



Electronic Data Transmissions Are “Imported Articles” Under Section 337

Oct 9, 2014

Reading Time : **2 min**

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The complainant, Align Technology, Inc., asserted seven patents directed to creating digital models of a person’s teeth for dental correction. A U.S.-based respondent, ClearCorrect Operating, LLC (CCUS), transmitted images of a patient’s teeth to a foreign respondent, ClearCorrect Pakistan, Ltd. (CCPK). CCPK then created digital models of corrective braces for orthodontic treatment of the patient. Next, CCPK uploaded these models back to CCUS’s computers in the United States, where CCUS manufactured the braces for the patient. In the Initial Determination, ALJ Rogers found that the uploading of the digital models from Pakistan to computers within the U.S. constituted the importation into the United States of articles that infringed the asserted patents, thereby violating Section 337. The ITC considered whether the data transmission of these models into the U.S. was an “importation” of an “article” under Section 337(a)(1)(B). First, the Commission looked to the statutory language, which did not expressly define an “article.” However, the Commission noted that its previous decisions had refused to limit the term “article” (e.g., to “articles of foreign manufacture”) and determined that the statutory language did not restrict the scope of the “article” in any way. Next, the Commission looked to previous decisions of the United States Court of Appeals for the Federal Circuit and its predecessor court, which held that Section 337 should be broadly interpreted to prohibit unfair methods of competition in importation. Additionally, the Commission reasoned that the legislative history intended the statute to be flexible enough to prevent every form of unfair practice. Finally, the Commission looked at U.S. Customs and Border Protection and Department of Labor policies, which held that software was to be considered an “article” and the transmission of software into the U.S. constituted an “importation.”

In view of the foregoing, the Commission held that the intended meaning of “article” broadly covered any item bought and sold in commerce and imported into the U.S., regardless of the manner of importation. Accordingly, it affirmed the ALJ’s determination that “digital datasets” electronically transmitted into the United States were “imported articles” under Section 337(a)(1)(B). This decision may expand the scope of articles over which the ITC has jurisdiction to include electronically transmitted articles that may not enter the United States through Customs and Border Protection.

On June 5, 2014, the respondents filed a notice of appeal of the final determination of the Commission. The opening brief was filed under seal on October 9, 2014.

Certain Digital Models, Digital Data, and Treatment Plans, Inv. No. 337TA833, (USITC Apr. 10, 2014) (Commission Opinion).

Categories

International Trade Commission

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