

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

In the Matter of

**CERTAIN ROBOTIC VACUUM
CLEANING DEVICES AND
COMPONENTS THEREOF SUCH AS
SPARE PARTS**

Investigation No. 337-TA-1057

**NOTICE OF THE COMMISSION'S FINAL DETERMINATION FINDING A
VIOLATION OF SECTION 337; ISSUANCE OF A LIMITED EXCLUSION ORDER
AND CEASE AND DESIST ORDERS; 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 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in this investigation. The Commission has issued a limited exclusion order prohibiting the unlicensed entry of certain vacuum cleaning devices and components thereof, such as spare parts, that infringe certain claims of U.S. Patent No. 9,038,233. The Commission has also issued cease and desist orders prohibiting the sale and distribution within the United States of articles that infringe certain claims of that patent against Hoover, Inc. of Glenwillow, Ohio; Royal Appliance Manufacturing Co., Inc. d/b/a TTI Floor Care North America, Inc. of Glenwillow, Ohio; bObsweep, Inc. of Toronto, Canada; and bObsweep USA of Henderson, Nevada. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Lucy Grace D. Noyola, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202-205-3438. 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, SW, Washington, DC 20436, telephone 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<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 under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on May 23, 2017, based on a complaint filed by iRobot Corporation of Bedford, Massachusetts (“iRobot”). 82 FR 23592 (May 23, 2017). The complaint alleges a violation of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain vacuum cleaning devices and components thereof, such as spare parts, by reason of infringement of certain claims of U.S. Patent Nos. 6,809,490 (“the ’490 patent”), 7,155,308 (“the ’308 patent”), 8,474,090 (“the ’090 patent”), 8,600,553 (“the ’553 patent”), 9,038,233 (“the ’233 patent”), and 9,486,924 (“the ’924 patent”). The Notice of Investigation names as respondents Bissell Homecare, Inc. of Grand Rapids, Michigan (“Bissell”); Hoover, Inc. of Glenwillow, Ohio and Royal Appliance Manufacturing Co., Inc. d/b/a TTI Floor Care North America, Inc. of Glenwillow, Ohio (collectively, “Hoover”); bObsweep, Inc. of Toronto, Canada and bObsweep USA of Henderson, Nevada (collectively, “bObsweep”); The Black & Decker Corporation of Towson, Maryland and Black & Decker (U.S.) Inc. of Towson, Maryland (collectively, “Black & Decker”); Shenzhen ZhiYi Technology Co., Ltd., d/b/a iLife of Shenzhen, China (“iLife”); Matsutek Enterprises Co., Ltd. of Taipei City, Taiwan (“Matsutek”); Suzhou Real Power Electric Appliance Co., Ltd. of Suzhou, China (“Suzhou”); and Shenzhen Silver Star Intelligent Technology Co., Ltd. of Shenzhen, China (“SSSIT”). The Office of Unfair Import Investigations is not a party in this investigation.

The investigation has been terminated with respect to respondents Suzhou, Black & Decker, Bissell, and Matsutek. Notice (Oct. 18, 2017) (determining not to review Order No. 23 (Sept. 26, 2017)); Notice (Jan. 31, 2018) (determining not to review Order No. 31 (Jan. 9, 2018)); Notice (Feb. 16, 2018) (determining not to review Order No. 34 (Jan. 25, 2018)). The investigation has also been terminated with respect to the ’924 and the ’308 patents. Notice (Jan. 16, 2018) (determining not to review Order No. 29 (Dec. 14, 2017)); Notice (Mar. 15, 2018) (determining not to review Order No. 40 (Feb. 21, 2018)).

On June 25, 2018, the presiding administrative law judge (“ALJ”) issued a final initial determination (“ID”), finding a violation of section 337 with respect to the ’553 and ’233 patents and no violation with respect to the ’490 and ’090 patents. Specifically, with respect to the ’553 patent, the ID found that: (1) iLife directly infringes claims 1 and 4, but not claims 11, 12, 13, and 22; (2) iLife has not induced or contributed to infringement of the patent; (3) iRobot has satisfied the technical prong of the domestic industry requirement; (4) claim 1, but not claims 11 and 12, is invalid for anticipation; and (5) claims 4, 12, 13, and 22 are not invalid for obviousness. With respect to the ’490 patent, the ID found that: (1) iLife and bObsweep directly infringe claim 42, but not claims 1 and 12, and Hoover directly infringes claim 42; (2) iLife, Hoover, bObsweep, and SSSIT have not induced or contributed to infringement of the patent; (3) iRobot has satisfied the technical prong of the domestic industry requirement; (4) claim 1, but not claim 12, is invalid for anticipation; (5) claims 12 and 42 are invalid for obviousness; and (6) claims 1 and 42 are not invalid for indefiniteness. With respect to the ’090 patent, the ID found that: (1) iLife, Hoover, SSSIT, and bObsweep directly infringe claims 1, 2, 3, 5, 7, and 10, but not claim 17; (2) iLife, Hoover, bObsweep, and SSSIT have not induced or contributed to infringement of the patent; (3) iRobot has satisfied the technical prong of the domestic industry requirement; (4) claims 1, 5, 7, 10, and 17 are not invalid for anticipation; and (5) claims 1, 2, 3, 4, 5, 7, 10, and 17 are invalid for obviousness in view of certain prior art combinations, but not

others. With respect to the '233 patent, the ID found that: (1) iLife and bObsweep directly infringe claims 1, 10, 11, 14, 15, and 16 and Hoover directly infringes the same claims with respect to the Hoover Quest 1000 products, but not the Hoover Rogue/Y1 and Hoover Y2 products; (2) iLife, Hoover, bObsweep, and SSSIT have not induced or contributed to infringement of the patent; (3) iRobot has satisfied the technical prong of the domestic industry requirement; and (4) claims 1, 10, 11, 14, 15, and 16 of the '233 patent are not invalid for anticipation, obviousness, nor lack of written description. The ID found that iRobot has satisfied the economic prong of the domestic industry requirement under 19 U.S.C. § 1337(a)(3)(C) with respect to all asserted patents.

