

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN NICOTINE POUCHES AND
COMPONENTS THEREOF AND
METHODS OF MAKING THE SAME**

Investigation No. 337-TA-1192

**NOTICE OF A COMMISSION DETERMINATION TO REVIEW IN PART AN INITIAL
DETERMINATION TERMINATING THE INVESTIGATION AS TO CERTAIN
CLAIMS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined to review in part an initial determination (“ID”) (Order No. 7) of the presiding administrative law judge (“ALJ”) granting complainants’ unopposed motion to partially terminate the investigation as to certain claims and, on review, to correct certain clerical errors in the ID. The Commission has determined not to review the remainder of the ID, including the ID’s determination that the motion is granted and that, accordingly, the investigation is terminated in part as to claims 18 and 20 of U.S. Patent No. 9,161,908 (“the ’908 patent”).

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.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 March 12, 2020, the Commission instituted Inv. No. 337-TA-1192, *Certain Nicotine Pouches and Components Thereof and Methods of Making the Same*, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based on a complaint filed by NYZ AB of Stockholm, Sweden; Swedish Match North America, LLC of Richmond, Virginia; Pinkerton Tobacco Co., LP of Owensboro, Kentucky; and wm17 holding GmbH of Switzerland (collectively, “Complainants”). 85 FR 1405-06 (Mar. 12, 2020). A supplement to the complaint was filed on February 21, 2020. The complaint 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 nicotine pouches and components thereof and methods of making the same by reason of infringement of claims 1, 2, 5, 6, 9-18, 20, and 21 of the '908 patent. The Commission's notice of investigation names as respondents The Art Factory AB of Helsingborg, Sweden; Kretek International, Inc. of Moorpark, California; and DRYFT Sciences, LLC of Moorpark, California (collectively, "Respondents"). *Id.* at 1406. The Commission's Office of Unfair Import Investigations also was named as a party. *Id.*

On May 15, 2020, Complainants filed an unopposed motion seeking to terminate this investigation with respect to claims 18 and 20 of the '908 patent. Mot. at 1.

On the same day, the presiding ALJ issued the subject ID granting complainants' motion. The ALJ found that no party opposes the motion, and there are no extraordinary circumstances that warrant denying the motion. ID at 2. No party petitioned for review of the ID.

The Commission has determined to review the ID in part and, on review, to correct certain errors on pages 1 and 2 of the ID. Specifically, the Commission clarifies that: (1) claim 1 of the '908 patent remains asserted in the investigation and (2) Complainants' motion was filed on May 15, 2020. The Commission determined not to review the remainder of the ID, including the ID's determination that the motion is granted and that, accordingly, the investigation is terminated in part as to claims 18 and 20 of the '908 patent.

The Commission vote for this determination took place on June 15, 2020.

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: June 15, 2020