

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

CERTAIN AUDIO PLAYERS AND
CONTROLLERS, COMPONENTS
THEREOF, AND PRODUCTS
CONTAINING SAME

Inv. No. 337-TA-1191

**ORDER NO. 35: INITIAL DETERMINATION GRANTING COMPLAINANT
SONOS, INC.'S UNOPPOSED MOTION FOR SUMMARY
DETERMINATION THAT THE ECONOMIC PRONG OF
DOMESTIC INDUSTRY IS SATISFIED**

(January 14, 2020)

On December 4, 2020, Complainant Sonos Inc. (“Sonos”) moved (1191-025) for summary determination that the economic prong is satisfied for all asserted patents under 19 U.S.C. § 1337(a)(2) and (3)(A)-(B). Sonos represents that Respondent Google LLC does not oppose the motion. Mot. at 2. The Commission Investigative Staff did not file a response.

Summary determination is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to a determination as a matter of law. *See* 19 C.F.R. § 210.18(b). In determining whether there is a genuine issue of material fact, “the evidence must be viewed in the light most favorable to the party opposing the motion with doubts resolved in favor of the non-movant.” *Crown Operations Int’l, Ltd. v. Solutia, Inc.*, 289 F.3d 1367, 1375 (Fed. Cir. 2002) (citation omitted).

Section 337(a)(3) sets forth the following economic criteria for determining the existence of a domestic industry in Section 337 investigations:

(3) For purposes of paragraph (2), an industry in the United States shall be considered to exist if there is in the United States, with respect to the articles protected by the patent, copyright, trademark, mask work, or design concerned –

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- (A) significant investment in plant and equipment;
- (B) significant employment of labor or capital; or
- (C) substantial investment in its exploitation, including engineering, research and development, or licensing.

Given that these criteria are listed in the disjunctive, satisfaction of any one of them will be sufficient to meet the economic prong of the domestic industry requirement. *Certain Integrated Circuit Chipsets and Prods. Containing Same*, Inv. No. 337-TA-428, Order No. 10, Initial Determination (unreviewed) (May 4, 2000).

The undersigned finds that Sonos has established that it satisfies the economic prong of the domestic industry requirement under § 337(a)(3)(B). The undisputed evidence shows that Sonos has invested almost \$ [REDACTED] in labor attributable to the Domestic Industry Products¹ over the past five years. To reach this amount, Sonos' expert, Michael K. Milani, first quantified Sonos' total U.S. investments in R&D labor for each of the R&D cost centers.² SUMF at ¶ 15; Mot. Ex. 1 at 65-66. This resulted in a sum of \$ [REDACTED] and is broken down by years as follows:

[REDACTED]

Id. at 66-67, Fig. 38. Mr. Milani then removed \$ [REDACTED] in labor attributable to administrative employees in the R&D cost centers, resulting in an amount of \$ [REDACTED]. *Id.* at 67-68. Mr. Milani refers to this amount as "Total Net Labor Investment in R&D." *Id.*; *see also* SUMF at ¶ 16.

¹ The Domestic Industry Products "include Sonos audio players and components thereof and controller/computing devices (such as smartphones, tablets, or computers) installed with the Sonos S1 or S2 app for iOS, Android, FireOS, macOS, or Windows." Statement of Undisputed Material Facts in Support of Complainant Sonos, Inc's Motion for Summary Determination that the Domestic Industry's Economic Prong is Satisfied as to all Asserted Patents ("SUMF") at ¶ 2.

² These investments were based on a trial balance document produced by Sonos. Mot. Ex. 1 at 65. The R&D cost centers were identified as [REDACTED] and are described in Mr. Milani's report. SUMF at ¶¶ 8, 9; *see also* Mot. Ex. 1 at 32, Fig. 7. The evidence shows that Sonos omitted from its calculations "investments in cost centers that are not entirely dedicated to R&D." SUMF at ¶ 10. "For example, Sonos omitted cost centers [REDACTED] and [REDACTED] even though a significant amount of domestic R&D takes place at these cost centers." *Id.*; *see also* Mot. Ex. 1 at 65.

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Next, Mr. Milani determined how much of Sonos' labor investment could be allocated to the Domestic Industry Products. First, Mr. Milani allocated the Total Net Labor Investment in R&D between investments in hardware (\$ [REDACTED]) and software (\$ [REDACTED]). SUMF 16; Mot. Ex. 1 at 68-71. Next, he separated out the software investments into player software (\$ [REDACTED]) and controller software (\$ [REDACTED]). SUMF 16; Mot. Ex. 1 at 71-73. Mr. Milani then combined the investment in hardware with the player software (\$ [REDACTED]) and determined that \$ [REDACTED] of that amount is attributable to the Domestic Industry Products. SUMF 16; Mot. Ex. 1 at 73-75. As for the controller software, Mr. Milani determined that \$ [REDACTED] of that amount is attributable to the Domestic Industry Products interfacing with the controller. Mot. Ex. 1 at 79-80; SUMF at ¶ 16. Thus, in sum, Mr. Milani concluded that \$ [REDACTED] of Sonos' labor investments is attributable to the Domestic Industry Products. Mot. Ex. 1 at 79, Ex. 4.1.

Mr. Milani then allocated the labor investments for the Domestic Industry Products by patent. Based on Mr. Milani's calculations, the undisputed evidence shows that labor investment can be allocated by patent as follows:

[REDACTED]

SUMF 11 (excerpt). Based on these figures, the undersigned finds that Sonos' investment in labor is quantitatively significant.

The undersigned also finds that Sonos' investment in labor in the United States is qualitatively significant. The evidence shows that Sonos spent only \$ [REDACTED] million in R&D labor outside of the United States during the relevant time period. *Id.* Thus, Sonos' investment in domestic R&D labor is more than [REDACTED] times the amount spent outside the United States on R&D

labor.

For these reasons, no genuine issue of material fact therefore remains and a summary determination that the economic prong of the domestic industry requirement is satisfied is appropriate.³

Accordingly, Sonos' motion (1191-025) for summary determination of the economic prong is granted.

Pursuant to 19 C.F.R. § 210.42(h), this Initial Determination shall be the determination of the Commission unless a party files a petition for review of the Initial Determination pursuant to 19 C.F.R. § 210.43(a), or the Commission, pursuant to 19 C.F.R. § 210.44 orders, on its own motion, a review of the Initial Determination or certain issues herein.

Within seven days of the date of this document, the parties shall submit to the Office of the Administrative Law Judges a joint statement as to whether or not they seek to have any portion of this document deleted from the public version. If the parties do seek to have portions of this document deleted from the public version, they must submit to this office a copy of this document with red brackets indicating the portion or portions asserted to contain confidential business information. The submission may be made by email and/or hard copy by the aforementioned date and need not be filed with the Commission Secretary.

SO ORDERED.



Charles E. Bullock
Chief Administrative Law Judge

³ The undersigned has already determined that Sonos has met the economic prong under section 337(a)(3)(B.) Accordingly, the undersigned need not decide whether Sonos meets the economic prong under section 337(a)(3)(A); *see also* Mot. at 1-2 (“The Chief ALJ could find that Sonos satisfies the economic prong under section 337(a)(3)(B) alone due to Sonos’ almost \$ [REDACTED] investment in labor over the last five years.”).

I, Lisa R. Barton, hereby certify that the attached **INITIAL DETERMINATION** has been served via EDIS upon the Commission Investigative Attorney, **Cortney Hoecherl, Esq.**, and the following parties as indicated, on **February 4, 2021**.



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