UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of **CERTAIN MULTIMEDIA DISPLAY AND NAVIGATION DEVICES AND SYSTEMS, COMPONENTS THEREOF, AND PRODUCTS CONTAINING SAME**	**Investigation No. 337-TA-694**

NOTICE OF COMMISSION DETERMINATION TO EXTEND THE TARGET DATE; REQUEST FOR SUPPLEMENTAL BRIEFING

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend the target date for completion of the above-captioned investigation from April 18, 2011, to June 17, 2011. The Commission is requesting supplemental briefing from the public and from the parties to the investigation with respect to certain questions set forth below.

FOR FURTHER INFORMATION CONTACT: Daniel E. Valencia, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-1999. 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: The Commission instituted the instant investigation on December 16, 2009, based on a complaint filed by Pioneer Corporation of Tokyo, Japan and Pioneer Electronics (USA) Inc. of Long Beach, California (collectively, "Pioneer"). 74 *Fed. Reg.* 66676 (Dec. 16, 2009). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, (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 multimedia display and navigation devices and systems, components thereof, and products containing same by reason of infringement of various claims of United States Patent Nos. 5,365,448 ("the '448 patent"), 5,424,951 ("the '951 patent"), and 6,122,592 ("the '592 patent"). The complaint named Garmin International, Inc. of Olathe, Kansas, Garmin Corporation of Taiwan (collectively,

"Garmin") and Honeywell International Inc. of Morristown, New Jersey ("Honeywell") as the proposed respondents. Honeywell was subsequently terminated from the investigation.

On December 16, 2010, the ALJ issued his final initial determination ("ID"). In his final ID, the ALJ found no violation of section 337 by Garmin. Specifically, the ALJ found that the accused products do not infringe claims 1 and 2 of the '448 patent, claims 1 and 2 of the '951 patent, or claims 1 and 2 of the '592 patent. The ALJ found that the '592 patent was not proven to be invalid and that Pioneer has established a domestic industry under 19 U.S.C. § 1337(a)(3)(C). On February 23, 2011, the Commission determined to review the final ID in part.

TARGET DATE: The Commission has determined to extend the target date for completion of the investigation by sixty (60) days from April 18, 2011 to June 17, 2011, to accommodate supplemental briefing.

SUPPLEMENTAL BRIEFING REQUEST: A domestic industry may be shown to exist, inter alia, by "substantial investment" in the "exploitation" of an asserted patent. 19 U.S.C. § 1337(a)(3)(C). Such investment may take the form of "engineering, research and development, or licensing," but other kinds of investments are not precluded. *See Certain Coaxial Cable Connectors and Components Thereof and Products Containing Same*, Inv. No. 337-TA-650, Comm'n Op. at 45 (Apr. 14, 2010). The following questions explore the domestic industry requirement in the context of a complainant that invests in licensing a patent portfolio, which includes the asserted patent among the licensed patents.

(1) Assuming that the evidence in the record does not show the patent asserted in a section 337 investigation to have more or less value than the rest of the patents of a portfolio, to what extent should the Commission attribute total expenses in licensing the portfolio toward the complainant's investment in exploitation of the asserted patent under section 337(a)(3)(C)? Please comment on whether the statute authorizes the Commission to allocate to the asserted patent the amount of the total expenses divided by the number of patents in the portfolio?

(2) Assuming that the statute authorizes allocation of total licensing expenses across all of the patents in the portfolio, what is the significance of evidence demonstrating that at the time the licensing expenses were incurred, the complainant did or did not present information to potential licensees that the asserted patent was being practiced or infringed by the respondent or a third party? What is the significance of evidence showing that the asserted patent was more or less important or valuable than the others in the portfolio? What is the significance of evidence indicating that, while total expenses in licensing a portfolio may be substantial, the share of the expenses allocated to the asserted patent is not?

(3) In light of any practical benefits of licensing a group of patents in a portfolio rather than licensing patents individually, does the statute permit expenses in the licensing of an entire portfolio to be considered an investment in the exploitation of the individual asserted patent?

