



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1140]

Certain Multi-Stage Fuel Vapor Canister Systems and Activated Carbon Components Thereof; Commission Determination to Review in Part, Take No Position on the Issues Under Review, and Affirm in Part a Final Initial Determination Finding No Violation of Section 337; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined to review in part the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on January 28, 2020, finding no violation of section 337 of the Tariff Act of 1930, as amended (“section 337”), in connection with the asserted patent. The Commission has determined to take no position on the issues under review. The Commission has also determined to affirm the ID’s findings that the asserted patent claims are invalid. This investigation is terminated with a finding of no violation of section 337.

FOR FURTHER INFORMATION CONTACT: Ron Traud, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-205-3427. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at

<https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 14, 2018, based on a complaint filed by Ingevity Corp. and Ingevity South Carolina, LLC, both of North Charleston, South Carolina (together, "Ingevity"). 83 FR 64356. The complaint, as supplemented, alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain multi-stage fuel vapor canister systems and activated carbon components thereof by reason of infringement of certain claims of U.S. Patent No. RE38,844 ("the '844 patent"). *Id.* The Commission's notice of investigation named as respondents MAHLE Filter Systems North America, Inc. of Murfreesboro, Tennessee; MAHLE Filter Systems Japan Corp. of Saitama, Japan; MAHLE Sistemas de Filtracion de Mexico de C.V. of Monterrey, Mexico; MAHLE Filter Systems Canada, ULC of Tilbury, Canada (altogether, "MAHLE"); Kuraray Co., Ltd. of Tokyo, Japan ("Kuraray"); Kuraray America, Inc. of Houston, Texas; and Nagamine Manufacture Co., Ltd. of Manno, Japan ("Nagamine"). *Id.* The Commission subsequently amended the complaint and notice of investigation to add Calgon Carbon Corporation ("Calgon") as a respondent and to remove Kuraray America, Inc. as a respondent. 84 FR 11555 (Mar. 27, 2019). The remaining respondents are collectively referred to herein as "Respondents." The Office of Unfair Import Investigations is not participating in this investigation. 83 FR 64356.

On January 28, 2020, the ALJ issued the final ID, which finds that Respondents did not violate section 337. More particularly, the final ID found, *inter alia*: (1) Ingevity, its customers, and operators of the domestic industry articles have been shown to practice the asserted claims of the '844 patent; (2) the domestic industry requirement is satisfied with respect to the '844 patent;

(3) Respondent MAHLE directly and/or indirectly infringes the asserted claims of the '844 patent; (4) Respondents Kuraray and Nagamine indirectly infringe the asserted claims; (5) the asserted claims of the '844 patent have been shown to be invalid under 35 U.S.C. 102 and/or 35 U.S.C. 103 over the Delphi prior invention, or the combination of the Delphi prior invention with other references; (6) the asserted claims of the '844 patent have been shown to be invalid under 35 U.S.C. 102 and/or 35 U.S.C. 103 over Meiller and/or Park and other references; (7) independent claim 18 of the '844 patent, and those depending therefrom, have been shown to be invalid under 35 U.S.C. 112 for indefiniteness, but independent claims 1, 31, and 43, and those depending therefrom, have not been shown to be invalid under 35 U.S.C. 112 for indefiniteness; and (8) patent exhaustion does not bar Ingevity's sought relief.

On February 10, 2020, the private parties filed petitions for review of the final ID, and on February 18, 2020, the private parties filed responses.

Having examined the record in this investigation, including the final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in part.

In particular, the Commission has determined to review the following issues:

- (1) Whether the asserted claims are invalid under 35 U.S.C. 103 over Meiller and/or Park and other references.
- (2) Whether the asserted claims are invalid under 35 U.S.C. 112 for indefiniteness related to the claim terms identified by the parties as the Volume Terms, including the final ID's discussion of the scope of the Volume Terms.
- (3) Whether the accused products infringe the asserted claims of the '844 patent, and whether Respondents indirectly infringe the asserted claims of the '844 patent.

- (4) Whether Ingevity's sale of its HCA carbons to MAHLE that are later incorporated into a subset of Accused Canisters that also contain BAX carbons exhausts Ingevity's patent rights as to those Accused Canisters.
- (5) Whether Ingevity satisfied the domestic industry requirement of section 337.
- (6) Whether Ingevity demonstrated satisfaction of the importation requirement of section 337, as set forth in the final ID beginning on page 34 through the carryover paragraph on page 35.
- (7) Whether Ingevity illegally tied the sales of its products to allowing its customers to practice the '844 patent.

The Commission has determined to not review the remainder of the final ID.

The Commission has determined to take no position on the issues under review. Accordingly, this investigation is terminated with a finding of no violation of section 337 based on the unreviewed findings of the final ID that the asserted claims have been shown to be invalid under 35 U.S.C. 102 and/or 35 U.S.C. 103 over the Delphi prior invention, or the combination of the Delphi prior invention with other references. This investigation is hereby terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: April 7, 2020.

Lisa Barton,
Secretary to the Commission.

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