

**UNITED STATES INTERNATIONAL TRADE COMMISSION  
WASHINGTON, D.C.**

**In the Matter of**

**CERTAIN HEALTHCARE BARCODE  
READERS AND COMPONENTS  
THEREOF**

Investigation No. 337-TA-\_\_\_\_\_

**COMPLAINT UNDER SECTION 337 OF THE TARRIF ACT OF 1930, AS  
AMENDED**

COMPLAINANT:

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PROPOSED RESPONDENTS:

Honeywell International Inc.  
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New Jersey 07962

Hand Held Products, Inc.  
9680 Old Bailes Road, Fort Mill  
South Carolina 29707

Intermec Technologies Corporation  
9680 Old Bailes Road, Fort Mill  
South Carolina 29707

Intermec IP Corp.  
9680 Old Bailes Road, Fort Mill  
South Carolina 29707

Intermec, Inc.  
16201 25th Ave. W.  
Lynwood, WA 98087-2520.

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**LIST OF EXHIBITS**

<b>Exhibit Number</b>	<b>Description</b>
Exhibit No. 1	Photograph of Honeywell's accused Xenon 1902 model
Exhibit No. 2	Datasheet for Honeywell Enhanced Xenon 1902h healthcare barcode scanner
Exhibit No. 3	Datasheet for Honeywell Enhanced Xenon 1900h healthcare barcode scanner
Exhibit No. 4	Datasheet for Honeywell SF61B healthcare barcode scanner
Exhibit No. 5	Datasheet for Honeywell SG20 healthcare barcode scanner

## **I. INTRODUCTION**

1. Complainant The Code Corporation (“Code”) respectfully requests that the United States International Trade Commission (“Commission”) institute an investigation into violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, by proposed respondents, Honeywell International Inc.; Hand Held Products, Inc., d/b/a Honeywell Scanning & Mobility; Intermec Technologies Corporation; Intermec IP Corporation; Intermec Technologies Corporation; Intermec IP Corp.; and Intermec, Inc. (collectively, “Honeywell” or “Proposed Respondents”).
2. This complaint arises under 19 U.S.C. § 1337 (a) (1) (A) based upon the anticompetitive and deceptive practices of Honeywell which have had the effect or threat of restraining and monopolizing trade and commerce in the United States. The unfair acts and methods of competition include violations of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1, 2; Section 3 of the Clayton Act; and Section 5 of the Federal Trade Commission Act
3. Code seeks a limited exclusion order barring from entry into the United States all healthcare barcode readers and components thereof imported, sold for importation, or sold after importation into the United States in connection with the unfair methods of competition and unfair acts set forth in this complaint.
4. Code further seeks permanent cease and desist orders prohibiting Proposed Respondents from engaging in further unfair competition, or in the importation, sale, sale for importation, marketing, advertisement, distribution, offering for sale, use after importation, packaging, transfer (except for exportation), solicitation of United States agents or distributors, and aiding and abetting other entities in the sale for importation, sale after importation, transfer (except for exportation), or distribution of all accused products.

## **II. PARTIES**

### **A. Complainant**

5. Complainant The Code Corporation is a Delaware corporation with its principal place of business at 12393 South Gateway Place Park, Suite 600, Draper, Utah 84020.

### **B. Respondents**

6. Honeywell International Inc. is a Delaware corporation with its principle place of business at 101 Columbia Road, Morristown, New Jersey 07962.
7. Hand Held Products, Inc. is a wholly-owned subsidiary of Honeywell International Inc. and a Delaware corporation with its principal place of business at 9680 Old Bailes Road, Fort Mill, South Carolina 29707.
8. Intermec Technologies Corporation is a wholly-owned subsidiary of Intermec, Inc. and a Washington corporation with its principal place of business located at 9680 Old Bailes Road, Fort Mill, South Carolina 29707.
9. Intermec IP Corp. is a wholly-owned subsidiary of Intermec Technologies Corporation and a Delaware corporation with its principal place of business located at 9680 Old Bailes Road, Fort Mill, South Carolina 29707.
10. Intermec, Inc. is a wholly-owned subsidiary of Hand Held Products, Inc. and a Delaware corporation with its principal place of business at 16201 25th Ave. W., Lynwood, WA 98087-2520.

## **III. RESPONDENTS' UNLAWFUL AND UNFAIR ACTS**

### **History of Barcode Reader Technology**

11. In 1948, a local food chain store owner approached Drexel Institute of Technology in Philadelphia asking about research into a method of automatically reading product information during checkout. Bernard Silver, a graduate student at Drexel Institute, along

with fellow graduate student Norman Joseph Woodland, teamed together to develop a solution. See <https://www.barcodesinc.com/articles/history.htm>.

