

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN MOVABLE BARRIER
OPERATOR SYSTEMS AND
COMPONENTS THEREOF**

**Inv. No. 337-TA-1209
(Modification)**

COMMISSION OPINION DENYING STAY

On August 10, 2020, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based on a complaint filed by Overhead Door Corporation of Lewisville, Texas and GMI Holdings Inc. of Mount Hope, Ohio (collectively, “Overhead Door” or “Complainants”). *See* 85 Fed. Reg. 48264-65 (Aug. 10, 2020). The complaint, as supplemented, alleged a violation of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain movable barrier operator systems and components thereof by reason of infringement of U.S. Patent Nos. 8,970,345 (“the ’345 patent”); 9,483,935 (“the ’935 patent”); 7,173,516 (“the ’516 patent”); 7,180,260 (“the ’260 patent”); 7,956,718 (“the ’718 patent”); and 8,410,895 (“the ’895 patent”). *See id.* at 48264. The notice of investigation named The Chamberlain Group, Inc. of Oak Brook, Illinois (“Chamberlain” or “Respondent”) as the respondent in this investigation. *See id.* at 48265. The Office of Unfair Import Investigations was not a party to the investigation. *See id.*

On February 9, 2022, the Commission issued a final determination finding a violation of section 337 based on infringement of the asserted claims of the ’935 patent, the ’718 patent, and

the '895 patent (collectively, “the Asserted Patents”).¹ See 87 Fed. Reg. 8605-06 (Feb. 15, 2022). The Commission further determined to: (1) issue a limited exclusion order (“LEO”) against Chamberlain’s infringing products and a cease and desist order (“CDO”) against Chamberlain (collectively, “the remedial orders”); and (2) set a bond during the period of Presidential review in the amount of one hundred (100) percent of the entered value of the infringing articles. *Id.* at 8606.

On March 30, 2022, the Commission issued a modification opinion and modified remedial orders to confirm that the definition of covered products or articles in the original remedial orders includes garage door openers, gate operators, and commercial operators. See 87 Fed. Reg. 19709-10 (Apr. 5, 2022). The Commission also amended the notice of investigation to expressly include garage door openers, gate operators, and commercial operators in the definition of the accused products and the scope of the investigation. See *id.* at 19710.

On April 12, 2022, Chamberlain filed a notice of appeal from the Commission’s final determination and modification determination with the U.S. Court of Appeals for the Federal Circuit (Appeal No. 22-1664). On the same day, Chamberlain filed with the Commission a motion to stay the modified remedial orders pending appeal and for expedited treatment. On April 20, 2022, Overhead Door filed a response opposing the motion to stay. On April 22,

¹ The '516 patent was terminated based on withdrawal of the allegations in the complaint as to that patent. See Order No. 10 (Jan. 19, 2021), *unreviewed by* Comm’n Notice (Feb. 10, 2021). The Commission found no infringement of the '345 and '260 patents and therefore no violation of section 337 based on those patents. See 87 Fed. Reg. at 8606.

2022, Chamberlain filed a motion for leave to file a reply in support of its motion to stay. On April 25, 2022, Overhead Door filed an opposition to the motion for leave.²

For the reasons set forth below, the Commission has determined to deny Chamberlain’s motion to stay.

I. BACKGROUND

On August 10, 2020, the Commission instituted this investigation under section 337 based on a complaint, as supplemented, alleging a violation of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain movable barrier operator systems and components thereof by reason of infringement of the ’345 patent, the ’935 patent, the ’516 patent, the ’260 patent, the ’718 patent and the ’895 patent. *See* 85 Fed. Reg. 48264-65. The notice of investigation defined the accused products as follows:

Pursuant to section 210.10(b)(1) of the Commission’s Rules of Practice and Procedure, 19 CFR 210.10(b)(1),³ the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is “***garage door systems and components thereof, remote controls, wireless transmitters, and software for operating the garage door systems.***”

² The Commission has determined to deny Chamberlain’s motion for leave to file a reply. Replies are generally not permitted. *See* Commission Rule 210.15(c), 19 C.F.R. § 210.15(c). The motion for leave does not raise new arguments that could not have been addressed in the motion to stay, and in any event would not change the outcome of the Commission’s decision. *See Certain Network Devices, Related Software & Components Thereof (II)*, Inv. No. 337-TA-945, Comm’n Order at 15 (Nov. 3, 2017) (denying leave to file a reply where respondent “has not shown that it could not have addressed the[] issues in its motion to stay” and the “reply does not present any assertions that [respondent] has not already addressed in its motion”). Moreover, granting Chamberlain’s motion for leave would merely delay the Commission’s determination, which is at odds with Chamberlain’s request for expedition.

³ Commission Rule 210.10(b)(1) provides that “[t]he notice will define the scope of the investigation in such plain language as to make explicit what accused products or category of accused products provided in accordance with § 210.12(a)(12) will be the subject of the investigation, and may be amended as provided in § 210.14(b) and (c).” 19 C.F.R. § 210.10(b)(1).

See id. at 48264 (emphasis added).

