



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1368]

Certain Vaporizer Devices, Cartridges Used Therewith, and Components Thereof; Notice of Final Determination Finding a Violation of Section 337; Issuance of a Limited Exclusion Order and Cease and Desist Orders; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that respondents (1) NJOY, LLC of Phoenix, Arizona; (2) NJOY Holdings, Inc. of Scottsdale, Arizona; (3) Altria Group, Inc. of Richmond, Virginia; (4) Altria Group Distribution Company of Richmond, Virginia; and (5) Altria Client Services LLC of Richmond, Virginia (collectively, “NJOY”) have violated section 337, by importing, selling for importation, or selling within the United States after importation certain vaporizer devices, cartridges used therewith, and components thereof that infringe claims 1 and 15 of U.S. Patent No. 11,134,722 (“the ’722 patent”), claims 1 and 8 of U.S. Patent No. 11,606,981 (“the ’981 patent”), claims 27 and 32 of U.S. Patent No. 10,130,123 (“the ’123 patent”), and claims 1 and 4 of U.S. Patent No. 10,709,173 (“the ’173 patent”). The Commission has determined that the appropriate remedies are a limited exclusion order (“LEO”) against NJOY’s infringing products and cease and desist orders (“CDOs”) against each of the NJOY respondents. The Commission has also determined to impose no bond (zero percent bond) for importations of the excluded articles imported during the period of Presidential review. This investigation is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3179. 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 August 7, 2023, based on a complaint filed by JUUL Labs, Inc. of Washington, D.C. and VMR Products LLC of San Francisco, California (together, "JLI"). 88 FR 52207 (Aug. 7, 2023). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337") based on the importation into the United States, the sale for importation, and/or the sale within the United States after importation of certain vaporizer devices, cartridges used therewith, and components thereof by reason of infringement of certain claims of U.S. Patent Nos. RE49,114 ("the '114 patent"), the '722 patent, the '981 patent, the '123 patent, and the '173 patent. *Id.* The complaint further alleges that a domestic industry ("DI") exists. *Id.* The notice of investigation names the five NJOY respondents. *Id.* The Office of Unfair Import Investigations ("OUII") is also named as a party. *Id.* The Commission also directed the presiding administrative law judge ("ALJ") to take evidence on and provide factual findings and a recommended determination concerning the public interest. *Id.*

On April 3, 2024, the Commission terminated the investigation as to the following asserted claims based on partial withdrawal of the complaint: (i) claims 1, 5-7, 29, 30, 36, 80, 89, and 93 of the '114 patent; (ii) claims 16, 18, 29, and 31 of the '123 patent; (iii) claims 3, 8, 14, and 17 of the '722 patent; and (iv) claims 6, 9-11, 17, and 18 of the '981 patent. Order No. 18 (Mar. 6, 2024), *unreviewed by Comm'n Notice* (Apr. 3, 2024).

On April 26, 2024, the Commission terminated the investigation as to the following asserted claims based on partial withdrawal of the complaint: (i) claims 43, 44, 76, 77, 81, and 86 (all remaining claims) of the '114 patent, thus terminating the '114 patent in its entirety; (ii)

claim 14 of the '123 patent; (iii) claims 2, 3, 6, 7, 15, 16, 18-25, 28, and 30 of the '173 patent; (iv) claims 5, 7, 9-13, 16, and 18-21 of the '722 patent; and (v) claims 2, 5, and 13-16 of the '981 patent. Order No. 21 (Apr. 2, 2024), *unreviewed by* Comm'n Notice (Apr. 26, 2024).

On June 18, 2024, the Commission affirmed an initial determination granting summary determination that JLI has satisfied the economic prong of the DI requirement as to the remaining asserted patents, *i.e.*, the '722, '981, '123, and '173, patents. Order No. 22 (Apr. 3, 2024), *aff'd by* Comm'n Notice (June 20, 2024).

On August 23, 2024, the ALJ issued a final initial determination (“ID”), which finds a violation of section 337 as to claims 1 and 15 of the '722 patent, claims 1 and 8 of the '981 patent, claims 27 and 32 of the '123 patent, and claims 1 and 4 of the '173 patent. Specifically, the ID finds that: (i) JLI showed that each of these claims have been infringed; (ii) NJOY failed to show that any of these claims is invalid; and (iii) JLI has satisfied the technical prong of the DI requirement as to each of the remaining asserted patents. The ID also includes the ALJ’s recommended determination (“RD”) on remedy, the public interest, and bonding. The RD recommends that, should the Commission determine that a violation of section 337 has occurred, the Commission should: (i) issue a LEO against NJOY’s infringing products; (ii) issue CDOs against each of the NJOY respondents; and (iii) impose no bond (zero percent bond) for importations of infringing products during the period of Presidential review. The ALJ also found that the statutory public interest factors do not support denying or delaying the recommended relief set forth in the RD.

On September 23, 2024, NJOY filed a motion for leave to file a reply in support of its petition for review addressing certain positions taken by OUII in its response to NJOY’s petition. On September 25 and 27, 2024, respectively, OUII and JLI each filed a response opposing NJOY’s motion for leave.