12. Approximately seventy (70) years ago, on October 20, 1949, Mr. . Woodland and Mr. Silver invented the first barcode and the first barcode reader.
13. Barcoding was first used commercially in 1966, but to make the system acceptable to the industry as a whole, standardization was needed. See <https://www.barcodesinc.com/articles/history.htm>. In 1970, Logicon Inc. developed the Universal Grocery Products Identification Code (“UGPIC”). The first company to produce barcode equipment for retail trade using UGPIC was the American company Monarch Marking in 1970. *Id.*
14. In 1972, a Kroger store in Cincinnati began using a bull’s-eye code. *Id.* During that same timeframe, a committee was formed within the grocery industry to select a standard code to be used in the industry. IBM proposed a design, based upon the UGPIC work and similar to today’s UPC code. On April 3, 1973, the committee selected the UPC symbol (based on the IBM proposal) as the industry standard. The success of the system since then has spurred on the development of other coding systems. George J. Laurer is considered the inventor of UPC or Uniform Product Code.
15. In June of 1974, the first UPC scanner was installed at a Marsh’s supermarket in Troy, Ohio. On June 26, 1974, Clyde Dawson pulled a 10-pack of Wrigley’s Juicy Fruit gum out of his basket and it was scanned by Sharon Buchanan at 8:01 am. The pack of gum is now in the Smithsonian Museum.
16. Today, most supermarkets read barcodes using laser scanner technology first developed in the 1960s. Unlike the old photo-sensor system, which reads a barcode by moving a

photo-sensor with a small aperture across the barcode, a laser scanner moves, or scans, the extremely bright pinpoint of laser light across the barcode, typically 660nm red in color. A photo-sensor(s), with a wide field of view encompassing the entire barcode, is covered by a filter which passes the 660nm red color while blocking ambient illumination of other wavelengths. As the scanning laser moves across a white space the reflected intensity is significantly higher than when the laser is moving across a dark bar of the barcode thereby generating the fluctuations in illumination intensity for reading the barcode.

17. In 1995, Dr. Yinjuin Wang of Metanetics introduced the first two dimensional (“2D”) CMOS imager-based barcode reader.
18. In 1997, Code was founded by entrepreneurs in the Charleston, South Carolina area.
19. By 2000, Code released the Zap Scanner, which was later renamed the CR1.1. Also in 2000, Code developed a proprietary and secure two-dimensional barcode symbology that would eventually be called GoCode®. Additionally, during this time, Code launched its CR1, an ultra-high density VGA CMOS two-dimensional imaging based barcode reader. This was more than seven (7) years before Honeywell entered the barcode market with its acquisition of Hand Held Products.
20. The initial market targeted by Code was publishers that would use the GoCode within advertisements. When a barcode in an advertisement was read by a barcode reader, a URL within the GoCode associated with the advertisement or publisher would be provided to a web-browser for the purpose of directing the web browser to a website with additional information about an advertised product. This technology was a precursor to the QR codes used in magazines and on products today which, when read by a smart phone, takes a web-browser operating on the smart phone to a website for additional information.

21. By 2003, Code launched the CR2, its first barcode reader with dual field optics and a 1.3 megapixel CMOS imager. This provided the ability for the same barcode reader to function in more applications with diverse cell/bar sizes and higher densities than any other 2D imaging based barcode reader on the market. The dual field optics means that two sets of optics are used to focus two separate images of the barcode within the field of view of each optic onto the photo-sensor array. The far field optics were optimized for reading wide 1D barcodes while the near field optics were optimized for reading high density 2D barcodes (typically square or with a much smaller aspect ratio than a 1D barcode). The CR2 was also one of the very first 2D imaging based barcode readers available with Bluetooth® communications.
22. The CR2 enabled Code to expand into other markets, including the market for hand held 2D imaging based barcode readers for use in healthcare facilities (the “Healthcare Market” or “Relevant Market”). Code’s first healthcare customer was Brigham and Women’s Hospital in Boston in 2003. <https://www.ftc.gov/enforcement/cases-proceedings/131-0070/honeywell-international-in-c-matter> At that time, Code was the only company tendering a 2D barcode reading solution that could read the small 2D barcodes used by the Hospital. In fact, Code has continually redesigned and modified its CR2 product line to target the needs of healthcare providers in the Healthcare Market.
23. Following in the footsteps of Code’s success, Hand Held Products (now part of Honeywell), Metrologic (now part of Honeywell), and Symbol Technologies (now part of Zebra) entered the Healthcare Market offering 2D solutions.. While these late entrants, like Honeywell, have the financial strength and power in other markets to give them the

resources to muscle into the Healthcare Market, their products, on information and belief, are technologically inferior to Code's. By way of example only, and on information and belief, products offered by Honeywell are not designed for the Healthcare Market. Rather, these products are designed for other, general uses, like manufacturing, and are "re-skinned" with Healthcare Plastic (defined below). But, these re-skinned products, such as the Honeywell (HHP) 4600g, are not technologically directed at the needs of the Healthcare Market. As a result, they are not technologically equivalent to Code's products. Just adding a new Healthcare Plastic does not make a competing product the same as Code's.