The complaint identified garage door openers, gate operators, and commercial operators as accused products (*see* Compl. at ¶ 4.31), and Chamberlain provided discovery relating to garage door openers, gate operators, and commercial operators. On April 2, 2021, Chamberlain filed a motion *in limine* seeking to exclude testimony related to gate operators on the basis that they are outside the scope of the investigation. On April 27, 2021, the Administrative Law Judge (“ALJ”) denied Chamberlain’s motion *in limine*, finding that “[i]t has not been established that gate operators have been excluded from this investigation . . . especially in view of OHD’s allegations beginning with the complaint.” *See* Order No. 13, at 3 (Apr. 27, 2021).

On May 19, 2021, Chamberlain argued again in its post-hearing brief that “[gate operators] are outside the scope of this investigation, which is limited to ‘garage door systems and components thereof, remote controls, wireless transmitters, and software for operating the garage door systems.’” *See* Chamberlain’s Post-Hearing Br. at 11 (May 19, 2021) (citing 85 Fed. Reg. at 48264 (notice of investigation)) (emphasis omitted).

On September 14, 2021, the ALJ issued a final initial determination (“FID”) finding a violation of section 337 with respect to the ’345, ’935, ’260, ’718, and ’895 patents. The FID defined the accused products as including garage door openers, gate operators, and commercial operators. *See* FID at 7 (“Chamberlain™ C205 is representative of all accused CGI operators, openers, and receivers, including any accessories which include a receiver, and the Chamberlain™ 953ESTD is representative of all accused CGI transmitters.”). The FID also rejected Chamberlain’s argument that gate operators are not within the scope of this investigation. *See id.* at 13-14. The FID noted that earlier in the investigation, the ALJ denied Chamberlain’s motion *in limine* seeking to exclude testimony related to gate operators and found

that “[i]t has not been established that gate operators have been excluded from this investigation . . . *especially in view of OHD’s allegations beginning with the complaint.*” *See id.* (citing Order No. 13, at 3-4 (Apr. 27, 2021)) (emphasis in original).

Chamberlain did not petition for Commission review of (and the Commission did not review *sua sponte*) the findings in the FID (and Order No. 13) as to the definition of the accused products and the scope of the investigation and, therefore, Chamberlain waived any challenge to those findings. *See* 19 C.F.R. § 210.43(b)(2) (“Any issue not raised in a petition for review will be deemed to have been abandoned by the petitioning party and may be disregarded by the Commission in reviewing the initial determination . . . , and any argument not relied on in a petition for review will be deemed to have been abandoned and may be disregarded by the Commission.”); *Finnigan Corp. v. ITC*, 180 F.3d 1354, 1362-63 (Fed. Cir. 1999) (“A party seeking review in this court of a determination by the Commission must specifically assert the error made by the ALJ in its petition for review to the Commission.”) (citations omitted).

On February 9, 2022, the Commission issued a final determination finding a violation of section 337, based on infringement by Chamberlain of the asserted claims of the ’935 patent, the ’718 patent, and the ’895 patent. *See* Comm’n Op. (Feb. 9, 2022); 87 Fed. Reg. 8605-06 (Feb. 15, 2022). The Commission confirmed, as to the ’935 patent, that “the accused products are barrier operators, including garage door openers (‘GDOs’), commercial barrier operators, and gate operators (‘GOs’).” *See* Comm’n Op. at 5. The Commission adjudicated infringement with respect to gate operators and commercial operators (in addition to garage door openers) and found them to infringe claims 1, 4, 16, and 19 of the ’935 patent. *See id.* at 5, 22-27. The Commission also considered garage door openers, gate operators, and commercial operators in its public interest and bonding analysis, which is relevant to the Commission’s determination as

to the issuance and scope of the remedial orders. *See* Comm’n Op. at 78-79, 84-85; 19 U.S.C. § 1337(d)(1), (f)(1).

The Commission also determined to: (1) issue an LEO against Chamberlain’s infringing products and a CDO against the Chamberlain and (2) set a bond during the period of Presidential review in the amount of one hundred (100) percent of the entered value of the infringing articles. Consistent with the scope of the investigation as defined in the notice of investigation, the remedial orders defined the covered products or articles as “garage door systems and components thereof, remote controls, wireless transmitters, and software for operating the garage door systems that infringe one or more of the asserted claims of the Asserted Patents.” *See* LEO at 2; CDO at 2; *see also Certain Automated Mech. Transmission Sys.*, Inv. No. 337-TA-503, 2007 WL 4473082, *10 (Aug. 1, 2007) (“[T]he scope of the remedy is dependent upon the scope of the investigation, which is determined by the notice of investigation.”). The Commission transmitted to the U.S. Trade Representative (“USTR”), pursuant to section 337(j), the original remedial orders upon their issuance along with the Commission’s opinion, the ALJ’s FID, and the record of the investigation.

