

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:

CERTAIN SOLDER REMOVAL WICKS

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Investigation No. 337-TA-26

COMMISSION MEMORANDUM OPINION IN
SUPPORT OF THE COMMISSION ACTION



USITC Publication 823
Washington, D. C.
July 1977

UNITED STATES INTERNATIONAL TRADE COMMISSION

COMMISSIONERS

Daniel Minchew, Chairman
Joseph O. Parker, Vice Chairman
George M. Moore
Catherine Bedell
Italo H. Ablondi

Kenneth R. Mason, Secretary to the Commission

This report was principally prepared by
William W. Gearhart, Jr., Office of the General Counsel

Address all communications to
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Washington, D. C. 20436

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

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CERTAIN SOLDER REMOVAL WICKS) Investigation No. 337-TA-26
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NOTICE AND ORDER CONCERNING
COMMISSION DETERMINATION

Upon consideration of the presiding officer's recommended determination and the record in this proceeding, the Commission hereby orders the termination of investigation No. 337-TA-26, Certain Solder Removal Wicks, on the basis of a determination that no violation of section 337 of the Tariff Act of 1930, as amended, exists.

Copies of the Commission Memorandum Opinion in support of the Commission action are available to the public during official working hours at the Office of the Secretary, United States International Trade Commission, 701 E Street NW., Washington, D.C. 24036. Notice of the institution of the investigation was published in the *Federal Register* on July 1, 1976 (41 F.R. 27134).

By order of the Commission:


Kenneth R. Mason
Secretary

Issued: July 1, 1977

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of:)
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CERTAIN SOLDER REMOVAL WICKS) Investigation No. 337-TA-26

COMMISSION MEMORANDUM OPINION

Upon consideration of the presiding officer's recommended determination and the record in this proceeding, the Commission has determined that there is no violation of section 337 of the Tariff Act of 1930, as amended, 1/ in the importation into, or sale in, the United States of certain solder removal wicks by reason of the fact that (1) claims 1 and 2 of U.S. Letters Patent No. 3,627,191 are invalid, for the purposes of section 337, in view of the prior art, under 35 U.S.C. 103, and (2) certain other alleged unfair methods of competition and unfair acts, including "passing off," false labeling, and false advertising, even if presently or formerly occurring, do not have the effect or tendency to destroy or substantially injure an industry, efficiently and economically operated, in the United States. 2/ We have ordered the termination of the investigation.

1/ 19 U.S.C. 1337 (Supp. IV, 1975).

2/ Vice Chairman Parker and Commissioner Bedell have determined that there is no violation of section 337 of the Tariff Act of 1930 for the reason that none of the unfair methods of competition or unfair acts alleged in the complaint and set forth in the notice of investigation have the effect or tendency to destroy or substantially injure an industry, efficiently and economically operated, in the United States. In view of their determination, they consider it unnecessary to make a determination with respect to the infringement or validity of U.S. Letters Patent No. 3,627,191.

Procedural history

On May 10, 1976, Solder Removal Co. and Jesse C. Hood, both of 1077 East Edna Place, Covena, California 91724, filed a complaint with the Commission under section 337. It was alleged in said complaint that the importation into and sale in the United States of certain solder removal wicks constituted unfair acts and unfair methods of competition by reason of (1) their coverage by one or more claims of U.S. Patent No. 3,629,191, (2) their being "passed off" as the product of Solder Removal Co., (3) their being falsely labeled as having a registered trademark, and (4) their being falsely advertised with the words "patent applied for" and "Patent Pending." Allegedly, such accused devices were produced in Switzerland under the name "Spirig Solder-Removing Wick," and imported into the United States by Signalarm, Inc., and Joseph Turek, Jr., both of 1348 Page, Springfield, Massachusetts. Named as respondents in said complaint were Signalarm, Inc., and Joseph Turek, Jr., at the address last above given. Named as the foreign manufacturer was Spirig, CH-8640 Rapperwil, P.O. Box 160, Speerstrasse 14, Switzerland.

On June 28, 1976, the Commission issued a notice of investigation, which was published in the Federal Register on July 1, 1976 (41 F.R. 27134). Named as respondents and parties in the notice were Signalarm, Inc., and Spirig.

Responses to the complaint and notice of investigation were filed by Dip. Ing. Ernest Spirig and Signalarm, Inc., following an extension of time for the submission of such responses.

On December 30, 1976, respondents filed a motion requesting that the date for completion of the public hearing be postponed one month pursuant to rule §210.41(e) or, in the alternative, that the investigation be designated a "more complicated" investigation pursuant to rule §210.15. The presiding officer recommended that the motion be granted to the extent that the hearing be set to begin on February 22, 1977. The Commission adopted the presiding officer's recommendation and the deadline for completing the hearing was postponed by nearly one month.

