

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN MULTIPLE MODE
OUTDOOR GRILLS AND PARTS
THEREOF**

Investigation No. 337-TA-895

**NOTICE OF COMMISSION'S FINAL DETERMINATION FINDING A VIOLATION
OF SECTION 337; ISSUANCE OF A LIMITED EXCLUSION ORDER AND CEASE
AND DESIST ORDERS; TERMINATION OF THE INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), in the unlawful importation, sale for importation, and sale after importation by respondents The Brinkmann Corporation ("Brinkmann") of Dallas, Texas; Outdoor Leisure Products, Inc. ("OLP") of Neosho, Missouri; Dongguan Kingsun Enterprises Co., Ltd. ("Kingsun") of Dongguan City, China; Academy, Ltd. ("Academy") of Katy, Texas; and Ningbo Huige Outdoor Products Co., Ltd. ("Huige") of Zhejiang Province, China, of certain multiple mode outdoor grills and parts thereof by reason of infringement of one or more claims of U.S. Patent No. 8,381,712 ("the '712 patent"). The Commission also found defaulted respondent Keesung Manufacturing Co., Ltd. ("Keesung") of Guangzhou, China in violation pursuant to Section 337(g)(1). The Commission's determination is final, and the investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2392. 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 at <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 September 26, 2013, based on a complaint filed on behalf of A&J Manufacturing, LLC of St. Simons, Georgia and A&J Manufacturing, Inc. of Green Cove Springs, Florida (collectively, “A&J” or “Complainants”). 78 *Fed. Reg.* 59373 (Sept. 26, 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 multiple mode outdoor grills and parts thereof by reason of infringement of certain claims of the ’712 patent, the claim of U.S. Patent No. D660,646, and the claim of U.S. Patent No. D662,773. The Commission’s notice of investigation, as amended, named numerous respondents including Brinkmann, OLP, Kingsun, Academy, Huige, Char-Broil, LLC (“Char-Broil”), and Fudeer Electric Appliance Co., Ltd. (“Fudeer”). The Office of Unfair Import Investigations (“OUII”) is also a party to this investigation.

On January 9, 2014, the Commission determined not to review an initial determination finding respondent Keesung in default. Order No. 16 (Dec. 20, 2013).

On June 24, 2014, the Commission affirmed-in-part and vacated-in-part an initial determination granting-in-part a motion for summary determination of non-infringement filed by Char-Broil, Fudeer, OLP, Kingsun, Tractor Supply Co., and Chant Kitchen Equipment (HK) Ltd. The Commission found that Complainants admit that the following redesigned grills do not infringe the ’712 patent: (1) Chant/Tractor Supply’s New Model 1046761; (2) Rankam’s Member’s Mark Grill, Model No. GR2071001-MM (Ver. 2) and (3) Rankam’s Smoke Canyon Grill, Model No. GR2034205-SC (Ver. 2). *Comm’n Op.* at 1 (Jun. 24, 2014). The Commission found the other redesigned products at issue were within the scope of the investigation. *Id.* The Commission adopted the ALJ’s construction of the “openable [] cover” limitations of claims 1 and 17 on modified grounds. *Id.* The Commission affirmed the ALJ’s finding of non-infringement of claims 1 and 17 for the Char-Broil Oklahoma Joe Longhorn Model 12210767 Grill and adopted the ALJ’s findings that the redesigned grills do not infringe claims 1 and 17 on modified grounds. *Id.* The Commission also found that the “openable [] cover means” limitations of claim 10 are means-plus-function limitations and directed the ALJ to make findings consistent with its means-plus-function interpretation. *Id.* at 2.

On July 31, 2014, the Commission determined not to review an initial determination granting a motion for partial termination of the investigation based on withdrawal of allegations in the complaint concerning the two asserted design patents. *See* Order No. 50 (Jul. 14, 2014).

On September 26, 2014, the ALJ issued the final Initial Determination (“ID”), finding a violation of section 337 as to respondents Brinkmann, OLP, Kingsun, Academy, and Huige based upon his determinations: (i) that certain, but not all, accused products infringe at least one claim of the ’712 patent; (ii) that the domestic industry requirement has been satisfied with respect to the ’712 patent; and (iii) that the asserted claims of the ’712 patent have not been shown by clear and convincing evidence to be invalid. On October 9, 2014, the ALJ issued his Recommended Determination on remedy and bonding.

