



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1199 (Rescission)]

Certain Tobacco Heating Articles and Components Thereof; Notice of Commission Decision to Institute a Rescission Proceeding and to; Termination of the Rescission Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute a rescission proceeding and to rescind the limited exclusion order (“LEO”) and cease and desist orders (“CDOs”) issued in the underlying investigation. The rescission proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, DC 20436, telephone (202) 205-3228. 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 on (202) 205-1810.

SUPPLEMENTARY INFORMATION: On May 15, 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 RAI Strategic Holdings, Inc., R.J. Reynolds Vapor Company, and R.J. Reynolds Tobacco Company, all of Winston-Salem, North Carolina (collectively, “Complainants”). See 85 FR 29482-83. The complaint, as supplemented, alleges a violation of section 337 based upon the importation of certain tobacco heating articles and

components thereof by reason of infringement of certain claims of U.S. Patent Nos. 9,839,238 (“the ’238 patent”); 9,930,915 (“the ’915 patent”); 9,901,123 (“the ’123 patent”). The complaint also alleges the existence of a domestic industry. The notice of investigation names the following respondents: Altria Client Services LLC (“ACS”) and Philip Morris USA, Inc. (“PM USA”) both of Richmond, Virginia, and Philip Morris Products S.A. (“PMPSA”) of Neuchatel, Switzerland (collectively, “Respondents”). *See id.* The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation. *See id.*

On September 29, 2021, the Commission issued a final determination finding a violation of section 337, based on Respondents’ infringement of claims 1-3 and 5 of the ’915 patent and claims 27-30 of the ’123 patent, but not the ’238 patent. *See* 86 FR 54998-99 (Oct. 5, 2021). The Commission further determined to issue an LEO against Respondents’ infringing products and CDOs against PM USA and ACS (collectively, “the remedial orders”). *See id.* The Commission determined not to impose a bond during the period of Presidential review. *See id.*

On December 1, 2021, Respondents filed an appeal from the Commission’s final determination with the U.S. Court of Appeals for the Federal Circuit. *See Philip Morris Products S.A. v. ITC*, Appeal No. 2022-1227. On March 31, 2023, the Federal Circuit issued a precedential opinion affirming the Commission’s decision in full. *See Philip Morris Products S.A. v. ITC*, 63 F.4th 1328 (Fed. Cir. 2023).

On February 8, 2024, Complainants and Respondents filed a joint petition to rescind the remedial orders based on a settlement agreement between Complainants and PMPSA. Pursuant to Commission Rule 210.76(a)(3), 19 CFR 210.76(a)(3), the petition asserts that it includes a confidential and public version of the underlying agreement. The petition also includes a statement that there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation.

On February 20, 2024, OUII filed a response stating that it did not support the joint petition as filed. Specifically, OUII argued the joint petition did not substantially comply with

the requirements of Commission Rule 210.76(a)(3) because: 1) the attached Schedule 3.1 Patent License Agreement is not signed, and 2) respondents ACS and PM USA are not parties to the agreement. OUII further argued that only PMPSA should be rescinded from the remedial orders.

On February 22, 2024, Complainants and Respondents filed a joint supplement to their petition. The joint supplement attaches the fully executed Patent License Agreement as set forth in Schedule 3.1 of the Settlement Agreement. The joint supplement also includes a discussion as to the scope of the settlement agreement. OUII did not file a further response to the joint supplement to the petition.

Having reviewed the joint petition, OUII's response thereto, the joint supplement to the petition, and the record of the investigation, the Commission has determined that the joint petition, as supplemented with the fully executed Patent License Agreement, complies with the Commission's rules and therefore granting the petition is warranted under 19 U.S.C. 1337(k) and 19 CFR 210.76. The Commission has also determined that the scope of the settlement agreement does not preclude rescission of all of the remedial orders issued. *See* 86 FR 13731-33 (Mar. 10, 2021) (Commission rescinded remedial orders based on petition to rescind filed solely by complainant).

Accordingly, the Commission has determined to institute a rescission proceeding and to rescind the remedial orders. The rescission proceeding is terminated.

The Commission's vote on this determination took place on March 11, 2024.

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: March 11, 2024.

Lisa Barton,

Secretary to the Commission.

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