

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

In the Matter of

**CERTAIN ELECTRONIC
NICOTINE DELIVERY SYSTEMS
AND COMPONENTS THEREOF**

Investigation No. 337-TA-1139

**NOTICE OF COMMISSION DECISION NOT TO REVIEW AN INITIAL
DETERMINATION PARTIALLY TERMINATING THE INVESTIGATION
BASED ON THE WITHDRAWAL OF CERTAIN PATENT CLAIMS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (“ID”) (Order No. 36) of the presiding administrative law judge (“ALJ”) partially terminating the investigation based on the withdrawal of certain patent claims.

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: On December 13, 2018, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based on a complaint filed by Juul Labs, Inc. of San Francisco, California (“Complainant”). *See* 83 FR 64156-57 (Dec. 13, 2018). The complaint, as amended and supplemented, alleges a violation of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic nicotine delivery systems and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 10,070,669 (“the ’669 patent”); 10,076,139 (“the ’139 patent”); 10,045,568 (“the ’568 patent”); 10,058,130 (“the ’130 patent”); and 10,104,915 (“the ’915 patent”). *See id.* The notice of investigation names numerous respondents, some of whom were terminated from the investigation based on settlement or entry of a consent order. *See* Order Nos. 31-34 (July 30, 2019), *unreviewed*, Comm’n Notice (Aug. 23, 2019); Order No. 20 (Apr. 2, 2019), *unreviewed*,

Comm'n Notice (Apr. 15, 2019); Order No. 18 (Mar. 28, 2019), *unreviewed*, Comm'n Notice (Apr. 11, 2019); Order No. 16 (Mar. 21, 2019), *unreviewed*, Comm'n Notice (Apr. 4, 2019); Order No. 13 (Mar. 12, 2019), *unreviewed*, Comm'n Notice (Apr. 5, 2019); Order No. 11 (Feb. 28, 2019), *unreviewed*, Comm'n Notice (Mar. 26, 2019); Order No. 9 (Feb. 27, 2019), *unreviewed*, Comm'n Notice (Mar. 26, 2019). The Office of Unfair Import Investigations is also a party to the investigation.

On July 24, 2019, Complainant filed an amended motion pursuant to Commission Rule 210.21(a)(1), 19 CFR 210.21(a)(1), to partially terminate the investigation based on the withdrawal of certain patent claims, namely: claims 4, 5, 7, 8, 10, 12, 16, 17, 20, and 21 of the '669 patent; claims 1-3, 5-9, 18, and 19 of the '568 patent; claims 5, 6, 8-10, 16, 19, 21, and 27 of the '130 patent; claims 2-4, 9, 11, 12, 18-20, 22, 23, and 27 of the '915 patent; and all asserted claims of the '139 patent.

On August 8, 2019, the ALJ issued the subject ID (Order No. 36) granting Complainant's motion. In accordance with Commission Rule 210.21(a)(1), 19 CFR 210.21(a)(1), the ALJ noted that Complainant "disclose[d] the . . . agreements regarding the subject matter of this investigation." *See* ID at 2-3. In addition, the ALJ found that the motion "reduces the number of issues to be decided in this investigation by removing certain patent claims as to all respondents" and that "no extraordinary circumstances that warrant denying the motion." *See id.* at 3.

No petition for review of the subject ID was filed. The Commission has determined not to review 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: September 5, 2019