

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

In the Matter of

**CERTAIN AUDIO PLAYERS AND
CONTROLLERS, COMPONENTS
THEREOF, AND PRODUCTS
CONTAINING THE SAME**

Investigation No. 337-TA-1191

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

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that, on August 13, 2021, the presiding chief administrative law judge (“CALJ”) issued a combined final initial determination (“ID”) finding a violation of section 337 and a recommended determination (“RD”) on remedy and bonding in the above-captioned investigation. The Commission has determined to review the final ID in part. The Commission requests briefing from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding. The Commission has also determined to extend the target date for completion of the investigation to January 6, 2022.

FOR FURTHER INFORMATION CONTACT: Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3179. 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, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On February 11, 2020, the Commission instituted this investigation based on a complaint filed by Sonos, Inc. (“Sonos”) of Santa Barbara, California. 85 FR 7783 (Feb. 11, 2020). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) (“section 337”), based on the importation into the United

States, the sale for importation, or the sale within the United States after importation of certain audio players and controllers, components thereof, and products containing the same by reason of infringement of certain claims of U.S. Patent Nos. 9,195,258 (“the ’258 patent”); 10,209,953 (“the ’953 patent”); 8,588,949 (“the ’949 patent”); 9,219,959 (“the ’959 patent”); and 10,439,896 (“the ’896 patent”). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The notice of investigation named as respondents Google LLC (“Google”) and Alphabet Inc. (“Alphabet”), both of Mountain View, California. *Id.* The Office of Unfair Import Investigations (“OUII”) is also named as a party. *Id.*

On September 21, 2020, the Commission terminated the investigation as to Alphabet based on withdrawal of the allegations in the complaint directed to Alphabet. Order No. 18 (Sept. 1, 2020), *unreviewed by* Comm’n Notice (Sept. 21, 2020). On November 24, 2020, the Commission determined that the importation requirement has been satisfied. Order No. 27 (Oct. 27, 2020), *unreviewed by* Comm’n Notice (Nov. 24, 2020). On February 2, 2021, the Commission determined that the technical prong of the domestic industry requirement has been satisfied as to the ’949 patent. Order No. 32 (Jan. 4, 2021), *unreviewed by* Comm’n Notice (Feb. 2, 2021). On February 16, 2021, the Commission determined that the economic prong of the domestic industry requirement has been satisfied as to all asserted patents. Order No. 35 (Jan. 14, 2021), *reviewed and aff’d by* Comm’n Notice (Feb. 16, 2021).

On March 12, 2021, the Commission partially terminated the investigation based on withdrawal of the allegations in the complaint as to the following asserted claims: claims 22 and 23 of the ’258 patent; claims 12 and 13 of the ’953 patent; claims 5, 9, 29, and 35 of the ’959 patent; and claim 3 of the ’896 patent. Order No. 58 (Feb. 23, 2021), *unreviewed by* Comm’n Notice (Mar. 12, 2021).

The following claims remain at issue: claims 17, 21, 24, and 26 of the ’258 patent; claims 7, 14, and 22-24 of the ’953 patent; claim 10 of the ’959 patent; claims 1, 2, 4, and 5 of the ’949 patent; and claims 1, 5, 6, and 12 of the ’896 patent.

On August 13, 2021, the CALJ issued the subject final ID on violation and RD on remedy and bonding. The ID finds violations of section 337 with respect to certain claims of each asserted patent. The RD recommends that, should the Commission determine that violations of section 337 occurred, then the Commission should: (i) issue a limited exclusion order against Google’s infringing products; (ii) issue a cease and desist order against Google; and (iii) set a bond of 100 percent for any importations of infringing products during the period of Presidential review.

On August 27, 2021, Sonos and Google each filed a petition for review of certain findings in the final ID. On September 7, 2021, the private parties filed responses to each other’s petitions, and OUII filed a combined response to both petitions.

On September 13, 2021, the Commission received eight submissions on the public interest in response to the Commission’s Federal Register notice. *See* 86 FR 46715 (Aug. 19,

2021). The Commission did not receive any submissions on the public interest from the parties pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)).

The Commission has determined to review the ID in part with respect to the ID's analysis of whether the products accused of infringing the '258 and '953 patent are articles that infringe at the time of importation. The Commission has also determined to correct two typographical errors on pages 24 and 84 of the ID. The Commission has determined not to review the remaining findings in the ID.

The Commission has also determined to extend the target date for completion of the investigation to January 6, 2022.

In connection with the final disposition of this investigation, the statute authorizes issuance of: (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) a cease and desist order that could result in the respondent 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 *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (December 1994).

The statute requires the Commission to consider the effects of any remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and/or cease and desist order 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, disapprove, or take no action on the Commission's determination. See Presidential Memorandum of July 21, 2005. 70 FR 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 and prescribed by the Secretary of the Treasury. 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, interested government agencies, and any other interested parties are invited to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should include views on the recommended determination by the CALJ on remedy and bonding.

In their initial written submissions, Sonos and OUII are requested to submit proposed remedial orders for the Commission’s consideration. Sonos is further requested to identify the dates the Asserted Patents expire, to provide the HTSUS subheadings under which the subject articles are imported, and to supply identification information for all known importers of the subject articles. Sonos is additionally requested to identify and explain, from the record, articles that are “components of” and “products containing” the subject articles, and thus covered by the proposed remedial orders, if imported separately from the subject articles.

Initial written submissions, including proposed remedial orders, must be filed no later than close of business on **December 2, 2021**. Reply submissions must be filed no later than the close of business on **December 10, 2021**. No further submissions on any of 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. The Commission’s paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1191) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.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 by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). 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 any confidential filing. 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,^[1] solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on November 19, 2021.

^[1] All contract personnel will sign appropriate nondisclosure agreements.

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', enclosed within a large, loopy oval flourish.

Lisa R. Barton
Secretary to the Commission

Issued: November 19, 2021