

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN VAPORIZER DEVICES,
CARTRIDGES USED THEREWITH, AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1368

**NOTICE OF COMMISSION DETERMINATION TO DENY RESPONDENTS'
PETITION FOR RECONSIDERATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to deny a petition for reconsideration filed by respondents (1) NJOY, LLC of Phoenix, Arizona; (2) NJOY Holdings, Inc. of Scottsdale, Arizona; (3) Altria Group, Inc. of Richmond, Virginia; (4) Altria Group Distribution Company of Richmond, Virginia; and (5) Altria Client Services LLC of Richmond, Virginia (collectively, "NJOY") in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3179. 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, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 7, 2023, based on a complaint filed by JUUL Labs, Inc. of Washington, D.C. and VMR Products LLC of San Francisco, California (together, "JLI"). 88 FR 52207 (Aug. 7, 2023). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337") based on the importation into the United States, the sale for importation, and/or the sale within the United States after importation of certain vaporizer devices, cartridges used therewith, and components thereof by reason of infringement of certain claims of U.S. Patent Nos. RE49,114 ("the '114 patent"), 11,134,722 ("the '722 patent"), 11,606,981 ("the '981 patent"), 10,130,123 ("the '123 patent"), and 10,709,173 ("the '173 patent"). *Id.* The complaint further alleges that a domestic industry ("DI") exists. *Id.* The notice of investigation names the five NJOY respondents. *Id.* The Office of Unfair Import Investigations ("OUII") is also named as a party. *Id.* The Commission also directed the presiding administrative law judge ("ALJ") to take evidence on and provide factual findings and

a recommended determination concerning the public interest. *Id.*

On August 23, 2024, the ALJ issued a final initial determination (“ID”) finding a violation of section 337 based on infringement of all the remaining asserted claims of the ’722, ’981, ’123, and ’173 patents. On September 6, 2024, NJOY filed a petition seeking Commission review of certain findings in the ID, including the ID’s construction of the “pressure sensor” limitations 27[d] and 27[e] and the phrase “gasket around the pressure sensor” recited in limitation 27[h] of claim 27 of the ’123 patent, as well as the ID’s finding that JLI’s JUUL2 DI system literally practices those limitations.

On October 24, 2024, the Commission determined to review in part the final ID. 89 FR 89041-44 (Nov. 12, 2024). As relevant to NJOY’s current petition, the Commission determined to review the ID’s construction of the “pressure sensor” limitations 27[d] and 27[e] of claim 27 of the ’123 patent, which allows the limitations to be literally practiced by a configuration that has two pressure sensors, each pressure sensor having only one of the two recited exposed sides “of the pressure sensor.” *Id.* at 89042; *see* ID at 117 (“In reciting a first side and a second side, the claim does not restrict the physical structure of the pressure sensor so that it must be a single sensor.”). The Commission also determined to review the ID’s finding that the JUUL2 system literally practices the “pressure sensor” limitations under the ID’s construction. 89 FR at 89042; *see* ID at 122-23. The Commission determined not to review, and thus affirmed, the ID’s construction of limitation 27[h] of claim 27 of the ’123 patent such that the recited “gasket around the pressure sensor” does *not* require the gasket “to be completely around the pressure sensor” and the ID’s finding that the JUUL2 system literally practices limitation 27[h]. 89 FR at 89042; *see* ID at 129-32.

On January 29, 2025, the Commission issued a final determination finding a violation of section 337 by NJOY with respect to all the remaining asserted claims. 90 FR 8938-40 (Feb. 4, 2025); *see* Comm’n Opinion (“Op.”) (Jan. 29, 2025). As relevant to NJOY’s current petition, the Commission determined, on review, to: (i) modify the ID’s construction of the “pressure sensor” limitations 27[d] and 27[e] and construe those limitations as requiring at least one “pressure sensor” that has both “a first side . . . exposed to a sealed air flow path” and “a second side . . . exposed to a device air path open to ambient pressure”; (ii) reverse the ID’s finding that the JUUL2 system literally practices the “pressure sensor” limitations 27[d] and 27[e]; and (iii) find that the JUUL2 system practices, under the doctrine of equivalents (“DOE”), the “pressure sensor” limitations 27[d] and 27[e] as properly construed. Op. at 29-35, 44-48, 55-72. Accordingly, the Commission found that JLI satisfied the technical prong of the DI requirement as to the ’123 patent based on the JUUL2 system and, therefore, found a violation of section 337 by NJOY as to the ’123 patent. *Id.* at 72, 74. The Commission also determined that the appropriate remedy is: (i) a limited exclusion order against NJOY’s infringing products and (ii) cease and desist orders against each of the NJOY respondents. 90 FR at 8940. The Commission imposed no bond (zero percent bond) for importations of the excluded articles during the period of Presidential review. *Id.*

On February 12, 2025, NJOY filed a petition for reconsideration of the Commission’s opinion’s finding that JLI satisfied the technical prong of the DI requirement as to the ’123 patent based on the JUUL2 system and, thus, that JLI showed that NJOY violated section 337 as

to the '123 patent. More specifically, NJOY argues that because the Commission finds that the JUUL2 practices the “pressure sensor” limitations 27[d] and [e] under the DOE, it is an “impossibility” that the JUUL2 *literally* practices the “gasket” limitation 27[h], which refers back to “the pressure sensor” (“a gasket around the pressure sensor . . .”). On February 19 and 20, 2025, respectively, OUII and JLI each filed a response opposing NJOY’s petition.

The Commission, having reviewed the record in this investigation, including the Commission’s final determination and opinion, NJOY’s petition, and JLI’s and OUII’s responses thereto, has determined to deny NJOY’s petition for reconsideration. The Commission issues an order herewith setting forth its determinations.

The Commission vote for this determination took place on April 7, 2025.

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.

A handwritten signature in black ink, appearing to read "Lisa R. Barton", written in a cursive style.

Lisa R. Barton
Secretary to the Commission

Issued: April 8, 2025