

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

In the Matter of)	
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)	
CERTAIN ENDOSCOPIC PROBES)	Inv. No. 337-TA-569
FOR USE IN ARGON PLASMA)	
COAGULATION SYSTEMS)	

**NOTICE OF COMMISSION DECISION TO REVIEW IN PART AN INITIAL
DETERMINATION AND ON REVIEW TO AFFIRM THE ADMINISTRATIVE LAW JUDGE'S
DETERMINATION THAT THERE IS NO VIOLATION OF SECTION 337**

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 an initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) determining that there is no violation of section 337 of the Tariff Act of 1930. Specifically, the Commission has determined to review the portions of the ALJ’s determination relating to construction of the claim term “predetermined minimum safety distance” and associated findings on infringement and domestic industry. On review, the Commission has determined to take no position with respect to these issues, and to affirm the ALJ’s determination of no violation of section 337.

FOR FURTHER INFORMATION CONTACT: Jonathan J. Engler, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-3112. Copies of the public version of the ID and all nonconfidential 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. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<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>.

SUPPLEMENTARY INFORMATION: This investigation was instituted by the Commission based on a complaint filed by ERBE Elektromedizin GmbH and ERBE USA, Inc. (collectively, “ERBE”). 71 Fed. Reg. 29386 (May 16, 2006). The complaint alleged violations of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain endoscopic probes for use in argon plasma coagulation systems by reason of infringement of 10 claims of U.S. Patent No. 5,720,745 (“the ‘745 patent”) and infringement of U.S. Supplemental Trademark Registration No. 2,637,630 (“the ‘630 registration”). The complaint also alleged that a domestic industry exists and/or is in the process of being established, with

regard to the '745 patent and the '630 registration under subsection (a)(2). The notice of investigation named Canady Technology, LLC of Hampton, Virginia ("Canady USA"); Canady Technology Germany GmbH of Germany ("Canady GmbH"); and KLS Martin as the respondents. The complaint requested that the Commission institute an investigation pursuant to Section 337 and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order. The investigation has been terminated as to KLS Martin on the basis of a settlement agreement.

On January 16, 2008 the administrative law judge issued a final ID finding no violation of section 337 in this investigation. The ALJ found no violation of section 337 through the importation or sale for importation of argon plasma probes sold by the Canady in the United States. In particular, the ID found that the Canady probes do not directly infringe the '745 patent; that even if there were direct infringement there is no contributory infringement or inducement to infringe the '745 patent by Canady; that ERBE has not shown that there is a domestic industry with respect to the '745 patent because the ERBE products are not used to practice its claims; and that the '745 patent is not invalid.

On January 28, 2008, ERBE filed its petition for review of the ID, challenging the ALJ's findings with respect to no infringement of the '745 patent and the absence of a domestic industry. Canady filed its Contingent Petition for review of the ID on January 29, 2008.

Having examined the record of this investigation, including the ALJ's final ID and the submissions of the parties, the Commission has determined to review the portions of the ALJ's determination relating to the construction of the phrase "predetermined minimum safety distance" the associated findings on infringement and domestic industry. On review, the Commission has determined to take no position with respect to these issues, and to affirm the ALJ's determination of no violation of section 337.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, and Commission rule 210.42, 19 C.F.R. § 210.42.

By order of the Commission.

/s/

Marilyn R. Abbott
Secretary to the Commission

Issued: March 17, 2008