24. In September 2007, Code started development of its second generation dual-field optics product, the CR2500 series line of barcode readers, an innovative product designed specifically to meet the needs of the Healthcare Market. The CR2500 was launched in October 2008.

25. Code attributes much of its success in the Healthcare Market to its innovative technologies implemented in its barcode readers including but not limited to:

- Code's dual field optics in the CR2 and CR2500 enable Code to read all symbologies at all densities and on a variety of surfaces that were known to be in use in healthcare facilities;
- The configurability and scripting technologies Code engineered into its barcode readers made Code barcode readers easy to operate with a healthcare facility's existing HIS systems;
- Code's programmable dual scan buttons enable the CR2500 to operate with two different HIS systems simultaneously in the same facility;
- Code's glare reduction technology in the CR2500 enable reading of barcodes printed on reflective and curved surfaces, including plastics;
- Code's CR2500 includes both a traditional "gun" form factor and a popular "palm" form factor, both sharing common accessories such as batteries and chargers;

- Code’s CR2500 implement multiple good read indicators for a variety of working environments within a hospital, including the traditional beep tone, a silent LED indicator, and a silent vibration indicator;
- Code’s universal mount chargers provide flexible mounting options for a variety of limited work space environments, including medical carts;
- Code implemented the most up to date Bluetooth standard in the CR2500 to enable wireless barcode reading while avoiding interference with the facilities WiFi network;
- Although more expensive than traditional plastics, Code implemented advanced plastics in its housings which could stand up to frequent cleaning with the disinfectants in use at health care facilities (“Healthcare Plastics”); and
- Code implemented several innovative power management technologies to enable use of its barcode readers for a full 12-hour shift on a single charge.

26. In 2012, Code launched its next generation product, the CR2600, which has sold more than 150,000 units and, until Honeywell’s anticompetitive and unfair business practices, may have been the #1 selling product into the healthcare market since its launch.

27. Code has expended tremendous time and financial resources researching and developing 2D imaging based handheld barcode readers for the Healthcare Market (“Healthcare Barcode Readers”), including Code’s 2600 series line of barcode readers, its next generation Healthcare Barcode Reader product launched in 2012 to address preventable errors across every department of a healthcare facility.

### **Honeywell’s Late Entry Into the Barcode Reader Marketplace**

28. In December 2007, three (3) months after Code started development of its second generation Healthcare Barcode Reader, the CR2500, the global conglomerate, Honeywell International Inc., made its first entry into the broader barcode scanning industry with its \$390 Million purchase of Hand Held Products, Inc. See <http://news.thomasnet.com/companystory/honeywell-announces-agreement-to-acquire-handheld-products-inc-imaging-and-mobile-innovator-534890>.

29. Honeywell subsequently expanded its footprint in the barcode reader market by acquiring Metrologic Instruments on July 2, 2008 for \$720 Million. See [https://web.archive.org/web/20090328172251/http://metrologic.com/corporate/press\\_rel/honeywell/pr\\_070208.htm](https://web.archive.org/web/20090328172251/http://metrologic.com/corporate/press_rel/honeywell/pr_070208.htm).
30. Honeywell continued its acquisition of market power by purchasing Intermec on September 17, 2013 for \$600 Million. See [http://www.intermec.co.uk/about\\_us/newsroom/press\\_releases/2013-09-Honeywell-Scanning-Mobility-Day-1.aspx](http://www.intermec.co.uk/about_us/newsroom/press_releases/2013-09-Honeywell-Scanning-Mobility-Day-1.aspx).

### **Honeywell Acquired Market Power That Concerned the FTC**

31. In 2013, the Federal Trade Commission filed a complaint to prevent Honeywell International Inc.'s planned acquisition of Intermec, Inc. The FTC's focus was the 2D scan engine market. 2D scan engines are a submarket of the larger 2D barcode reader market. The Healthcare Market is also a submarket of the larger 2D barcode reader market as well. 2D scan engines are a component of 2D barcode readers.
32. The Federal Trade Commission explained the basis for its concern that Honeywell would violate antitrust laws:

The market for 2D scan engines in the United States is highly concentrated. Honeywell, Intermec and Motorola are the three most significant participants in the 2D scan engine market in the United States. Post-Acquisition, the combined share of two firms – Honeywell and Motorola – would be in excess of 80%. Additionally, Honeywell, Intermec and Motorola are the only 2D scan engine firms in the U.S. that have deep and broad portfolios of relevant IP that insulate them and their customers from infringement suits.

*See Complaint, available at*

<https://www.ftc.gov/enforcement/cases-proceedings/131-0070/honeywell-international-inc-matte>

r.