On February 28, 2022, Overhead Door filed a motion for clarification, or in the alternative, a petition for modification, to confirm that the Commission’s remedial orders cover not just garage door openers (undisputed) but also gate operators and commercial operators. On March 10, 2022, Chamberlain filed an opposition to Overhead Door’s motion and/or petition. On March 30, 2022, the Commission issued a modification opinion and modified remedial orders confirming that the definition of covered products or articles includes garage door openers, gate operators, and commercial operators. *See* Comm’n Modification Op. (Mar. 30, 2022); 87 Fed. Reg. 19709-10 (Apr. 5, 2022). The Commission also amended the notice of

investigation pursuant to Commission Rule 210.14(c) (19 C.F.R. § 210.14(c)) to conform to the evidence and the issues adjudicated during the investigation.⁴ *See id.* at 19710. Specifically, the notice was amended to expressly include garage door openers, gate operators, and commercial operators in the definition of the accused products and the scope of the investigation. *See id.* The Commission shared the modified remedial orders and the modification determination with USTR on the day of their issuance and explained that the modification was merely clarifying in nature and therefore not subject to another 60-day review process under section 337(j). *See* Correspondence with USTR (Mar. 30, 2022) (Filed on EDIS⁵ Apr. 28, 2022).

On April 12, 2022, Chamberlain filed a notice of appeal from the Commission’s final determination and modification determination with the U.S. Court of Appeals for the Federal Circuit (Appeal No. 22-1664). On the same day, Chamberlain filed with the Commission a motion to stay the modified remedial orders pending appeal and request for expedited treatment.⁶ On April 13, 2022, Overhead Door filed a response opposing Chamberlain’s request for expedited treatment.⁷ On April 18, 2022, the Commission determined to expedite the deadline

⁴ Commission Rule 210.14(c) provides that “[w]hen issues not raised by the pleadings or notice of investigation, but reasonably within the scope of the pleadings and notice, are considered during the taking of evidence by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings and notice”, and “[s]uch amendments of the pleadings and notice as may be necessary to make them conform to the evidence and to raise such issues shall be allowed at any time, and shall be effective with respect to all parties who have expressly or impliedly consented.” 19 C.F.R. § 210.14(c); *cf.* Fed. R. Civ. P. 15(b)(2) (allowing such amendments “at any time, even after judgment”).

⁵ “EDIS” refers to the Commission’s Electronic Document Information System.

⁶ *See* Respondent’s Motion for a Stay of the March 30 Orders and Request for Expedited Treatment (Apr. 12, 2022) (“Chamberlain’s Mot.”).

⁷ *See* Complainants’ Opposition to Respondent’s Request for Shortened Response Time to its Motion for Stay of March 30 Orders (Apr. 13, 2022).

for Overhead Door’s response to Chamberlain’s motion to stay, and set such deadline for April 20, 2022. On April 20, 2022, Overhead Door filed a response opposing Chamberlain’s motion to stay.⁸ On April 22, 2022, Chamberlain filed a motion for leave to file a reply in support of its motion to stay.⁹ On April 25, 2022, Overhead Door filed an opposition to Chamberlain’s motion for leave to file a reply.¹⁰ As discussed above, the Commission has determined to deny Chamberlain’s motion for leave to file a reply.

II. LEGAL STANDARDS

The Federal Circuit set forth a four-part test in considering whether to stay a lower court’s remedy pending appeal:

(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Standard Havens Prods., Inc. v. Gencor Indus, Inc., 897 F.2d 511, 512 (Fed. Cir. 1990)

(quotation omitted). The Federal Circuit applies the test flexibly: each factor “need not be given equal weight,” *id.*, and a sliding scale applies whereby the second through fourth factors (collectively, the equities or harms) can compensate for a weaker showing under the first factor, *id.* The Federal Circuit also explained that to “prevail, a movant must establish a strong likelihood of success on the merits or, failing that, must demonstrate that it has a substantial case

⁸ See Complainants’ Response to Respondent’s Motion for a Stay of the March 30 Orders (Apr. 20, 2022) (“Overhead Door’s Resp.”).

⁹ See Respondent’s Motion for Leave to File a Reply in Support of Its Motion for a Stay of the March 30 Orders (Apr. 22, 2022).

¹⁰ See Complainants’ Opposition to Chamberlain’s Motion for Leave to File a Reply in Support of Its Motion for a Stay of the March 30 Orders (Apr. 25, 2022).

on the merits and that the harm factors militate in its favor.” *Spansion, Inc. v. ITC*, Nos. 2009-1460, -1461, -1462, -1465, 2009 WL 2876448, at *1 (Fed. Cir. Sept. 8, 2009) (citation omitted).

The Commission considers motions for stay under the *Standard Havens* test except that the movant need not demonstrate a likelihood of success or a substantial case on the merits. The Commission has recognized the futility of a likelihood-of-success test in this context given that it would be difficult to ask an agency to find that its own decision is likely to be overturned on appeal. *Certain Agricultural Tractors Under 50 Power Take-Off Horsepower*, Inv. No. 337-TA-380 (“*Agricultural Tractors*”), Comm’n Op. at 10 (Apr. 25, 1997); *see also Washington Metro. Area Transit Comm. v. Holiday Tours, Inc.*, 559 F.2d 841, 844 (D.C. Cir. 1977) (“*Holiday Tours*”) (“Prior recourse to the initial decisionmaker would hardly be required as a general matter if it could properly grant interim relief only on a prediction that it has rendered an erroneous decision.”). Accordingly, a stay may be appropriate when the agency has “ruled on an admittedly difficult legal question and when the equities of the case suggest that the status quo should be maintained.” *Holiday Tours*, 559 F.2d at 844-45; *see also Agricultural Tractors*, Comm’n Op. at 10. Essentially, the test provides an agency with the discretion to grant a stay even if the movant falls short of showing a likelihood of success on the merits, where there is a sufficient showing that the movant would suffer irreparable harm absent a stay and the agency acknowledges that its ruling addresses an admittedly difficult legal question.

