

Issued: December 14, 2009.

**Marilyn R. Abbott,**

*Secretary.*

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## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-632]

### **Certain Refrigerators and Components Thereof; Notice of Commission Determination To Review in Its Entirety a Final Determination on Remand Finding No Violation of Section 337; Schedule for Briefing on the Issues on Review and 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 its entirety the presiding administrative law judge's ("ALJ") final initial determination ("ID") on remand issued on October 9, 2009, in the above-captioned investigation. The Commission is also requesting briefing on one issue on review and on remedy, the public interest, and bonding.

**FOR FURTHER INFORMATION CONTACT:** Megan M. Valentine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708-2301. Copies of the ALJ's IDs and all other non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.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 February 21, 2008, the Commission instituted this investigation, based on a complaint filed by Whirlpool Patents Company of St. Joseph, Michigan; Whirlpool Manufacturing Corporation of St. Joseph, Michigan; Whirlpool

Corporation of Benton Harbor, Michigan, and Maytag Corporation of Benton Harbor, Michigan (collectively, "Whirlpool"). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, 19 U.S.C. \* 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain refrigerators and components thereof that infringe certain claims of U.S. Patent Nos. 6,082,130 ("the '130 patent"); 6,810,680 ("the '680 patent"); 6,915,644 ("the '644 patent"); 6,971,730 ("the '730 patent"); and 7,240,980 ("the '980 patent"). Whirlpool named LG Electronics, Inc.; LG Electronics, USA, Inc.; and LG Electronics Monterrey Mexico, S.A., De, CV (collectively, "LG") as respondents. The complaint, as supplemented, further alleged that an industry in the United States exists as required by subsection (a)(2) of Section 337 and requested that the Commission issue an exclusion order and cease and desist orders.

On May 1, 2008, Whirlpool filed a motion to partially terminate the investigation based on their withdrawal of the '730 patent and the '980 patent. On June 9, 2009, the ALJ issued an ID, Order No. 8, terminating the investigation, in part, as to the '730 and '980 patents. LG supported the motion. On June 24, 2008, the Commission determined not to review Order No. 8.

On September 11, 2008, Whirlpool and LG filed a joint motion seeking termination of this investigation with respect to the '680 patent and the '644 patent on the basis of a settlement agreement. On September 25, 2008, the ALJ issued an ID, Order No. 10, terminating the investigation, in part, as to the '680 and '644 patents. No petitions for review were filed. On October 27, 2008, the Commission determined not to review Order No. 10.

On October 17, 2008, Whirlpool filed a motion for summary determination that it had satisfied the importation requirement. On November 20, 2008, the ALJ issued an ID, Order No. 14, granting complainant's motion for summary determination of importation. No petitions for review were filed. On December 15, 2008, the Commission issued notice that it had determined not to review Order No. 14.

On July 24, 2008, Whirlpool filed a motion seeking leave to amend the complaint and notice of investigation to (1) remove references to patents that had been withdrawn from this investigation; (2) add a reference to a non-exclusive license that relates to two patents at issue; and (3) update the current state of the domestic industry. On November 25,

2008, the ALJ issued Order No. 15, in which he granted Whirlpool's motion as to (1) and (3) above and denied it with respect to (2). No petitions for review were filed. The Commission determined not to review the subject ID on December 15, 2008.

On February 26, 2009, the ALJ issued a final ID, in which he found no violation of Section 337. On March 11, 2009, Whirlpool filed a petition for review, and LG filed a contingent petition for review. Whirlpool, LG and the Commission investigative attorney ("IA") filed responses. On April 27, 2009, the Commission determined to review the final ID in its entirety. 74 FR 20345-6 (May 1, 2009). In particular, the Commission was concerned with the ALJ's claim construction of the terms "freezer compartment," "disposed within the freezer compartment," and "ice storage bin having a bottom opening." The Commission asked the parties to address several questions concerning claim construction.

After receiving briefing from the parties, the Commission determined to modify the ALJ's claim constructions of the terms "freezer compartment," "disposed within the freezer compartment," and "ice storage bin having a bottom opening," determined to affirm the final ID's construction of the term "ice maker," and determined to remand the investigation to the ALJ to make findings regarding infringement, validity, and domestic industry consistent with the Commission's claim constructions. The Commission further ordered the ALJ to issue a remand ID ("RID") on violation and a recommended determination on remedy and bonding. The Commission also issued an Opinion detailing its reasons for modifying the claim constructions.

On July 22, LG filed a petition for reconsideration of the Commission's decision to modify the ALJ's claim constructions of the phrases "freezer compartment" and "disposed within the freezer compartment." On August 28, 2009, the Commission denied LG's petition.

On October 9, 2009, the ALJ issued his RID, in which he found no violation of Section 337. Specifically, the ALJ found that the accused refrigerators and components thereof do not infringe claims 1, 2, 4, 6, 8, and 9 of the '130 patent literally or under the doctrine of equivalents. The ALJ also found that claims 1, 2, 4, 6, and 9 of the '130 patent are invalid under 35 U.S.C. 103 for obviousness, but that claim 8 of the '130 patent is not invalid under 35 U.S.C. 103. The ALJ further found that a domestic industry exists.

On October 26, 2009, Whirlpool filed a petition for review challenging the RID's conclusion of non-infringement and obviousness. LG also filed a contingent petition for review challenging the ALJ's findings concerning non-obviousness and his conclusion that a domestic industry exists. On November 3, 2009, LG filed a response to Whirlpool's petition. On November 4, 2009, Whirlpool filed a response to LG's petition. On November 6, 2009, the IA filed a combined response to both petitions.

Having examined the record of this investigation, including the ALJ's final RID, the Commission has determined to review the RID in its entirety.

The parties are requested to brief their positions on the issues under review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in responses to the following question:

Does the prior art of record show an ice discharge chute, as recited in claim 2 of the '130 patent, that is separate from and below the bottom opening of the ice storage bin? Can this prior art be combined with the Hitachi reference, or any other prior art references that are currently in the record, to render claim 2 obvious?

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) 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 *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders 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 or disapprove the Commission's action. 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 to the investigation are requested to file written submissions on the issue identified in this notice. 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 ALJ on remedy and bonding.

Complainants and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the dates that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on Wednesday, December 30, 2009. Reply submissions must be filed no later than the close of business on Thursday, January 7, 2010. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR \*210.6.

Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

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 section 210.42-46 of the Commission's Rules of Practice and Procedure (19 CFR 210.42-46).

By order of the Commission.

Issued: December 14, 2009.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

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## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Schedules; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of availability of proposed records schedules; request for comments.

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**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

**DATES:** Requests for copies must be received in writing on or before January 19, 2010. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is