

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
TWO INITIAL DETERMINATIONS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review two initial determinations (“IDs”) of the presiding administrative law judge (“ALJ”) in the above-captioned investigation. The first ID (Order No. 51) granted the respondents’ motion for summary determination that certain patent claims of four asserted patents are invalid as indefinite under 35 U.S.C. § 112. The second ID (Order No. 52) granted certain respondents’ motion for summary determination that certain accused products do not infringe the asserted claims of five asserted patents.

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 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 (“Alberee”); API

Korea Co., Ltd. of NamDong-Gu Incheon, Korea (“API”); Cequent Consumer Products, Inc. of Solon, Ohio; Corea Autoparts Producing Corp. d/b/a CAP America of Gyeongsangbuk-do, Korea; Danyang UPC Auto Parts Co., Ltd. of Jiangsu, China (“Danyang”); Fu-Gang Co., Ltd. of Yilan County, Taiwan (“Fu-Gang”); PIAA Corp. USA of Portland, Oregon; Pylon Manufacturing Corp. of Deerfield Beach, Florida (“Pylon”); RainEater LLC of Erie, Pennsylvania; Scan Top Enterprise Co., Ltd. of Taipei, Taiwan (“Scan Top”); and Winplus North America Inc. of Ontario, California (“Winplus”). 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. Also on April 12, 2012, the Commission determined not to review the ALJ’s initial determination finding respondent Fu-Gang in default. On June 13, 2012, the Commission determined not to review the ALJ’s ID terminating the investigation as to respondent Winplus on the basis of a settlement agreement, and on August 13, 2012, the Commission determined not to review the ALJ’s ID terminating the investigation as to respondents Alberee and API on the basis of a settlement agreement.

On October 2, 2012, the ALJ issued Order No. 51, entitled “Initial Determination Granting Respondents’ Motion for Summary Determination of Invalidity of Certain Asserted Claims of U.S. Patent Nos. 6,611,988; 6,553,607; 6,836,926; and 6,973,698.” Order No. 51 incorporated by reference and attached Order No. 45, which was issued on August 31, 2012 and was entitled “Construing the Terms of the Asserted Claims of the Patents At Issue.” Also on October 2, 2012, the ALJ issued Order No. 52, entitled “Initial Determination Granting Respondents Danyang UPC Auto Parts Co., Ltd., Pylon Manufacturing Corp., and Scan Top Enterprise Co., Ltd.’s Motion for Summary Determination of Non-Infringement of All Asserted Claims of U.S. Patent Nos. 6,611,988, 6,944,905, 6,836,926, 7,293,321, and 7,523,520.”

On October 10, 2012, Bosch and the Commission investigative attorney (“IA”) filed petitions for review of Order No. 51. On October 17, 2012, the respondents opposed these petitions.

Also on October 10, 2012, Bosch filed a petition for review of Order No. 52. On October 17, 2012, the IA and the respondents filed oppositions. On October 25, 2012, Bosch filed a motion for leave to file a reply in support of its petition for review of Order No. 52. The Commission has determined to deny Bosch’s motion for leave.

The Commission has determined to review Order Nos. 51 and 52. By virtue of reviewing Order No. 51, the Commission is also reviewing the ALJ’s claim construction determinations regarding those claim terms he found to be indefinite. Order No. 45 at 19-23 (“considerably shallower”), 29-33 (“securing means” or “means for securing”), 55-58 (the “actual contact force” limitation), 110-13 (the “wiper strip” limitation), 113-16 (the “concave curvature” limitation). In addition, by virtue of reviewing Order No. 52, the Commission is also reviewing the ALJ’s

construction of “support element” or “supporting element.” Order No. 45 at 12-16. These constructions were not ripe for Commission review upon the issuance of Order No. 45 “since claim construction, standing alone, is not an ‘issue’ or ‘any part of an issue’ within the meaning of” Commission Rule 210.18. *Certain Mobile Telephones and Wireless Communication Devices Featuring Digital Cameras, and Components Thereof*, Inv. No. 337-TA-703, Notice of Commission Determination That June 22, 2010, Initial Determination Is an Order Rather Than an Initial Determination 2 (Oct. 20, 2010). The constructions relied upon in Order Nos. 51 and 52, however, no longer stand alone.

The parties are to brief the following issues on Commission review. For Order No. 51:

- (1) If the Commission were to determine that each of the claim terms in dispute is definite, the appropriate construction for each.
- (2) Whether the term “stop (62, 63)” in claim 1 of U.S. Patent No. 6,553,607 refers to the stop on the wiper blade or the stop on the wiper arm.
- (3) The effect, if any, on claim construction by virtue of the patents’ recitation in their claims of the numbering of components from the preferred embodiment (*e.g.*, “stop (62, 63)”).

For Order No. 52:

- (1) Whether the intrinsic record for each patent demonstrates clear disavowal of claim scope in view of the legal test set forth in, *inter alia*, *Thorner v. Sony Computer Entertainment America LLC*, 669 F.3d 1362, 1366-67 (Fed. Cir. 2012). The parties are to address not only the scope of disavowal adopted by the ALJ, but also the scope of disavowal urged in claim construction proceedings by the IA (“high profile bracket design”), on a patent-by-patent basis.
- (2) Whether the subject matter of each patent claim (*e.g.*, the attachment mechanism for a wiper blade to a wiper arm, as opposed to the blade itself) is pertinent for the clear disavowal test.
- (3) Whether it is appropriate to construe the term “support element” to include limitations recited elsewhere in the asserted patent claims, such as “band-shaped-elongated,” “band-like,” “elongated,” “long-stretched out,” or “flat bar.”
- (4) Whether there is a genuine issue of material fact whether the accused products that are the subject of Order No. 52 contain a “support element” that is “band-shaped-elongated,” “band-like,” “elongated,” “long-stretched out,” or “flat bar,” regardless of whether those accused products use brackets.

The parties’ opening briefs in response to this notice (*i.e.*, briefs that address both IDs together) are to be limited to sixty pages and must be submitted by November 14, 2012. The parties’ opposition briefs are to be limited to forty pages and must be submitted by November 21, 2012.

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, 210.44, and 210.45 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42, 210.44, and 210.45).

By order of the Commission.

A handwritten signature in black ink, appearing to read "Lisa R. Barton". The signature is fluid and cursive, with a large initial "L" and "B".

Lisa R. Barton
Acting Secretary to the Commission

Issued: November 1, 2012