III. DISCUSSION

Having considered the parties’ submissions concerning a stay, as well as the underlying record of the Commission investigation, the Commission finds that, on balance, the stay factors weigh against granting a stay of the modified remedial orders. Accordingly, the Commission has determined to deny Chamberlain’s motion for stay.

A. Chamberlain Bears Responsibility for the Consequences of Its Own Conduct in Commission Proceedings

Before turning to the individual stay factors discussed below, the Commission addresses an issue that cuts across all of the factors, namely, Chamberlain’s own responsibility for the situation it has created for itself. This affects likelihood of success, because Chamberlain tactically forfeited arguments that it could have raised but chose not to in the violation investigation. It affects irreparable harm because it is well understood, as discussed below, that a party’s self-inflicted harm cannot give rise to irreparable harm under *Standard Havens*. It affects the balance of harms because Chamberlain asks the Commission to weigh Chamberlain’s interest against Overhead Door’s. And it affects the public interest because Chamberlain itself, and its customers, actually raised the effect of the exclusion order on gate operators and commercial operators even before the original remedial orders issued without ever asserting that additional process was necessary to capture any public interest issues as to them.

As discussed above, and as detailed in the Commission’s clarification/modification decision, Chamberlain’s acquiescence to the inclusion of gate operators and commercial operators as within the scope of the investigation was pervasive in the Commission violation investigation.

- In addition to garage door openers, the complaint identified sixteen gate operators and four commercial operators as accused products. *See* Comm’n Modification Op. at 12.
- The parties litigated infringement with respect to gate operators and commercial operators and Chamberlain provided extensive discovery relating to those products. *Id.*
- Chamberlain filed a motion *in limine* to exclude testimony related to gate operators on the basis that they are outside the scope of the investigation. *Id.* at 4. On April 27, 2021, the ALJ denied Chamberlain’s motion finding that “[i]t has not been established that gate operators have been excluded from this

investigation ... especially in view of [Overhead Door's] allegations beginning with the complaint.” *Id.* (citing Order No. 13, at 3 (Apr. 27, 2021)).

- In its post-hearing brief, Chamberlain disputed Overhead Door's definition of accused products for including gate operators and commercial operators, and argued that gate operators were outside the scope of this investigation. *Id.* at 4-5, 13. The ALJ rejected Chamberlain's arguments in his FID. *See id.* at 4, 8, 13.
- Chamberlain did not petition for Commission review of the ALJ's findings that gate operators and commercial operators are included in the definition of the accused products and/or within the scope of the investigation and therefore, Chamberlain forfeited those arguments pursuant to Commission Rule 210.43(b)(2), 19 C.F.R. § 210.43(b)(2). *See Comm'n Modification Op.* at 13-14.
- At the remedy briefing stage, Chamberlain argued that the public interest weighed against the exclusion of garage door openers, gate operators, and commercial operators. *See Chamberlain's Public Interest ("PI") Statement* at 1, 3 (Oct. 14, 2021).
- At the remedy briefing stage, Chamberlain's customers raised similar arguments. Non-Party PI Statements (Oct.-Dec. 2021) (Amarr, A-Tech, Clopay, Garaga, Precision Door).
- The Commission confirmed in its final determination that the accused products include garage door openers, gate operators, and commercial operators, and found them to infringe claims 1, 4, 16, and 19 of the '935 patent. *See Comm'n Modification Op.* at 8-9; *Comm'n Op.* at 5, 22-27. The Commission also considered gate operators and commercial operators in its public interest and bonding analyses. *See Comm'n Modification Op.* at 16; *Comm'n Op.* at 77-79, 84-85.

Tellingly, Chamberlain's motion for a stay does not argue that it was ever actually confused as to whether or not gate operators or commercial operators were within the scope of the investigation or the scope of the Commission's orders. The ALJ made unequivocal findings about the definition of the accused products and the scope of the investigation. *See FID* at 7, 13-14. In the Commission proceedings, if Chamberlain disagreed with the ALJ's findings as to the scope of the investigation (which is the same as the scope of the remedial orders), Chamberlain had the opportunity to clarify such scope before the Commission, but instead Chamberlain chose acquiescence. Having failed to petition for Commission review of the

ALJ's findings as to the definition of the accused products and the scope of the investigation, Chamberlain cannot now complain that the scope of the original remedial orders (which is the same as the scope of the investigation) includes gate operators and commercial operators. More than that, if Chamberlain believed the orders would not cover gate operators and commercial operators because they were outside the scope of the investigation, then it should not have equivocated by actually briefing the public interest implications as to gate operators and commercial operators at the Commission stage of the investigation.

