

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN AUTOMOTIVE
MULTIMEDIA DISPLAY AND
NAVIGATION SYSTEMS,
COMPONENTS THEREOF, AND
PRODUCTS CONTAINING SAME

Inv. No. 337-TA-657

**ORDER NO. 21: GRANTING HONEYWELL'S MOTION TO COMPEL
PRODUCTION OF PIONEER'S OEM HONDA SOURCE CODE**

(May 11, 2009)

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On April 8, 2009, complainant Honeywell International Inc. ("Honeywell") filed a motion to compel respondents Pioneer Corporation, and Pioneer Electronics (USA), Inc. (collectively "Pioneer") to produce source code for its OEM products made for [REDACTED] (Motion Docket No. 657-039.) On April 20, 2009, Pioneer filed an opposition to the present motion. On April 20, 2009, the Commission Investigative Staff ("Staff") filed its response in support of Honeywell's motion to compel.

Honeywell argues that its request for the OEM [REDACTED] source code is reasonably calculated to lead to the discovery of admissible evidence. Specifically, Honeywell argues that the source code for Pioneer products [REDACTED] are discoverable because they control various functions within the accused products and provide evidence relevant to whether certain claim elements are met. Honeywell also seeks source code for any other [REDACTED] products that Pioneer has not previously identified. Honeywell argues that Pioneer [REDACTED]

[REDACTED]

[REDACTED]

PUBLIC VERSION

Honeywell asserts that Pioneer's reason for not producing the source code is that Pioneer believes that the [REDACTED] are beyond the scope of the investigation because they are imported into the United States by non-party automobile manufacturers. However, Honeywell argues that an investigation under 19 U.S.C. 1337 includes products which are sold for importation and thus Honeywell argues Pioneer's reason for not producing the source code is unjustifiable.

Pioneer argues that Honeywell's present motion should be denied with regard to Pioneer product [REDACTED], because it is [REDACTED]. [REDACTED] Pioneer argues that under *Kyocera Wireless Corp. v. Int'l Trade Comm'n*, 545 F.3d 1340 (Fed. Cir. 2008) the limited exclusion order (LEO) sought by Honeywell in this investigation can only exclude products of a named respondent, which [REDACTED] is not. Pioneer argues that because an LEO cannot issue against [REDACTED], and thus exclude [REDACTED], that the source code for the [REDACTED] is irrelevant and need not be produced in discovery. With regard to Pioneer products [REDACTED] Pioneer asserts that it has now arranged to produce the source code for those products and thus Honeywell's motion with regard to those products is moot.

Discovery is broadly permitted in Section 337 investigations. Under Commission Rule 19 C.F.R. 210.27(b), a party may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party. *See* 19 C.F.R. § 210.27(b). Moreover, under the Commission's Rules and the Federal Rules of Civil Procedure, discovery . . . must generally be permitted of admissible evidence and of information that appears reasonably calculated to lead to the discovery of admissible evidence." *Certain Salinomycin Biomass and Preparations Containing Same*, Inv. No. 337-TA-370, Order No. 4, at 2 (March 13, 1995).

PUBLIC VERSION

The Commission instituted this investigation on September 12, 2008 and thereafter published the Notice of Investigation (NOI) in the Federal Register. The NOI specifically states that this investigation was instituted:

to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain automotive multimedia display or navigation systems, components thereof, or products containing same that infringe one or more of claims 1-7 of U.S. Patent No. 6,664,945; claims 1, 10-12, and 20 of U.S. Patent No. 6,700,482; claims 1, 4, 5, 9, 11, 13, and 20 of U.S. Patent No. 6,289,277; claims 2, 3, and 25 of U.S. Patent No. 6,691,030; claims 1-7 and 17 of U.S. Patent No. 6,308,132; and claim 5 of U.S. Patent No. 5,923,286.

73 FR 54617 (September 22, 2008). Pioneer does not dispute in its opposition Honeywell's assertion that the requested source code for the [REDACTED] products operates in conjunction with navigation products that fall within the scope of this investigation. Rather, Pioneer argues that because any LEO that may issue in this investigation cannot reach [REDACTED] then the requested discovery is irrelevant and undiscoverable.

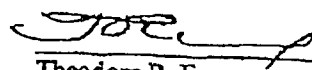
Pioneer confuses the scope of investigation with the scope of relief available in a Section 337 investigation. Under statute, it is a violation of Section 337 to import into the United States, sell for importation, or sell within the United States after importation any product that infringes a valid and enforceable United States patent. *See* 19 U.S.C. § 1337(a)(1)(B). The Federal Circuit's opinion in *Kyocera Wireless* did not alter this fact. The Federal Circuit's opinion dealt solely with the remedies available to the Commission under 35 U.S.C. § 1337(d) and not what constitutes a violation of Section 337 under 35 U.S.C. § 1337(a)(1). *See Kyocera Wireless*, 545 F.3d at 1355-58. Thus, the mere fact that non-party [REDACTED] is the importer is of no avail as Pioneer does not dispute that it [REDACTED] and that the OEM products operate with navigation products that fall within the scope of this investigation.

