

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)**

REMAND ORDER

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 Fed. Reg. 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 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 Office of Unfair Import Investigations did not participate in this investigation. *See id.*

On November 25, 2019, the presiding administrative law judge (“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.

On February 19, 2020, the Commission determined to review Order No. 38 and the final ID in part. 85 Fed. Reg. 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, however, vacated Order No. 38 and remanded the economic prong issue to the ALJ with respect to the ’223 patent only, while the Commission continued its analysis of the violation issues for that patent. *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 determined that Nortek violated section 337 by way of infringing claims 1 and 21 of the ’223 patent. 85 Fed. Reg. 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 Nortek respondent with respect to those claims. *Id.*; *see also* Comm’n Op. (Jan. 12, 2021) (Public Version).

Chamberlain timely appealed the Commission’s finding that asserted claim 11 of the ’404 patent is not infringed, and that asserted claim 1 of the ’052 patent 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.¹ On August 21, 2023, Chamberlain and Nortek submitted their replies.²

In accordance with the remand from the Federal Circuit, and on review of the record in this investigation, including the ID, Remand ID, and the parties’ submissions, the Commission has determined to remand to the presiding ALJ the issue of whether Chamberlain has satisfied the economic prong of the domestic industry requirement with respect to articles protected by the ’404 patent in view of the Court’s decision. The ALJ may take into consideration the factual findings in the Remand ID, to the extent the domestic industry products and financial figures relevant to analyzing the economic prong for articles protected by the ’223 patent may also be

¹ See Complainant The Chamberlain Group, Inc.’s Response to the Commission’s Request for Written Submissions Pursuant to a Court Remand (Aug. 14, 2023) (“Chamberlain’s Br.”); Respondents’ Written Submission Concerning Proceedings to be Conducted on Remand (Aug. 14, 2023) (“Nortek’s Br.”).

² See Complainant The Chamberlain Group, Inc.’s Reply to Respondents’ Written Submission Concerning Proceedings to be Conducted on Remand (Aug. 21, 2023); Respondents’ Response to Complainant’s Written Submission Concerning Proceedings to be Conducted on Remand (Aug. 21, 2023).

relevant to articles protected by the '404 patent. The Commission notes that both parties have indicated that additional fact-finding should not be necessary to resolve this issue. *See* Chamberlain's Br. at 1, 7-8; Nortek's Br. at 3-4. The Commission, however, leaves this issue, including whether a reopening of the record for the taking of additional evidence is necessary, to the ALJ's discretion.

Upon consideration of this matter, the Commission hereby ORDERS that:

- 1) The issue of whether Chamberlain has satisfied the economic prong with respect to the articles protected by the '404 patent is remanded to the ALJ for a remand initial determination ("RID") on this issue in view of the Court's decision, including such proceedings as the ALJ may deem necessary to render the RID.
- 2) The ALJ shall issue the RID expeditiously, using such materials in the present evidentiary record and the previous Remand ID regarding the '223 patent as the ALJ deems relevant and appropriate.
- 3) The RID shall become final 45 days after issuance unless it is reviewed by the Commission.
- 4) Either Chamberlain or Nortek, or both, may petition the Commission to review the RID within ten (10) days after service of said RID. Any party may file a response to such petition(s) for review within five (5) business days after service of the petition(s) for review.
- 5) The Secretary shall serve a copy of this Order upon each of the Complainant and Respondents.

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 **ORDER, COMMISSION** has been served upon the following parties as indicated, on **October 4, 2023**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
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