Chamberlain also equivocates about its interactions with USTR. Chamberlain suggests without support that USTR may not have known about gate operators or commercial operators or considered them during the period of Presidential review. But the public record indicates that Chamberlain itself discussed those products with USTR even before the issuance of the modified remedial orders. *See* Letter from Chamberlain to USTR (Mar. 16, 2022), available at <https://www.politico.com/f/?id=0000017f-ae28-d5d4-a97f-afacebab0000>. The Commission also sent USTR a copy of the modified remedial orders and indicated that the modification was merely a clarification such that a new period of Presidential review was not triggered. The Commission subsequently put into the Commission's EDIS record of the investigation the transmittal correspondence the Commission had with USTR as to issuance of the clarified/modified orders. *See* Correspondence with USTR (Mar. 30, 2022) (Filed on EDIS Apr. 28, 2022).

B. The Modified Remedial Orders Do Not Raise an Admittedly Difficult Legal Question.

1. The Commission Has the Authority to Modify Its Remedial Orders to Clarify that They Include Garage Door Openers, Gate Operators, and Commercial Operators.

The Commission finds no admittedly difficult question in connection with the Commission's authority and action under section 337(k). Chamberlain argues that the Commission has no authority under section 337(k) to modify the remedial orders to expand their scope. *See* Chamberlain's Mot. at 4-8; *see* 19 U.S.C. § 1337(k). Chamberlain relies on the incorrect premise that, here, the Commission expanded the scope of the original remedial orders through modification. Chamberlain, however, nowhere substantiates that premise in the record.

The Commission made clear in its modification opinion that the "modifications to the remedial orders are clarifying in nature rather than substantive, and are intended to eliminate any potential confusion as to the scope of the remedial orders." *See* Comm'n Modification Op. at 20. The Commission explained that it "nowhere excluded gate operators or commercial operators from the scope of the investigation or the remedial orders." *See id.* at 14. Rather, in the underlying investigation, "the Commission adjudicated infringement as to gate operators and commercial operators and understood the 'garage door systems' definition to include those products given the history of the litigation before the ALJ." *See id.*

Chamberlain also incorrectly equates "garage door systems" with "garage door openers," when "systems" can include both openers and operators. *See* Chamberlain's Mot. at 2. As discussed above, Chamberlain forfeited its opportunity to seek clarification at the Commission review stage. In any event, Chamberlain's conduct during the investigation was entirely consistent with an understanding that the scope of the investigation (and of the originally-issued

orders) included gate operators and commercial operators, as the ALJ defined such scope during the investigation and as the Commission confirmed in the modification proceeding.

The Commission is permitted under section 337(k)(1) and under Commission Rule 210.76 to modify the remedial orders to clarify their scope. *See* 19 U.S.C. § 1337(k); 19 C.F.R. § 210.76. Section 337(k)(1) provides that “any exclusion from entry or order under this section shall continue in effect until the Commission finds, and in the case of exclusion from entry notifies the Secretary of the Treasury, that the conditions which led to such exclusion from entry or order no longer exist.” 19 U.S.C. § 1337(k)(1). Commission Rule 210.76(a)(1) provides that “[w]hensoever any person believes that changed conditions of fact or law, or the public interest, require that an exclusion order, cease and desist order, or consent order be modified or set aside, in whole or in part, such person may request, pursuant to section 337(k)(1) . . . that the Commission make a determination that the conditions which led to the issuance of an exclusion order, cease and desist order, or consent order no longer exist.” 19 C.F.R. § 210.76(a)(1). Here, the Commission found there was such a change in conditions of fact or law justifying modification of the remedial orders. As the Commission explained:

By failing to petition for Commission review of the ALJ’s finding that the scope of the investigation includes gate operators and commercial operators, [Chamberlain] acquiesced to that scope of the investigation. Yet [Chamberlain] now asserts a narrow interpretation of that scope as recited in the remedial orders, inconsistent with the FID and the Commission’s final determination. This change in [Chamberlain’s] position is a changed circumstance or condition justifying modification of the remedial orders. . . . The changed circumstance also includes the confusion among the parties (and potentially U.S. Customs and Border Protection (“CBP”), which enforces the Commission’s exclusion orders) as to the scope of the Commission’s orders. Such confusion is a direct result of [Chamberlain’s] incorrect contention, after the issuance of the remedial orders, that gate operators and commercial operators are not within the scope of the Commission’s orders.

See Comm'n Modification Op. at 19; Overhead Door's Resp. at 8-9. Chamberlain's representations to the public about the scope of the original remedial orders are at odds with the parties' conduct and the issues adjudicated in the underlying investigation. *See* Comm'n Modification Op. at 17-19. Moreover, Chamberlain does not deny that it failed to petition for Commission review of the FID's findings with respect to the definition of the accused products and the scope of the investigation. Thus, the Commission correctly found changed conditions justifying clarification and modification of its remedial orders.

