

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN RADIO FREQUENCY
IDENTIFICATION (“RFID”) PRODUCTS
AND COMPONENTS THEREOF**

Investigation No. 337-TA-979

**NOTICE OF COMMISSION DETERMINATION TO REVIEW AN INITIAL
DETERMINATION GRANTING A MOTION FOR PARTIAL TERMINATION OF THE
INVESTIGATION WITH RESPECT TO CERTAIN ASSERTED CLAIMS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review the presiding administrative law judge’s (“ALJ”) initial determination (“ID”) (Order No. 31) granting a motion for partial termination of the investigation based on a withdrawal of all allegations of infringement relating to claims 3, 6-8, 11 and 14-16 of U.S. Patent No. 8,587,436 (“the ’436 patent”) and claims 1, 2, 9, 10, 12, 16-18, and 26-28 of U.S. Patent No. 7,119,664 (“the ’664 patent”).

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2392. 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 January 11, 2016, based on a complaint filed by Neology, Inc. of Poway, California. 81 *Fed. Reg.* 1205-06 (Jan. 11, 2016). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 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 radio frequency identification (“RFID”) products and components thereof by reason of infringement of

certain claims of U.S. Patent No. 8,325,044; the '436 patent; and the '664 patent. The complaint further alleges that an industry in the United States exists as required by 19 U.S.C. § 1337(a)(2). The notice of investigation named eight respondents. The Office of Unfair Import Investigations is a party in this investigation.

On August 12, 2016, pursuant to Commission Rule 210.21(a)(1), Neology filed an unopposed motion seeking partial termination of the investigation based on withdrawal of all allegations relating to claims 3, 6-8, 11 and 14-16 of the '436 patent and claims 1, 2, 9, 10, 12, 16-18, and 26-28 of the '664 patent. Order No. 31 at 1. The ALJ granted Neology's motion on August 15, 2016. Order No. 31 (Aug. 15, 2016). The ALJ found no extraordinary circumstances preventing Neology's partial termination of the investigation based on withdrawal of all allegations relating to the claims at issue in the motion. *Id.* at 2. No petition for review of the subject ID was filed.

The Commission has determined to review the subject ID. A motion for termination of an investigation based on withdrawal of the complaint must comply with Commission Rule 210.21(a)(1). That Rule requires that the motion "contain a statement that there are no agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation, or if there are any agreements concerning the subject matter of the investigation, all such agreements shall be identified, and if written, a copy shall be filed with the Commission along with the motion." 19 C.F.R. § 210.21(a)(1). Neology's motion fails to meet this requirement.

Neology is directed to file a submission with the Commission that supplements its motion and complies with the above-cited provision of Commission Rule 210.21(a)(1). Neology's supplemental submission to the Commission must be filed by September 29, 2016. Any responses to Neology's submission must be filed by October 7, 2016.

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 Commission Rule 210.4(f), 19 C.F.R. 210.4(f). Submissions should refer to the investigation number ("Inv. No. 979") in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://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. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits,

reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. 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 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', with a stylized flourish at the end.

Lisa R. Barton
Secretary to the Commission

Issued: September 13, 2016