

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN SMART THERMOSTATS,
LOAD CONTROL SWITCHES, AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1277

**NOTICE OF A COMMISSION DETERMINATION TO REVIEW IN PART A FINAL
INITIAL DETERMINATION FINDING NO VIOLATION OF SECTION 337, AND ON
REVIEW, TO AFFIRM WITH CERTAIN MODIFICATIONS; TERMINATION OF THE
INVESTIGATION**

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 in part a final initial determination (“ID”) of the presiding administrative law judge (“ALJ”), finding no violation of section 337, and on review, to affirm with certain modifications set forth herein. The investigation is terminated.

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 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 September 2, 2021, the Commission instituted this investigation based on a complaint filed by Causam Enterprises, Inc. (“Causam”) of Raleigh, North Carolina. 86 FR 49345-46 (Sept. 2, 2021). The complaint alleged violations of 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 smart thermostats, load control switches, and components thereof by reason of infringement of one or more of claims 1–9, 16, 19–21, 23–28, and 30 of U.S. Patent No. 8,805,552 (“the ’552 patent”); claims 1–8, 10, 13–17, 19–23, and 25–29 of U.S. Patent No. 9,678,522 (“the ’522 patent”); claims 1–11, 13–16, 18, and 19 of U.S. Patent No. 10,394,268 (“the ’268 patent”); and claims 1, 2, 8, 9, 11, 13, 14, and 17 of U.S. Patent No. 10,396,592 (“the ’592 patent”) (collectively, “Asserted Patents”). *Id.* The Commission’s notice of investigation named the following nine entities as respondents: Alarm.com Holdings, Inc. of Tysons, Virginia; Alarm.com Inc. of Tysons, Virginia; Ecobee, Inc. of Toronto, Ontario,

Canada; EnergyHub, Inc. of Brooklyn, New York; Itron, Inc. of Liberty Lake, Washington; Itron Distributed Energy Management, Inc. of Liberty Lake, Washington (“Itron Distributed”); Resideo Smart Homes Technology (Tianjin) of Tianjin, China; Resideo Technologies, Inc. of Austin, Texas (“Resideo Technologies”); and Xylem Inc., of Rye Brook, New York (“Xylem”). The Office of Unfair Import Investigations was not named as a party in this investigation. *Id.*

On December 10, 2021, the ALJ issued an ID granting a motion to terminate the investigation as to Xylem based upon settlement. Order No. 7 (Dec. 10, 2021), *unreviewed by* Comm’n Notice (Jan. 10, 2022).

On April 21, 2022, the ALJ issued an ID granting a motion (1) to amend the complaint and notice of investigation to substitute new respondent Ademco Inc. of Melville, New York for respondent Resideo Technologies and (2) to terminate the investigation as to respondent Itron Distributed; claim 21 of the ’552 patent; claims 5, 14, and 17 of the ’522 patent; claims 5, 13, and 16 of the ’268 patent; and claims 8 and 9 of the ’592 patent based upon withdrawal of the allegations in the complaint. Order No. 12 (Apr. 21, 2022), *unreviewed by* Comm’n Notice (May 17, 2022).

The Chief ALJ (“CALJ”) held an evidentiary hearing from June 28-July 1, 2022 and received post-hearing briefs thereafter (this investigation was reassigned from ALJ Shaw to Chief ALJ Cheney on June 17, 2022).

On November 16, 2022, the CALJ issued the final ID finding no violation of section 337 as to the asserted patent claims. The ID found that by appearing and participating in the investigation and not contesting jurisdiction, the parties have consented to personal jurisdiction at the Commission. ID at 17. The ID also found that the Commission has *in rem* jurisdiction over the accused products. *Id.* The ID further found that the importation requirement under 19 U.S.C. 1337(a)(1)(B) is satisfied. *Id.* at 16 (citing JX-0015C, JX-0016C, JX-0017C, JX-0018C (stipulations between the parties as to importation)). The ID, however, found that Causam failed to demonstrate that it has standing to assert a claim of infringement for any of the Asserted Patents. *Id.* at 17-26. The ID also found that Causam failed to prove infringement of the asserted claims, and that Respondents failed to show that any of the asserted claims are invalid. *Id.* at 40-120, 177-224. Finally, the ID found that Causam proved the existence of a domestic industry that practices the Asserted Patents as required by 19 U.S.C. 1337(a)(2). *Id.* at 120-177. The ID included the CALJ’s recommended determination on remedy and bonding (“RD”). The RD recommended that, should the Commission find a violation, issuance of a limited exclusion order and cease and desist orders would be appropriate. ID/RD at 225-230. The RD also recommended imposing a bond in the amount of one hundred percent (100%) of entered value for covered products imported during the period of Presidential review. *Id.* at 230-32.

On November 28, 2022, Causam filed a petition for review of the ID and Respondents filed a contingent petition for review of the ID. On December 6, 2022, the parties filed responses to the petitions.

Having reviewed the record of the investigation, including the final ID, the parties' submissions, the petitions for review, and the response thereto, the Commission has determined to review the final ID in part. Specifically, the Commission has determined to review (1) the final ID's findings as to Causam's standing to assert infringement of the asserted patents; (2) the final ID's findings on obviousness; and (3) the final ID's domestic industry findings.

The Commission, upon review, takes no position on (1) whether Causam has standing to assert infringement of the asserted patents; (2) whether the asserted patent claims are invalid for obviousness; and (3) whether Causam satisfied the technical or economic prongs of the domestic industry requirement. The Commission adopts all findings in the final ID that are not inconsistent with the Commission's determination.

The investigation is terminated with a finding of no violation of section 337.

The Commission vote for this determination took place on February 16, 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', enclosed within a circular flourish.

Lisa R. Barton
Secretary to the Commission

Issued: February 16, 2023