33. If Honeywell were to have acquired monopoly power in the 2D scan engine market, it could have leveraged this monopoly into the larger 2D barcode market, as well as into the Healthcare Market because of its ability to keep competitors from entering into the 2D scan engine market. As noted by the FTC in its Complaint, Honeywell has a substantial IP portfolio related to 2D scan engines. The FTC was concerned that Honeywell would use this portfolio, and the threat of infringement suits, to drive out or keep competitors from the market. If it were successful in this strategy, Honeywell could then force others to license its IP as opposed to trying to develop competing, non-infringing technology. The practical impact would be that Honeywell would be the dominant force in the 2D scan engine market, and all manufacturers and developers would be forced, ultimately, to license Honeywell's technology.
34. What the FTC was concerned about Honeywell doing in the 2D scan engine market/2D barcode market is exactly what they are attempting to do to gain monopoly power in the Healthcare Market.
35. The Federal Trade Commission's investigation culminated in Honeywell entering into a consent order designed to prevent it from excluding one competitor, Datalogic, from the 2D Scan Engine Market. *See* Decision and Order, *available at* <https://www.ftc.gov/enforcement/cases-proceedings/131-0070/honeywell-international-in-c-matter>.
36. On September 17, 2013, Honeywell acquired Intermec, Inc. and thereby cemented a dominant position in the 2D imaging based barcode reader market. *See* Honeywell Completes Acquisition of Intermec, *available at*

[http://www.intermec.co.uk/about\\_us/newsroom/press\\_releases/2013-09-Honeywell-Scanning-Mobility-Day-1.aspx](http://www.intermec.co.uk/about_us/newsroom/press_releases/2013-09-Honeywell-Scanning-Mobility-Day-1.aspx).

**Honeywell's Anticompetitive Acts Have Partially Excluded Code And Threaten to Fully Exclude Code From the Healthcare Market**

37. Since its acquisition of Intermec and establishment of its market power in the overall 2D barcode market, Honeywell has used its market power to coerce distributors, resellers, and developers of integral software into joining a campaign to attempt to exclude Code from the Healthcare Market and convert all Code sales into Honeywell sales. Honeywell also leveraged its market power to attempt to extract confidential information, such as client lists, from companies that distributed both Code and Honeywell products.
38. [REDACTED] is a barcode reader reseller for both Code and Honeywell. On March 6, 2017, Honeywell employee [REDACTED] sent an email to officers of [REDACTED] requesting that they contact end users of Code's products and use Honeywell's talking points and FAQ (the "Talking Points") to call into question Code's viability as a company. In those Talking Points, Honeywell, through [REDACTED] falsely asserted that "Code has engaged in widespread infringement affecting a broad range of its current product portfolio," and stated that if end users "are concerned in any way we could introduce our Honeywell Xenon solution as an excellent alternative."
39. [REDACTED]  
[REDACTED]  
[REDACTED] uses Code scanners, and warning that "purchasing and use of Code scanners" would be "with the knowledge that these actions may mean you are doing so under patent infringement." After that threat came a proposed way out: "If you are

concerned in any way and if you would like to change to the legal patented technology, we can offer the Honeywell Xenon solution as an excellent competitive alternative.” In other words, end users could either risk reprisal from Honeywell, the more powerful company, if they continued to rely on Code’s allegedly illegal products, or switch to Honeywell’s “legal patented” products. [REDACTED]

[REDACTED] officers revealed that the [REDACTED] Email had been written by Honeywell and that it was part of Honeywell’s “marketing program.”

40. In exchange for [REDACTED] agreement to disseminate the [REDACTED] Email, Honeywell told [REDACTED] that it should anticipate picking up additional business by participating in the marketing campaign.

41. Several other resellers of Code, [REDACTED] were also contacted by Honeywell and asked to disseminate a similar letter to its customers which [REDACTED] disseminated.

42. [REDACTED] is a dominant provider of electronic health record (“EHR”) systems for hospitals and a major reseller of Code’s equipment to these hospitals. Honeywell knows that [REDACTED] has a strong influence on a hospital’s decision to purchase barcode reading equipment. On information and belief, Honeywell requested [REDACTED] disseminate similar false and misleading information from the Talking Points in an attempt to make its disparaging message more wide-spread and influential.

43. Equally important, [REDACTED] is a dominant EHR provider to hospitals, and hospitals rely on [REDACTED] to certify which barcode readers will integrate with [REDACTED] records system. About 1,400 of the approximately 5,500 hospitals in the U.S. use [REDACTED] EHR systems. Hospitals

using a [REDACTED] EHR system typically do not purchase products that [REDACTED] does not certify. In the past, [REDACTED] has certified Code's equipment to work with its EHR records software, which has had a strong influence on hospitals' decisions to purchase Code's Healthcare Barcode Readers.

44. Code has developed technology that allows the use of an Android mobile computer to be used as Healthcare Barcode Readers. Honeywell has a competing Android device, [REDACTED]. [REDACTED] Despite the fact that [REDACTED] assisted Code in the development of this technology, [REDACTED]. [REDACTED] Consequently hospitals will not buy it. On information and belief, Honeywell contacted [REDACTED] and coerced it into not certifying [REDACTED] competing Android product. Code has invested over [REDACTED] in this new technology and cannot sell it because of Honeywell's interference with [REDACTED]. End users, such as hospitals, are also suffering because they do not have access to the technology, which was designed specifically with the needs of the Healthcare Market in mind.
45. In addition, on or about April 20, 2017, a [REDACTED] employee informed a Code employee that a Honeywell representative asked [REDACTED] to provide Honeywell with a list of Code's customers or send an email to Code's customers notifying them of the lawsuit.
46. On information and belief, on or about January 19, 2017, Productivity Products at Honeywell Safety & Productivity Solutions hosted a meeting of employees and a senior executive of Honeywell told them to put doubt in the minds of customers, like [REDACTED], about the viability of Code as a company.

