

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN MOVABLE BARRIER
OPERATOR SYSTEMS AND
COMPONENTS THEREOF**

**Investigation No. 337-TA-1118
(Remand)**

**NOTICE OF A COMMISSION REQUEST FOR WRITTEN SUBMISSIONS AND
REMAND FOR AN INITIAL DETERMINATION ON THE ECONOMIC PRONG OF
THE DOMESTIC INDUSTRY REQUIREMENT PURSUANT TO A COURT REMAND**

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 set a briefing schedule for the issues under consideration on remand from the U.S. Court of Appeals for the Federal Circuit (“Federal Circuit” or “Court”). The Commission has further determined to remand the investigation to the presiding administrative law judge (“ALJ”) for an initial determination on the economic prong of the domestic industry requirement. The Commission has determined to dismiss the infringement claim against an expired patent and vacate all findings regarding that expired patent as moot.

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 this investigation on June 11, 2018, based on a complaint, as supplemented, filed by The Chamberlain Group, Inc. (“Chamberlain”) of Oak Brook, Illinois. 83 FR 27020-21 (June 11, 2018). The complaint alleged a violation of section 337 the Tariff Act, as amended, 19 U.S.C. 1337 (“section 337”), by way of the importation into the United States, sale for importation, or sale in the United States after importation of certain movable barrier operator systems and components thereof that allegedly infringe one or more of the asserted claims of U.S. Patent Nos. 7,755,223 (“the ’223 patent”); 8,587,404 (“the ’404 patent”); and 6,741,052 (“the ’052 patent”). *Id.* The Commission’s notice of investigation named Nortek Security & Control, LLC of Carlsbad, California; Nortek, Inc. of Providence, Rhode Island; and GTO Access Systems, LLC of Tallahassee, Florida (collectively, “Nortek”) as respondents.

Id. The complaint further alleged the existence of a domestic industry. The Office of Unfair Import Investigations was not named as a party to this investigation. *See id.*

On November 25, 2019, the presiding ALJ issued an initial determination (“ID”) (Order No. 38) granting Chamberlain's motion for summary determination that it satisfied the economic prong of the domestic industry requirement for all three patents at issue. Order No. 38 (Nov. 25, 2019). On the same date, the ALJ issued the final ID, finding no violation of section 337 because the asserted claims of the '404 and '223 patents were not infringed and the asserted claim of the '052 patent is invalid as obvious. ID at 286-87. The ID further finds that the asserted claim of the '404 patent is not patent-ineligible under 35 U.S.C. § 101. *Id.* at 86-96.

On February 19, 2020, the Commission determined to review Order No. 38 and the final ID in part. 85 FR 10723-26 (Feb. 25, 2020). On April 22, 2020, the Commission issued a final determination adopting the ID's findings of no violation with respect to the '404 and '052 patents. Comm'n Notice at 3 (April 22, 2020). The Commission took no position on whether the asserted claim of the '404 patent is invalid under 35 U.S.C. § 101. *Id.* The Commission vacated Order No. 38 and remanded the economic prong issue to the ALJ with respect to the '223 patent, the only patent still at issue. *Id.*

On July 10, 2020, the ALJ issued a Remand Initial Determination (“Remand ID”), finding that Chamberlain satisfied the economic prong of the domestic industry requirement for the '223 patent. Remand ID at 2 (July 10, 2020). The Remand ID found that Chamberlain's investments in plant and equipment and labor or capital were both quantitatively and qualitatively significant under sections 337(a)(3)(A) and (B), respectively. *Id.* at 31-35.

On December 3, 2020, the Commission completed its review regarding the '223 patent and concluded that Nortek violated section 337 by way of infringing claims 1 and 21 of the '223 patent. 85 FR 79217-18 (Dec. 9, 2020). The Commission affirmed the Remand ID with a modified analysis of the economic prong and issued a limited exclusion order and cease and desist order against each of the Nortek respondents with respect to those claims. *Id.*; *see also* Comm'n Op. (Jan. 12, 2021) (Public Version).

