

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

In the Matter of

**CERTAIN PROTECTIVE CASES AND
COMPONENTS THEREOF**

Investigation No. 337-TA-780

**NOTICE OF COMMISSION DETERMINATION TO REVIEW IN PART A FINAL
INITIAL DETERMINATION FINDING A VIOLATION OF SECTION 337; SCHEDULE
FOR FILING WRITTEN SUBMISSIONS ON THE ISSUES UNDER REVIEW AND ON
REMEDY, THE PUBLIC INTEREST AND BONDING**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on June 29, 2012, finding a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in this investigation.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3042. 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 <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 June 30, 2011, based on a complaint filed by Otter Products, LLC of Fort Collins, Colorado (“Otter”). 76 *Fed. Reg.* 38417 (June 30, 2011). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain protective cases and components thereof by reason of infringement of some or all of the claims of United States Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386; and claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, and 44 of United States Patent No. 7,933,122 (“the ’122 patent”); and United States Trademark Registration Nos. 3,788,534; 3,788,535; 3,623,789; and 3,795,187. *Id.* The notice of investigation named the following respondents:

A.G. Findings and Mfg. Co., Inc. of Sunrise, Florida (“A.G. Findings”); AFC Trident Inc. of Chino, California (“AFC Trident”); Alibaba.com Hong Kong Ltd. of Hangzhou, China (“Alibaba.com”); Anbess Electronics Co. Ltd. of Schenzhen, China (“Anbess”); Cellairis Franchise, Inc. of Alpharetta, Georgia (“Cellairis”); Cellet Products of Sante Fe Springs, California (“Cellet”); DHgate.com of Beijing, China (“Dhgate.com”); Griffin Technology, Inc. of Nashville, Tennessee (“Griffin”); Guangzhou Evotech Industry Co., Ltd. of Guangdong, China (“Guangzhou Evotech”); Hard Candy Cases LLC of Sacramento, California (“Hard Candy”); Hoffco Brands, Inc. of Wheat Ridge, Colorado (“Hoffco”); Hong Kong Better Technology Group Ltd. of Shenzhen, China (“Better Technology Group”); Hong Kong HJJ Co. Ltd. of Shenzhen, China (“HJJ”); Hypercel Corporation of Valencia, California (“Hypercel”); InMotion Entertainment of Jacksonville, Florida (“InMotion”); MegaWatts Computers, LLC of Tulsa, Oklahoma (“MegaWatts”); National Cellular of Brooklyn, New York (“National Cellular”); OEMBargain.com of Wantagh, New York (“OEMBargain.com”); One Step Up Ltd. of New York, New York (“One Step Up”); Papaya Holdings Ltd. of Central, Hong Kong (“Papaya”); Quanyun Electronics Co., Ltd. of Shenzhen, China (“Quanyun”); ShenZhen Star & Way Trade Co., Ltd. of Guangzhou City, China (“Star & Way”); Sinatech Industries Co., Ltd. of Guangzhou City, China (“Sinatech”); SmileCase of Windsor Mill, Maryland (“SmileCase”); Suntel Global Investment Ltd. of Guangzhou, China (“Suntel”); TheCaseInPoint.com of Titusville, Florida (“TheCaseInPoint.com”); TheCaseSpace of Fort Collins, Colorado (“TheCaseSpace”); Topter Technology Co., Ltd. of Guangdong, China (“Topter”); and Trait Technology (Shenzhen) Co., Ltd. of Shenzhen, China (“Trait Technology”). *Id.* With respect to accused products by Respondent Griffin, Otter asserted only the ’122 patent.

On August 3, 2011, the ALJ issued an ID granting Otter leave to amend the complaint and notice of investigation to add Global Cellular, Inc. of Alpharetta, Georgia (“Global Cellular”) as a respondent. *See* Order No. 3 (August 3, 2011). The Commission determined not to review the order. *See* Notice of Commission Determination not to Review an Initial Determination Granting Complainant’s Motion to Amend the Complaint and Notice of Investigation to Add a Respondent (August 18, 2011).

The following respondents were terminated from the investigation based on settlement agreements, consent orders, or withdrawal of allegations from the complaint: One Step Up, InMotion, Hard Candy, DHGate.com, Alibaba.com, A.G. Findings, Cellairis, Global Cellular, AFC Trident, Better Technology Group, and OEMBargain.com. The following respondents were found in default: Anbess, Guangzhou Evotech, Hoffco, HJJ, Sinatech, Suntel, Trait Technology, Papaya, Quanyun, Topter, Cellet, TheCaseSpace, MegaWatts, Hypercel, Star & Way, SmileCase, TheCaseInpoint.com, and National Cellular (collectively “Defaulting Respondents”). Griffin is the only remaining respondent not found in default, and the only respondent that appeared before the Commission.

