INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1240]

Certain UMTS and LTE Cellular Communications Modules and Products Containing the Same; Notice of a Commission Determination To Review in Part and, on Review, Affirm a Final Initial Determination Finding No Violation of Section 337; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (the ''Commission'') has determined to review in part the final initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') on April 1, 2022. On review, the Commission has determined to take no position on certain non-dispositive issues. The Commission has determined not to review, and thereby adopts, the remaining findings in the ID. The Commission further determines to affirm the ID's finding of no violation with respect to each of the subject patents. This investigation is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2382. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket system (''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: The Commission instituted the present investigation on January 27, 2021, based on a complaint, as supplemented, filed by Koninklijke Philips N.V. of Eindhoven, Netherlands and Philips RS North America LLC (f/k/a Respironics, Inc.) of Pittsburgh, Pennsylvania. 86 FR 7305–06 (Jan. 27, 2021). The complaint alleges a violation of section 337 of the Tariff Act, as amended, 19 U.S.C. 1337, based on the importation, sale for importation, or sale in the United States after importation of certain UMTS and LTE cellular communication modules and products containing the same by reason of infringement of certain claims of U.S. Patent Nos. 7,831,271; 8,199,711; 7,554,943; and 7,944,935. *Id.* The complaint further alleges a domestic industry exists or is in the process of being established. *Id.*

The Commission's notice of investigation names the following respondents: Thales DIS AIS USA, LLC of Bellevue, Washington; Thales DIS AIS Deutschland GmbH, Bayern, Germany (collectively, ''Thales''); Thales USA, Inc., Arlington, Virginia; Thales S.A., Paris, France; Telit Wireless Solutions, Inc. of Durham, North Carolina; Telit Communications PLC, London, United Kingdom; Quectel Wireless Solutions Co., Ltd., Shanghai, China; CalAmp Corp. of Irvine, California; Xirgo Technologies, LLC of Camarillo, California; Laird Connectivity, Inc. of Akron, Ohio (all collectively, ''Respondents''). *Id.* at 7306. The Office of Unfair Import Investigations (''OUII'') is also named as a party to this investigation. *Id.*

The presiding ALJ held an evidentiary hearing from October 8–13, 2021. The parties filed their opening post-hearing briefs on October 29, 2021, and their post-hearing reply briefs on November 15, 2021.

On April 1, 2022, the presiding ALJ issued the final ID at issue finding no violation of Section 337 with respect to each of the four asserted patents. In summary, the final ID finds that Philips failed to prove that any of the asserted claims of the four asserted patents is infringed, directly or indirectly, by any of the Respondents. The ID further finds that Philips failed to prove that it satisfied the technical prong of the domestic industry requirement with respect to any of the four asserted patents. The ID further finds that asserted claim 9 of the '711 patent is invalid as indefinite and asserted claims 9 and 12 are invalid as obvious. The ID further finds that asserted claims 1–8 of the '271 patent are invalid as indefinite and for lack of sufficient written description. The ID finds that claim 12 of the '943 patent is invalid as indefinite. The ID further finds that all four patents are unenforceable under a doctrine of implied waiver, but it rejects Respondents' proposed defenses of express and implied licenses and equitable estoppel.

On April 13, 2022, Philips filed a petition for review of certain no-violation findings in the final ID. On April 15, 2022, Thales filed a contingent petition to review certain findings in the final ID.

On April 15, 2022, the presiding ALJ issued a recommended determination on remedy and bonding.

On April 21, 2022, OUII filed a combined response opposing both parties' petitions for review. On April 21, 2022, Respondents filed their opposition to Philips' petition for review. On April 25, 2022, Philips filed its opposition to Thales' contingent petition for review.

On May 16, 2022, Philips and Thales filed public interest statements pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)). The Commission also received public interest statements from a number of third parties as well as from interested individuals in response to the post-RD **Federal Register** notice, including: ResMed Corp. (May 13, 2022); the American Sleep Apnea Association (May 16, 2022); App Association (May 16, 2022); Continental Automotive Systems, Inc., Denso Corporation, Bury S.p.z.o.o, the Alliance for Automotive Innovation, and the European Association of Auto Suppliers (May 16, 2022); Congressmen Scott H. Peters and Congressman Bryan G. Steil (May 16, 2022); Federal Trade Commission Chair Lina M. Khan and Commissioner Rebecca Kelly Slaughter (May 16, 2022); Professor Michael A. Carrier (May 16, 2022); Dr. Kathleen Sarmiento, M.D (May 16, 2022); Dr. Patrick J. Strollo, Jr., MD (May 8, 2022), Dr. Sanjay R. Patel, MD (May 5, 2022), and Dr. Sunil Sharma, M.D., Dr. Robert Stansbury, M.D., and Chris Pham, D.O. of the West Virginia University Sleep Evaluation Center (May 3, 2022). 87 FR 23884 (April 21, 2022).