47. On information and belief, following this executive's instructions, Honeywell Sales Representative Doug Brown began telling customers that Honeywell's anticompetitive acts will "bury Code" and that "[customers] should be very careful of Code."
48. On information and belief, Honeywell Sales Representative Patrick Bogart characterized the lawsuit as one that "will put Code out of business," and Honeywell Solutions Architect Jason Manguba characterized the lawsuit as one that "Code is going to lose."
49. On information and belief, Honeywell plans to continue to pressure resellers, like [REDACTED] and EHR developers, like [REDACTED], into favoring Honeywell over competitors. If that plan is successful, the network effects in Honeywell's favor would prevent meaningful competition in the Healthcare Market because healthcare providers will flock to the products that are certified and therefore believed to be compatible with the medical records systems they already use.
50. [REDACTED] is a distributor for both Honeywell and Code. On or about March 14, 2017, a senior executive of [REDACTED], reported that a Honeywell representative asked him the following, or the equivalent of the following: "we do so much barcode business with you, we don't know why you don't just give all of the Code business to us." On or about April 20, 2017, another senior executive of [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

51. On or about January 19, 2017, representatives of Honeywell met with representatives of [REDACTED]. Upon information and belief, at the [REDACTED] Meeting, Honeywell falsely disparaged Code.
52. Subsequent to this conversation, and without notice, [REDACTED] suddenly dropped internal marketing of Code products. This impacted Code's ability to market to [REDACTED] sales representatives. As a result, salespeople at [REDACTED] were less willing, and less motivated, to sell or offer to sell Code's products. Code's sales through [REDACTED] are down at least 20% in 2017 as a direct result of the discontinued internal marketing. Upon information and belief, [REDACTED] actions are not based on product quality or concerns, but rather are directly traceable to Honeywell's actions.
53. Upon information and belief, on or about January 19, 2017, Lisa London, then President, Productivity Products at Honeywell Safety & Productivity Solutions (formerly Honeywell Scanning and Mobility), sent a letter to resellers outside of the United States (some of which purchase Code Products) detailing the United States patent infringement allegations in the South Carolina lawsuit and disparaging Code and Code's products. This has had a direct impact on funding, which Code needed to continue its research and development activities. Absent these funds, Code will not be able to continue to upgrade its products and technology for the Healthcare Market. Moreover, it will limit or eliminate Code's ability to expand outside of the Healthcare Market into the broader 2D Barcode Reader Market and compete with Honeywell in those markets.
54. Upon information and belief, Honeywell pressured multiple other market participants, including [REDACTED] to attempt to coordinate with its campaign against Code.

55. On May 23, 2017, Honeywell sent an email to its business partners signaling the need for protectionist coordination: “We are committed to working closely with our strong network of distributors, value-added resellers and independent software vendors and believe this action will help drive broader protection for our partners.”

### **Honeywell Misled Code’s Customers**

56. Honeywell also unfairly competes in the Relevant Market by misleading Code’s Customers.

57. Upon information and belief, on January 19 or January 20, 2017, Honeywell held a meeting at which it instructed employees to put doubts in the minds of Customers about the viability of Code. In accordance with those instructions, Honeywell representatives warned Code Customers that Code would be going out of business and that they should avoid Code. For example, Honeywell Sales Representative Doug Brown told several Code resellers that Honeywell will “bury Code” and that customers “should be very careful of Code.” Moreover, Honeywell Sales Representative Patrick Bogart has stated: “Code has two options: either go bankrupt or sell.” These disparaging statements are false and misleading.

58. On January 19, 2017, Honeywell issued a press release falsely stating that “Code has engaged in widespread infringement affecting a broad range of its current product portfolio.” This statement is false on many levels. First, Code is not infringing any of Honeywell’s patents. Second, Honeywell has over 3000 patents related to barcode reading, and the infringement suit only alleges infringement of 6 patents, 4 of which expired before the end of 2017. This press release also stated that Honeywell filed a lawsuit to “prevent Code from” using technology covered by six patents. This was misleading because (1) Honeywell could not have obtained, and did not obtain, injunctive

relief for expired patents, and (2) two of the asserted patents had already expired, one would expire on February 27, 2017, and one would expire on March 24, 2017.

