

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN CRAWLER CRANES AND
COMPONENTS THEREOF**

Investigation No. 337-TA-887

**NOTICE OF THE COMMISSION'S FINAL DETERMINATION; ISSUANCE OF A
LIMITED EXCLUSION ORDER AND CEASE AND DESIST ORDER; TERMINATION
OF THE INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 in this investigation and has (1) issued a limited exclusion order prohibiting importation of certain crawler cranes and components thereof and (2) issued a cease and desist order directed to the domestic respondent.

FOR FURTHER INFORMATION CONTACT: Amanda Pitcher Fisherow, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2737. 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 (<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 July 17, 2013, based on a complaint filed by Manitowoc Cranes, LLC of Manitowoc, Wisconsin ("Manitowoc"). 78 *Fed. Reg.* 42800-01 (July 17, 2013). The complaint alleges violations of subsection (a)(1)(B) of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 ("section 337") in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain crawler cranes and components thereof, by reason of infringement of U.S. Patent Nos. 7,546,928 ("the '928 patent") and 7,967,158 ("the '158 patent"), and that an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337. The complaint further alleges

violations of subsection (a)(1)(A) of section 337 by reason of trade secret misappropriation, the threat or effect of which is to destroy or substantially injure an industry in the United States or to prevent the establishment of such an industry. The Commission's notice of investigation named Sany Heavy Industry Co., Ltd. of Changsha, China, and Sany America, Inc. of Peachtree City, Georgia (collectively, "Sany") as respondents. The Office of Unfair Import Investigations ("OUII") was also named as a party.

On July 11, 2014, the ALJ issued his final initial determination ("ID") finding a violation of section 337 with respect to claims 1, 2, 5, 8, and 23-26 of the '928 patent and misappropriation of Trade Secret Nos. 1, 6, 14, and 15. The ALJ further found no violation of section 337 with respect to claims 6, 10, and 11 of the '928 patent, claim 1 of the '158 patent, and Trade Secret Nos. 3 and 4.

On July 28, 2014, OUII, Manitowoc, and Sany each filed a petition for review. On August 5, 2014, the parties replied to the respective petitions for review.

On September 19, 2014, the Commission determined to review the final ID and solicited briefing from the parties on questions concerning violation, remedy, bonding, and the public interest. *79 Fed. Reg.* 57566-68. Specifically, the Commission determined to review the ALJ's findings with respect to: (1) importation of the accused products; (2) infringement of the asserted patents; (3) estoppel; (4) the technical prong of the domestic industry requirement; and (5) the asserted trade secrets. The parties provided initial submissions to the Commission's questions on October 1, 2014, and responsive submissions on October 8, 2014.

On December 3, 2014, the Commission determined to request additional briefing. Notice (December 3, 2014). On December 12, 2014, the parties filed initial submissions in response to the Commission's notice and filed response submissions on December 19, 2014.

After considering the final ID, written submissions, and the record in this investigation, the Commission has determined to affirm-in-part and reverse-in-part the final ID and to terminate the investigation with a finding of violation of section 337. Specifically, the Commission: (1) finds the asserted method claims of the '928 patent are not infringed; (2) finds the asserted method claim of the '158 patent is not infringed; (3) finds that claims 23-26 of the '928 patent are infringed by at least one product; (4) takes no position on the ALJ's estoppel findings; (5) finds that the domestic industry requirement has been met; and (6) finds Trade Secret Nos. 1, 3, 4, 6, 14, and 15 are protectable and have been misappropriated. The Commission has issued its opinion setting forth the reasons for its determination. Commissioner Kieff concurs in the outcome and has filed an opinion concurring in result and dissenting in part.

Having found a violation of section 337 in this investigation, the Commission has determined that the appropriate form of relief is: (1) a limited exclusion order prohibiting the unlicensed entry of certain crawler cranes and components thereof that (a) infringe one or more of claims 23-26 of the '928 patent and are manufactured by, or on behalf of, or are imported by or on behalf of the Respondents or any of their affiliated companies, parents, subsidiaries, agents, or other related business entities, or their successors or assigns; and/or (b) are manufactured

abroad by or on behalf of, or imported by or on behalf of, Respondents or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns, using any of Trade Secret Nos. 1, 3, 4, 6, 14, and 15, for a period of ten (10) years; and (2) a cease and desist order prohibiting the domestic respondent from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, transferring (except for exportation), and soliciting United States, agents or distributors for, certain crawler cranes and components therefore manufactured using any of Trade Secret Nos. 1, 3, 4, 6, 14, and 15.

The Commission has also determined that the public interest factors enumerated in section 337(d) and (f) (19 U.S.C. §§ 1337(d) and (f)) do not preclude issuance of the limited exclusion order or a cease and desist order. Finally, the Commission has determined that a bond during the period of presidential review (19 U.S.C. § 1337(j)) shall be in the amount of 100 percent (100%) of the entered value of the imported articles that are subject to the limited exclusion order or cease and desist order. The Commission's orders and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

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 C.F.R. Part 210).

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: April 16, 2015