On October 24, 2024, the Commission determined to review in part the final ID. 89 FR 89041-44 (Nov. 12, 2024). Specifically, the Commission determined to review (i) the ID’s

construction of the “pressure sensor” limitations (limitations 27[d] and 27[e]) recited in claim 27 of the ’123 patent, and (ii) the ID’s findings that the NJOY ACE accused product, the asserted RevB and JAGWAR iterations of the JUUL DI system, and the asserted JUUL2 DI system literally practice limitations 27[d] and 27[e] of claim 27 of the ’123 patent under the ID’s construction of those limitations. *Id.* at 89042.

The Commission also determined to review certain of the ID’s findings regarding claim construction and satisfaction of the technical prong of the DI requirement with respect to the ’173 patent. *Id.* In particular, the Commission determined to review (i) the ID’s construction of the terms “mouthpiece” and “disposed within” recited in asserted claim 1 of the ’173 patent, and (ii) the ID’s finding that the JUUL2 DI system practices claims 1 and 4 of the ’173 patent. *Id.*

The Commission further determined to reconsider its previous finding that JLI has satisfied the economic prong of the DI requirement with respect to the ’123 and ’173 patents based on investments related to both the JUUL DI system and the JUUL2 DI system. *Id.*

The Commission determined not to review the remaining findings in the ID, including the ID’s findings of a violation of section 337 as to the ’722 and ’981 patents. *Id.* The Commission also determined to deny NJOY’s motion for leave to file a reply in support of its petition for review. *Id.*

The Commission’s notice requested written submissions (i) from the parties on certain issues under review and (ii) from the parties, interested government agencies, and any other interested persons on the issues of remedy, the public interest, and bonding. *Id.* at 89042-43.

On November 7, 2024, JLI, NJOY, and OUII each filed initial briefs with written submissions on the issues under review as well as on remedy, the public interest, and bonding. On November 14, 2024, JLI, NJOY, and OUII each filed reply briefs. Also, between November 5-19, 2024, the Commission received five submissions on the public interest from members of the public.

The Commission, having reviewed the record in this investigation, including the final ID, the parties' petitions and responses thereto, the parties' briefs on the issues under review, remedy, the public interest, and bonding, and the public submissions on remedy, the public interest, and bonding, has determined that NJOY has violated section 337 by importing, selling for importation, or selling within the United States after importation certain vaporizer devices, cartridges used therewith, and components thereof that infringe claims 1 and 15 of the '722 patent, claims 1 and 8 of the '981 patent, claims 27 and 32 of the '123 patent, and claims 1 and 4 of the '173 patent.

Specifically, as to the '123 patent, the Commission: (i) modifies the ID's construction of the "pressure sensor" limitations (limitations 27[d] and 27[e]) recited in claim 27 of the '123 patent; (ii) affirms with modified analysis the ID's findings that the NJOY ACE accused product literally practices the "pressure sensor" limitations of claim 27 of the '123 patent and thus literally practices claims 27 and 32 of the '123 patent; (iii) finds that the asserted JUUL2 DI system practices claims 27 and 32 of the '123 patent under the doctrine of equivalents ("DOE") and, therefore, affirms with modified reasoning the ID's finding that JLI has satisfied the technical prong of the DI requirement as to the '123 patent based on this product; (iv) takes no position on whether JLI has satisfied the technical prong of the DI requirement as to the '123 patent based on the RevB and JAGWAR iterations of the JUUL DI system; and (v) modifies Order No. 22 to vacate and take no position on whether JLI has satisfied the economic prong of the DI requirement as to the '123 patent based on the JUUL DI system. Accordingly, the Commission affirms with modified reasoning the ID's finding that JLI has shown a violation of section 337 by NJOY as to claims 27 and 32 of the '123 patent.

As to the '173 patent, the Commission: (i) affirms with modified analysis the ID's construction of the term "mouthpiece" recited in claim 1 of the '173 patent; (ii) takes no position on the ID's construction of the term "disposed within" recited in claim 1 of the '173 patent; (iii) takes no position on the ID's finding that the JUUL2 DI system practices claims 1 and 4 of

the '173 patent; and (iv) modifies Order No. 22 to vacate and take no position on whether JLI has satisfied the economic prong of the DI requirement as to the '173 patent based on the JUUL2 DI system. Accordingly, the Commission affirms with modified analysis the ID's finding that JLI has shown a violation of section 337 by NJOY as to claims 1 and 4 of the '173 patent.

The Commission has determined that the appropriate remedy is: (i) an LEO prohibiting the importation of certain vaporizer devices, cartridges used therewith, and components thereof that infringe one or more of claims 1 and 15 of the '722 patent, claims 1 and 8 of the '981 patent, claims 27 and 32 of the '123 patent, and claims 1 and 4 of the '173 patent; and (ii) CDOs against each of the NJOY respondents. The Commission has also determined that the public interest factors do not preclude issuance of the remedial orders. The Commission has further determined to impose no bond (zero percent bond) for importations of the excluded articles imported during the period of Presidential review (19 U.S.C. 1337(j)).

The Commission issues its opinion herewith setting forth its determinations on certain issues. This investigation is hereby terminated.

The Commission's orders and opinion were delivered to the President and United States Trade Representative on the day of their issuance.

The Commission vote for this determination took place on January 29, 2025.

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: January 29, 2025.

Lisa Barton,

Secretary to the Commission.