PUBLIC VERSION

Having examined the parties submissions filed in support and opposition to the present motion, the ALJ finds that requested discovery is reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Administrative Law Judge hereby grants Honeywell's present motion to compel production of Pioneer's OEM [REDACTED] source code. Within five (5) business days, Pioneer shall, to the extent it has not already done so, produce the source code for the [REDACTED] products. Additionally, Pioneer shall make available to Honeywell within five (5) business day, or at a time and place convenient to the parties, a witness(s) to testify about the produced source code.

Within seven days of the date of this document, each party shall submit to the Office of the Administrative Law Judges a statement as to whether or not it seeks to have any portion of this document deleted from the public version. Any party seeking to have any portion of this document deleted from the public version thereof shall also submit to this office a copy of this document with red brackets indicating any portion asserted to contain confidential business information. The parties' submissions may be made by facsimile and/or hard copy by the aforementioned date. The parties' submissions concerning the public version of this document need not be filed with the Commission Secretary.

SO ORDERED.

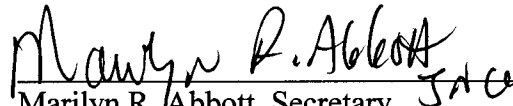

Theodore R. Essex
Administrative Law Judge

**IN THE MATTER OF CERTAIN AUTOMOTIVE MULTIMEDIA
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PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **ORDER 21 PUBLIC VERSION** has been served by hand upon the Commission Investigative Attorney, **Bryan F. Moore, Esq.**, and the following parties as indicated on May 20, 2009.


Marilyn R. Abbott, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112A
Washington, D.C. 20436

COMPLAINANT HONEYWELL INTERNATIONAL INC.:

Louis Mastriani, Esq.
ADDUCI, MASTRIANI & SCHAUMBERG LLP
1200 Seventeenth Street, NW - Fifth Floor
Washington, DC 20036

() Via Hand Delivery
() Via Overnight Mail
() Via First Class Mail
() Other: _____

**RESPONDENTS ALPINE ELECTRONICS, INC., ALPINE ELECTRONICS
OF AMERICA, INC.:**

Laura Beth Miller, Esq.
Gary M. Ropski, Esq.
BRINKS HOFER GILSON & LIONE
NBC Tower, Suite 3600
455 N. Cityfront Plaza Drive
Chicago, IL 60611-5599

() Via Hand Delivery
() Via Overnight Mail
() Via First Class Mail
() Other: _____

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CERTIFICATE OF SERVICE - PAGE 2

**RESPONDENTS ALPINE ELECTRONICS, INC., ALPINE ELECTRONICS
OF AMERICA, INC.:**

Lyle B. Vander Schaaf, Esq.
Jay Reiziss, Esq.
BRYAN CAVE
700 13th Street, SW, Suite 700
Washington, DC 20005

() Via Hand Delivery
() Via Overnight Mail
() Via First Class Mail
() Other: _____

**RESPONDENTS DENSO CORPORATION, DENSO INTERNATIONAL
AMERICA, INC.:**

Terry L. Clark, Esq,
HARNESS, DICKEY & PIERCE, PLC
11730 Plaza America Drive, Suite 600
Reston, VA 20190

() Via Hand Delivery
() Via Overnight Mail
() Via First Class Mail
() Other: _____

Robert J. Lenihan, Esq.
HARNESS, DICKEY & PIERCE, PLC
5445 Corporation Drive, Suite 200
Troy, Michigan 48098

() Via Hand Delivery
() Via Overnight Mail
() Via First Class Mail
() Other: _____

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CERTIFICATE OF SERVICE - PAGE 3

RESPONDENTS PIONEER CORPORATION, PIONEER ELECTRONICS (USA), INC., :

Smith R. Brittingham IV, Esq.. () Via Hand Delivery
Eric J. Fues, Esq. () Via Overnight Mail
FINNEGAN, HENDERSON, FARABOW, (✓) Via First Class Mail
GARRETT & DUNNER, LLP () Other: _____
901 New York Avenue, NW
Washington, DC 20001

RESPONDENTS, KENWOOD CORPORATION, KENWOOD USA CORPORATION:

Adam R. Hess, Esq. () Via Hand Delivery
Scott J. Pivnick () Via Overnight Mail
PILLSBURY WINTHROP SHAW (✓) Via First Class Mail
PITTMAN LLP () Other: _____
2300 N. Street, NW
Washington, DC 20037-1122

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PUBLIC MAILING LIST

Heather Hall
LEXIS - NEXIS
9443 Springboro Pike
Miamisburg, OH 45342

() Via Hand Delivery
() Via Overnight Mail
() Via First Class Mail
() Other: _____

Kenneth Clair
THOMSON WEST
1100 Thirteen Street, NW, Suite 200
Washington, D.C. 20005

() Via Hand Delivery
() Via Overnight Mail
() Via First Class Mail
() Other: _____