

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN UV CURABLE COATINGS
FOR OPTICAL FIBERS, COATED
OPTICAL FIBERS, AND PRODUCTS
CONTAINING SAME

Investigation No. 337-TA-1031

**NOTICE OF COMMISSION DETERMINATION TO REVIEW AN
INITIAL DETERMINATION GRANTING RESPONDENT'S MOTION FOR
SUMMARY DETERMINATION THAT CLAIMS 16-18, 21, AND 30 OF U.S. PATENT
No. 7,706,659 ARE INVALID FOR INDEFINITENESS UNDER 35 U.S.C. § 112, ¶ 2, AND
ON REVIEW, TO REVERSE AND VACATE THE INITIAL DETERMINATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review an initial determination ("ID") (Order No. 33) of the presiding administrative law judge ("ALJ") granting Respondent Momentive UV Coatings (Shanghai) Co., Ltd.'s motion for summary determination that claims 16-18, 21, and 30 of U.S. Patent No. 7,706,659 are invalid for indefiniteness under 35 U.S.C. § 112, ¶ 2. As explained in the forthcoming Commission Opinion, the Commission has determined to review the ID, and on review, to reverse and vacate the ID.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708-4716. 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 SW., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://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 December 5, 2016, based on a complaint filed by Complainants DSM Desotech, Inc. of Elgin, Illinois and DSM IP Assets B.V. of Herleen, Netherlands (collectively, "DSM" or "Complainants"). See 81 *Fed. Reg.* 87588-9 (Dec. 5, 2016). The Complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after

importation of certain UV curable coatings for optical fibers, coated optical fibers, and products containing same by reason of infringement of claims 1-8, 10-15, and 18-22 of U.S. Patent No. 6,961,508, claims 1-10 and 13-15 of U.S. Patent No. 7,171,103, claims 2-4, 9, 11, 12, and 15 of U.S. Patent No. 7,067,564, and claims 1-3, 9, 12, 16-18, 21, and 30 of U.S. Patent No. 7,706,659 (“the ’659 patent”). *See id.* The notice of investigation identifies two respondents, namely: Momentive UV Coatings (Shanghai) Co., Ltd. of Shanghai, China (“MUV”) and OFS Fitel, LLC of Norcross, Georgia (“OFS”) (collectively, “Respondents”). *See id.* The Office of Unfair Import Investigations is also a party in this investigation. *See id.*

On May 22, 2017, Respondent MUV filed a motion for summary determination that claims 16-18, 21, and 30 of the ’659 patent are invalid for indefiniteness under 35 U.S.C. § 112, ¶ 2. On June 1, 2017, DSM filed an opposition to MUV’s motion and on June 5, 2017, the Commission Investigative Attorney (“IA”) filed a response in support of MUV’s motion.

On July 6, 2017, the ALJ issued the subject ID (Order No. 33) granting MUV’s motion. On July 14, 2017, DSM filed a petition for review of the subject ID and on July 21, 2017, Respondents filed a response to DSM’s Petition. On July 24, 2017, the IA filed a response to DSM’s Petition.

As explained in the forthcoming Commission Opinion, the Commission has determined to review the ID, and on review, to reverse and vacate the ID.

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.



Lisa R. Barton
Secretary to the Commission

Issued: August 7, 2017