On October 14, 2014, A&J filed a petition for review of certain aspects of the final ID's findings concerning claim construction and infringement. On the same day, Brinkmann, OLP, and Academy together sought review of certain aspects of the final ID's findings regarding validity. OLP separately challenged certain aspects of the final ID's findings regarding claim construction and infringement. Academy and Huige petitioned for review of the ID's determination (Order No. 47) to exclude evidence and testimony concerning their redesigns, and the ALJ's refusal to make a determination as to whether those redesigns infringe the asserted claims of the '712 patent. Responses to the petitions were filed on October 22, 2014.

On December 2, 2014, the Commission determined to review the final ID in part and requested briefing on issues it determined to review, and on remedy, the public interest, and bonding. 79 *Fed. Reg.* 72700-02 (Dec. 8, 2014). Specifically, with respect to the '712 patent, the Commission determined to review: (1) the ID's construction of the "exhaust" and "exhaust means" limitations in claims 10 and 16, and related findings regarding infringement of claims 10-16; (2) the ID's findings regarding infringement of claims 1, 4, and 6-8 by the accused Dyna-Glo grills imported by respondent GHP Group, Incorporated; (3) the ID's findings regarding infringement of claims 1, 2, 4-8, 10, 11, and 13-15 by the accused Char-Broil Model No. 463724512 grill; and (4) the ID's finding that the '712 patent was not shown to be invalid.

On December 12, 2014, A&J and OUII each filed initial written submissions regarding issues on review, remedy, the public interest, and bonding. On the same day, the respondents jointly filed their initial written submission regarding issues on review, remedy, the public interest, and bonding. Responses to the initial written submissions were filed on December 19, 2014.

Having examined the record of this investigation, including the parties' submissions and responses thereto, the Commission has determined that 35 U.S.C. § 112, ¶ 6 applies to the "exhaust means" and "exhaust" limitations in claims 10 and 16. Based on the Commission's interpretation of claims 10-16, the Commission has determined (i) that the accused Brinkmann 810-3821 grill infringes claims 10, 11, 13, 15, and 16; (ii) that the accused Academy/Huige grills infringe claims 10-13, 15, and 16; and (iii) that the other accused Brinkmann grills, the OLP/Kingsun redesigned grills, the OLP/Kingsun original grills, and the Char-Broil/Fudeer grills do not infringe any of claims 10-16 of the '712 patent. The Commission vacates the ID's finding that the DGB730SNB-D grill does not infringe claims 1, 4, and 6-8 of the '712 patent. The Commission also reverses the ID's finding that the DGJ810CSB-D grill does not infringe claims 1, 4, and 6-8 of the '712 patent. With respect to the accused Char-Broil/Fudeer grill, Model No. 463724512, the Commission has determined to affirm, with modified reasoning, the ID's finding that the grill does not infringe any asserted claims of the '712 patent. The Commission has further determined to affirm, with modified reasoning, the ID's finding that the asserted claims of the '712 patent have not been proven invalid as obvious. Accordingly, the Commission has found a violation of section 337 as to respondents Brinkmann, OLP, Kingsun, Academy, and Huige, and defaulted respondent Keesung.

The Commission has determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry of covered multiple mode outdoor grills and parts thereof

manufactured by, for, or on behalf of Brinkmann, OLP, Kingsun, Academy, Huige, and Keesung, or any of their affiliated companies, parents, subsidiaries, licensees, or other related business entities, or their successors or assigns. The Commission has also determined to issue cease and desist orders prohibiting Brinkmann, OLP, and Academy from further importing, selling, and distributing articles that infringe certain claims of the '712 patent in the United States. The orders include the following exemptions: (1) conduct licensed or authorized by the owner of the '712 patent; (2) conduct related to covered products imported by or for the United States; and (3) the importation, distribution, and sale of parts for use in the maintenance, service, or repair of covered products purchased prior to the effective date of the orders. The Commission has carefully considered the submissions of the parties and has determined that the public interest factors enumerated in section 337(d)(1), (f)(1), and (g)(1) do not preclude issuance of its orders.

Finally, the Commission has determined that excluded multiple mode outdoor grills and parts thereof may be imported and sold in the United States during the period of Presidential review (19 U.S.C. § 1337(j)) with the posting of a bond of 100 percent of the entered value for all covered articles manufactured by, for, or on behalf of Keesung, and the posting of a bond of zero percent for all covered articles manufactured by, for, or on behalf of Brinkmann, OLP, Kingsun, Academy, and Huige. The Commission's Orders and Opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

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 C.F.R. 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: February 3, 2015