Chamberlain also incorrectly argues that modification proceedings under section 337(k) can only be used to rescind or narrow remedial orders, but not to clarify them. *See* Chamberlain's Mot. at 6-7. Chamberlain's argument finds no support in the language of section 337, the Commission's rules, or Federal Circuit and Commission precedent. The language of section 337(k) and Commission Rule 210.76 constrains the Commission's authority to terminate remedial orders in the absence of changed conditions but does not otherwise constrain the Commission's authority as Chamberlain suggests. Chamberlain's reliance on *Young Engineers* likewise is misplaced. *See id.* at 7 (citing *Young Eng'rs, Inc. v. USITC*, 721 F.2d 1305, 1312 (Fed. Cir. 1983)). In that case, the President disapproved the Commission's determination to issue remedial orders. *See Young Eng'rs*, 721 F.2d at 1305. As a result, there were no remedial orders in effect and the Court found that the Commission was not permitted to issue new orders under section 337(h) (now section 337(k)). *See id.* at 1311-12. The Commission's modification was justified in the present investigation because gate operators and commercial operators were adjudicated as infringing during the Commission investigation and were considered in the public interest and bonding analyses which inform the issuance and scope of the remedial orders. 19 U.S.C. §§ 1337(d)(1), (f)(1). Chamberlain's argument that the

Commission's authority is limited to narrowing or terminating remedial orders is also contrary to longstanding Commission practice, where modification may be used to clarify the scope of remedial orders or to adjudicate later-developed redesigns.¹¹

Accordingly, the Commission finds that Chamberlain fails to demonstrate an admittedly difficult legal question with respect to the Commission's modification of the remedial orders.

2. The Commission Complied with the Administrative Procedure Act and with the Commission's Rules.

The Commission complied with the Administrative Procedure Act ("APA") and with its own rules in clarifying the remedial orders. Chamberlain argues that the Commission violated the APA and Commission Rule 210.76 by "combining the institution, determination, and termination of a modification proceeding into a single act." *See* Chamberlain's Mot. at 8-10. As discussed above, Chamberlain had an opportunity in the violation investigation to cure any issue that it believed to be confusing or problematic. Instead, it chose not to do so and forfeited its arguments about the scope of the investigation and the definition of the accused products. In view of Chamberlain's conduct in the violation investigation, the Commission's process in clarifying and modifying its orders does not present an admittedly difficult legal question, particularly where the Commission complied with its own rules and with the APA.

¹¹ *See Allied Corp. v. USITC*, 850 F.2d 1573, 1576-82 (Fed. Cir. 1988); *see also Koki Holdings Am. Ltd.*, 830 F. App'x 320, 321-22 (Fed. Cir. 2020) (denying petition for mandamus where the petitioner argued that section 337(k)(1) "does not provide the Commission authority to 'add products to a previously-issued exclusion order'"); *Chamberlain Grp., Inc. v. ITC*, No. 18-2002, ECF 44 (Fed. Cir. Oct. 18, 2018) (denying stay of remedial orders pending appeal and resolution of modification proceedings concerning redesigned products); *Certain Marine Sonar Imaging Devices, Including Downscan & Sidescan Devices, Prods. Containing the Same, & Components Thereof*, Inv. No. 337-TA-921, Comm'n Op., 2016 WL 11603660, *6-7 (Aug. 29, 2016) ("*Certain Marine Sonar Imaging Devices*"), *dismissed as moot, Garmin Int'l, Inc. v. ITC*, 691 F. App'x 624 (Fed. Cir. 2017) (modifying exclusion order to clarify that it covers certain components of marine sonar imaging devices).

Chamberlain conflates various parts of Commission Rule 210.76 (19 C.F.R. § 210.76) and takes them out of context. Commission Rule 210.76 requires the Commission to “institute a modification or rescission proceeding by publication of a notice in the Federal Register.” 19 C.F.R. § 210.76(b)(5). The Commission complied with the rule by publishing in the Federal Register a notice instituting the modification proceeding. *See* 87 Fed. Reg. at 19709.

Commission Rule 210.76(b) also provides that the Commission may handle the modification proceeding itself or “may delegate” it to an ALJ, and if delegated, the ALJ will make a “recommended determination.” 19 C.F.R. § 210.76(b). Should there be a referral to an ALJ, the “[p]arties may submit comments on the recommended determination within 10 days from the service of the recommended determination.” *Id.* at § 210.76(c).

In the modification proceeding at issue here, there was no referral to the ALJ, and thus there was no recommended determination. Neither section 337, the APA, nor Commission Rule 210.76 requires referral of a modification proceeding to the ALJ. Nor did Chamberlain request such referral in its response to Overhead Door’s motion to clarify and/or petition to modify. The Commission routinely institutes and terminates modification or rescission proceedings in the same step where no further fact-finding or delegation to an ALJ is necessary; this practice conserves administrative resources and does not violate the APA, section 337, or Commission rules. *See, e.g., Certain Marine Sonar Imaging Devices*, Inv. No. 337-TA-921, Comm’n Notice, 2016 WL 10689514 (Aug. 18, 2016).

Thus, Chamberlain’s argument that it (or the public) was entitled to comment on a recommended determination misapprehends administrative law generally, and Commission Rule 210.76 specifically. Moreover, as discussed earlier, the Commission had already received comments from the public with respect to gate operators and commercial operators before

issuing the original remedial orders, negating any argument that the public was deprived of an opportunity to comment on the scope of the remedial orders. *See Overhead Door's Resp.* at 10-11. Accordingly, the Commission finds that Chamberlain fails to demonstrate an admittedly difficult legal question with respect to the Commission's institution and termination of the modification proceeding in a single step.