On June 29, 2012, the ALJ issued his final ID, finding a violation of section 337 by Griffin and the Defaulting Respondents. Specifically, the ALJ found that the Commission has subject matter jurisdiction: *in rem jurisdiction* over the accused products and *in personam* jurisdiction over the respondents. ID at 45-46. The ALJ also found that the importation requirement of section 337 (19 U.S.C. § 1337(a)(1)(B)) has been satisfied. *Id.* at 38-45.

Regarding infringement, the ALJ found that the Defaulting Respondents' accused products infringe the asserted claims of the asserted patents and the asserted trademarks. *Id.* at 62-88. The ALJ further found that Griffin's accused products, the Griffin survivor for iPad 2 and Griffin Explorer for iPhone 4, literally infringe the asserted claims of the '122 patent but that the Griffin Survivor for iPhone 4 and Griffin Survivor for iPod Touch do not literally infringe the asserted claims of the '122 patent. *Id.* at 64-78. The ALJ concluded that an industry exists within the United States for the asserted patents and trademarks as required by 19 U.S.C. § 1337(a)(2). *Id.* at 89-108.

The ID includes the ALJ's recommended determination on remedy and bonding. The ALJ recommended that in the event the Commission finds a violation of section 337, the Commission should issue a general exclusion order directed to infringing articles. *Id.* at 118. The ALJ found that there has been a widespread pattern of unauthorized use of the asserted patents and that certain business conditions exist that warrant a general exclusion order. *Id.* at 116. The ALJ also recommended issuance of cease and desist orders directed to the defaulting respondents, recommending that the cease and desist order should encompass the Defaulting Respondents' internet activities as well. *Id.* at 120. Regarding Griffin, the ALJ found that the record evidence establishes that it has commercially significant amounts of infringing protective cases in inventory in the United States and recommended issuing a cease and desist order directed to those infringing products. *Id.* With respect to the amount of bond that should be posted during the period of Presidential review, the ALJ recommended that if the Commission finds a violation of section 337, it should set a bond of 331.80 percent of entered value for tablet cases and 195.12 percent for non-tablet cases for infringing products of the Defaulting Respondents imported. For Griffin's infringing products, the ALJ recommended setting a bond of 12.45 percent for tablet cases and no bond for non-tablet cases imported during the period of Presidential review.

On July 16, 2012, Otter filed a petition for review of the ID. That same day, the Commission investigative attorney filed a petition for review. On July 17, 2012, Griffin filed a petition for review (the Commission granted Griffin's motion for leave to file its petition one day late). On July 24, 2012, the parties filed responses to the petitions for review.

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in part. Specifically, the Commission has determined to review the ALJ's finding that the accused Griffin Survivor for iPod Touch does not literally infringe the asserted claims of the '122 patent. The Commission has determined not to review any other issues in the ID.

The parties are requested to brief their positions on the issue under review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in responses to the following questions:

1. Does the '122 patent teach that the shape identified as "switch opening" and the shapes identified as "grooves" are mutually exclusive?

2. Is the feature identified in the '122 patent as a “switch opening” identical to the feature in the Griffin Survivor for iPod touch Mr. Anders identified as a “groove”? *See* CX-1 at page 52 (reproduced in ID at 69).
3. Does the “groove” limitation, as construed by the ALJ, read on the tab/groove features identified by Mr. Anders and located at the top portion of the Survivor for the iPod Touch?

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy on the public interest. The factors the Commission will consider are the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 *Fed. Reg.* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, OUII, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant is also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the dates that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial

orders must be filed no later than close of business on Friday, September 14, 2012. Initial submissions are limited to 100 pages, not including any attachments or exhibits related to discussion of the remedy, bonding or public interest. Reply submissions must be filed no later than the close of business on Friday, September 21, 2012. Reply submissions are limited to 50 pages, not including any attachments or exhibits related to discussion of the remedy, bonding or public interest. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number (“Inv. No. 337-TA-754”) in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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 sections 210.42-46 and 210.50 of the Commission’s Rules of Practice and Procedure (19 C.F.R. § 210.42-46 and 210.50).

By order of the Commission.

/s/
Lisa R. Barton
Acting Secretary to the Commission

Issued: August 30, 2012