

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
(Advisory Opinion Proceeding)

NOTICE OF A COMMISSION DETERMINATION TO INSTITUTE
AN ADVISORY OPINION PROCEEDING

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 institute an advisory opinion proceeding, as requested by respondents Nortek Security & Control, LLC of Carlsbad, California; Nortek, Inc. of Providence, Rhode Island; and GTO Access Systems, LLC of Tallahassee, Florida (collectively, “Nortek”). The Commission has further determined to set a target date of six months from the date of institution for completion of this proceeding, and to refer this matter to the Chief Administrative Law Judge (“CALJ”) for assignment to an administrative law judge (“ALJ”) for appropriate proceedings and a recommendation, to be completed within four months from the date of institution.

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 The Chamberlain Group, Inc. (“CGI”) of Oak Brook, Illinois. 83 FR 27020-21 (June 11, 2018). The complaint alleges that Nortek violated section 337 of the Tariff Act, as amended, 19 U.S.C. 1337 (“Section 337”) by importing, selling for importation, or selling in the United States after importation certain movable barrier operator (“MBO”) systems, including garage door openers (“GDOs”), 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 Office of Unfair Import Investigations was not named as a party to this investigation. *Id.*

On December 12, 2018, CGI filed an opposed motion for summary determination that it satisfied the economic prong of the domestic industry requirement. On June 6, 2019, the presiding ALJ issued a notice advising the parties that the motion would be granted and a formal written order would follow. Order No. 26 (June 6, 2019).

On November 25, 2019, the ALJ issued Order No. 38, granting CGI's motion for summary determination that its investments in labor and capital were "significant" and satisfied the economic prong of the domestic industry requirement under 19 U.S.C. 1337(a)(3)(B). Order No. 38 (Nov. 25, 2019). Order No. 38 denied summary determination with respect to CGI's investments in plant and equipment under 19 U.S.C. 1337(a)(3)(A). *Id.*

On the same date, the ALJ issued the final Initial Determination on Violation of Section 337 ("Final ID") and Recommended Determination on Remedy and Bond ("RD"), finding no violation of Section 337 because the asserted claims of the '223 and '404 patents are not infringed and the asserted claim of the '052 patent is invalid.

On February 19, 2020, the Commission issued a notice of its determination to review Order No. 38 and to partially review the Final ID with respect to certain issues relating to each of the three asserted patents. 85 FR 10723-26 (Feb. 25, 2020).

On April 22, 2020, the Commission affirmed there is no violation with respect to the '404 and '052 patents. Comm'n Notice at 3 (April 22, 2020). The Commission also vacated Order No. 38 and remanded the economic prong issue to the presiding ALJ for further proceedings, while the Commission continued to review issues relating to the '223 patent. *Id.*; Order Vacating and Remanding Order No. 38 (April 22, 2020) ("Remand Order").

On July 10, 2020, the ALJ issued a Remand Initial Determination ("Remand ID"), finding that CGI made significant investments in plant and equipment and labor and capital sufficient to satisfy the economic prong of the domestic industry requirement under both Sections 337(a)(3)(A) and (B) (19 U.S.C. 1337(a)(3)(A), (B)), respectively. Remand ID (July 10, 2020). On September 9, 2020, the Commission determined to review the Remand ID. 85 FR 57249-51 (Sept. 15, 2020).

On December 3, 2020, the Commission determined that Nortek violated Section 337 by way of infringing claims 1 and 21 of the '223 patent. The Commission issued a limited exclusion order and cease and desist orders against Nortek and imposed a bond in the amount of 100 percent of the entered value of the covered products during the period of Presidential review.

On December 18, 2020, Nortek filed the subject request for an advisory opinion that GDOs that allegedly operate their obstacle detectors at a constant energy level do not infringe asserted claims 1 or 21 of the '223 patent, and thus are not covered by the remedial orders. CGI filed its opposition to Nortek's request on December 30, 2020.

On January 7, 2021, Nortek filed a motion seeking leave to file a reply to CGI's opposition. On January 11, 2021, CGI opposed Nortek's motion. The Commission has determined to deny Nortek's motion.

Having reviewed the parties' submissions in view of the record below, the Commission has determined to institute an advisory opinion proceeding, per Nortek's request, to ascertain whether GDOs that allegedly operate their obstacle detectors at a constant energy level infringe asserted claims 1 or 21 of the '223 patent and are covered by the remedial orders issued in this investigation. The Commission has determined to refer the matter to the CALJ for assignment to an ALJ for appropriate proceedings and a recommendation. The ALJ shall conduct any appropriate proceedings and issue an initial advisory opinion within four months from the date that the Commission's notice to conduct the proceeding is published in the Federal Register. The target date shall be two months thereafter. The ALJ may extend the target date, allowing two months for Commission review, for good cause.

The Commission voted to approve these determinations on January 19, 2021.

The authority for the Commission's determinations 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: January 21, 2021