



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1372]

Certain Vaporizer Devices, Cartridges Used Therewith, and Components Thereof; Notice of a Commission Determination to Review in Part a Final Initial Determination Finding No Violation of Section 337 and, on Review, to Affirm the Finding of No Violation; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part a final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on December 5, 2024, finding no violation of section 337 in the above-referenced investigation and, on review, to affirm the finding of no violation. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3115. 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: On September 26, 2023, the Commission instituted this investigation based on a complaint filed by NJOY, LLC of Scottsdale, Arizona (“NJOY”). 88 FR 66050 and 66051 (Sept. 26, 2023). The complaint alleged violations of section 337 based on the importation into the United States, the sale for importation, or the sale within the

United States after importation of certain vaporizer devices, cartridges used therewith, and components thereof by reason of infringement of claims 1–48 of U.S. Patent No. 11,497,864 (“the ’864 patent”) and claims 1, 3, 4, 6–9, 11, 12, 14–17, 19, 20, 22, 23, and 25–27 of U.S. Patent No. 10,334,881 (“the ’881 patent”). The Commission’s notice of investigation named JUUL Labs, Inc. of Washington, D.C. (“JLI”) as the sole respondent. *Id.* The Office of Unfair Import Investigations was named as a party in the investigation. *Id.*

On April 30, 2024, the ALJ issued Order No. 44, granting Complainant’s motion to terminate the investigation with respect to (i) claims 2-18, 20-25, and 27 of the ’881 patent; and (ii) claims 1, 3-8, 11, 14, 17-19, 21-25, and 27-48 of the ’864 patent based on the withdrawal of allegations in the Complaint relating thereto. Order No. 44 (Apr. 30, 2024), *unreviewed by* Comm’n Notice (May 20, 2024). At the time of the final ID, NJOY continued to assert claims 2, 9, 10, 12, 13, 15, 16, 20, and 26 of the ’864 patent, and claims 1, 19, and 26 of the ’881 patent.

On December 5, 2024, the presiding ALJ issued a final ID on violation of section 337 and recommended determination on remedy and bond finding no violation of section 337. The ID found that a violation of section 337 has not occurred by the importation into the United States, the sale for importation, or the sale within the United States after importation of certain vaporizer devices, cartridges used therewith, and components thereof based on infringement of the ’881 and ’864 patents. The ID found that the economic prong of the domestic industry requirement has not been satisfied with respect to any of the asserted patents. The ID also found that the technical prong of the domestic industry requirement was satisfied with respect to the ’864 patent, and was not satisfied with respect to the ’881 patent. The ID further found that it has not been shown by clear and convincing evidence that the asserted claims of the asserted patents are invalid.

On December 18, 2024, the Chair granted NJOY’s request for all parties to file petitions for Commission review of the Final ID on December 23, 2024, and responses to the petitions on January 8, 2025.

On December 23, 2024, complainant NJOY filed “Complainant’s Petition for Review of Initial Determination on Violation of Section 337.” On the same day, respondent JLI filed “Respondent JUUL Labs, Inc.’s Contingent Petition for Review of the Initial Determination on Violation of Section 337.” On January 8, 2025, respondent JLI and complainant NJOY filed “Respondent JUUL Labs, Inc.’s Response to Complainant’s Petition of Review of Initial Determination on Violation of Section 337” and “Complainant’s Response to Respondent’s Contingent Petition for Review of Initial Determination on Violation of Section 337,” respectively. On the same day, OUII filed “Response of the Office of Unfair Import Investigations to the Private Parties’ Petitions for Review of the Initial Determination On Violation of Section 337.”

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 in part the ID and, on review, to affirm the final ID with the following modifications. Specifically, the Commission has determined to review the ID’s non-infringement findings with respect to the ’864 patent for the limited purpose of supplementing the ID’s citation on the fifth line from the top on page 39 of the ID, which shall read as follows: “NJOY Br. at 22-23; *see also* CX-2221C.0023-24 (describing the JUULpod as including the mouthpiece); Dahm Tr. at 995:19-1004:22 (describing the mouthpiece as part of the housing that contains all the device internals).” The Commission has also determined to review the ID’s findings regarding the economic prong of the domestic industry requirement with respect to the ’864 and ’881 patents and, on review, to take no position on these findings. *See Beloit Corp. v. Valmet Oy*, 742 F.2d 1421, 1424 (Fed. Cir. 1984).

The Commission has determined not to review the remainder of the ID, including the ID’s finding of no violation of section 337.

The investigation is hereby terminated.

The Commission vote for this determination took place on March 3, 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: March 3, 2025.

Lisa Barton,

Secretary to the Commission.

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