Issued: April 13, 2021.

Lisa Barton,

Secretary to the Commission.

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INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1190]

Certain Wearable Monitoring Devices, Systems, and Components Thereof; Commission Determination To Review in Part a Final Initial Determination Finding No Violation of Section 337; Affirmance of a Finding of No Violation of Section 337; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part a final initial determination (''ID'') of the presiding administrative law judge (''ALJ'') finding no violation of section 337. On review, the Commission has determined to affirm the final ID's finding of no violation of section 337. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 15, 2020, based on a complaint filed on behalf of Philips North America, LLC of Andover, Massachusetts and Koninklijke Philips N.V. of Eindhoven, Netherlands (collectively, ''Complainants''). 85 FR 2440–41 (Jan. 15, 2020). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wearable monitoring devices, systems, and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 7,845,228 (''the '228 patent''); 9,820,698 (''the '698 patent''); 9,717,464 (''the '464 patent''); and 9,961,186 (''the '186 patent''). The Commission's notice of investigation named the following Respondents: Fitbit, Inc. (''Fitbit'') of San Francisco, California; Garmin International, Inc. and Garmin USA, Inc., both of Olathe, Kansas (''the domestic Garmin Respondents''); Garmin Ltd. d/b/a Garmin Switzerland GmbH of Schaffhausen, Switzerland; Ingram Micro Inc. of Irvine, California; Maintek Computer (Suzhou) Co., Ltd. of Jiangsu Province, China; and Inventec Appliances (Pudong) of Shanghai, China (collectively, ''Respondents''). The Office of Unfair Import Investigations (''OUII'') is participating in the investigation. The '186 patent was previously terminated from the investigation. Order No. 25 (July 17, 2020), *unreviewed by* Comm'n Notice (Aug. 4, 2020).

On February 4, 2021, the ALJ issued the final ID finding no violation of section 337 as to the two patents involved in the evidentiary hearing, the '228 and '464 patents. (Regarding the '698 patent, s*ee* Order. No. 35 (discussed below)). With respect to the '228 patent, the ID finds that: (1) None of Respondents' accused products infringe asserted claim 2 of the '228 patent; (2) claim 2 of the '228 patent is invalid as anticipated under 35 U.S.C. 102 by the asserted prior art (U.S. Patent No. 6,077,236); (3) claim 2 of the '228 patent is directed to patent-ineligible subject matter under 35 U.S.C. 101; (4) claim 2 of the '228 patent is not anticipated under 35 U.S.C. 102, or rendered obvious under 35 U.S.C. 103, by any other asserted prior art; (5) claim 2 of the '228 patent is not unenforceable based on patent exhaustion; and (6) Philips has satisfied the domestic industry requirement with respect to the '228 patent.

With respect to the '464 patent, the ID finds that: (1) None of Respondents' accused products infringe asserted claims 1 and 6 of the '464 patent; (2) claims 1 and 6 of the '464 patent are directed to patent-ineligible subject matter under 35 U.S.C. 101; (3) claims 1 and 6 of the '464 patent are not anticipated under 35 U.S.C. 102 and they are not rendered obvious under 35 U.S.C. 103; and (4) claims 1 and 6 of the '464 patent are not invalid based on improper inventorship under 35 U.S.C. 115(a) or 116(a); (5) Philips has not satisfied the technical prong of the domestic industry requirement with respect to the '464 patent; and (6) Philips has satisfied the economic prong of the domestic industry requirement by showing that a domestic industry is in the process of being established.

In the Recommended Determination, the ALJ recommends that if the Commission finds a violation it should issue a limited exclusion order directed to Respondents' infringing products and a cease and desist order directed to the domestic Garmin respondents and Fitbit.

On February 16, 2021, Philips petitioned, OUII petitioned and contingently petitioned, and Respondents contingently petitioned for review of certain aspects of the final ID. On February 24, 2021, Philips, OUII, and Respondents each responded to the other parties' petitions for review.

The Commission received no public interest comments from the public in response to the **Federal Register** notice seeking comment on the public interest. 86 FR 9085–86 (Feb. 11, 2021). On March 8, 2021, Respondents submitted public interest comments pursuant to Commission Rule 210.50(a)(4). No other party submitted public interest comments.

The Commission has determined to review the final ID in part. Specifically, the Commission has determined to review: (1) The ID's construction of the term ''monitor'' recited in claim 2 of the '228 patent; (2) the ID's finding of non-infringement for claim 2 of the '228 patent; (3) the ID's finding that Philips has satisfied the domestic industry requirement with respect to the '228 patent; (4) the ID's finding that claim 2 of the '228 patent is not unenforceable based on patent exhaustion; and (5) the ID's finding, with respect to the '464 patent, that Philips has satisfied the economic prong of the domestic industry requirement by showing that a domestic industry is in the process of being established. The Commission has determined not to review the remainder of the final ID.

