *Id.* The Commission’s notice of investigation named Nortek Security & Control, LLC of Carlsbad, California; Nortek, Inc. of Providence, Rhode Island; and GTO Access Systems, LLC of Tallahassee, Florida (collectively, “Nortek”) as respondents. *Id.* The complaint further alleged the existence of a domestic industry. The Office of Unfair Import Investigations was not named as a party to this investigation. *See id.*

On April 22, 2020, the Commission found no violation of section 337 with respect to the ’404 patent and ’052 patent. The Commission, however, determined to review the ALJ’s finding

of no infringement of the '223 patent and vacated and remanded the ALJ's finding that Chamberlain had satisfied the economic prong of the domestic industry requirement with respect to the '223 patent. Comm'n Notice at 3 (April 22, 2020); Comm'n Order (April 22, 2020) (vacating and remanding Order No. 38 (Nov. 25, 2019)).

On July 10, 2020, the ALJ issued a Remand ID, finding that Chamberlain satisfied the economic prong of the '223 patent under sections 337(a)(3)(A) (plant and equipment) and 337(a)(3)(B) (labor and capital). On September 9, 2020, the Commission determined to review the Remand ID, based on a petition for review filed by Nortek on July 20, 2020. 85 FR 57249-51 (Sept. 15, 2020).

On December 3, 2020, the Commission found a violation of section 337 with respect to the '223 patent, finding that Nortek infringed claims 1 and 21 of the '223 patent and that Chamberlain had satisfied the economic prong of the domestic industry requirement as to the '223 patent. Comm'n Notice (Dec. 3, 2020); Comm'n Opinion (Dec. 3, 2020). The Commission issued a limited exclusion order and a cease and desist order ("the remedial orders") against each of the Nortek respondents with respect to the '223 patent. *See id.*

Chamberlain timely appealed the Commission's April 22, 2020 determination of no violation of the '404 patent and '052 patent to the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit" or "Court"). Nortek timely cross-appealed the Commission's December 3, 2020 determination of violation for the '223 patent. The Court consolidated the separate appeals. While the appeals were pending, the '052 patent expired, which mooted the appeal with respect to that patent.

On April 27, 2023, the Federal Circuit issued its opinion in the consolidated appeals. *The Chamberlain Group, Inc. v. ITC*, Appeal Nos. 2020-1965, 2021-1829, 2023 WL 3115579 (Fed. Cir. April 27, 2023). The Federal Circuit affirmed the Commission's violation determination with respect to the '223 patent, but it reversed and vacated the Commission's determination of no infringement with respect to the '404 patent due to a change in claim construction. *Id.* The Federal Circuit issued its mandate on July 19, 2023, returning jurisdiction to the Commission for the remanded issues.

On October 4, 2023, the Commission determined to remand the investigation to the presiding ALJ for an ID on whether Chamberlain has satisfied the economic prong of the domestic industry requirement with respect to the '404 patent, taking into account the Federal Circuit's findings for that patent. Comm'n Notice (Oct. 4, 2023); Remand Order (Oct. 4, 2023). The Commission also requested additional briefing from the parties with respect to certain issues on which it had not previously taken a position. Comm'n Notice (Oct. 4, 2023). The Commission also dismissed the infringement claim and vacated all findings with respect to the expired '052 patent as moot. *See Chamberlain*, 2013 WL 311579 at *1.

On August 18, 2023, Nortek filed a motion for return of bond paid during the period of Presidential review of the remedial orders. Chamberlain did not take a position on whether it supported or opposed the return of the bond, so the presiding ALJ treated the motion as unopposed. On January 11, 2024, the ALJ issued the subject ID (Order No. 47) granting Nortek's motion for return of a bond as there was no dispute that the bonds posted during the

Presidential review period were only for “products Respondents have imported into the U.S. and/or sold after importation into the U.S. [that] do not infringe.” Order No. 47 at 8 (Jan. 11, 2024).

No petition for review of the subject ID was filed.

The Commission has determined not to review the subject ID.

The Commission vote for this determination took place on February 26, 2024.

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", enclosed within a large, loopy oval flourish.

Lisa R. Barton
Secretary to the Commission

Issued: February 26, 2024