3. The Period of Presidential Review Does Not Restart Under Section 337(j) with Modified Orders that Merely Clarify their Scope.

The Commission complied with section 337(j) because the period of Presidential review does not restart when a modification merely clarifies the scope of the remedial orders. Chamberlain incorrectly asserts that it was entitled under section 337(j) to a restart of the 60-day period of Presidential review after the Commission issued the modified remedial orders. *See Chamberlain's Mot.* at 10-13.

The Commission transmitted to the USTR the original remedial orders upon their issuance along with the Commission's opinion, the ALJ's FID, and the record of the investigation. Those materials demonstrated that the remedial orders as originally issued subsumed gate operators and commercial operators. The Commission also sent the modified orders to USTR when they issued, along with the Commission clarification/modification opinion. The Commission explained that the modified orders were clarifying and therefore not subject to another 60-day review process, consistent with longstanding practice. As USTR stated in *SSIH*, "[t]he sixty[-]day period provided for Presidential review of the Commission determination was not extended since the amendment made by the Commission did not alter the nature of the determination or the order materially." *SSIH Equip. S.A. v. USITC*, 718 F.2d 365, 369 (Fed. Cir. 1983). That understanding continues today.

Chamberlain’s stay motion asserts that it was prejudiced because it was entitled to further Presidential review. Chamberlain, however, does not assert that it was unable, or lacked the opportunity, to discuss gate operators and commercial operators with USTR after the issuance of the original remedial orders. Indeed, the limited public record indicates that Chamberlain did have such discussions. *See* Letter from Chamberlain to USTR (Mar. 16, 2022), available at <https://www.politico.com/f/?id=0000017f-ae28-d5d4-a97f-afacebab0000>.

Chamberlain also argues that the language of the modified remedial orders shows that it “may continue importing under bond until the conclusion of Presidential review (*i.e.*, up to sixty days), with such review running from ‘the day after this Order is received’ by the President’s representative,” and that “[t]his Order’ can mean only the modified orders themselves.” *See* Chamberlain’s Mot. at 13. It is evident, however, from the language of the Order, Modified LEO at ¶ 3, that “this Order” refers to the original remedial orders which were actions under section 337(d), (e), and (f), triggering the Commission’s requirement to transmit the orders to the President under section 337(j). The modified orders are not similarly subject to section 337(j) because the Commission’s determination was merely clarifying in nature. If Chamberlain was unclear that the original remedial orders encompassed gate operators and commercial operators, any doubt as to the scope of the original orders was extinguished when the Commission issued its modification determination and the modified remedial orders on March 30, 2022.

Accordingly, the Commission finds that Chamberlain fails to demonstrate an admittedly difficult legal question with respect to the Commission’s compliance with section 337(j).

4. Chamberlain’s Conclusory Patent Assertions Fail to Demonstrate an Admittedly Difficult Legal Question.

Chamberlain also provides two conclusory paragraphs in support of its arguments that the Asserted Patents are neither infringed nor patentable. *See* Chamberlain’s Mot. at 13-15. The

Commission and the FID fully explained their reasoning as to the infringement and validity of the Asserted Patents under 35 U.S.C. § 101. The Commission addressed the issues that Chamberlain purports to raise now, and Chamberlain fails to account for the Commission’s findings and reasoning. *See* Comm’n Op. at 55-60 (discussing infringement of the ’718 and ’895 patents); Comm’n Op. at 60-66 (discussing patent-eligibility of ’718 and ’895 patents); FID at 42-50 (rejecting Chamberlain’s construction and prosecution history disclaimer argument as to the ’935 patent); FID at 99-104 (discussing patent-eligibility of the ’935 patent); FID at 339-344 (discussing patent-eligibility of ’718 and ’895 patents).

Because Chamberlain does not address the Commission’s findings, much less explain why they present admittedly difficult legal questions (indeed, infringement is a question of fact), the Commission finds that Chamberlain fails to establish an admittedly difficult legal question with respect to non-infringement and patentability of the Asserted Patents.

C. Chamberlain Fails to Establish Irreparable Harm

Chamberlain represents that “[t]he ITC’s orders of March 30, 2022 cover nearly 100% of Chamberlain’s Garage Door Opener, Gate Operator, and Commercial Operator products.” Chamberlain’s Mot. at 16. While the Commission recognizes that Chamberlain’s entire product lines may be impacted, the Commission finds no irreparable harm because Chamberlain is responsible for and failed to mitigate its own harm.