Chamberlain timely appealed the Commission's finding that the asserted claim 11 of the '404 patent is not infringed, and that asserted claim 1 of the '052 patent claim is invalid. Nortek appealed the Commission's finding that asserted claims 1 and 21 of the '223 patent are infringed. The '052 patent expired while the appeals were pending.

On April 27, 2023, the U.S. Court of Appeals for the Federal Circuit issued its opinion on the issues on appeal in *The Chamberlain Group, Inc. v. ITC*, Appeal Nos. 2020-1965, 2021-1829, ___ F.4th ___, 2023 WL 3115579 (Fed. Cir. April 27, 2023). The Federal Circuit affirmed the Commission's determination that Nortek infringed the '223 patent but vacated and remanded the Commission's determination that Nortek did not infringe the '404 patent based on the Court's construction of the claim term “movable barrier operator.” *Id.* at *1, *7-8. The Federal Circuit also vacated and remanded the Commission's determination regarding the now-expired '052 patent, with directions to dismiss the infringement claim as moot. *Id.* at *1, *4. The Federal Circuit issued its mandate on July 19, 2023, returning jurisdiction to the Commission for the remanded issues.

On August 4, 2023, the Commission issued a notice soliciting written submissions from Chamberlain and Nortek on proceedings to be conducted on remand. Comm'n Notice (Aug. 4, 2023). On August 14, 2023, Chamberlain and Nortek submitted their initial responses to the Commission's notice. On August 21, 2023, the parties submitted their respective replies.

Having reviewed the parties' submissions and the record below, including the ID and Remand ID, the Commission has determined to remand the investigation to the presiding ALJ for an ID on whether Chamberlain has satisfied the economic prong of the domestic industry requirement with regard to articles protected by the '404 patent in view of the Court's decision.

The Commission has further determined to request written submissions from the parties on whether claim 11 of the '404 patent is infringed (*see Chamberlain*, 2023 WL 3115579 at *5-7) and whether the ID errs in finding claim 11 is not patent-ineligible under 35 U.S.C. § 101. The Commission further finds the parties' dispute over sanctions to be moot, and that no action is required at this time with respect to Nortek's prospective motion for return of bond.

The Commission has also determined to dismiss the infringement claim and vacate all other findings with respect to the '052 patent as moot, as directed by the Federal Circuit. *See Chamberlain*, 2013 WL 3115579 at *1.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions regarding the following issues on remand: (i) whether Nortek infringes claim 11 of the '404 patent, in view of the Federal Circuit's opinion and (ii) whether the final ID correctly finds that claim 11 of the '404 patent is not patent-ineligible under 35 U.S.C. § 101. All responses must be based on the present evidentiary record; no new evidentiary material may be submitted without authorization from the Commission.

Opening submissions may be no longer than 25 pages and must be filed no later than the close of business on **October 27, 2023**. Reply submissions may be no longer than 20 pages and must be filed no later than the close of business on **November 10, 2023**. No further submissions on these issues will be permitted unless ordered by the Commission.

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-1118) in a prominent place on the cover page 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 at (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. A redacted non-confidential version of the document must also be filed simultaneously with 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 voted to approve this determination on October 4, 2023.

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.



Lisa R. Barton
Secretary to the Commission

Issued: October 4, 2023

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served upon the following parties as indicated, on **October 4, 2023**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

On Behalf of The Chamberlain Group, Inc.:

David C. Marcus, Esq.
WILMER CUTLER PICKERING HALE AND DORR LLP
350 South Grand Avenue, Suite 2400
Los Angeles, CA 90071
Email: David.marcus@wilmerhale.com

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Email Notification
of Availability for Download

**On Behalf of Nortek, Inc., Nortek Security & Control, LLC
f/k/a Linear, LLC, and GTO Access Systems LLC. f/k/a Gates
That Open, LLC:**

Matthew C. Bernstein, Esq.
PERKINS COIE LLP
11452 El Camino Real, Suite 300
San Diego, CA 92130
Email: MBernstein@perkinscoie.com

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Email Notification
of Availability for Download