

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
AND, ON REVIEW, TO AFFIRM A REMAND INITIAL DETERMINATION FINDING
THAT COMPLAINANT HAS SATISFIED THE ECONOMIC PRONG OF THE
DOMESTIC INDUSTRY REQUIREMENT; REQUEST FOR BRIEFING ON REMEDY,
THE PUBLIC INTEREST, AND BONDING**

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 a remand initial determination (“RID”) of the presiding administrative law judge (“ALJ”), finding that PAX Labs, Inc. (“Complainant”) satisfied the economic prong of the domestic industry requirement under section 337 of the Tariff Act of 1930, as amended. On review, the Commission has determined to affirm the RID’s finding that Complainant satisfied the economic prong of the domestic industry requirement under section 337(a)(3)(A) and (B).¹ The Commission requests written submissions from the parties, interested government agencies, and other interested persons on the issues of remedy, the public interest, and bonding, under the schedule set forth below.

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.

¹ Commissioner Johanson concurs with the Commission’s finding of a domestic industry under subsection 337(a)(3)(B) based on alternative reasoning as set forth in his separate views in this investigation, and he takes no position on Complainant’s investments under 337(a)(3)(A).

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 final initial determination (“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: the accused STIIIZY-LIIL, the STIIIZY-1G(C), and the STIIIZY-ORIG-1 products infringe at least one claim of each Asserted Patent; the accused STIIIZY-AIO, the FLARE(C), and the FLARE(V) products each infringe at least one asserted claim of the ’527 and ’580 patents; the accused ROVE(C) and ROVE(V) products each infringe at least one asserted claim of the ’527 patent; the accused STIIIZY Redesigned Products and FLARE-REDESIGNS infringe at least one claim of the ’580 patent; the ROVE(C) and ROVE(V) products do not infringe the asserted claims of the ’580 patent; and the accused ROVE-REDESIGNS do not infringe any asserted claim. The FID further finds that Respondents induced infringement and contributorily infringed all asserted claims, none of the asserted claims are invalid under 35 U.S.C. §§ 102, 103, and/or 112, ¶ 1, and Complainant has satisfied the technical prong of the domestic industry requirement for all Asserted Patents. 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 asked 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).

On May 16, 2025, the Commission issued a notice indicating that it was reviewing the FID's findings 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. *See* Comm'n Not. at 3 (May 16, 2025). On review, the Commission 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).'" *Id.* The Commission remanded the investigation and directed the ALJ to "consider whether Complainant's alleged domestic industry investments were made with respect to the articles protected by the patent (*i.e.*, the products that the FID finds satisfy the technical prong of

the domestic industry requirement), not limited by whether those investments were made post-patent issuance.” Remand Order at 4 (May 16, 2025). The other issues remain under review.

On June 9, 2025, Complainant and Respondents submitted their respective remand briefs. The ALJ did not provide for the parties to file reply briefs.

On July 18, 2025, the ALJ issued the RID finding that Complainant has satisfied the economic prong of the domestic industry requirement under section 337(a)(3)(A) and (B).

On July 30, 2025, Respondents submitted a petition for review of the RID. Respondents request review of the RID’s finding that Complainant was an exclusive licensee to the Asserted Patents before June 28, 2022, and that investments made before that date should count towards Complainant’s domestic industry. On August 6, 2025, Complainant submitted a response to Respondents’ petition for review.

Having examined the record of this investigation, including the RID and the parties’ submissions, the Commission has determined to review the RID. First, the Commission has determined to supplement the following sentence on page 7 of the RID: “Nor is there a dispute that all investments toward a domestic industry were incurred while [Complainant] was an exclusive licensee to the Asserted Patents.” The Commission notes that Respondents dispute whether Complainant was an exclusive licensee to the Asserted Patents before the Asserted Patents issued. However, Respondents raised this argument for the first time in their remand submission, and accordingly, this argument is waived. *See, e.g., Certain Fitness Devices, Streaming Components Thereof, and Systems Containing Same*, Inv. No. 337-TA-1265, Comm’n Op. at 19-20 (Mar. 23, 2023) (finding arguments not made in the pre-hearing brief to be waived). Furthermore, the Commission has determined to modify the following sentence on page 14 of the RID: “The 1.0-gram pod only practices the ’757 and ’580 patents, so less than 100% of all DI investments are attributable to a domestic industry for these patents” to read: “The 1.0-gram pod is not alleged to practice the ’757 and ’580 patents, so less than 100% of all DI investments are attributable to a domestic industry for these patents.”

The Commission otherwise affirms the RID’s finding that Complainant has satisfied the economic prong of the domestic industry requirement under section 337(a)(3)(A) and (B), including its subsidiary finding that Complainant was an exclusive licensee when it made its domestic industry investments. The Commission finds that the RID reflects a holistic approach to the domestic industry analysis consistent with the Federal Circuit’s recent holding in *Wuhan Healthgen Biotechnology Corp. v. Int’l Trade Comm’n*, 127 F.4th 1334, 1339 (Fed. Cir. 2025); *see also Lashify, Inc. v. Int’l Trade Comm’n*, 130 F.4th 948, 963 (Fed. Cir. 2025).

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia*, (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States; and/or (2) cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written

submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (Dec. 1994).

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and cease and desist orders would have on: (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. See Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding.

In its initial submission, Complainant is also requested to identify the remedy sought and to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to state the dates that the Asserted Patents expire, to provide the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. All initial written submissions, from the parties and/or third parties/interested government agencies, and proposed remedial orders from the parties must be filed no later than close of business on **October 1, 2025**. All reply submissions must be filed no later than the close of business on **October 8, 2025**. Opening submissions from the parties are limited to **25** pages. Reply submissions from the parties are limited to **15** pages. All submission from third parties and/or interested government agencies are limited to **10** pages. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above pursuant to 19 CFR 210.4(f). Submissions should refer to the investigation number (**Inv. No. 337-TA-1392**) in a prominent place on the cover page and/or the

first page. (See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary, (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed with the Commission and served on any parties to the investigation within two business days of any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on September 17, 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', enclosed within a large, loopy oval flourish.

Lisa R. Barton
Secretary to the Commission

Issued: September 17, 2025