

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

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

Investigation No. 337-TA-1141

**NOTICE OF A COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL
DETERMINATION GRANTING COMPLAINANT'S MOTION FOR SUMMARY
DETERMINATION ON ISSUES OF IMPORTATION, INFRINGEMENT, AND
DOMESTIC INDUSTRY**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (the "Commission") has determined not to review an initial determination ("ID") (Order No. 38) granting complainant's motion for summary determination on issues of importation, infringement, and domestic industry.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2382. 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 (<https://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's Electronic Docket Information System ("EDIS") (<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 27, 2018, the Commission instituted the present investigation based on a complaint filed by Juul Labs, Inc. ("Juul" or "complainant") of San Francisco, California. 83 FR 66746-747 (Dec. 27, 2018). The complaint alleges a violation of 19 U.S.C. 1337, as amended ("Section 337"), in the importation, sale for importation, and sale in the United States after importation of certain cartridges used in electronic nicotine delivery systems and components thereof that allegedly infringe one or more of the asserted claims of U.S. Patent Nos. 10,058,129 ("the '129 patent"); 10,104,915 ("the '915 patent"); 10,111,470 ("the '470 patent"); 10,117,465 ("the '465 patent"); and 10,117,466 ("the '466 patent"). *Id.* The complaint also alleges the existence of a domestic industry. *Id.*

The notice of investigation originally named twenty-three (23) respondents, of which only nine (9) remain actively involved in this investigation: Shenzhen Yibo Technology Co. of Shenzhen City, China; Ziip Lab Co. of Shenzhen City, China; Ziip Lab S.A. of Maldonado, Uruguay; Maduro Distributors, Inc. (“Maduro”) of Maplewood, MN; Twist Vapor Franchising LLC of Tampa, Florida; Vape4U LLC of Montclair, California; Vaperz LLC (“Vaperz”) of Frankfurt, Illinois; Vaportronix, LLC (“Vaportronix”) of Aventura, Florida; and Vapor 4 Life Holdings, Inc. of Northbrook, Illinois (collectively, “Respondents”). *Id.* The Office of Unfair Import Investigations (“OUII”) was also named as a party. 83 FR at 66747.

On July 23, 2019, Juul moved for summary determination of importation, infringement, and domestic industry based on stipulations entered by Respondents and additional unrebutted evidence submitted by Juul. On July 25, 2019, Juul filed a motion for leave to clarify its original motion with respect to its allegations of direct and indirect infringement. On August 2, 2019, OUII filed a response in support of the motion, as clarified, except to the extent that Juul was seeking summary determination that the accused Vaperz JC01 pods indirectly infringe one or more of the asserted patent claims. OUII made no objection to Vaperz’s other accused products, *i.e.*, its Airbender pods and Ziip pods. On August 2, 2019, Vaportronix filed a response opposing Juul’s motion, but only with respect to whether Juul’s investments and activities in the United States satisfy the domestic industry requirement. Juul filed a reply in support of its motion on August 5, 2019.

On August 14, 2019, the presiding administrative law judge (“ALJ”) issued the subject ID (Order No. 38), which grants Juul’s motion and enters summary determination that: (1) the importation requirement has been satisfied for each of the accused products; (2) the accused products infringe, directly or indirectly, each of the asserted claims of the ’129, ’915, ’470, ’465, and ’466 patents, with the exception of Vaperz’s JC01 cartridge, which infringes only the ’915 patent, and Maduro, which is not accused of infringing the ’129 patent; and (3) Juul has satisfied the domestic industry requirement with respect to each asserted patent. ID at 26-28.

No party filed a petition to review the subject ID. The Commission has determined not to review the subject 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 13, 2019