

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN RELOAD CARTRIDGES FOR
LAPAROSCOPIC SURGICAL
STAPLERS**

Inv. No. 337-TA-1167

NOTICE OF INSTITUTION OF INVESTIGATION

Institution of Investigation Pursuant to 19 U.S.C.1337

AGENCY: U.S. International Trade Commission

ACTION: Notice

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 30, 2019, under section 337 of the Tariff Act of 1930, as amended, on behalf of Ethicon LLC of Guaynabo, PR; Ethicon Endo-surgery, Inc. of Cincinnati, Ohio; and Ethicon US, LLC of Cincinnati, Ohio. Letters supplementing the complaint were filed on June 7 and 17, 2019. The complaint alleges violations 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 reload cartridges for laparoscopic surgical staplers by reason of infringement of certain claims of U.S. Patent No. 9,844,379 (“the ’379 patent”); U.S. Patent No. 9,844,369 (“the ’369 patent”); U.S. Patent No. 7,490,749 (“the ’749 patent”); U.S. Patent No. 8,479,969 (“the ’969 patent”); and U.S. Patent No. 9,113,874 (“the ’874 patent”). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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., Room 112, Washington, D.C. 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (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>.

FOR FURTHER INFORMATION CONTACT: Katherine Hiner, Office of Docket Services, U.S. International Trade Commission, telephone (202) 205-1802.

SUPPLEMENTARY INFORMATION:

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 C.F.R. 210.10 (2019).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on June 28, 2019, **ORDERED THAT** –

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1-3 of the '379 patent; claims 22-23 of the '369 patent; claim 1 of the '749 patent; claim 24 of the '969 patent; and claim 19 of the '874 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 C.F.R. 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is "stapler reload cartridges for surgical instruments used in laparoscopic surgical procedures to both cut and staple tissue";

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Ethicon LLC
475 Street C, Los Frailes Industrial Park
Guaynabo, PR 00969

Ethicon Endo-Surgery, Inc.
4545 Creek Road
Cincinnati, OH 45242

Ethicon US, LLC
4545 Creek Road
Cincinnati, OH 45242

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Intuitive Surgical Inc.
1020 Kifer Road
Building 101
Sunnyvale, CA 94086

Intuitive Surgical Operations, Inc.
1020 Kifer Road
Sunnyvale, CA 94086

Intuitive Surgical Holdings, LLC
1020 Kifer Road
Sunnyvale, CA 94086

Intuitive Surgical S. De R.L. De C.V.
Circuito Internacional Sur #21-A
Parque Industrial Nelson
Carretera A San Luis R.c., Km 14
Mexicali Baja California, Mexico 21397; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 C.F.R. 210.13. Pursuant to 19 C.F.R. 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton'.

Lisa R. Barton
Secretary to the Commission

Issued: June 28, 2019