

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 THE COMMISSION’S DETERMINATIONS TO GRANT PARTIAL
TERMINATION OF THE INVESTIGATION WITH RESPECT TO CERTAIN
ASSERTED CLAIMS AND TO NOT REVIEW TWO INITIAL DETERMINATIONS
GRANTING MOTIONS FOR PARTIAL TERMINATION OF THE INVESTIGATION
WITH RESPECT TO CERTAIN OTHER 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 grant 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”); and to not review the presiding administrative law judge’s (“ALJ”) initial determinations (“ID”) (Order Nos. 34 and 35, as amended by Order Nos. 38 and 39, respectively) granting complainant’s motions for partial termination of the investigation based on a withdrawal of all allegations of infringement relating to claims 9, 10, 12, 17, and 18 of the ’436 patent and to all remaining asserted claims of 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 (“Neology”). 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.

Since August 12, 2016, Neology has filed three unopposed motions seeking partial termination of the investigation based on withdrawal of all allegations of infringement with respect to certain asserted claims. Neology’s first motion (Docket No. 979-024), as amended on September 14, 2016, sought partial termination of the investigation with respect 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. Neology’s second motion (Docket No. 979-025), as amended on September 14, 2016, sought partial termination with respect to claims 9, 10, 12, 17, and 18 of the ’436 patent. Its third motion (Docket No. 979-027), as amended on September 14, 2016, sought partial termination of the investigation with respect to all remaining asserted claims of the ’664 patent. The ALJ thereafter granted Neology’s three motions. Order No. 31 (Aug. 15, 2016); Order No. 34 (Aug. 29, 2016); Order No. 35 (Sep. 12, 2016).

On September 13, 2016, the Commission issued a Notice of its determination to review Order No. 31 because the first motion did not comply with Commission Rule 210.21(a)(1). The Commission’s Notice stated that 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). Because Neology’s first motion failed to meet this requirement, the Commission directed Neology to file a submission with the Commission that supplements its first motion and complies with the above-cited provision of Commission Rule 210.21(a)(1).

The ALJ subsequently ordered Neology to file corrected motions that comply with Commission Rule 210.21(a)(1). *See* Order No. 37 (Sep. 14, 2016). On September 14, 2016, Neology filed three corrected motions in compliance with Commission Rule 210.21(a)(1). Each corrected motion stated that there are no agreements, written or oral, express or implied between the parties concerning the subject matter of the Investigation. The next day, the ALJ issued amended IDs granting Neology’s three corrected motions. Order Nos. 38-40 (Sep. 15, 2016). No petitions for review of the subject IDs were filed.

The Commission has determined not to review Order Nos. 34 and 35, as amended by Order Nos. 38 and 39, respectively, granting Neology's motions for partial termination of the investigation based on a withdrawal of all allegations of infringement relating to claims 9, 10, 12, 17, and 18 of the '436 patent and to all remaining asserted claims of the '664 patent.

Order No. 40 is moot in light of the Commission's determination to review Order No. 31. Based on Neology's submission of a corrected first motion in compliance with Commission Rule 210.21(a)(1), the Commission has determined to grant 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 the '436 patent and claims 1, 2, 9, 10, 12, 16-18, and 26-28 of the '664 patent.

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', written in a cursive style.

Lisa R. Barton
Secretary to the Commission

Issued: September 27, 2016