



Sonos Has Tough Fight Ahead To Exclude Google Products From the US

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News that Sonos had won a [preliminary ruling at the International Trade Commission](#) (ITC) that Google infringed on five of its wireless audio system patents was hailed as a David-versus-Goliath win for the home audio company and also [sent its share price soaring](#).

But getting to the next step and securing a meaningful import ban from the commission could be an uphill battle for Sonos.

Over the next four months, it must fight to secure an ITC exclusion order that would not only cover Google's smart speakers and Chromecast devices, but also products that can stream music – such as Pixel phones, Slate tablets and computers.

The tricky part is that the ITC weighs the public interest before it excludes a product. Google is seeking to build a public interest case, and third parties have joined in with an argument that individuals with disabilities need its smart home products to live more independently; while others have argued that people's livelihoods and the US economy would take a hit, as an army of technology companies and software developers dedicate their work to designing apps for Google products.

Sonos counters that its own products and many other companies' offerings can fill the void if Google's options are taken off the shelf.

But while it might succeed in convincing the ITC that there are plenty choices for consumers, there are records in the ITC case that show it all could be a moot point.

Google has already reworked the computer code for the challenged products. If the ITC concludes that the redesigns do not infringe, then a simple software update might allow it to import non-infringing products, sidestepping any exclusion order.

"The judge approved our workaround," says Google spokesman Jose Castañeda, adding that his company denies infringing on Sonos's patents. "We compete on the quality of our products and the merits of our ideas. We disagree with this preliminary ruling and will continue to make our case in the upcoming review process."

Sonos didn't respond to a request for comment about the redesign. However, its chief legal officer, Eddie Lazarus, did note in a statement that the ITC judge found that the company's five patents are valid and that Google infringed on them.

"We are pleased the ITC has confirmed Google's blatant infringement of Sonos' patented inventions," he said. "This decision re-affirms the strength and breadth of our portfolio, marking a promising milestone in our long-term pursuit to defend our innovation against misappropriation by Big Tech monopolies."

Initial determination

On 13 August, Chief Administrative Law Judge Charles E Bullock issued an initial determination saying that there had been a violation of Section 337 of the Tariff Act of 1930 in Google's importation and sale in the US of audio players and controllers, their components, and other products containing them. Such products violated all five of Sonos's patents, said the initial determination.

The public version of the decision ran to only two pages but, at some point, the commission will post the full 200-page ruling after redacting confidential information, ITC spokeswoman Peg O'Laughlin confirmed.

Sonos's legal campaign against Google started in [January 2020 with a federal lawsuit in California](#), and a parallel case at the ITC. The companies had partnered in the past to get Google music to stream on Sonos speakers. In the litigation, Sonos accused Google of using knowledge from that partnership to develop the Google Chromecast multi-room audio product.

Sonos has alleged that Google audio players and audio controllers – such as cell phones, tablets and computers – infringe the five patents. Those patents cover: multiple speakers playing a song at the same time; speakers changing their equalisation whether paired or unpaired; controllers that adjust volume of a group of speakers together, or just one speaker in the group; and controllers that set up a speaker on a home WiFi system.

But Google has denied Sonos's allegations.

"There is no basis for Sonos's claims. The technologies Google uses were all independently developed by Google," said the company's ITC response. "The five asserted patents describe older technologies – not the advanced technologies Google uses."

Google has also sued Sonos separately, alleging the [audio company has infringed on five Google patents](#), three of which the search engine purchased from Motorola years ago. When it learned Sonos might assert even more patents against it, [Google filed more litigation](#) asking for a declaratory judgment of non-infringement.

The companies are also in litigation outside the US. In April, a [Hamburg court handed Sonos a preliminary injunction](#) that stopped an Irish Google subsidiary from selling Cast technology that infringes on a Sonos patent in Germany.

Sonos has enjoyed litigation victories against other opponents.

It [won a jury trial against speaker manufacturer Denon](#), owned by D&M Holdings, and they later entered a settlement.

In 2019, [Sonos sued Lenbrook](#) Industries Ltd, which produces Bluesound products, and they later settled. Lenbrook entered a multi-year agreement to licence Sonos patents for BlueOS devices worldwide.

Public interest statements

While there's always a strong interest in protecting patents, the ITC must weigh IP rights against the public interest, explains Christina Ondrick, principal in McKool Smith in Washington DC.

She says that a fight over this issue – which receives more attention in the ITC nowadays – is teed up next in the Sonos and Google dispute.

"You are seeing efforts by the commission to craft exclusion orders that are tailored to prevent harm to the public interest," Ondrick states. "The ubiquitous nature of the products in this investigation has already drawn a large amount of third-party attention."

On 16 August, the commission asked for comments about the public impact of a limited exclusion order that would stop Google from importing infringing products.

