

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

In the Matter of

**CERTAIN ACCESS CONTROL SYSTEMS
AND COMPONENTS THEREOF**

Investigation No. 337-TA-1016

**NOTICE OF DETERMINATION TO DENY RESPONDENTS'
MOTION FOR PARTIAL STAY OF REMEDIAL ORDERS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to deny Respondents' motion for partial stay of the remedial orders in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-2382. 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 <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://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 August 3, 2016, based on a Complaint filed by the Chamberlain Group ("Chamberlain") of Elmhurst, Illinois. 81 FR 52713 (Aug. 9, 2016). The Complaint alleged that Respondents were violating Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 ("Section 337"), by importing, selling for importation, or selling in the United States after importation garage door opener products ("GDOs") that infringe certain claims of U.S. Patent No. 7,161,319 ("the '319 patent"), U.S. Patent No. 7,196,911 ("the '611 patent"), and U.S. Patent No. 7,339,336 ("the '336 patent"). The '319 patent is the only patent presently at issue, as it is the only patent the Commission has found to be valid and infringed.

The Commission's Notice of Investigation named Techtronic Industries Co., Techtronic Industries North America, Inc., One World Technologies, Inc., and OWT Industries, Inc., and ET Technology (Wuxi) Co. (collectively, "Techtronic") as Respondents. Ryobi Technologies, Inc. was initially named a Respondent, but was later terminated. Notice (Nov. 7, 2016) (*see* Order No. 6). The Office of Unfair Import Investigations is not a party to the investigation.

On July 12-13, 2017, the ALJ held an evidentiary hearing with respect to the '319 patent. On October 23, 2017, the ALJ issued his final initial determination ("ID"), in which he found the patent was infringed by Techtronic's accused GDOs and not obvious. ID at 130-41, 144, 151-212. The Commission adopted (by not reviewing) the ALJ's infringement determination and reviewed only his non-obviousness determination. 82 FR 61792 (Dec. 29, 2017). On March 23, 2018, the Commission determined to affirm his findings of non-obviousness, found Techtronic in violation of Section 337, and entered a limited exclusion order and cease-and-desist orders. 83 FR 13517 (Mar. 29, 2018). The President did not disapprove of the Commission's remedial orders. The Commission's final determination is presently on appeal.

Techtronic claims to have redesigned its original accused GDOs to avoid infringement. On August 2, 2018, Techtronic petitioned the Commission to institute a modification proceeding to determine whether their allegedly redesigned GDOs infringe the '319 patent and are covered by the remedial orders issued in this investigation. On August 13, 2018, Chamberlain filed its opposition to this Petition. The Commission determined to institute the requested proceeding, delegated the matter to the Chief ALJ for assignment, and directed that a recommended determination ("RD") be issued within six (6) months. 83 FR 45676-77 (Sept. 10, 2018). The Chief ALJ, who is presiding over this modification proceeding, recently set a procedural schedule in accordance with the Commission's directive. Order No. 40 (Sept. 24, 2018) (setting date for issuance of the RD as March 11, 2019).

On September 12, 2018, Techtronic filed an Emergency Motion for Partial Stay of Remedial Orders in the U.S. Court of Appeals for the Federal Circuit. Both the Commission and Chamberlain filed their oppositions to Techtronic's stay motion on September 20, 2018. Techtronic filed its reply in support of its motion on September 25, 2018.

On September 13, 2018, Techtronic filed a similar Motion for Partial Stay of Remedial Orders ("Motion") in the Commission. Techtronic is requesting that the Commission stay its remedial orders with respect to its redesigned GDOs pending appeal of the Commission's remedial orders. Chamberlain filed its opposition to Techtronic's Motion on September 24, 2018.

Upon review of the parties' submissions, the Commission has determined to deny Techtronic's Motion for Partial Stay of Remedial Orders in the above-captioned investigation. *See* 5 U.S.C. § 705. The standard for a stay at the agency level has been construed to be "the same as the standard for a stay at the judicial level: each is governed by the four-part preliminary injunction test."¹ *Sierra Club v. Jackson*, 833 F. Supp. 2d 11, 30 (D.D.C. 2012). Without prejudicing the ultimate disposition of the modification proceeding,² the Commission finds that

¹ Techtronic did not argue that an "admittedly difficult legal question" warrants a stay. *See Certain Agricultural Tractors Under 50 Power Take-Off Horsepower*, Inv. No. 337-TA-380, Comm'n Op. Denying Resp'ts' Pet. for Reconsideration and Mot. for Relief Pending Appeal 10 (Apr. 25, 1997).

² Techtronic's Motion does not assert that the Commission's findings in the violation investigation are incorrect. Rather, Techtronic relies upon arguments it plans to present in the ongoing modification proceedings. As a result, Techtronic has not made any showing of a

Techtronic's allegations of irreparable harm are both insufficient and too speculative to support a stay. Compare *Standard Havens Prods., Inc. v. Gencor Indus., Inc.*, 897 F.2d 511, 515-16 (Fed. Cir. 1990); *Nutrition 21 v. United States*, 930 F.2d 867, 871 (Fed. Cir. 1991). Techtronic has also failed to demonstrate that the balance of hardships tips in its favor, and that the public interest supports the extraordinary relief of a stay.

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 CFR part 210).

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: October 10, 2018

likelihood of success on the merits of the appeal for which the stay is sought.