

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

Investigation No. 337-TA-943

CERTAIN WIRELESS HEADSETS

**NOTICE OF COMMISSION DETERMINATION TO AFFIRM WITH MODIFICATION
AN INITIAL DETERMINATION, GRANTING RESPONDENTS' MOTION FOR
SUMMARY DETERMINATION OF PATENT INVALIDITY DUE TO
INDEFINITENESS; TERMINATION OF INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm with certain modifications an initial determination ("ID") (Order No. 17), granting respondents' motion for summary determination of patent invalidity due to indefiniteness. The Commission finds no violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 ("section 337"). The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-708-2301. 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 January 13, 2015, based on a complaint filed by One-E-Way, Inc. of Pasadena, California ("One-E-Way"). 80 *Fed. Reg.* 1663 (Jan. 13, 2015). The complaint alleges violations of section 337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wireless headsets by reason of infringement of certain claims of U.S. Patent Nos. 7,865,258 ("the '258 patent") and 8,131,391 ("the '391 patent"). *Id.* The notice of investigation named several respondents, including Sony Corporation of Tokyo, Japan; Sony Corporation of America of New York, New York; and Sony Electronics, Inc. of San Diego, California (collectively, "Sony"); Beats Electronics, LLC of Culver City, California and Beats Electronics International Ltd. of Dublin, Ireland (collectively, "Beats"); Sennheiser Electronic

GmbH & Co. KG of Wedemark, Germany and Sennheiser Electronic Corporation of Old Lyme, Connecticut (collectively, “Sennheiser”); BlueAnt Wireless Pty, Ltd. of Richmond, Australia and BlueAnt Wireless, Inc. of Chicago, Illinois (collectively, “BlueAnt”); Creative Technology Ltd. of Singapore and Creative Labs, Inc. of Milpitas, California (collectively, “Creative Labs”); GN Netcom A/S d/b/a Jabra of Ballerup, Denmark (“GN Netcom”); and Jawbone, Inc. of San Francisco, California. *Id.* The Office of Unfair Import Investigations was also named as a party to the investigation. *Id.* The Commission previously terminated the investigation with respect to Beats and Sennheiser. See Notice (Apr. 29, 2015); Notice (June 11, 2015). The Commission also previously terminated the investigation with respect to certain claims of the ’258 and ’391 patents. See Notice (May 26, 2015); Notice (Aug. 26, 2015). On February 16, 2016, the Commission amended the Notice of investigation to correct the name of respondent Jawbone, Inc. to AliphCom d/b/a Jawbone, and also terminated the investigation as to AliphCom. Notice (Feb. 16, 2016).

On August 10, 2015, respondents Sony, BlueAnt, Creative Labs, and GN Netcom (collectively, “Respondents”) filed a motion for summary determination that asserted claim 8 of the ’258 patent and asserted claims 1, 3-6, and 10 of the ’391 patent are invalid as indefinite under 35 U.S.C. § 112, ¶ 2. On August 20, 2015, the Commission investigative attorney (“IA”) filed a response in support of the motion. Also on August 20, 2015, One-E-Way filed an opposition to the motion. On August 27, 2015, Respondents moved for leave to file a reply to One-E-Way’s opposition, which the presiding administrative law judge (“ALJ”) granted that same day. See Order No. 16 (Aug. 27, 2015).

On September 21, 2015, the ALJ issued the subject ID (Order No. 17), granting Respondents’ motion for summary determination that all of the asserted claims of the ’258 and ’391 patents are invalid as indefinite under 35 U.S.C. § 112, ¶ 2 and finding no violation of section 337. On October 2, 2015, One-E-Way filed a petition for review of the subject ID. On October 9, 2015, Respondents and the IA each filed responses to the petition.

On December 1, 2015, the Commission determined to review Order No. 17 and posed several questions to the parties. 80 *Fed. Reg.* 76038-40 (Dec. 7, 2015). The parties filed initial submissions on December 11, 2015, and filed response submissions on December 18, 2015.

Having examined the record of this investigation, including the subject ID, the petitions for review, and the responses thereto, and the parties’ submissions in response to the Commission’s request for additional briefing, the Commission has determined to affirm Order No. 17 with modification. In particular, the Commission corrects the statement on pages 7, 61, and 65-66 of the subject ID that the limitations “free from interference” and “virtually free from interference” coexist in the asserted claims. The asserted claims recite the limitation “virtually free from interference” only. The Commission also clarifies that the ALJ’s statement on page 85 of subject ID that the intrinsic evidence fails to explain how the invention both “transmits” and “reproduces” audio “virtually free from interference” should be made with reference to claims 1 and 5 of the ’391 patent, not to claims 1 and 3 of the ’391 patent.

The Commission finds no violation of section 337. The investigation is terminated.

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.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton
Secretary to the Commission

Issued: May 12, 2016