(4) How should licensing expenses and activities relating to (a) cross-licenses and (b) global portfolio licenses (*i.e.*, U.S. and foreign patents) be treated under section 337(a)(3)(C)?

(5) What is the nature and extent of the "nexus" between an asserted patent and a licensing expense or activity that is sufficient to prove that such expense or activity constitutes an investment in the asserted patent? What factors should be considered in determining whether the required nexus is established? What is the evidentiary showing required to prove a nexus between the asserted patent and the licensing activities and expenses in the context of a portfolio license?

(6) Is a "nexus" between an asserted patent and a licensing activity sufficient to prove that expenses associated with that licensing activity are an investment in the asserted patent under section 337(a)(3)(C) even if other patents are involved? *See* ID at 165 (citing *Certain 3G Wideband Code Division Multiple Access (WCDMA) Handsets and Components Thereof*, Inv. No. 337-TA-601, Order No. 20 (unreviewed ID) (June 24, 2010)). If a "nexus" is sufficient, is the strength of that nexus relevant in determining the amount of investment in the asserted patent(s)? For example, is the number of patents included in a license relevant in determining the amount of investment in an asserted patent(s) compared to the expenses generally associated with licensing all of the patents? Is the breadth of technology covered by the portfolio, as a whole, relative to the breadth of technology covered by the asserted patent(s) relevant in determining the amount of investment in the asserted patent(s)?

(7) In *Certain Stringed Musical Instruments and Components Thereof*, Inv. No. 337-TA-586, the Commission noted that "the requirement for showing the existence of a domestic industry will depend on the industry in question, and the complainant's relative size." Comm'n Op. at 25-26 (May 16, 2008). Please comment on the appropriate context for determining whether a complainant's investments in licensing a portfolio of patents, which includes the asserted patent, is "substantial" within the meaning of section 337(a)(3)(C) in a particular industry? In other words, in determining whether appropriately identified investments in licensing the portfolio constitute a "substantial investment in [the asserted patent's] exploitation" within the meaning of the statute, against what specific measure should those investments be assessed? In discussing the context for determining whether portfolio licensing investments are substantial, please discuss relevant factors, criteria, and evidence that should be considered in determining whether the complainant's licensing investments are "substantial" in the context of a portfolio license. Please include in the discussion, how these factors, criteria, and evidence may vary depending on the industry in question and complainant's relative size.

(8) Please comment on the significance of whether and to what extent the complainant receives royalties under the license agreement or acquires other rights or benefits as a result of a portfolio license in assessing whether the complainant's licensing expenses and activities constitute a "substantial investment in [the asserted patent's] exploitation."

(9) Please comment on the significance of whether and to what extent a complainant engages in ancillary exploitation activities that frequently accompany licensing efforts, such as

development, engineering, or servicing of licensed articles, in assessing whether a complainant has made a "substantial investment in [the asserted patent's] exploitation" through licensing.

(10) ***For the parties to the investigation only***:

a. Please cite and discuss the specific evidence of record in this investigation supporting your position as to each of the above questions.
b. Assuming the licensing efforts of complainant Pioneer and Discovision Associaties are viewed together, to what extent did the expenses in licensing Pioneer's navigation portfolio (before Pioneer retained outside counsel) represent Pioneer's investment in licensing the asserted patents? Please support your response with citations to the record.
c. Please comment on the weight that should be given to documents concerning complainant's licensing activities and expenses from which information has been redacted. Please discuss the significance, *vel non,* of the content of the redacted documents to the complainant's licensing activities and investments in view of such redactions.

Parties to the investigation and members of the public are invited to file written submissions addressing the questions set forth above regarding the domestic industry requirement of section 337(a)(3)(C). Opening submissions of the parties to the investigation are due no later than May 3, 2011. A public version of these submissions must be filed with the Secretary no later than May 10, 2011. Reply submissions of the parties to the investigation are due no later than May 17, 2011. Written submissions from members of the public will be accepted anytime on or before May 17, 2011. 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 and may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

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 210.42-50 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42-50).

By order of the Commission.

James R. Holbein
Acting Secretary to the Commission

Issued: April 18, 2011