The ALJ also issued a Recommended Determination on Remedy and Bond ("RD"), recommending, if the Commission finds a section 337 violation, the issuance of (1) a limited exclusion order against certain robotic vacuum cleaning devices and components thereof that are imported, sold for importation, and/or sold after importation by Hoover, bObsweep, SSSIT, and iLife, (2) cease and desist orders against Hoover and iLife, and (3) imposition of a bond of 18.89 percent of the entered value for iLife products, 48.65 percent for bObsweep products, and 41.35 percent for Hoover products that are imported during the period of Presidential review.

On July 9, 2018, iRobot and Respondents each filed a petition for review challenging various findings in the final ID. On July 17, 2018, iRobot and Respondents each filed responses to the petitions for review.

On July 16, 2018, the Commission determined that iRobot satisfied the economic prong of the domestic industry requirement under 19 U.S.C. 1337(a)(3)(B). Notice (July 16, 2018) (determining to affirm with modifications Order No. 39 (Feb. 13, 2018)).

On July 25, 2018, iRobot filed post-RD statements on the public interest under Commission Rule 210.50(a)(4). The Commission did not receive any post-RD public interest comments from any respondent pursuant to Commission Rule 210.50(a)(4). The Commission did not receive comments from the public in response to the Commission notice issued on July 10, 2018 soliciting public interest comments. 83 FR 31977 (July 10, 2018).

On September 12, 2018, the Commission determined to review in part the final ID. 83 FR 47188 (Sept. 18, 2018). Specifically, the Commission determined to review the ID's findings on: (1) induced and contributory infringement with respect to the '553, '490, '090, and '233 patents; (2) anticipation with respect to the asserted claims of the '553 patent; (3) obviousness with respect to the asserted claims of the '553 patent; (4) direct infringement of the '090 patent by iLife, Hoover, bObsweep, and SSSIT; (5) anticipation with respect to the asserted claims of the '090 patent; (6) obviousness with respect to the asserted claims of the '090 patent; (7) anticipation with respect to the asserted claims of the '233 patent; and (8) consideration of U.S. Patent No. 6,594,844 as prior art under 35 U.S.C. 102(a) and 35 U.S.C. 103 with respect to the '233 patent. The Commission also requested briefing from the parties on certain issues under review and briefing from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding.

On September 19, 2018, iRobot filed an unopposed motion to terminate the investigation as to iLife based on a settlement agreement and, because the '553 patent is asserted against iLife only, all claims asserted under the '553 patent for mootness. On October 2, 2018, the Commission determined to grant that motion. Notice (Oct. 2, 2018). Thus, the respondents remaining in this investigation are Hoover, bObsweep, and SSSIT, and the remaining asserted patents are the '490, '090, and '233 patents.

On September 24, 2018, iRobot and the remaining respondents filed initial written submissions addressing the Commission's questions and the issues of remedy, the public interest, and bonding. On October 1, 2018, the parties filed response briefs. No comments were received from the public.

Having examined the record of this investigation, including the ID and the parties' submissions, the Commission has determined to affirm, on modified grounds, the ID's finding of a violation as to the '233 patent and no violation as to the '490 and '090 patents. Specifically, the Commission has determined that Hoover, bObsweep, and SSSIT have not induced or contributed to infringement of the '490, '090, and '233 patents. With respect to the '090 patent, the Commission has determined that the Hoover, SSSIT, and bObsweep bObi products meet all limitations of claims 1, 2, 3, 5, 7, 10, and 17, and that the asserted claims are invalid for obviousness, but not invalid for anticipation. With respect to the '233 patent, the Commission has determined that claims 1, 10, 11, 14, 15, and 16 are not invalid for anticipation nor obviousness. The Commission has determined to adopt all findings and conclusions in the final ID that are not inconsistent with the Commission's opinion issued herewith.

The Commission has determined the appropriate remedy is a limited exclusion order prohibiting Hoover, bObsweep, and SSSIT from importing certain vacuum cleaning devices and components thereof, such as spare parts, that infringe one or more of claims 1, 10, 11, 14, 15, and 16 of the '233 patent, as well as cease and desist orders against Hoover and bObsweep prohibiting them from, *inter alia*, selling or distributing within the United States such products. The Commission has determined the public interest factors enumerated in section 337(d)(1) and (f)(1) do not preclude issuance of the limited exclusion order or cease and desist orders.

The Commission has also determined to set a bond in the following percentages of the entered value of the respondents' infringing products during the period of Presidential review (19 U.S.C. 1337(j)): 48.65 percent for products that are manufactured by or on behalf of bObsweep; 41.35 percent for products that are manufactured by or on behalf of Hoover; and zero percent (no bond) for products that are manufactured by SSSIT on behalf of entities other than Hoover and bObsweep, as well as products that are manufactured on behalf of SSSIT. 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 CFR 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: November 30, 2018