

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
(Remand)**

**NOTICE OF A COMMISSION DETERMINATION TO REVIEW A REMAND INITIAL
DETERMINATION ON SECOND REMAND ORDER; REQUEST FOR WRITTEN
SUBMISSIONS ON REMEDY, THE PUBLIC INTEREST, AND 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 to review a Remand Initial Determination on Second Remand Order (“Second RID”) finding that complainant The Chamberlain Group, Inc. (“Chamberlain”) has satisfied the economic prong of the domestic industry requirement with respect to U.S. Patent No. 8,587,404 (“the ’404 patent”). The Commission requests written submissions from the parties, interested government agencies, and other interested persons on the issues of remedy, the public interest, and bond, under the schedule set forth below.

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: The Commission instituted this investigation on June 11, 2018, based on a complaint, as supplemented, filed by Chamberlain of Oak Brook, Illinois. 83 FR 27020-21 (June 11, 2018). The complaint alleges a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”) by way of importing, selling for importation, or selling in the United States after importation certain movable barrier operator systems that allegedly infringe one or more of the asserted claims of the ’404 patent, U.S. Patent Nos. 7,755,223 (“the ’223 patent”), and 6,741,052 (“the ’052 patent”). *Id.* The Commission’s notice of investigation named Nortek Security & Control, LLC of Carlsbad, California (presently doing business as Nice North America LLC); 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 November 25, 2019, the presiding administrative law judge (“ALJ”) issued two initial determinations (“IDs”). First, the ALJ issued Order No. 38, granting Chamberlain’s motion for summary determination that it satisfied the economic prong of the domestic industry requirement (“DI economic prong”). Order No. 38 (Nov. 25, 2019). Second, the ALJ issued a final ID (“FID”) on violation, as well as a recommended determination (“RD”) on remedy and bond. The FID finds no violation of section 337 because: (i) Nortek did not infringe claim 11 of the ’404 patent; (ii) Nortek did not infringe the ’223 patent and Chamberlain did not satisfy the technical prong of the domestic industry requirement (“DI technical prong”) for that patent; and (iii) asserted claim 1 of the ’052 patent is invalid as obvious. FID at 1, 286-87. The RD recommends issuing a limited exclusion order (“LEO”) and cease-and-desist orders (“CDO”) against Nortek and setting the bond at 100 percent during the period of Presidential review, if the Commission finds that Nortek violated section 337. *Id.* at 280, 282, 286.

The parties did not file any submissions pursuant to Commission Rule 210.50(a)(4), 19 CFR 210.50(a)(4). The Commission also received no submissions in response to its notice soliciting comments from the public on impacts on the public interest should the recommended relief be granted. 84 FR 70998-999 (Dec. 26, 2019). On April 22, 2020, the Commission determined to review and, on review, to adopt the FID’s no-violation finding for the ’404 patent, which was based on a narrow construction of “movable barrier operator” that excluded the wall station from its scope. Comm’n Notice at 3 (Apr. 22, 2020). The Commission determined to review and ultimately took no position on the FID’s finding that Nortek failed to prove by clear and convincing evidence that claim 11 of the ’404 patent is abstract and thus patent-ineligible under 35 U.S.C. 101. At the same time, the Commission vacated Order No. 38 and remanded the economic prong issue to the ALJ for further proceedings with respect to the ’223 patent, which was still under review at that time. *Id.*; Order Vacating and Remanding Order No. 38 (Apr. 22, 2020) (“First Remand Order”).

On July 10, 2020, the ALJ, after re-analyzing the domestic industry per the Commission’s instructions, issued a Remand Initial Determination (“First RID” or “RID1”). The First RID finds that Chamberlain made significant investments in plant and equipment as well as labor and capital, and thus satisfied the DI economic prong for the ’223 patent under 19 U.S.C. 1337(a)(3)(A) and (B), respectively.

On September 9, 2020, the Commission determined to review the First RID and requested additional briefing by the parties on issues relating to the DI economic prong with respect to the ’223 patent and remedy, bond, and the public interest. 85 FR 57249-50 (Sept. 14, 2020).

On December 3, 2020, the Commission determined to adopt the First RID’s findings that Chamberlain satisfied the DI economic prong under subsections 337(a)(3)(A) and (B). 85 FR 79217-18 (Dec. 9, 2020). The Commission also reversed the FID’s non-infringement finding for the ’223 patent and found instead that Nortek violated section 337 by way of infringing the ’223

patent. *Id.* Finding no public interest factors that precluded relief, the Commission proceeded to issue an LEO and CDOs against Nortek. *Id.*

On June 16, 2020, Chamberlain appealed the Commission's no-violation determinations with respect to the '404 and '052 patents. On April 1, 2021, Nortek cross-appealed the Commission's violation determination for the '223 patent. While the appeals were pending, the '052 patent expired.

