UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of **CERTAIN REFRIGERATORS AND COMPONENTS THEREOF**	**Investigation No. 337-TA-632**

ORDER: DENIAL OF COMPLAINANTS' PETITION FOR RECONSIDERATION

The Commission instituted this investigation on February 26, 2008, based on a complaint filed by Whirlpool Patents Company of St. Joseph, MI; Whirlpool Manufacturing Corporation of St. Joseph, MI; Whirlpool Corporation of Benton Harbor, MI; and Maytag Corporation of Benton Harbor, MI (collectively "Whirlpool"). 73 *Fed. Reg.* 10285 (Feb. 26, 2008). The respondents named in the Notice of Investigation were LG Electronics, Inc. of South Korea; LG Electronics, USA, Inc. of Englewood Cliffs, NJ; and LG Electronics Monterrey of Mexico (collectively "LG"). *Id.*

The complaint, as supplemented, alleged violations of Section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, sale for importation, and sale within the United States after importation of certain refrigerators and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 6,810,680; 6,915,644; 6,971,730; 7,240,980; and 6,082,130 ("the '130 patent"). 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. The '130 was

the sole remaining patent in this investigation after the investigation was terminated with respect to the other asserted patents.

On October 9, 2009, the presiding administrative law judge ("ALJ") issued his remand initial determination ("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 December 14, 2009, the Commission determined to review the RID in its entirety and requested briefing on the issues it determined to review, remedy, the public interest, and bonding. 74 *Fed. Reg.* 67250 (Dec. 18, 2009). In particular, the Commission determined to review the ALJ's finding that claims 1, 2, 4, 6, and 9 of the '130 patent are invalid under 35 U.S.C. § 103 for obviousness, and in its notice of review, the Commission asked the parties for briefing on the issues under review, remedy, the public interest, and bonding. On December 30, 2009, the parties filed initial written submissions regarding the issues identified by the Commission, and on January 7, 2010, the parties filed reply submissions.

On February 12, 2010, the Commission determined to affirm the ALJ's determination of no violation. 75 *Fed. Reg.* 7520-2 (Feb. 19, 2010). Specifically, the Commission determined to affirm the ALJ's finding that claims 1, 2, 4, 6, and 9 of the '130 patent are invalid for obviousness with several modifications to the analysis concerning claims 1 and 2. The Commission issued an

Opinion concerning its reasons for affirming the ALJ's determination of no violation, and specifically detailing its reasons for affirming the ALJ's findings with respect to obviousness with certain modifications. Commission Opinion (Feb. 23, 2010).

On March 1, 2010, Whirlpool filed a petition for reconsideration of the Commission's decision to affirm the ALJ's finding that claims 1, 2, 4, 6, and 9 of the '130 patent are invalid for obviousness. LG and the Commission investigative attorney filed oppositions to the petition on March 8, 2010.

Commission Rule 210.47 provides in pertinent part:

> Within 14 days after service of a Commission determination, any party may file with the Commission a petition for reconsideration of such determination or any action ordered to be taken thereunder, setting forth the relief desired and the grounds in support thereof. Any petition filed under this section must be confined to new questions raised by the determination or action ordered to be taken thereunder and upon which the petitioner had no opportunity to submit arguments.

19 C.F.R. § 210.47.

Whirlpool's petition for reconsideration of the Commission's determination that claims 1, 2, 4, 6, and 9 of the '130 patent are invalid for obviousness does not identify new questions raised by the ALJ's RID or the Commission's final determination or present arguments that Whirlpool did not have the opportunity to address in previous briefing before either the ALJ or the Commission. As such, we find that Whirlpool's petition for reconsideration does not satisfy the requirements of Commission Rule 210.47.

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

1. Complainants' petition for reconsideration of the Commission's determination that claims 1, 2, 4, 6, and 9 of the '130 patent are invalid for obviousness is DENIED.

2. The Secretary will serve this Order on all parties to the investigation.

By order of the Commission.

/s/
Marilyn R. Abbott
Secretary to the Commission

Issued: April 5, 2010