"I think Google and third parties will come armed to make their best arguments as to why public health and welfare concerns are an overriding concern, to try and prevent issuance, or tailor any exclusion order," Ondrick says.

On the other side, Ondrick believes Sonos will keep arguing that there are plenty of other sources of similar products to fill the void, if Google cannot import its versions to the US. Sonos must show it can supply them, or license other companies to do it, producing enough volume to replace the Google options, she explains.

Very early in the investigation, there were eight public interest statements that sided with Google.

Six of these noted that many blind people and those with other physical disabilities have come to rely upon Google smart speakers in their everyday lives. Some who used to depend on caretakers now use Google smart home products to control their lights, heating, air conditioning, kitchen appliances and more, according to the statements.

Trade associations of tech companies and software developers argued that excluding the Google products would harm US consumers and workers. Many companies and software developers work to develop apps for Google's products, explained a statement by the Computer & Communications Industry Association and the Developer's Alliance.

Another public interest statement took issue with the great breadth of Google products that Sonos seeks to exclude.

"These devices are not in any way configured or designed to serve as 'audio players' or to practice the technology claimed in the asserted patents except that they are sold with preinstalled music-streaming software through which a consumer can also manage smart speakers on a network," said the statement by the R Street Institute, Public Knowledge and Innovation Defense Foundation.

Google argues that excluding its products would harm millions of people in the US.

"Group audio playback is simply one of thousands of features provided by the accused products, with affect numerous aspects of the lives of millions of individual Americans and businesses across the United States," the company said in its own public interest statement. "Excluding the accused products would also disrupt other US industries and damage other US businesses and developers that rely on Google's products."

But Sonos countered that people with disabilities are not going to lose access to smart home devices if Google's products are excluded from importation. It argued that it and other companies – like Bose Corp, Harman International or Yamaha Corp - could fill the void if Google's smart speakers were blocked. If Google could not import its phones, tablets and computers, other companies like Motorola Mobility, Nokia Corp or HTC Corp could replace them in the market, Sonos claimed.

Sonos claimed in ITC filings that the third parties who submitted public interest statements had gotten funding from Google and largely did not disclose it.

IAM has ascertained that Google is a member of both the Communications Industry Association and the Developer's Alliance. According to the CCIA website, the company's VP of Policy and Government Affairs, Mark Isakowitz, [sits on the association's board](#).

Redesign arguments

An exclusion order sometimes hits a business and its sales and revenue hard, but not always. Many companies choose to redesign their products during the ITC process.

Ondrick notes that when the infringing product is software, rather than hardware, it's easier for a company to implement a design around. It only takes a software update.

"If I have a design-around, and all of my speaker products that are imported are the design-around, then the exclusion order exists – but it doesn't impact future products," says Ondrick. "As long as all of my new products are a design-around, then I am not violating the exclusion order."

If it's true that Google already redesigned its software and the ITC judge approved the workaround – which isn't yet reflected in public case filings – it could take the wind out of Sonos's sails in the ITC case.

The parties argued about the redesign in late August and early September of 2020.

Sonos asked the judge to strike Google's redesigned software code, saying it came in too late during the investigation, but the ITC judge issued an order in early September 2020 that denied the request.

The order said Sonos argued the redesigns weren't fixed or definite, and alleged that Google hadn't disclosed how the redesigns were non-infringing. Google hadn't shown it had imported the redesigned products, Sonos contended.

Google's position was that it disclosed its redesigns in time, before deadlines in the case's schedule, said the order. Google claimed that it gave Sonos the source code and products using the code for inspection. This put Sonos on notice and gave it a chance for more discovery, Google argued.

The judge ruled that Google had met the test to have its redesigned products adjudicated during the case.

"The redesigns are sufficiently fixed such that an infringement determination can be made," the order said. "Google's redesigns should not be stricken."

Next steps

On 13 December, the ITC is scheduled to make a final determination in the case.

When the commission reviews the initial determination, it could adopt the ruling, modify it or reverse it, says Lisa Kattan, partner in Baker Botts in Washington DC.

"While the commission often modifies initial determinations, it's more often than not that they uphold the decision if there has been a violation of Section 337," says Kattan, chair of her firm's ITC practice group.

Next, the US president will get 60 days to review the ruling, with an option to veto an exclusion order.

Both Kattan and Mike Doman, associate with Adduci, Mastriani & Schaumberg in Washington DC, say it's very unlikely that Joe Biden would overturn an exclusion order against Google.

In 2013, then-President Barack Obama vetoed an ITC exclusion order that Samsung won against Apple for the iPhone and some iPads. It was the first time since 1987 that an exclusion order had been overturned in this way.

"The last veto referred to the possibility that the patents at issue in that investigation were standard essential," Kattan explains. Doman adds that a presidential veto has only happened six times in the ITC's history.

"It is really something that is reserved for situations where blocking the imports would have some adverse impact on public interest," he says.