Chamberlain is a multibillion-dollar company serving customers worldwide. Chamberlain’s international sales are not affected by the Commission’s remedial orders. Chamberlain relies on a three-page declaration to assert economic harm from the issuance of the modified remedial orders. *See* Chamberlain’s Mot. at 15-16; Overhead Door’s Resp. at 17-18. Such harm, however, is insufficient to warrant a stay. *See, e.g., Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (“[E]conomic loss does not, in and of itself, constitute irreparable

harm.”). Chamberlain does not demonstrate the type of irreparable harm justifying the entry of a stay in this case. *Compare Standard Havens*, 897 F.2d at 515 (discussing “employee layoffs, immediate insolvency, and, possibly, extinction”). Nor does Chamberlain demonstrate that its alleged harm is traceable to the exclusion from entry pursuant to the LEO of gate operators and commercial operators in particular. Indeed, the asserted harm to Chamberlain relating to gate operators and commercial operators appears to be small (less than a third) compared to that alleged in connection with garage door openers. *See* Chamberlain’s Mot. at 16.

As discussed earlier, any harm from the exclusion from entry pursuant to the LEO of gate operators and commercial operators is the direct result of Chamberlain’s own failure to petition for Commission review of the FID’s findings that the definition of the accused products and the scope of the investigation include such products. The law is settled that self-inflicted harm cannot be irreparable. *See* 11A Charles Alan Wright et al., *Federal Practice & Procedure* § 2948.1, at 138 (2013) (“Not surprisingly, a party may not satisfy the irreparable harm requirement if the harm complained of is self-inflicted.”); *Safari Club Int’l v. Salazar*, 852 F. Supp. 2d 102, 123 (D.D.C. 2012) (explaining that plaintiffs “who decline the opportunity to avail themselves of a regulatory scheme to avoid the very harm for which they seek injunctive relief have been denied the relief”) (modifications and citations omitted); *Barton v. District of Columbia*, 131 F. Supp. 2d 236, 247 (D.D.C. 2001) (denying a preliminary injunction because “the plaintiffs in this case seem to have suffered the most from their own actions or inactions”).

Moreover, Chamberlain has a duty to mitigate any harm. Chamberlain previously represented to the Commission (in its opposition to Overhead Door’s motion to clarify and/or petition to modify at 16 n.2) that it “has engaged in a robust and decisive redesign effort to remove the features found to infringe the [Asserted Patents].” Chamberlain’s redesign efforts

began well before the Commission’s infringement findings, as Chamberlain presented redesigns for adjudication before the Commission in the underlying investigation (those redesigns were found to infringe the Asserted Patents). *See* Comm’n Op. at 23, 60. In any event, as the Federal Circuit explained, “[o]ne who elects to build a business on a product found to infringe cannot be heard to complain if an injunction against continuing infringement destroys the business so elected.” *Merial Ltd. v. Cipla Ltd.*, 681 F.3d 1283, 1306 (Fed. Cir. 2012).

Accordingly, the Commission finds that Chamberlain fails to establish irreparable harm.

D. The Balance of Hardships Does Not Weigh in Favor of a Stay

The Commission also finds that the balance of hardships does not warrant a stay. Chamberlain’s principal argument in support of the balance of hardships factor is that Overhead Door “faces virtually no cognizable harm from the proposed stay.” *See* Chamberlain’s Mot. at 16. To the extent, however, that Chamberlain is harmed by the remedial orders, Overhead Door, which directly competes in the marketplace with Chamberlain (*see* FID at 356), is also harmed by a stay. *See, e.g., Douglas Dynamics, LLC v. Buyers Prods. Co.*, 717 F.3d 1336, 1345 (Fed. Cir. 2013) (“Where two companies are in competition against one another, the patentee suffers the harm—often irreparable—of being forced to compete against products that incorporate and infringe its own patented inventions.”); *accord* Overhead Door’s Resp. at 19-20.

In addition, as discussed *supra*, the Commission finds that Chamberlain bears responsibility for the consequences of its own conduct and failed to mitigate its own harm. Accordingly, the Commission finds that the balance of hardships does not weigh in favor of a stay.

E. The Public Interest Does Not Weigh in Favor of a Stay.


In the underlying investigation, the Commission considered public interest statements from the parties and from the public concerning all the accused products, including garage door

openers, gate operators, and commercial operators. *See* Comm’n Op. at 73-82. The Commission determined that the public interest does not preclude the issuance of the remedial orders in this investigation. *See id.* Specifically, the Commission found “a multitude of other competitors making directly competitive articles who could supply U.S. demand in the event [Chamberlain’s] imports were excluded.” *Id.* at 77; *see also* Overhead Door’s Resp. at 20. While the Commission acknowledged there may initially be “a market shortfall,” the Commission found that “other suppliers can ramp up their supply in a short period, within three (3) months.” *See* Comm’n Op. at 79. Chamberlain itself admitted that “a transition period of at least three months . . . would ameliorate harm to the public interest.” *Id.* Notably, that three-month transition period has now lapsed. Accordingly, the Commission finds that the public interest factor does not weigh in favor of a stay.

IV. CONCLUSION

For the foregoing reasons, the Commission finds that, on balance, the stay factors weigh against granting Chamberlain’s motion to stay the modified remedial orders pending appeal. Accordingly, the Commission has determined to deny Chamberlain’s motion to stay.

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: May 13, 2022

**CERTAIN MOVABLE BARRIER
OPERATOR SYSTEMS AND
COMPONENTS THEREOF**

**Inv. No. 337-TA-1209
(Modification)**

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **COMMISSION OPINION** has been served to the following parties as indicated, on **May 13, 2022**.



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