59. Upon information and belief, Honeywell mislead numerous Code Customers in addition to the ones specifically named above.
60. As explained above, Honeywell pressured distributors and resellers, such as [REDACTED] to convey Honeywell's messages as if those messages were their own. This ghostwriting created the misleading impression that messages attacking Code originated from neutral parties rather than a competitor of Code. Honeywell's coercion of distributors and resellers is a violation of U.S. antitrust laws separate and apart from Honeywell's unilateral conduct in violation of the antitrust laws. In addition, Honeywell's utterance of intentionally and knowingly false and disparaging comments, and its direct communication with Code's customers, constitute unfair competition, business disparagement, and tortious interference with current and prospective contracts.

### **Relevant Markets**

61. The market relevant to this Complaint is the market for hand held two-dimensional imaging based barcode readers for use in healthcare facilities. This market has been defined as the Healthcare Market in paragraph 22 above.
62. As explained above in n.1, the 2D scan engine market is a subset of the broader 2D barcode reader market. 2D scan engines are hardware components of 2D barcode readers that include 2D image sensor assembly which essentially photographs a barcode and a decoder which translates a barcode into a digital format that computer processors can interpret and analyze.
63. Code's Healthcare Barcode Readers utilize a 2D scan engine to photograph a barcode and a decoder to translate the barcode into a digital format that computer processors can interpret

and analyze, but also typically include the types of features set forth in paragraph 21, making them more useful in a healthcare environment and as an accurate data entry tool to a health care provider's electronic health records system. Honeywell's barcode readers do not offer such features as dual field optics and glare reduction.

64. Code and Honeywell compete in the Healthcare Market. For example, the Medical University of South Carolina and the Conway Medical Center are customers of both Code and Honeywell. The parties compete throughout the United States. Notably, the Healthcare Market is limited. There are only approximately 5,500 hospitals in the United States, and they often purchase complete replacement systems on a three to five year cycle. Once the system is purchased, a hospital will only purchase replacement units. Accordingly, if a competitor is unable to sell a complete system to a hospital or hospital group when the hospital is replacing or updating its barcode system, that competitor will likely be foreclosed from selling to that hospital for at least 3 years.

65. Despite Honeywell's \$1.7 Billion worth of acquisitions and Honeywell's massive footprint in the general 2D barcode reader market, Code has continued to compete with Honeywell in the Healthcare Market. In this Relevant Market, Code and Honeywell are the two leading providers. Currently over 40% of United States hospitals rely on Code's Healthcare Barcode Readers. Sales of these specialized products to the Healthcare Market is over 85% of Code's business. Honeywell also has over 40% market share in the Healthcare Market. Honeywell also has significant market power in the larger 2D barcode reader market (estimated 30%).

66. Specifically, even though the parties have about equal market share in the Healthcare Market, Honeywell is a global conglomerate over 1,000 times larger than Code.

Honeywell has \$39 billion in annual revenue and in excess of 30% of the market share in the broader 2D barcode market. It has virtually unlimited financial resources as compared to Code, a company less than a thousandth of the size of Honeywell.

67. Honeywell recognizes its dominant financial position and market power in the larger 2D barcode market, and hatched a scheme to use its dominant positions to eliminate Code as a competitor in the Healthcare Market, thus permitting Honeywell to effectively monopolize and control well over 80% of the Relevant Market.

68. Honeywell's products in the Relevant Market are part of the Honeywell Safety and Productivity business, which reported sales of \$1.173 billion in the third quarter of 2016.

#### **Barriers to Entry**

69. Healthcare Barcode Readers are reliant on significant intellectual property in order to operate. Such intellectual property is protected by patents and trade secrets. A company wishing to enter into and compete in the Healthcare Market with its own Healthcare Barcode Readers needs to either develop, acquire, or license the necessary technology.

70. Healthcare Barcode Readers must be certified as compatible with commonly used electronic-medical-record systems to be reasonably competitive. As shown above, larger competitors can pressure developers of electronic-medical-record systems, such as Cerner, and any favoritism by those developers can create an insurmountable network effect for competitors.

#### **Antitrust Injury in the Relevant Market**

71. By pressuring distributors and resellers to give their Code business to Honeywell, Honeywell furthered its goal of monopolizing the Healthcare Market and creating exclusive-dealing agreements in violation of Section 337 of the Tariff Act, 19 U.S.C. 1337;

Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1, 2; Section 3 of the Clayton Act; and Section 5 of the Federal Trade Commission Act.

72. By coercing or incentivizing distributors, resellers, and software developers into cooperating in Honeywell's attempts to exclude Code from the Relevant Market, Honeywell furthered its goal of organizing a group boycott against Code in violation of Section 337 of the Tariff Act, 19 U.S.C. 1337, and Sections 1 and 2 of the Sherman Act, 15 U.S.C §§ 1, 2.
73. By misleading Customers about the viability of Code as a company, the alleged risks to consumers of purchasing Code products, and the true source of statements about Code, Honeywell unfairly competed in violation of Section 337 of the Tariff Act, 19 U.S.C. 1337.
74. The violations above have injured end users in the Relevant Market by depriving them of accurate information, choices, and the fair competition that could have generated lower prices and higher quality. For example, as a result of the [REDACTED] Meeting, [REDACTED], which is Code's largest reseller, stopped all marketing of Code products. This limited end users choices and significantly impeded Code's ability to compete in the Healthcare Market.
75. Honeywell's anticompetitive and deceptive statements permeated the market. Below are a few examples. First, on March 28, 2017, Beth Grainger from Hawaii Pacific Health forwarded the [REDACTED] and asked if "it is something we should be concerned about." Second, the Talking Points attached a 22-page list of end users to be contacted. Portions of the Talking Points appear in the emails of Code's end users, such as [REDACTED]. A March 9, 2017 email from [REDACTED] forwarded portions of the Talking Points and flagged a pending acquisition of Code readers. Third,