On review, the Commission has determined to: (1) Construe the term ''monitor'' recited in claim 2 of the '228 patent to mean ''receive and track''; (2) affirm, with modified reasoning, the ID's finding that the accused products practice the ''monitor [ ] the sensor signals discontinuously in time'' limitation recited in claim 2; and (3) reverse the ID's finding that the accused products do not practice the ''monitor the sensor signals in turn'' limitation recited in claim 2. Accordingly, the Commission finds that the accused

products infringe claim 2 of the '228 patent. The Commission has also determined to reverse the ID's finding that Philips' BX–100 Biosensor Device does not practice all limitations of the '228 patent, and therefore finds that Philips satisfies the technical prong of the domestic industry requirement with respect to this patent. The Commission takes no position on the ID's finding that claim 2 of the '228 patent is not unenforceable based on patent exhaustion. With respect to the '464 patent, the Commission has determined to take no position on the ID's analysis and finding regarding an industry in the process of being established, and therefore takes no position on whether Philips has met the economic prong requirement.

Accordingly, as the Commission does not disturb the ID's other findings with respect to the '228 and '464 patents, the Commission has determined to affirm the final ID's finding of no violation of section 337 with respect to these two patents.

The Commission previously determined to review two IDs the ALJ issued on October 1, 2020: (1) Order No. 34 granting Philips' motion for partial summary determination that complainants satisfied the economic prong of the domestic industry requirement as to the BX–100 Biosensor Device with respect to the '228 patent; and (2) Order No. 35 granting Respondents' motion for summary determination that Respondents' accused products do not infringe (i) asserted claims 1 and 6 of the '698 patent, and (ii) asserted claims 1 and 6 of the '464 patent with respect to the accused heart rate monitoring functionalities. Comm'n Notice (Nov. 16, 2020). On review of the first ID (Order No. 34), the Commission has determined to take no position on the ID's finding that Philips has satisfied the economic prong of the domestic industry requirement by showing that a domestic industry is in the process of being established. The Commission has determined to affirm the finding in Order No. 34 that an industry exists in the United States as to the BX–100 Biosensor Device with respect to the '228 patent. The Commission has also determined to affirm the findings in the second ID (Order No. 35) of non-infringement with respect to the '698 patent, and non-infringement with respect to the '464 patent for the heart rate monitoring functionalities in the accused Fitbit and Garmin devices. The '698 patent therefore is terminated from the investigation with a finding of no violation of section 337.

The investigation is terminated.

The Commission vote for this determination took place on April 12, 2021.

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 part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: April 12, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–07797 Filed 4–15–21; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1175]

Certain Bone Cements and Bone Cement Accessories; Commission Determination To Review in Part a Final Initial Determination Finding No Violation of Section 337; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined to review in part a final initial determination (''FID'') of the presiding administrative law judge (''ALJ'') finding no violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation. The Commission requests briefing from the parties on certain issues under review, as indicated in this notice. The Commission also requests briefing from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3228. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone 202–205–1810.

SUPPLEMENTARY INFORMATION: On September 23, 2019, the Commission instituted this investigation based on a complaint filed on behalf of Zimmer, Inc. and Zimmer US, Inc. both of Warsaw, Indiana (collectively, ''Complainants''). 84 FR 49764 (Sept. 23, 2019). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain bone cements and bone cement accessories by reason of the misappropriation of trade secrets, false advertising, and tortious interference, the threat or effect of which is to destroy or substantially injure an industry in the United States. The complaint also alleges the existence of a domestic industry. The Commission's notice of investigation names the following as respondents: Heraeus Medical GmbH of Wehrheim, Germany and Heraeus Medical LLC of Yardley, Pennsylvania (collectively, ''Respondents''). *Id.* The Office of Unfair Import Investigations (''OUII'') is named as a party in this investigation. *Id.*

On February 11, 2021, the ALJ issued the FID, finding no violation of section 337. More particularly, the FID finds, *inter alia,* that: (1) The Commission has subject matter and personal jurisdiction; (2) Respondents sold for importation into the United States, imported, or sold after importation accused bone cements and bone cement accessories; (3) a domestic industry exists with respect to Complainants' accessory products under section 337(a)(1)(A)(i) (19 U.S.C. 1337(a)(1)(A)(i)); (4) Complainants own the asserted trade secrets; (5) trade secrets (''TS'') 10, 15, and 28 are protectable, but TS 11 is not protectable; (6) Respondents did not misappropriate any asserted TS; (6) Respondents did not engage in false advertising; (7) Respondents did not tortiously interference with Complainants' contracts or prospective business relationships; and (6) Complainants failed to show a substantial injury or threat of injury to their domestic industry.

The FID includes the ALJ's recommended determination (''RD''), which recommends that, if the Commission finds a violation of section 337, the Commission should issue a limited exclusion order and a cease and desist order directed to Respondents.