

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN AUDIO PLAYERS AND
COMPONENTS THEREOF (II)**

Investigation No. 337-TA-1330

**NOTICE OF A COMMISSION DETERMINATION TO REVIEW
AN INITIAL DETERMINATION GRANTING COMPLAINANT'S MOTION FOR
SUMMARY DETERMINATION THAT THE ECONOMIC PRONG OF THE
DOMESTIC INDUSTRY REQUIREMENT IS SATISFIED; AND ON REVIEW, TO
AFFIRM THE INITIAL DETERMINATION WITH MODIFICATIONS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission ("Commission") has determined to review, and on review, to affirm with modifications an initial determination ("ID") (Order No. 31) of the presiding administrative law judge ("ALJ"), granting complainant Google LLC's unopposed motion for summary determination that the economic prong of the domestic industry requirement is satisfied.

FOR FURTHER INFORMATION CONTACT: Edward S. Jou, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-3316. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.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 September 15, 2022, based on a complaint filed on behalf of Google LLC of Mountain View, California ("Google"). 87 FR 56701 (Sept. 15, 2022). The complaint alleged a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain audio players and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 9,632,748; 9,812,128; 11,024,311; and 11,050,615. *Id.* The complaint further alleged that an industry in the United States exists as required by section 337. *Id.* The Commission's notice of investigation named as the respondent Sonos, Inc. of Santa

Barbara, California (“Sonos”). *Id.* The Office of Unfair Import Investigations was not named as a party in this investigation. *Id.*

On April 20, 2023, Google filed a motion seeking a summary determination that the importation requirement of section 337 was satisfied and a summary determination that the economic prong of the domestic industry requirement is satisfied. On May 1, 2023, Sonos filed a statement of non-opposition to the importation portion of Google’s motion. On May 8, 2023, the ALJ issued Order No. 27, which granted the motion as to the importation requirement. The Commission determined not to review Order No. 27 on June 6, 2023.

On May 22, 2023, Google and Sonos filed a joint stipulation relating to the domestic industry wherein Sonos stipulated that it would not dispute Google’s contentions with respect to the economic prong of the domestic industry requirement.

On May 26, 2023, the ALJ issued the subject ID (Order No. 31) granting Google’s motion for summary determination as to the economic prong of the domestic industry requirement. No petitions for review of the ID were filed.

Having reviewed the record in this investigation, including the subject ID, the motion for summary determination and exhibits thereto, and the parties’ stipulation relating to economic domestic industry, the Commission has determined to review the subject ID. On review, the Commission takes no position on the discussion in the first paragraph of page 17 of the ID.^{1,2} In addition, the Commission strikes the phrase “the profitability of” from the first line of page 18 of the ID. The Commission has determined to affirm the remainder of the subject ID, including the finding that the economic prong of the domestic industry requirement is satisfied.³

¹ Chair Johanson and Commissioner Stayin find that the headcount analysis provided by Google further supports the ALJ’s finding of quantitative significance, and the other metrics provided by Google are qualitative factors that also support the finding of significance. *See* ID at 17.

² Commissioner Kearns does not join the preceding footnote. On review, he adopts the discussion in the first paragraph on page 17 of the ID (he further notes that, under appropriate circumstances, a headcount analysis can support a finding of quantitative significance). He finds the economic prong of the domestic industry requirement satisfied based on the ID’s comparison of labor expenditures to global net revenue and the qualitative importance of the research, design, development, and engineering activities at issue.

³ Commissioner Karpel would affirm the ID. She finds the ID’s reasoning sound and its holding with respect to the domestic industry requirement well supported by findings of fact and in accordance with established law.

The Commission vote for this determination took place on June 28, 2023.

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 'L. Barton' with a stylized flourish at the end.

Lisa R. Barton
Secretary to the Commission

Issued: June 28, 2023