several non-US resellers for Honeywell and Code, have reported that Honeywell disseminated the January 19, 2017 press release to all of its partners worldwide.

76. Given the sturdy barriers to entry into the Healthcare Market, if Honeywell succeeds in its plan to “bury Code,” Honeywell will be able to consolidate its dominant position in the Healthcare Market, which will increase its ability to monopolize the Relevant Market through anticompetitive and unfair practices such as those described above. This will irreparably injure the Healthcare Market through fewer, less qualified products and higher prices, unless the Commission intervenes.
77. Code is an innovator in the market as Honeywell concedes.
78. Thus, if Code is forced from the Healthcare Market, purchasers will lose high-end, high-quality, well-innovated products. There is no other such innovator in the Healthcare Market as Honeywell and others follow Code’s lead on innovations.
79. If Code is forced from the market, upon information and belief, only Honeywell will have the capacity over the near term to fill the gap left by Code’s departure in the Healthcare Market .Moreover, given the realities of the certification (e.g., validation) process with EHR records providers, it will be a significant time before new competitors could enter the market to compete with Honeywell. Thus, Honeywell’s market share will, at minimum, exceed 50%, and Honeywell will have market power.
80. As a result, Honeywell will be able to engage in supra-competitive pricing, that will drive up costs to U.S. healthcare providers, ultimately driving up healthcare costs across the U.S.
81. Honeywell has harmed, and will continue to harm, competition, consumers, and Code through its anticompetitive and illegal conduct. Honeywell’s conduct is harmful to competition and consumers in that it has had, and will continue to have, the effect of: (a)

denying the public free choice in the market for 2D healthcare barcode readers as its tactics discourage purchasers from purchasing Code products and, if successful, will remove Code's products from the market entirely; (b) creating higher prices for 2D Healthcare Barcode Readers if Code is forced from the Healthcare Market; (c) forcing consumers to use inferior Healthcare Barcode Readers; and (d) stifling the development of new and better 2D Healthcare Barcode Readers.

82. As a direct and proximate result of defendants' unlawful conduct, Code's sales and/or market has been impeded and frustrated.

83. Honeywell has not acted alone in its conduct. As set out above, upon information and belief, Honeywell has conspired and/or attempted to conspire with Code distributors and resellers to boycott Code products based on Honeywell's anticompetitive and unfair business practices.

84. In multiple meetings, Honeywell has attempted to use Code's resellers and distributors to organize a group boycott of Code products solely based on Honeywell's anticompetitive and unfair business practices.

85. Honeywell's intent in doing so is, as described above is, to drive Code from the market so that it can monopolize the 2D healthcare barcode reader market.

86. Code has suffered lost sales, lost profits, and a diminution in the value of its business and goodwill as a result of Honeywell's anticompetitive actions and unfair business practices.

#### **IV. SPECIFIC INSTANCES OF UNFAIR IMPORTATION AND SALE**

87. Proposed Respondents sell for importation, import into the United States, and/or sell after importation the Healthcare Barcode Readers. For example, Honeywell's website notes the sale of multiple imported healthcare barcode readers in the United States, including the SF61B Healthcare, the SG20 Healthcare, and the Xenon 1900h & 1902h. *See, e.g.,*

<https://www.honeywellaidc.com/products/barcode-scanners/healthcare/listing>. A photograph of Honeywell's accused Xenon 1902 model sold in the United States and showing China as the country of manufacture is attached as Ex. 1<sup>1</sup>. This is consistent with Honeywell's complaint in *Certain Bar Code Readers, Scan Engines, Products Containing the Same, and Components Thereof*, Inv. No. 337-TA-1061 in which Honeywell conspicuously fails to allege that it domestically manufactures any of its healthcare barcode scanners that it acknowledges it sells in the United States. Instead, in its attempt to plead a domestic industry, Honeywell alleges in its complaint investments in research and development, warranty, and other support efforts rather than any domestic manufacture. *Certain Bar Code Readers, Scan Engines, Products Containing the Same, and Components Thereof*, Inv. No. 337-TA-1061, Complaint at ¶¶113-123.

#### V. HARMONIZED TARIFF SCHEDULE NUMBERS

88. On information and belief, the Accused Products have been imported into the United States under at least the following Harmonized Tariff Schedule number: 8471900000.