On February 22, 1977, a hearing commenced before the presiding officer to determine whether there is a violation of section 337. All parties to the proceeding appeared at such hearing by means of their respective counsels. Such hearing continued until February 25, 1977, when it was adjourned. Provision was made for the subsequent submission of briefs and reply briefs.

On April 26, 1977, the presiding officer issued a recommendation that the Commission determine that there is no violation of section 337 by reason of the fact that claims 1 and 2 of U.S. Letters Patent No. 3,627,191 are invalid, for purposes of section 337, as obvious in view of their prior art, under 35 U.S.C. 103, and that there is no effect or tendency to destroy or substantially injure an industry efficiently and economically operated, in the United States; and that, with respect to the allegations of passing off, false labeling, and false advertising, there is no violation of section 337 in the importation, and the sale,

of certain solder removal wicks, by reason of the fact that there is no effect or tendency to destroy or substantially injure an industry, efficiently and economically operated, in the United States. Exceptions to the recommended determination were filed by all parties.

On May 19, 1977, the Commission issued a notice announcing a schedule for briefs with respect to the recommended determination and ordering a hearing for June 10, 1977, before the Commission to hear argument with respect to the recommended determination and to hear argument and receive information concerning appropriate relief, bonding, and the public-interest factors set forth in subsections (d) and (f) of section 337. The notice also provided for the filing of written comments by any party, interested person, Government agency, or Government concerning relief, bonding, and the public-interest factors. Such notice was published in the Federal Register of May 24, 1977 (42 F.R. 26478).

Briefs were received from all parties. The Commission held its scheduled hearing on June 10, 1977, with all parties appearing. No advice or information was received from the Department of Health, Education, and Welfare, the Department of Justice, the Federal Trade Commission, or any other Government agency.

Supplemental Views of Chairman Daniel Minchew and
Commissioners George M. Moore and Italo H. Ablondi

Pursuant to section 337 of the Tariff Act of 1930, as amended, the Commission must determine whether there is a violation of the statute and, if so, what remedy, if any, should be afforded for such violation. We have considered the recommended determination of the presiding officer, the record developed before the presiding officer, and the record of the June 10, 1977, hearing before the Commission, as well as all of the arguments, relevant submissions, and other appropriate information.

We have determined that there is no violation of section 337 in the importation of the subject solder removal wicks into the United States, or in their sale by the owner, importer, consignee, or agent of either, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. Specifically, we have determined that claims 1 and 2 of the so-called Hood patent, U.S. Letters Patent No. 3,627,191, are invalid, for purposes of section 337, in view of the prior art, under 35 U.S.C. 103, and therefore find there is no unfair method or unfair act within the meaning of section 337. 1/ Further, we have determined that certain other alleged unfair methods of competition and unfair acts, including "passing off", false labeling, and false advertising, even if presently or formerly occurring, do not have the effect or tendency to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

1/ Commissioner Moore, however, determines that claims 1 and 2 of the Hood patent are infringed, if such patent were valid.

In view of the fact that we have determined the Hood patent to be invalid for purposes of section 337, we do not find it necessary to determine whether the importation or sale of the imported wicks has the effect or tendency to destroy or substantially injure an industry, efficiently and economically operated, in the United States. And similarly, since we have determined that the alleged non-patent violations do not have the effect or tendency to destroy or substantially injure an industry, efficiently and economically operated, in the United States, we find it unnecessary to make further findings regarding these issues.

We further adopt by reference the findings of fact and conclusions of law of the presiding officer insofar as they are supportive of and not inconsistent with the above determination.

Supplemental Views of Vice Chairman
Parker and Commissioner Bedell

In this investigation, the Presiding Officer has made a recommended determination that there is no violation of section 337 of the Tariff Act of 1930, as amended, by reason of the fact that: (1) claims 1 and 2 of U.S. Letters Patent No. 3,627,191 are invalid; and (2) that none of the unfair methods of competition or unfair acts alleged in the complaint and contained in the notice of investigation (41 F.R. 27134, July 1, 1976) have the effect or tendency to destroy or substantially injure an industry, efficiently and economically operated, in the United States. Our review of the record of this proceeding discloses that the evidence fully supports the recommended determination of the Presiding Officer with respect to (2) above.

We are in basic agreement with the findings of fact and conclusions of law of the Presiding Officer that none of the alleged unfair methods of competition or unfair acts alleged in the complaint and set forth in the notice of investigation have the effect or tendency to substantially injure the domestic industry. Therefore, we incorporate, by reference herein, said findings and conclusions. Consequently, we have made a negative determination.

1/ See page 2 of Complainant's Comments Re Recommended Determination filed May 10, 1977.

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- I. Solder & soldering I. Title
- II. Title: Certain solder removal
wicks.

UNITED STATES
INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C. 20436

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