

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN WET DRY SURFACE
CLEANING DEVICES**

Investigation No. 337-TA-1304

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

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 a final initial determination (“FID”) issued by the Chief Administrative Law Judge (“CALJ”), finding a violation of section 337 as to U.S. Patent Nos. 11,076,735 (“the ’735 patent”) and 11,071,428 (“the ’428 patent”) and no violation of section 337 as to U.S. Patent Nos. 11,122,949 (“the ’949 patent”), 10,820,769 (“the ’769 patent”), and 11,096,541 (“the ’541 patent”), in the above-captioned investigation. The Commission also requests written submissions from the parties, interested government agencies, and other interested persons on the issues of remedy, the public interest, and bonding, under the schedule set forth below.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-3228. 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 on (202) 205-1810.

SUPPLEMENTARY INFORMATION: On March 9, 2022, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based on a complaint filed by Bissell Inc. and Bissell Homecare, Inc., both of Grand Rapids, Michigan (collectively, “Complainants”). See 87 FR 13311-12 (March 9, 2022). The complaint, as supplemented, alleges violations of 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 wet dry surface cleaning devices by reason of infringement of certain claims of the '735 patent, the '428 patent, the '949 patent, the '541 patent, and the '769 patent. *Id.* The complaint further alleges that a domestic industry exists. *Id.* The notice of investigation names as respondents Tineco Intelligent Technology Co., Ltd. of Suzhou City, China; TEK (Hong Kong) Science & Technology Ltd. of Hong Kong; and Tineco Intelligent, Inc. of Seattle, Washington (collectively, "Respondents"). *Id.* The Office of Unfair Import Investigations is not participating in this investigation.

On March 24, 2023, the CALJ issued the FID, finding that a violation of section 337 has occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation, of certain wet dry surface cleaning devices that infringe asserted claims 1, 13, and 15 of the '735 patent and asserted claim 1 of the '428 patent. The FID further finds no violation of section 337 with respect to the asserted claims of the '949 patent, the '769 patent, and the '541 patent. On April 7, 2023, the CALJ issued a recommended determination ("RD") on remedy and bonding should the Commission find a violation of section 337. Specifically, if a violation is found, the RD recommends the Commission issue a limited exclusion order directed to the infringing products and cease and desist orders directed to each of the Respondents. The RD further recommends setting a bond of \$49.01 for infringing iFloor 3 products, \$99.01 for infringing Floor ONE S3 products, and \$0 for all other infringing accused products for any importations of infringing products during the period of Presidential review.

On April 7, 2023, Complainants filed a combined petition and contingent petition requesting review of certain findings. Specifically, Complainants seek review of the FID's non-infringement findings as to the '949, '541, and '769 patents, finding that Complainants failed to satisfy the technical prong for the '541 patent, finding that certain redesigned accused products do not infringe the '735 and '428 patents, and waiver of Complainants' infringement argument as to the '428 patent. Complainants also seek contingent review of certain economic prong findings. That same day, Respondents filed a combined petition and contingent petition requesting review of certain findings. Specifically, Respondents seek review of the FID's findings that the original accused products infringe the '735 and '428 patents, that the asserted claims of the '735 and '428 patents are not invalid, that Complainants satisfied the technical prong of the domestic industry requirement as to the '735 and '428 patents, and that Complainants satisfied the economic prong of the domestic industry requirement for all of the Asserted Patents. *See* RPet. Respondents also seek contingent review of the FID's findings that the asserted claims of the '949, '541, and '769 patents are not invalid. On April 17, 2023, Complainants and Respondents filed their respective responses to the petitions for review.

On May 8, 2023, Representative Hillary J. Scholten submitted a response to the Commission's notice seeking public interest submissions. EDIS Doc. ID 795898; *see* 88 FR 22479-80 (Apr. 13, 2023). On May 9, 2023, Complainants filed a submission on the public interest pursuant to Commission Rule 210.50(a)(4). 19 CFR 210.50(a)(4).

Having reviewed the record of the investigation, including the FID, the parties' submissions to the CALJ, the petitions for review, and the responses thereto, the Commission has determined to review the FID in part. Specifically, the Commission has determined to review: 1) the FID's infringement findings for the '949, '769, and '541 patents; 2) the FID's technical prong findings for the '541 patent; 3) the FID's invalidity findings for the '735 and '428 patents; and 4) the FID's economic prong findings. The Commission has determined not to review any other findings presented in the FID.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia*, (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 (Dec. 1994).

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and a 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: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the CALJ on remedy and bonding.

In their initial submission, Complainants are also requested to identify the remedy sought and Complainants are requested to submit proposed remedial orders for the Commission's consideration. Complainants are further requested to state the dates that the Asserted Patents expire, to provide the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on **August 15, 2023**. Reply submissions must be filed no later than the close of business on **August 22, 2023**. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Opening submissions are limited to **20** pages. Reply submissions are limited to **10** pages.

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 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1304) 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. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed with the Commission and served on any parties to the investigation within two business days of 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, 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 August 1, 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 'LRB', is positioned above the printed name and title.

Lisa R. Barton
Secretary to the Commission

Issued: August 1, 2023