

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

In the Matter of

**CERTAIN SWITCHES AND PRODUCTS
CONTAINING SAME**

Investigation No. 337-TA-589

**NOTICE OF COMMISSION DETERMINATION TO REVIEW A FINAL
DETERMINATION ON VIOLATION OF SECTION 337; SCHEDULE FOR FILING
WRITTEN SUBMISSIONS ON THE ISSUES UNDER 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 a portion of the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on November 7, 2007, regarding whether there is a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Michelle Walters, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5468. Copies of 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, S.W., Washington, D.C. 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: This investigation was instituted on December 7, 2006, based on a complaint filed by ATEN International Co., Ltd. of Taipei, Taiwan, and ATEN Technology, Inc. of Irvine, California (collectively, “ATEN”). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain switches and products containing the same by reason of infringement of various claims of United States Patent No. 7,035,112. The complaint named six respondents: Belkin International, Inc.,

Belkin, Inc. (collectively, “Belkin”), Emine Technology Co., Ltd. (“Emine”), RATOC Systems, Inc., RATOC Systems International, Inc. (collectively, “RATOC”), and JustCom Tech, Inc. (“JustCom”). The ALJ issued an order terminating RATOC and JustCom based on settlement agreements, including a consent order, which the Commission has previously determined to review.

On November 7, 2007, the ALJ issued his final ID, and on November 21, 2007, he issued his recommended determination on remedy and bonding. In his ID, the ALJ found that Belkin’s and Emine’s accused products do not infringe asserted claims 1 and 12-21. In addition, the ALJ found that the claims are not invalid for anticipation or obviousness. The ALJ also found that the claims are not invalid for lack of written description support and that the patent is not unenforceable for inequitable conduct. Further, the ALJ found that there was no domestic industry based on the asserted patent. ATEN, Belkin, Emine, and the Commission investigative attorney each filed petitions for review of the ALJ’s ID and responses to the petitions.

Having examined the record of this investigation, including the ALJ’s final ID, the petitions for review, and the responses thereto, the Commission has determined (1) to review the ALJ’s claim construction of the terms “body,” “fixedly attached,” and “integrated into,” and (2) to review the ALJ’s determinations on infringement, anticipation, obviousness, and domestic industry, but (3) not to review the ALJ’s claim construction of the terms “connector plugs,” “connector ports,” “cable,” or “molded attachment element,” and (4) not to review the ALJ’s determinations on the level of skill of a person of ordinary skill in the art, written description, and inequitable conduct. With respect to the claim constructions the Commission has determined not to review, the Commission understands the ALJ to have adopted the reasoning of the party whose claim construction he adopted.

The parties should brief their positions on the issues on 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 questions:

1. How should the claim term “body” be construed? Please cite claim language, specification language, prosecution history, and any relevant extrinsic evidence to support your position. In addressing the claim language, please comment on whether one of ordinary skill in the art would understand that claim 1 indicates that the body is an enclosure designed to contain a switching circuit and to have a plurality of cables fixedly attached to and extending from it.
2. Does the specification limit the term “body” to an integrally injection-molded plastic enclosure and/or to an enclosure that provides good weather-resistance, impact-resistance, and absolute protection of the internal circuit board and circuits thereon? Please cite cases addressing whether similar language can be or has been used to limit a claim term.

3. Does the specification distinguish the prior art through its statement that “the box 41 includes outer walls that are made of metal material or rigid plastic material and assembled together by means of screws (not shown)” in a way that limits the claims? ‘112 patent, col. 1, ll. 23-25. Please cite cases addressing whether similar language can be or has been used to distinguish prior art.
4. If the Commission arrives at a claim construction not asserted by the parties or adopts the ALJ’s claim construction, should the Commission remand the investigation to the ALJ to develop the record according to the selected claim construction?
5. Under your proposed claim construction of the claim term “body,” do the accused products meet this limitation?
6. If the Commission were to construe the claim term “body” (a) to require an integrally injection-molded plastic enclosure, (b) to require an enclosure that provides good weather-resistance, impact-resistance, and absolute protection of the internal circuit board and circuits thereon, or (c) to exclude “the box 41 includes outer walls that are made of metal material or rigid plastic material and assembled together by means of screws (not shown),” do the accused products meet the limitations identified in (a), (b), and (c)?
7. If the Commission were to construe the claim term “body” to exclude the switching circuit, do the accused products’ cables extend from the body as required by claim 1 of the ‘112 patent?
8. Do Emine’s products have a plurality of cables?
9. Under your proposed claim construction of the claim term “body,” is this limitation disclosed by the prior art?
10. If the Commission were to construe the claim term “body” (a) to require an integrally injection-molded plastic enclosure, (b) to require an enclosure that provides good weather-resistance, impact-resistance, and absolute protection of the internal circuit board and circuits thereon, or (c) to exclude “the box 41 includes outer walls that are made of metal material or rigid plastic material and assembled together by means of screws (not shown),” do the prior art materials disclose the limitations identified in (a), (b), and (c)?
11. If the Commission were to construe the claim term “body” to exclude the switching circuit, do the prior art materials disclose cables that extend from the “body” as required by claim 1 of the ‘112 patent?
12. Under your proposed claim construction of the term “body,” do ATEN’s products meet this limitation?

13. If the Commission were to construe the claim term “body” (a) to require an integrally injection-molded plastic enclosure, (b) to require an enclosure that provides good weather-resistance, impact-resistance, and absolute protection of the internal circuit board and circuits thereon, or (c) to exclude “the box 41 includes outer walls that are made of metal material or rigid plastic material and assembled together by means of screws (not shown),” do ATEN’s products meet the limitations identified in (a), (b), and (c)?
14. If the Commission were to construe the claim term “body” to exclude the switching circuit, do ATEN’s products’ cables extend from the body as required by claim 1 of the ‘112 patent?

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 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 *Fed. Reg.* 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 issues 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 Commission investigative attorney 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 Tuesday, January 8, 2008. Reply submissions must be filed no later than the close of business on Tuesday, January 15, 2008. 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 C.F.R. § 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 sections 210.42-46 and 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42-46 and 210.50).

By order of the Commission.

/s/
Marilyn R. Abbott
Secretary to the Commission

Issued: December 21, 2007