#### VI. OTHER LITIGATION

89. On January 19, 2017, Honeywell filed a Complaint against Code in the United States District Court for South Carolina, which action was styled *Hand Held Products, Inc., et al. v. The Code Corporation*, Civ. No. 2:17-cv-167-RMG (D.S.C.).<sup>2</sup> In the South Carolina action, Honeywell alleged that Code infringed six (6) patents: United States Patent No. 6,607,128 ("the '128 Patent"), United States Patent No. 8,096,472 ("the '472 Patent"), United States Patent No. 6,249,008 ("the '008 Patent"), United States Patent No. 6,538,413 ("the '413 Patent"), United States Patent No. 6,039,258 ("the '258 Patent"), and United

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<sup>1</sup> Datasheets for other Honeywell healthcare barcode readers are attached as Ex. 2-5.

<sup>2</sup> The South Carolina action was subsequently transferred to the District of Utah and is now styled *Hand Held Products, Inc., et al. v. The Code Corporation*, Civ. No. 2:17-cv-00820-BCW (D. Utah).

States Patent No. 6,491,223 (“the ’223 Patent”). In that action, Code’s Answer included counterclaims for non-infringement of the patents at suit, invalidity of the patents in suit, injurious falsehood under Utah law, interference with economic relations and/or prospective economic advantage under Utah law, interference with contractual relations and/or prospective contractual relations under South Carolina law, and unfair trade practices under the Lanham Act. That case was subsequently transferred to the United States District Court for the District of Utah.

90. On May 23, 2017, Honeywell filed a Complaint with the U.S. International Trade Commission under 19 U.S.C. § 1337 (“Section 337”) alleging that Code and Cortex Pte Ltd. had violated Section 337 by allegedly selling for importation into the United States, importing into the United States, and selling in the United States after importation products that allegedly infringe six (6) additional patents: United States Patent No. 6,832,725 (“the ’725 Patent”), United States Patent No. 8,511,572 (“the ’572 Patent”), United States Patent No. 7,148,923 (“the ’923 Patent”), United States Patent No. 7,527,206 (“the ’206 Patent”), United States Patent No. 8,646,692 (“the ’692 Patent”), and United States Patent No. 9,323,969 (“the ’969 Patent”). That investigation is ongoing.

91. On May 23, 2017, Honeywell also filed a second patent infringement lawsuit against Code in the United States District Court for the District of Delaware, styled *Honeywell Int’l, Inc., et al. v. The Code Corporation*, Civ. No. 17-cv-00594-VAC-CJB (D. Del.), which alleged infringement of the same patents asserted in the above referenced Section 337 investigation. That case has been stayed pending resolution of the Section 337 investigation.

92. Concurrent with the filing of this complaint, Code will file a companion antitrust action in the United States District Court for the Eastern District of Texas

93. Other than as described above, the alleged unfair methods of competition and unfair acts, or the subject matter thereof, are not and have not been the subject of any court or agency litigation.

## **VII. RELIEF REQUESTED**

WHEREFORE, Code requests that the Commission:

- a. Institute an investigation pursuant to its authority under 19 U.S.C. § 1337, as amended, with regard to Respondents' unlawful practices related to importation into the United States, sale for importation, and sale and marketing within the United States after importation, of two-dimensional barcode scanners and related products, including two-dimensional scan engines;
- b. Issue a limited exclusion order barring from entry into the United States all healthcare barcode scanners and components thereof imported, sold for importation, or sold after importation into the United States in connection with the unfair methods of competition and unfair acts set forth in this complaint.
- c. Issue permanent cease and desist orders prohibiting Proposed Respondents from importing, selling for importation, marketing, advertising, distributing, offering for sale, using after importation, packaging, transferring (except for exportation), soliciting United States agents or distributors, and aiding and abetting other entities in the sale for importation, sale after importation, transfer (except for exportation), or distribution of all Accused Products.

- d. Issue permanent orders to Respondents under 19 U.S.C. § 1337(f) directing Respondents to cease and desist from use of anticompetitive and unfair trade practices to interfere with Code's operations in the Relevant Market.
- e. Grant such other relief based as the Commission deems just and proper under the laws of the United States and its jurisdictional authority.

Dated: January 9, 2018

Respectfully Submitted,

GREENBERG TRAURIG, LLP

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**ATTORNEYS FOR COMPLAINANT THE  
CODE CORPORATION**

## VERIFICATION OF COMPLAINT

I, Garrett Russell, declare, in accordance with 19 CFR §§ 210.4 and 210.12(a), under penalty of perjury that the following statements are true:

1. I am Vice President Sales, Americas & Global Marketing of The Code Corporation, and am duly authorized to sign this complaint on behalf of the Complainants.
2. I have read the Complaint and am aware of its contents;
3. The Complaint is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
4. To the best of my knowledge founded upon reasonable inquiry, the claims and legal contentions of this Complaint are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;
5. The allegations and other factual contentions in the Complaint have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

Executed on January 9, 2018



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**Garrett Russell**