

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN SLEEP-DISORDERED
BREATHING TREATMENT SYSTEMS
AND COMPONENTS THEREOF**

Investigation No. 337-TA-890

**NOTICE OF COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL
DETERMINATION GRANTING THE COMPLAINANTS' MOTION TO PARTIALLY
TERMINATE THE INVESTIGATION BY WITHDRAWING ALLEGATIONS WITH
RESPECT TO U.S. PATENT NO. 7,938,116**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (“ID”) (Order No. 11) of the presiding administrative law judge granting the Complainants’ motion to partially terminate the investigation by withdrawing allegations with respect to U.S. Patent No. 7,938,116 (“the ‘116 patent”).

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.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 Friday, August 23, 2013, based on a complaint filed on July 19, 2013, on behalf of ResMed Corp. of San Diego, California; ResMed Inc. of San Diego, California; and ResMed Ltd. of Bella Vista, Australia (collectively, “ the Complainants”). 78 *Fed. Reg.* 52563-64 (August 23, 2013). The complaint alleged violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the sale for importation, importation, or sale within the United States after importation of certain sleep-disordered breathing treatment systems and components thereof by reason of infringement of one or more of claims 32–37, 53, 79, 80, and 88 of U.S. Patent No.

7,997,267; claims 1–7 of U.S. Patent No. 7,614,398 (“the ‘398 patent”); claim 1 of the ‘116 patent; claims 30, 37, and 38 of U.S. Patent No. 7,341,060; claims 1, 3, 5, 11, 28, 30, 31, and 56 of U.S. Patent No. 8,312,883; claims 13, 15, 16, 26–28, 51, 52, and 55 of U.S. Patent No. 7,926,487; claims 1, 3, 6, 7, 9, 29, 32, 35, 40, 42, 45, 50, 51, 56, 59, 89, 92, 94, and 96 of U.S. Patent No. 7,178,527; and claims 19–24, 26, 29–36, and 39–41 of U.S. Patent No. 7,950,392. The Commission’s notice of investigation named as respondents BMC Medical Co., Ltd. of Beijing, China; 3B Medical, Inc. of Lake Wales, Florida; and 3B Products, L.L.C. of Lake Wales, Florida (collective, “the Respondents”). A Commission investigative attorney (“IA”) is also participating in this investigation.

On December 13, 2013, the Commission issued notice of its determination not to review an ID (Order No. 4) granting the Complainants’ unopposed motion to amend the complaint to correct an error in its allegations regarding the domestic industry. 78 *Fed. Reg.* 76858–59 (December 19, 2013).

On February 10, 2014, the Commission issued notice of its determination not to review an ID (Order No. 7) granting the Complainants’ motion to amend the complaint and notice of investigation by substituting claim 1-7 of U.S. Patent No. RE44,453 for claims 1-7 of the ‘398 patent, and granting the Respondents’ motion to terminate the investigation with respect to the ‘398 patent. 79 *Fed. Reg.* 9000-01 (February 14, 2014).

On February 10, 2014, the Complainants moved for partial termination of the investigation with respect to the asserted claims of the ‘116 patent by withdrawing the allegations regarding those claims. The motion stated that the IA did not oppose the motion. On February 12, 2014, the Respondents filed a response stating that they also did not oppose the motion. On February 24, 2014, the ALJ issued the subject ID (Order No. 11) granting the motion. No petitions for review were filed.

Having considered the ID, the Commission has determined not to review the subject ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and Part 210 of the Commission’s Rules of Practice and Procedure (19 C.F.R. Part 210).

By order of the Commission.



Lisa R. Barton
Acting Secretary to the Commission

Issued: March 11, 2014