

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 THE COMMISSION'S FINAL DETERMINATION FINDING NO
VIOLATION OF SECTION 337; TERMINATION OF INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (the "Commission") has determined, upon review of the final initial determination (the "ID"), that the complainants have not shown a violation of section 337 of the Tariff Act of 1930, as amended, in connection with the asserted patents. This investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Ron Traud, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-205-3427. 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, DC 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, telephone 202-205-1810.

SUPPLEMENTARY INFORMATION: On December 5, 2016, the Commission instituted this investigation based on a complaint filed by DSM Desotech, Inc. of Elgin, IL; and DSM IP Assets B.V. of Heerlen, Netherlands (collectively, "DSM"). 81 FR 87588-89 (Dec. 5, 2016). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337"), based upon the importation into the United States, the sale for importation, or 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 one or more of claims 1-8, 10-15, and 18-22 of U.S. Patent No. 6,961,508 ("the '508 patent"); claims 1-10 and 13-15 of U.S. Patent No. 7,171,103 ("the '103 patent"); 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"). *Id.* The Commission's Notice of Investigation named as respondents

Momentive UV Coatings (Shanghai) Co., Ltd. of Shanghai, China (“MUV”); and OFS Fitel, LLC of Norcross, Georgia (“OFS”) (collectively, “Respondents”). *Id.* The Office of Unfair Import Investigations (“OUII”) was also named as a party in this investigation. *Id.*

Prior to the evidentiary hearing, DSM withdrew its allegations as to certain patent claims. *See* Order 12 (Apr. 12, 2017), *unreviewed*, Notice of Commission Determination Not to Review an Initial Determination Granting Complainants’ Unopposed Motion to Terminate this Investigation with respect to One Patent Claim (May 11, 2017); Order 50 (Aug. 25, 2017), *unreviewed*, Notice of Commission Determination Not to Review An Initial Determination Withdrawing from the Complaint Certain Allegations Regarding U.S. Patent No. 7,067,564 (Sept. 15, 2017). DSM proceeded at the evidentiary hearing on the following patents and claims: claims 1-8, 11-15, 18-19, 20-21, and 22 of the ’508 patent; claims 1-10 and 13-15 of the ’103 patent; and claims 1-3, 9, 12, 16-18, 21, and 30 of the ’659 patent.

On February 15, 2018, the presiding administrative law judge (“ALJ”) issued the ID, which finds only MUV in violation of section 337, and only as to the ’508 and ’103 patents. On February 27-28, 2018, OUII, DSM, MUV, and OFS filed petitions for review of the ID, and on March 7-8, 2018, the parties filed responses to the petitions. On March 19, 2018, the private parties filed statements on the public interest. The Commission also received comments on the public interest from members of the public.

On April 16, 2018, after considering the parties’ petitions and responses thereto, the Commission determined to review the following issues:

- (1) Whether respondent OFS imports respondent MUV’s accused KS1-043/048 coating.
- (2) Whether claim 30 of ’659 patent is invalid for lack of written description.
- (3) Whether claims 1-8, 11, 15, and 18-19 of the ’508 patent are invalid for lack of written description and enablement.
- (4) Whether claim 21 of the ’508 patent and claims 1-10 and 13-15 of the ’103 patent are invalid for lack of written description and enablement.
- (5) Whether the accused products infringe the ’508, ’103, and ’659 patents.
- (6) Whether the technical and economic prongs of the domestic industry requirement have been met for the ’508, ’103, and ’659 patents.

The Commission had determined to not review the remainder of the ID and did not request any briefing.

On review, the Commission has now determined that DSM has not shown that Respondents have violated section 337. As to the issues under review and as explained more fully in the related Commission Opinion, the Commission has determined to affirm with

modifications in part, reverse in part, and take no position as to certain issues under review. More particularly, the Commission has determined to affirm with modified reasoning the ID's conclusion that claims 1-8, 11, 15, and 18-19 of the '508 patent are invalid for lack of written description. The Commission has also determined to supplement the ID's reasoning as to its conclusion that claim 30 of the '659 patent is invalid for lack of written description. The Commission has further determined to reverse the ID's conclusion that claim 21 of the '508 patent and claims 1-10 and 13-15 of the '103 patent are not invalid for lack of written description. The Commission has additionally determined to modify the ID to include a finding that respondent OFS imports respondent MUV's accused KS1-043/048 coating. Finally, the Commission has determined not to take a position as to whether claims 1-8, 11, 15, 18-19, and 21 of the '508 patent and claims 1-10 and 13-15 of the '103 patent are invalid for lack of enablement; whether the accused products infringe the '508, '103, and '659 patents; and whether the technical and economic prongs of the domestic industry requirement have been met for those patents.

This action is taken under the authority of 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.

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: May 8, 2018