

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.**

In the Matter of

CERTAIN WIPER BLADES

Investigation No. 337-TA-816

**NOTICE OF COMMISSION DECISION TO REVIEW
AN INITIAL DETERMINATION GRANTING SUMMARY DETERMINATION,
AND ON REVIEW REVERSING THE GRANT OF SUMMARY DETERMINATION;
REMAND OF INFRINGEMENT ISSUE TO ALJ**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review an initial determination (“ID”) (Order No. 63) of the presiding administrative law judge (“ALJ”) in the above-captioned investigation, and on review the Commission has determined to reverse the ID, and to remand the infringement issue to the ALJ. The ID granted certain respondents’ motion for summary determination of noninfringement of the asserted claims of U.S. Patent No. 6,657,434 (“the ’434 patent”).

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 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, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://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 on November 29, 2011, based on a complaint filed by Robert Bosch LLC of Farmington Hills, Michigan (“Bosch”) alleging a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), in the importation, sale for importation, and sale within the United States after importation of certain wiper blades that infringe certain claims of nine patents. *76 Fed. Reg. 73677*.

The notice of investigation named thirteen respondents: ADM21 Co., Ltd. of Gyeonggi-do, Korea; ADM21 Co. (North America) Ltd. of Englewood Cliffs, New Jersey; Alberee Products, Inc. d/b/a Saver Automotive Products, Inc. of Baltimore, Maryland; API Korea Co., Ltd. of NamDong-Gu Incheon, Korea; Cequent Consumer Products, Inc. of Solon, Ohio; Corea Autoparts Producing Corp. of Gyeongsangbuk-do, Korea; Danyang UPC Auto Parts Co., Ltd. of Jiangsu, China; Fu-Gang Co., Ltd. of Yilan County, Taiwan; PIAA Corp. USA of Portland, Oregon; Pylon Manufacturing Corp. of Deerfield Beach, Florida; RainEater LLC of Erie, Pennsylvania; Scan Top Enterprise Co., Ltd. of Taipei, Taiwan; and Winplus North America Inc. of Ontario, California. The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337.

On April 12, 2012, the Commission determined, in relevant part, not to review the ALJ's ID granting Bosch's motion to amend the notice of investigation to add as respondents Daewoo International Corporation of Seoul, Korea, and CAP America, Inc. of Farmington Hills, Michigan.

On October 2, 2012, the ALJ issued two summary determinations that together found certain asserted claims of seven of the asserted patents either invalid as indefinite under 35 U.S.C. § 112 or not infringed. Order Nos. 51 & 52. On November 1, 2012, upon petitions for review by Bosch and the Commission investigative attorney ("IA"), the Commission determined to review these IDs. The parties subsequently filed extensive briefing, and the disposition of these two earlier orders is currently pending before the Commission. The '434 patent presently at issue in Order No. 63 was not involved in either of the two previous summary determinations.

On January 15, 2013, the ALJ issued Order No. 63, the subject ID, which found that the accused products of respondents Corea Autoparts Producing Corp., CAP America, Inc., and PIAA Corp. USA (collectively, "the CAP respondents") do not infringe the asserted claims of the '434 patent. Order No. 63 relied upon a disputed claim term construed by the ALJ in Order No. 45, the ALJ's claim construction order. On January 25, 2013, Bosch petitioned for review of Order No. 63. On February 1, 2013, the CAP respondents and the IA filed oppositions to Bosch's petition.

Having reviewed the record of this investigation, including the parties' claim construction briefs, Order No. 45, the CAP respondents' motion for summary determination and the responses thereto, Order No. 63, the petition for review, and the oppositions thereto, the Commission has determined to review Order No. 63, and on review to reverse the ALJ's finding of noninfringement. The Commission has determined that further briefing of the issue is unwarranted in view of the already extensive record.

The Commission has determined that the ALJ's claim construction of claim 1's detent shoulder "pointing toward the other end portion is disposed on each of the two end portions of the support element" as "projecting beyond the support element such that it can point towards the other end of the support element," Order No. 45 at 53, is legally erroneous. In particular, the Commission finds that the construction in Order No. 45 impermissibly incorporates limitations from preferred

embodiments into the claim language. *See, e.g., Thorner v. Sony Comp. Entertainment Am. LLC*, 669 F.3d 1362, 1366-67 (Fed. Cir. 2012) (stating that to act as a lexicographer, it “is not enough for a patentee to simply disclose a single embodiment or use a word in the same manner in all embodiments,” and that to evidence disavowal, it “is likewise not enough that the only embodiments, or all of the embodiments, contain a particular limitation”). The Commission finds that the ordinary meaning of the disputed claim language applies without the “projecting” limitation added in Order No. 45. In so determining, the Commission takes no position whether the accused CAP products infringe the asserted claims as so construed. The reasoning in support of the Commission’s decision will be set forth in further detail in an opinion to be issued forthwith.

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 sections 210.42-210.45 of the Commission’s Rules of Practice and Procedure (19 C.F.R. §§ 210.42-210.45).

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
Acting Secretary to the Commission

Issued: February 15, 2013