

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

In the Matter of

**CERTAIN LASER BAR CODE
SCANNERS AND SCAN ENGINES,
COMPONENTS THEREOF AND
PRODUCTS CONTAINING SAME**

Investigation No. 337-TA-551

**NOTICE OF DECISION TO REVIEW AND MODIFY AN INITIAL DETERMINATION
GRANTING IN PART A MOTION FOR SUMMARY DETERMINATION THAT THE
ECONOMIC PRONG OF THE DOMESTIC INDUSTRY REQUIREMENT
REGARDING THE PATENTS AT ISSUE HAS BEEN MET**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review and modify the presiding administrative law judge's ("ALJ") initial determination ("ID") granting in part complainant's motion for summary determination regarding the economic prong of the domestic industry requirement.

FOR FURTHER INFORMATION CONTACT: Michelle Walters, Esq., 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: On October 20, 2005, the Commission instituted this investigation, based on a complaint filed by Symbol Technologies, Inc. of Holtsville, New York ("Symbol"). The complaint alleges 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 laser bar code scanners and scan engines, components thereof, and products containing the same by reason of infringement of various claims of United States Patent Nos. 5,262,627 (“the ‘627 patent”), 5,545,889 (“the ‘889 patent”), 5,917,173 (“the ‘173 patent”), 5,457,308 (“the ‘308 patent”), and 6,220,514 (“the ‘514 patent”). The complaint further alleges that an industry in the United States exists as required by section 337(a)(2). The complaint names two respondents, Metro (Suzhou) Technologies Co., Ltd. of Suzhou, China and Metrologic Instruments, Inc. of Blackwood, New Jersey (collectively “Metrologic”).

On May 30, 2006, Symbol moved for summary determination pursuant to Commission Rule 210.18 that it satisfies the economic prong of the domestic industry requirement of 19 U.S.C. § 1337(a)(2) with regard to the ‘627 patent, the ‘889 patent, the ‘173 patent, and the ‘398 patent (“the Symbol patents”). The ‘514 patent was previously terminated from the investigation.

On July 17, 2006, the ALJ issued an ID (Order No. 25) granting in part complainant’s motion for summary determination regarding the economic prong of the domestic industry requirement. The ALJ concluded that, although Symbol had not shown that it made a significant investment in plant and equipment with respect to the Symbol patents under 19 U.S.C. § 1337(a)(3)(A), it had shown that it made a significant employment of labor under 19 U.S.C. § 1337(a)(3)(B) and a substantial investment in the article’s exploitation under 19 U.S.C. § 1337(a)(3)(C).

On July 25, 2006, Metrologic petitioned for review, challenging the ALJ’s determinations that Symbol satisfied the economic prong for the ‘627 patent and the ‘173 patent under 19 U.S.C. § 1337(a)(3)(B) and (C), and on August 4, 2006, Symbol and the Commission investigative attorney each filed responses to Metrologic’s petition, supporting the ALJ’s determinations.

Having examined the record of this investigation, including the submissions of the parties, the Commission has determined to review the ALJ’s ID in order to modify it to the extent necessary to clarify that the Commission relies not only on Symbol’s engineering investments in adopting the ALJ’s determinations with regard to the economic prong of the domestic industry requirement, but also on that portion of Symbol’s service and repair investments which Metrologic concedes are associated with the products allegedly covered by the ‘627 patent and the ‘173 patent. *See* Respondents Metrologic Instruments, Inc. and Metro (Suzhou) Technologies Co., Ltd.’s Petition for Review of Order 25 Granting Summary Determination that Complainant has Satisfied the Economic Prong of the Domestic Industry Requirement at 7, Inv. No. 337-TA-551.

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 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42).

By order of the Commission.

/s/

Marilyn R. Abbott
Secretary to the Commission

Issued: August 25, 2006