

**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 AFFIRM AN INITIAL
DETERMINATION GRANTING SUMMARY DETERMINATION THAT THE
ECONOMIC PRONG OF THE DOMESTIC INDUSTRY REQUIREMENT IS
SATISFIED**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm an initial determination (“ID”) (Order No. 22) of the presiding administrative law judge (“ALJ”) granting complainants’ unopposed motion for summary determination that the economic prong of the domestic industry requirement is satisfied.

FOR FURTHER INFORMATION CONTACT: Namo Kim, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3459. 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, “Complainants”). 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, 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”), 10,130,123 (“the ’123 patent”),

10,709,173 (“the ’173 patent”), 11,134,722 (“the ’722 patent”), and 11,606,981 (“the ’981 patent”). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The notice of investigation named five respondents: NJOY, LLC of Phoenix, Arizona; NJOY Holdings, Inc. of Scottsdale, Arizona; Altria Group, Inc. of Richmond, Virginia; Altria Group Distribution Company of Richmond, Virginia; and Altria Client Services LLC of Richmond, Virginia. *Id.* The Office of Unfair Import Investigations (“OUII”) is also named as a party. *Id.*

The Commission subsequently terminated the investigation as to the following asserted claims based on withdrawal of the complaint: (i) claims 1, 5-7, 29, 30, 36, 80, 89, and 93 of the ’114 patent; (ii) claims 16, 18, 29, and 31 of the ’123 patent; (iii) claims 3, 8, 14, and 17 of the ’722 patent; and (iv) claims 6, 9-11, 17, and 18 of the ’981 patent. Order No. 18 (March 6, 2024), *unreviewed* by Comm’n Notice (April 3, 2024). The Commission further terminated the investigation as to the following asserted claims based on withdrawal of the complaint: (i) claims 43, 44, 76, 77, 81, and 86 (all remaining claims) of the ’114 patent; (ii) claim 14 of the ’123 patent; (iii) claims 2, 3, 6, 7, 15, 16, 18-25, 28, and 30 of the ’173 patent; (iv) claims 5, 7, 9-13, 16, and 18-21 of the ’722 patent; and (v) claims 2, 5, and 13-16 of the ’981 patent. Order No. 21 (April 2, 2024), *unreviewed* by Comm’n Notice (Apr. 26, 2024).

On March 1, 2024, Complainants filed an unopposed motion for summary determination that they have satisfied: (i) the economic prong of the domestic industry requirement under sections 337(a)(3)(A) and (B) for all of the asserted patents, *i.e.*, the ’114, ’123, ’173, ’722, and ’981 patents; and (ii) the technical prong of the domestic industry requirement with respect to claims 43, 44, 76, 77, 81, and 86 of the ’114 patent, which was subsequently terminated from the investigation as noted above.

On March 13, 2024, OUII filed a response supporting Complainants’ motion for summary determination. None of the respondents in this investigation responded to the motion.

On April 3, 2024, the ALJ issued the subject ID (Order No. 22) granting Complainants’ unopposed motion for summary determination that the economic prong of the domestic industry requirement is satisfied for the ’123, ’173, ’722, and ’981 patents under sections 337(a)(3)(A) and 337(a)(3)(B). The ID denies as moot Complainants’ motion for the economic prong and the technical prong relating to the previously terminated ’114 patent. The ID considers evidence submitted by Complainants regarding its asserted domestic industry products (“JUUL System” and “JUUL2 System”) for the ’123, ’173, ’722, and ’981 patents and finds that Complainants have “satisfied the economic prong of the domestic industry requirement with respect to the JUUL System and with respect to the JUUL2 System under both” sections 337(a)(3)(A) and (B).

On May 3, 2024, the Commission determined to review the subject ID in its entirety. *See* Comm’n Notice (May 3, 2024).

Having examined the record of this investigation, including the subject ID and the submissions of the parties, the Commission has determined to affirm the subject ID granting Complainants’ unopposed motion for summary determination that the economic prong of the

domestic industry requirement is satisfied for the '123, '173, '722, and '981 patents under sections 337(a)(3)(A) and 337(a)(3)(B).¹

The Commission vote for this determination took place on June 18, 2024.

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 20, 2024

¹ Commissioner Kearns agrees that the economic prong of the domestic industry requirement is satisfied in this case. However, he would not rely upon the comparisons to “analogous” global investments set forth in the subject ID in determining the quantitative significance of Complainants’ investments, as it appears those comparisons are too limited. It is not clear, for example, whether the comparisons relied upon by the ID take into account the costs paid to foreign third-party contract manufacturers. The Commission’s significance analysis should be based on full picture of all expenses associated with the product, not a selective subset of those expenses. One could not establish a domestic industry by demonstrating, for example, that the vast majority of expenses associated with packaging the product (*e.g.*, ribbon-tying expenses) occur in the United States, or that the vast majority of accounting expenses take place in the United States. As an alternative to a comparison of domestic to foreign expenditures, significance can be assessed based on “the value added to the article in the United States by the domestic activities.” See *Certain Bone Cements, Components Thereof and Products Containing Same*, Inv. No. 337-TA-1153 (“*Bone Cements*”), Comm’n Op. at 26. In this case, in the absence of information to the contrary, the record supports a finding of significance in view of the value added to the domestic industry products from Complainants’ U.S. manufacturing activities.