Upon review of the subject ID, the parties' petitions, and responses thereto, the Commission has determined to review and, on review, take no position on the following issues: (1) the ID's construction and application of the claim terms ''queue,'' ''queue store,'' and ''means for transmitting the group'' in the '935 patent: (2) the ID's finding that claims 9 and 12 of the '711 patent are invalid as obvious; (3) the ID's finding on domestic industry for the '271 patent, to the extent it might be interpreted to suggest that ''each and every'' asserted domestic industry product must be shown to practice a claim of an asserted patent to satisfy the technical prong of the domestic industry requirement (*see* ID at 221); (4) the ID's finding that the accused products do not directly infringe method claims 1–4 of the '271 patent on the basis that Philips did not prove that they are used with an antenna, which conflicts with the ID's construction of ''transmitting'' to not require an antenna (*cf.* ID at 210 *with* ID at 234); (5) the ID's finding that Philips

satisfied the economic prong of the domestic industry requirement with respect to the four asserted patents; (6) the ID's finding that Philips has impliedly waived its rights to assert the four asserted patents; and (7) the ID's finding that Respondents failed to prove either their express/implied license defense or their equitable estoppel defense with respect to any of the four asserted patents. *See Beloit Corp.* v. *Valmet Oy,* 742 F.2d 1421, 1422–23 (Fed. Cir. 1984). Chair Johanson and Commissioner Karpel base their decision to review and take no position on the economic prong on the finding that the technical prong is not met. Commissioner Kearns would affirm the ID's finding that the '271 patent is unenforceable under the doctrine of implied waiver (but takes no position on implied waiver for the other three asserted patents), and its findings that Respondents failed to prove both their express/implied license defense and their equitable estoppel defense with respect to the four asserted patents. Commissioner Kearns also notes that his determination to review and take no position regarding satisfaction of the economic prong is independent of his determination regarding the technical prong.

The Commission has determined not to review, and thus adopts, the remaining findings in the ID, including that: (1) the asserted claims of the '935 patent, the '711 patent, the '943 patent, and the '271 patent are not infringed; (2) Philips did not satisfy the technical prong of the domestic industry requirement with respect to any of the four asserted patents; (3) claim 9 of the '711 patent and claim 12 of the '943 patent are invalid as indefinite; and (4) the asserted claims of the '271 patent are invalid as indefinite and for lack of written description. Recognizing the Commission has determined not to review the ID's finding that Philips did not satisfy the technical prong of the domestic industry requirement with respect to any of the four asserted patents, Commissioner Schmidtlein would otherwise affirm the ID's analysis concerning whether the asserted economic prong investments were significant under 19 U.S.C. 1337(a)(3)(A) and (B).

The Commission thus affirms the final ID's finding of no violation of Section 337 with respect to each of the four asserted patents. This investigation is hereby terminated.

The Commission voted to approve this determination on July 6, 2022.

The authority for the Commission's determinations 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.

Issued: July 6, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–14761 Filed 7–11–22; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Donald J. Murphy, M.D.; Decision and Order

On April 15, 2022, the Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Donald J. Murphy, M.D. (hereinafter, Registrant). OSC, at 1 and 3. The OSC proposed the revocation of Registrant's Certificate of Registration No. AM2605561 at the registered address of 5920 McIntyre St., Golden, Colorado, 80403. *Id.* at 1. The OSC alleged that Registrant's registration should be revoked because Registrant is ''without authority to handle controlled substances in the State of Colorado, the state in which [he is] registered with DEA.'' *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

The Agency makes the following findings of fact based on the uncontroverted evidence submitted by the Government in its Request for Final Agency Action (RFAA) submitted June 23, 2022.[1]

Findings of Fact

On September 23, 2021, the Colorado Medical Board issued an Order suspending Registrant's license to practice medicine in the State of Colorado. RFAAX C (Order of Summary Suspension), at 3. According to Colorado's online records, of which the Agency takes official notice, Registrant's license is still suspended. [2] Colorado Professional or Business License Lookup, *https://apps.colorado.gov/dora/licensing/Lookup/LicenseLookup.aspx* (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not currently licensed to engage in the practice of medicine in Colorado, the state in which he is registered with the DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA) ''upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.,* 76 FR 71,371 (2011), *pet. for rev. denied,* 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.,* 43 FR 27,616, 27,617 (1978). [3]

[1] Based on the Declaration from a DEA Diversion Investigator that the Government submitted with its RFAA, the Agency finds that the Government's service of the OSC on Registrant was adequate. RFAA, Exhibit (hereinafter, RFAAX) B, at 1–2. Further, based on the Government's assertions in its RFAA, the Agency finds that more than thirty days have passed since Registrant was served with the OSC and Registrant has neither requested a hearing nor submitted a written statement or corrective action plan and therefore has waived any such rights. RFAA, at 1–2; *see also* 21 CFR 1301.43(d) and 21 U.S.C. 824(c)(2)(C).

[2] Under the Administrative Procedure Act, an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), ''[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.'' Accordingly, Registrant may dispute the Agency's finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to Office of the Administrator, Drug Enforcement Administration at *dea.addo.attorneys@dea.usdoj.gov.*

[3] This rule derives from the text of two provisions of the CSA. First, Congress defined the term ''practitioner'' to mean ''a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper,* 76 FR at 71,371–72; *Sheran Arden*

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