On April 27, 2023, the Federal Circuit issued its decision, in which it: (i) affirmed the Commission's violation determination for the '223 patent; (ii) for the '404 patent, reversed the Commission's construction of the limitation "movable barrier operator," vacated its non-infringement, waiver, and no-violation determinations, and remanded to the Commission with instructions to re-evaluate infringement using a proper claim construction; and (iii) vacated the Commission's determinations for the expired '052 patent and remanded with instructions to dismiss the infringement claim as moot. *The Chamberlain Group, Inc. v. ITC*, Appeal Nos. 20-1965, 21-1829, 2023 WL 3115579 (Fed. Cir. Apr. 27, 2023). The mandate issued on July 19, 2023, returning jurisdiction to the Commission for the remanded issues.

On August 4, 2023, the Commission issued a notice asking the parties whether additional proceedings were necessary on remand. Comm'n Notice (Aug. 4, 2023). The parties agreed there was no need to reopen the evidentiary record, as it has already been fully developed.

On October 4, 2023, the Commission issued a second notice directing the parties to brief: (i) which, if any, of the accused products infringe claim 11 of the '404 patent under the Court's new construction of "movable barrier operator"; and (ii) whether the FID properly finds that claim 11 is not patent-ineligible under 35 U.S.C. 101. Comm'n Notice at 3 (Oct. 4, 2023). The Commission determined not to reopen the evidentiary record. *See id.* The Commission also remanded the investigation to the presiding ALJ for the sole purpose of determining whether Chamberlain satisfied the DI economic prong for the '404 patent. In the original investigation, the Commission found no infringement of the '404 patent and thus DI economic prong as to this patent was not at issue when the ALJ issued the First RID. *Id.*; Remand Order (Oct. 4, 2023) ("Second Remand Order"). The Commission also determined to dismiss the infringement claim against the expired '052 patent and vacate all findings regarding that expired patent as moot.

Chamberlain and Nortek filed their initial responses to the Commission's second notice on October 27, 2023, and their replies on November 13, 2023.

On January 11, 2024, the presiding ALJ issued Order No. 46 directing the parties to provide additional or supplemental information regarding the covered products allegedly protected by the '404 patent, the extent to which the domestic investments relating to products covered by the '223 patent were equally applicable to products covered by the '404 patent, the domestic inventories of products covered by the '404 patent, and other issues relating to the DI economic prong analysis. Order No. 46 (Jan. 11, 2024). The parties filed their initial responses to Order No. 46 on January 29, 2024, and their respective replies on February 5, 2024.

On May 8, 2024, the ALJ issued the Second RID. Order No. 50 (May 8, 2024). The Second RID finds that Chamberlain has satisfied the DI economic prong for the '404 patent under subsections 337(a)(3)(A), (B), and (C). The Second RID notes that the Commission previously determined that Chamberlain's domestic industry products (the "'404 DI Products") practice the '404 patent, and thus finds that Chamberlain has satisfied the DI technical prong for that patent. Although the Commission did not ask the ALJ to make findings regarding infringement or the DI technical prong, the Second RID finds that Nortek infringes the '404 patent, and the same Nortek products that infringe the '404 patent also infringe the '223 patent.

On May 20, 2024, Nortek filed a petition for review of the Second RID. On May 28, 2024, Chamberlain filed its opposition to Nortek's petition for review.

Upon review of the evidence of record, the parties' submissions, the final ID, the Second RID, and the Federal Circuit's decision on appeal, the Commission has determined to review the Second RID.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia*, (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States; and/or (2) cease and desist orders that could result in the respondent(s) 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, Comm'n Op. at 7-10 (Dec. 1994).

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and cease and desist orders 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, disapprove, or take no action on the Commission's determination. 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: 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 take into consideration the remedy and bond previously issued in this investigation, the Commission's Opinion of December 3, 2020, with respect to remedy, the public interest, and bond, and the recommended determination on remedy and bond issued by the presiding ALJ on November 25, 2019.

In its initial submission, Complainant is also requested to identify the remedy sought and to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to state the dates that the asserted patents expire, to provide the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on **July 8, 2024**. Reply submissions must be filed no later than the close of business on **July 15, 2024**. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Opening submissions are limited to 15 pages. Reply submissions are limited to 10 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. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1118 (remand)) in a prominent place on the cover page and/or the 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 at (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed with the Commission and served on any parties to the investigation within two business days of any confidential filing. 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, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on June 24, 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, stylized oval flourish.

Lisa R. Barton
Secretary to the Commission

Issued: June 25, 2024