UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

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

NOTICE OF COMMISSION DECISION TO MODIFY CERTAIN CLAIM CONSTRUCTIONS MADE IN A FINAL INITIAL DETERMINATION AND TO REMAND THE INVESTIGATION TO THE ALJ; EXTENSION OF TARGET DATE

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to modify certain claim constructions made in a final initial determination ("ID") issued in the above-captioned investigation and to remand the investigation to the presiding administrative law judge ("ALJ").

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 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, 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: On February 21, 2008, the Commission voted to institute 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, alleges violations of section 337 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; and 7,240,980. 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 alleges 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 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 the subject 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 OUII filed responses. On April 27, 2009, the Commission determined to review the final ID in its entirety. 74 *Fed. Reg.* 20345-6 (May 1, 2009). The Commission asked the parties to address the following questions:

> 1. Do the ordinary and customary meanings of the following terms differ from the meanings ascribed to them by the inventors' testimony: “freezer compartment,” “disposed within,” “mounted on,” “having an access opening and a closure member for closing the access opening,” and “ice storage bin having a bottom opening.” Please discuss with reference to dictionary definitions and expert testimony.
>
> 2. Are the phrases “mounted on” and “disposed within” mutually exclusive in the context of claim 1 of the ‘130 patent? Are either or both of these terms synonymous with “installed”?

3. How does the prosecution history inform the claim construction, in terms of disclaimer and interpretation?

4. Would one of ordinary skill in the art understand a space defined by a cabinet having an access opening but not having a closure member to mean a "freezer compartment," given that temperatures within such a compartment cannot be reduced to freezing?

5. In construing claim 1, the parties dispute whether the "closure member" is part of the freezer compartment. What conclusions can be drawn from the term "freezer compartment closure member" appearing in dependent claim 9? What conclusions, if any, can be drawn from a comparison of claim 1 and independent claim 10, the latter clearly identifying the closure member as part of the refrigerator.

6. To what extent should the Commission consider inventor testimony when construing the claims? See *Hoechst Celanese Corp. v. BP Chems. Ltd.*, 78 F.3d 1575, 1580 ("Markman requires us to give no deference to the testimony of the inventor about the meaning of the claims.").

7. For parties proposing additional or different meanings on claim construction, do these point to a different result for infringement, validity, or domestic industry? Please explain with regard to each relevant refrigerator model. Responses should rely on evidence of record.

8. Specifically, with respect to infringement, respond to the following: Does the closure member have to be the closure member to the access to the freezer compartment? If so, can a self-contained ice maker within a fresh-food compartment qualify as a freezer for which there is a closure member within the meaning of claim 1? Does it matter if both the ice maker and the storage unit are in the closure member?

The parties filed initial submissions on May 8, 2009 and reply submissions on May 15, 2009.

Having examined the record of this investigation, including the ALJ's final ID, the Commission has determined to modify the final ID's claim constructions of the terms "freezer compartment," "disposed within the freezer compartment," and "ice storage bin having a bottom opening." The Commission has determined to affirm the final ID's construction of the term "ice maker." The Commission has further determined to remand the investigation to the ALJ to make findings regarding infringement, validity, and domestic industry that are consistent with the Commission's claim constructions, and to issue a final remand ID on violation and a recommended determination on remedy and bonding.

The target date of the investigation is extended by two months to September 7, 2009.

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 C.F.R. § 210.42-46).

By order of the Commission.
Marilyn R. Abbott, Secretary

William R. Bishop
Acting Secretary

Issued: July 8, 2009