

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN OIL VAPORIZING DEVICES,
COMPONENTS THEREOF, AND
PRODUCTS CONTAINING THE SAME**

Investigation No. 337-TA-1392

**NOTICE OF A COMMISSION DETERMINATION TO REVIEW IN PART
A FINAL INITIAL DETERMINATION FINDING NO VIOLATION AND, ON REVIEW,
TO VACATE AN INITIAL DETERMINATION ON THE ECONOMIC PRONG OF THE
DOMESTIC INDUSTRY REQUIREMENT AND REMAND FOR FURTHER
PROCEEDINGS**

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 a final initial determination (“FID”) of the presiding administrative law judge (“ALJ”), finding no violation of section 337 of the Tariff Act of 1930, as amended. Among other issues, as discussed below, the Commission reviews the FID’s finding that PAX Labs, Inc. (“Complainant”) has not satisfied its burden on the economic prong of the domestic industry requirement. On review, the Commission has determined to vacate this finding and to remand for further proceedings consistent with the Commission’s determination.

FOR FURTHER INFORMATION CONTACT: B. Rashmi Borah, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-2518. 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: The Commission instituted this investigation on March 6, 2024, based on a complaint filed by Complainant. 89 FR 16025-26 (Mar. 6, 2024). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain oil vaporizing devices, components thereof, and products containing the same by reason of infringement of certain claims of U.S. Patent Nos. 11,369,756 (“the ’756 patent”); 11,766,527 (“the ’527

patent”); 11,369,757 (“the ’757 patent”); and 11,759,580 (“the ’580 patent”) (together, the “Asserted Patents”). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The Commission’s notice of investigation named as respondents STIIIZY IP LLC f/k/a STIIIZY, LLC; STIIIZY, Inc. d/b/a Shryne Group Inc. (collectively, “STIIIZY”); ALD Group Limited; and ALD Hong Kong Holdings (collectively, “ALD”) (together, “Respondents”) *Id.* The Office of Unfair Import Investigations is not participating in the investigation. *Id.*

The Commission previously terminated the investigation as to claims 4 and 21 of the ’527 patent. Order No. 11 (July 11, 2024), *unreviewed by* Comm’n Notice (July 30, 2024). The Commission also terminated the investigation as to claims 2, 3, 6-9, and 11-17 of the ’756 patent; claims 3-8, 10-12, 14, and 17-19 of the ’757 patent; claims 2-3, 6-9, 12-16, 19, 20, 24, 25, and 27-29 of the ’527 patent; and claims 2-5, 9, 12-15, and 19 of the ’580 patent. Order No. 20 (Sept. 6, 2024), *unreviewed by* Comm’n Notice (Oct. 7, 2024).

The ALJ held an evidentiary hearing from October 21-23, 2024.

After the hearing, the Commission terminated the investigation as to claims 2, 9, and 16 of the ’757 patent; claims 23, 26, and 30 of the ’527 patent; and claims 11, 16-18, and 20 of the ’580 patent. Order No. 32 (Nov. 8, 2024), *unreviewed by* Comm’n Notice (Dec. 10, 2024).

As of the issuance of the FID, the remaining asserted claims were: claims 1, 5, and 10 of the ’756 patent; claims 1, 5, 10, 11, 17, 18, and 22 of the ’527 patent; claims 1, 13, 15, and 20 of the ’757 patent; and claims 1, 6-8, and 10 of the ’580 patent.

On March 6, 2025, the ALJ issued the FID finding no violation of section 337. The FID finds that: (1) all asserted claims are infringed by at least one representative accused products; (2) none of the asserted claims are invalid under 35 U.S.C. §§ 102, 103, and/or 112, ¶ 1; and (3) Complainant has satisfied the technical prong of the domestic industry requirement for all Asserted Patents. FID at 111-13. The FID finds, however, that Complainant has not satisfied the economic prong of the domestic industry requirement for any of the Asserted Patents. *Id.*

The FID also includes the ALJ’s recommended determination (“RD”) on remedy, the public interest, and bonding should the Commission find a violation of section 337. Specifically, the RD recommends that the Commission issue a limited exclusion order barring entry of STIIIZY’s and ALD’s products that infringe the asserted claims of the Asserted Patents. The RD also recommends issuing a cease and desist order directed to STIIIZY, but not to ALD, because ALD does not maintain significant commercial operations in the United States. The RD further recommends that the Commission set a bond of 100 percent for any importations of infringing products during the period of Presidential review.

On March 18, 2025, Complainant filed a petition seeking review of the following findings: (1) that certain accused products do not infringe the asserted claims of the ’580 patent; (2) that certain redesigned products do not infringe the asserted claims of the ’756, ’527, or ’757 patent; and (3) that Complainant has not satisfied the economic prong of the domestic industry requirement. On the same day, Respondents filed a petition seeking review of the following

findings: (1) that certain redesigned products infringe the asserted claims of the '580 patent under the doctrine of equivalents; (2) that claims 1, 6, or 8 of the '580 patent are not invalid as anticipated; and (3) that Respondents failed to meet their burden to show that a skilled artisan would have been motivated to combine certain prior art references. Respondents also ask the Commission to determine: (1) whether Complainant's investments made while the Complainant was a licensee should be counted under subsections (A) or (B) of the economic prong of the domestic industry requirement; (2) whether Complainant fails to satisfy the economic prong of the domestic industry requirement because Complainant's domestic industry expenditures are based on activities that are illegal under the Controlled Substances Act; and (3) whether Complainant demonstrated that it had a domestic industry on the date the complaint was filed. On March 26, 2025, Complainant and Respondents filed their respective petition responses.

On March 31, 2025, Professor William J. McNichol, Jr., an adjunct professor at Rutgers Law School, submitted a response to the Commission's *Federal Register* notice seeking public interest submissions. *See* 90 Fed. Reg. 11851-52 (Mar. 12, 2025). On April 7, 2025, the Complainant and ALD filed their respective submissions on the public interest pursuant to Commission Rule 210.50(a)(4). 19 C.F.R. § 210.52(a)(4).

Having examined the record of this investigation, including the FID and the parties' submissions, the Commission has determined to review the FID in part. Specifically, the Commission has determined to review the FID's finding that (1) certain accused products do not infringe the '580 patent; (2) certain redesigned products infringe the '580 patent; and (3) Complainant has not satisfied its burden as to the economic prong of the domestic industry requirement. The Commission has determined not to review the remainder of the FID.

As explained in the remand order issued concurrently herewith, the Commission has determined that the FID errs by stating as a bright-line rule that "pre-issuance investments [are not] cognizable under subparagraphs (A) and (B) of section 337(a)(3)." FID at 110. Accordingly, the Commission has determined to vacate and remand for further proceedings the FID's finding that Complainant has not satisfied its burden on the economic prong of the domestic industry requirement. The other findings selected for review remain under Commission review pending the remand.

The Commission vote for this determination took place on May 16, 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.



Lisa R. Barton
Secretary to the Commission

Issued: May 16, 2025