

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN MARINE AIR
CONDITIONING SYSTEMS,
COMPONENTS THEREOF, AND
PRODUCTS CONTAINING THE SAME**

Investigation No. 337-TA-1346

**NOTICE OF A COMMISSION DETERMINATION TO REVIEW IN PART AND, ON
REVIEW, TO AFFIRM WITH MODIFICATION A FINAL INITIAL
DETERMINATION FINDING NO VIOLATION; TERMINATION OF
INVESTIGATION**

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 and, on review, to affirm with modification a final initial determination (“FID”) of the presiding administrative law judge (“ALJ”). The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Namo Kim, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3459. 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 December 7, 2022, the Commission instituted this investigation based on a complaint, as supplemented, filed by Dometic Corporation of Rosemont, Illinois and Dometic Sweden AB of Solna, Sweden (collectively, “Dometic”). 87 FR 76216-17 (Dec. 13, 2022). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”) based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain marine air conditioning systems, components thereof, and products containing same by reason of the infringement of certain claims of U.S. Patent No. 8,056,351 (“the ’351 patent”). *Id.* The complaint further alleges that a domestic industry (“DI”) exists. *Id.* The notice of institution named four (4) respondents: (1) Shanghai Hopewell Industrial Co. Ltd. of Shanghai, China; (2)

Shanghai Hehe Industrial Co. Ltd. of Shanghai, China; (3) CitiMarine, L.L.C. of Doral, Florida; and (4) Mabru Power Systems, Inc. of Dania Beach, Florida (collectively, “Respondents”). *Id.*

On August 28, 2023, the Commission granted in part summary determination that the economic prong of the DI requirement is satisfied. Order No. 23, *unreviewed by Comm’n Notice* (Aug. 28, 2023).

On September 13, 2023, the Commission affirmed an initial determination granting in part summary determination of invalidity of claims 1-2, 4-5, 7 of the ’351 patent. Order No. 19, *aff’d by Comm’n Notice* (September 13, 2023).

The presiding ALJ held an evidentiary hearing on September 18-21, 2023.

On October 31, 2023, the Commission affirmed an initial determination terminating the investigation with respect to claims 3, 11 and 17 of the ’351 patent. Order No. 30, *unreviewed by Comm’n Notice* (October 31, 2023). Accordingly, at the time the FID was issued, claims 18-22 of the ’351 patent remained pending.

On December 8, 2023, the ALJ issued the FID finding no violation of section 337. Specifically, the FID finds that Dometic failed to show infringement or to satisfy the technical prong of the DI requirement because “the DI Products do not possess two axes” as required by the remaining asserted claims under the FID’s claim construction. Despite finding no infringement, the ALJ conducted an independent analysis of the accused products beyond the infringement theories presented by Dometic and determined that some accused products satisfy all limitations of the asserted claims. Lastly, the FID finds that all remaining asserted claims are valid.

The FID also includes a Recommended Determination (“RD”) recommending, should the Commission find a violation of section 337, that the Commission issue: (1) a limited exclusion order with the Commission’s standard certification provision, which does not identify non-infringing articles as requested by the respondents; and (2) a cease-and-desist order against any respondent found to be in violation. The RD further recommends that the Commission set no bond (zero percent) during the period of Presidential review.

On December 22, 2023, both parties (Dometic and Respondents) petitioned for Commission review of FID’s findings. Specifically, Dometic requests Commission review of the FID’s findings concerning: (1) claim construction; (2) non-infringement; (3) the technical prong of the DI requirement; and (4) validity of the asserted claims concerning the claim construction and secondary considerations. Respondents request Commission review of the FID’s findings concerning: (1) the technical prong; (2) certain factual findings related to infringement; (3) excluding Respondents’ failure of proof arguments related to infringement; and (4) validity, in particular whether a certain product qualifies as prior art and whether the ALJ abused his discretion by excluding a certain prior art exhibit.. Respondents also request contingent review of the following issues: (1) claim construction and (2) validity.

On December 27, 2023, the Commission published its post-RD *Federal Register* notice seeking submissions on public interest issues raised by the relief recommended by the ALJ

should the Commission find a violation. 88 FR 89466-67 (Dec. 27, 2023). No responses were filed from the public.

On January 4, 2024, both parties (Dometic and Respondents) responded to each other's petition for review of the FID.

On January 9, 2024, both parties (Dometic and Respondents) filed a statement on the public interest pursuant to Commission Rule 210.50(a)(4), 19 CFR 210.50(a)(4).

The Commission, having reviewed the record in this investigation, including the FID and the parties' petitions and responses thereto, has determined to review in part and, on review, to affirm with modification the FID's finding of no violation. In particular, the Commission reviews and, on review, supplements with supporting extrinsic evidence the FID's construction of the claim limitation "the blower being rotatable about [a] first axis so that the outlet can be oriented toward a first direct[i]on and a second direction, and the first and second directions point to substantially different lateral sides of the main body" recited in claim 18 of the '351 patent. The Commission has also determined to review the FID's findings concerning infringement and the technical prong of the DI requirement and, on review, to affirm the FID's finding of non-infringement and non-satisfaction of the technical prong, but to vacate the ALJ's independent findings that some of the accused products (*i.e.*, Mabru SC07, which represents all Mabru accused products) satisfy all limitations of the asserted claims, as well as the ALJ's independent technical prong findings on the DI products. The Commission has further determined to review and, on review, to take no position on certain of the FID's invalidity findings and the findings that certain accused products satisfy a dependent claim limitation of the '351 patent. The Commission has determined not to review the remainder of the FID.

The Commission issues its opinion herewith setting forth its determinations on certain issues. The investigation is terminated.

The Commission vote for this determination took place on March 7, 2024.

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 shape.

Lisa R. Barton
Secretary to the Commission

Issued: March 7, 2024