

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN MULTIPLE MODE
OUTDOOR GRILLS AND PARTS
THEREOF**

Investigation No. 337-TA-895

**NOTICE OF THE COMMISSION'S DETERMINATION TO AFFIRM IN-PART AND
VACATE IN-PART AN INITIAL DETERMINATION GRANTING IN-PART A
MOTION FOR SUMMARY DETERMINATION OF NON-INFRINGEMENT**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm-in-part and vacate-in-part the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 33) finding non-infringement of certain products.

FOR FURTHER INFORMATION CONTACT: Amanda Pitcher Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.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: The Commission instituted this investigation on September 26, 2013, based on a complaint filed on behalf of A&J Manufacturing, LLC of St. Simons, Georgia and A&J Manufacturing, Inc. of Green Cove Springs, Florida (collectively "Complainants"). 78 *Fed. Reg.* 59373 (Sept. 26, 2013). The complaint alleged violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the sale for importation, importation, or sale within the United States after importation of certain multiple mode outdoor grills and parts thereof by reason of infringement of certain claims of U.S. Patent No. 8,381,712 ("the '712 patent"), U.S. Patent No. D660,646, and U.S. Patent No. D662,773 patent. The

Commission's notice of investigation, as amended, named several respondents, including Char-Broil, LLC; Zhejiang Fudeer Electric Appliance Co., Ltd; Rankam Metal Products Manufactory Limited, USA; Outdoor Leisure Products, Inc.; Dongguan Kingsun Enterprises Co., Ltd.; Tractor Supply Co.; and Chant Kitchen Equipment (HK) Ltd (collectively "Respondents").

On March 5, 2014, the Respondents filed a motion for summary determination of non-infringement of the asserted claims of the '712 patent. On March 24, 2014, Complainants opposed the motion. Also on March 23, 2014, the Office of Unfair Import Investigations (OUII) filed a response in partial support of the motion. After considering the motion and responses, on April 8, 2014, the ALJ requested additional briefing from the parties. Order No. 28. The parties filed responses to Order No. 28 on April 11, 2014 and April 14, 2014.

On April 17, 2014, the ALJ granted the Respondents' motion in part. The ALJ found that that certain products do not infringe claims 1-20 of the '712 patent and that a genuine issue of material fact exists with respect to an additional product.

On April 25, 2014, Complainants timely petitioned for review. On May 2, 2014, OUII filed a response. On May 2, 2014, respondents Char-Broil, LLC; Zhejiang Fudeer Electric Appliance Co., Ltd; Rankam Metal Products Manufactory Limited, USA; Outdoor Leisure Products, Inc.; Dongguan Kingsun Enterprises Co., Ltd. ("the Char-Broil Respondents") filed a joint response. Also on May 2, 2014 respondents Tractor Supply Co.; and Chant Kitchen Equipment (HK) Ltd. ("the Chant Respondents") filed a joint response.

On May 20, 2014, the Commission determined to review the ID in the entirety. The parties were requested to brief various issues. On May 28, 2014, Complainants, OUII, the Chant Respondents and the Char-Broil Respondents filed responses to the Commission's request for briefing. On June 2, 2014, Complainants, OUII, and the Char-Broil Respondents filed reply responses.

On review, the Commission has determined to affirm in-part and vacate in-part the ID. The Commission finds that Complainants assert that the following redesigned grills do not infringe the '712 patent: (1) Chant/Tractor Supply's New Model 1046761; (2) Rankam's Member's Mark Grill, Model No. GR2071001-MM (Ver. 2) and (3) Rankam's Smoke Canyon Grill, Model No. GR2034205-SC (Ver. 2). The Commission finds that the remaining redesigned products are within the scope of the investigation. The Commission adopts the ALJ's construction of the "openable [] cover" limitations of claims 1 and 17 on modified grounds. The Commission affirms the ALJ's finding of non-infringement of claims 1 and 17 for the existing Char-Broil product and adopts the ALJ's findings that the redesigned grills do not infringe claims 1 and 17 on modified grounds. The Commission vacates the ALJ's construction of claim 10 and non-infringement findings based on that construction. The Commission also finds that the "openable [] cover means" limitations of claim 10 are means-plus-function limitations and directs the ALJ to make findings consistent with a means-plus-function interpretation, as will be clarified in a forth coming opinion.

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 C.F.R. Part 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', with a stylized flourish at the end.

Lisa R. Barton
Secretary to the Commission

Issued: June 24, 2014