

**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-997**

**NOTICE OF COMMISSION DETERMINATION ON REVIEW TO AFFIRM THE  
ADMINISTRATIVE LAW JUDGE'S GRANT OF A MOTION TO TERMINATE THE  
INVESTIGATION AS TO CERTAIN ASSERTED CLAIMS**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined on review to affirm the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 7) granting complainants' motion to terminate the investigation as to claims 3, 4, 7, 12, 14, 18, 21, 23, 29, 31, and 32 of U.S. Patent No. 8,020,551 ("the '551 patent"); claims 19, 21, 23, 24, 26, 27, and 29 of U.S. Patent No. 9,072,860 ("the '860 patent"); and claims 3, 11, 12, 16-19, 23, 25-27, 29, 30, 41-43, 52-55, 57, 58, 61-65, 70-76, 78-81, 83, 84, 86-88, 90, 91, 93-99, 102, 103, 105, 112-120, 122-138, 143-150, 153-155, 160, 161, 164, 165, 167, and 173 of U.S. Patent No. 8,006,691 ("the '691 patent") based upon withdrawal of allegations pertaining to those claims from the complaint.

**FOR FURTHER INFORMATION CONTACT:** Panyin A Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3042. 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 <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://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 Inv. No. 337-TA-997 on May 18, 2016, based on a complaint filed by ResMed Corporation of San Diego, California; ResMed Incorporated of San Diego, California; and ResMed Limited of New South Wales, Australia (collectively, "ResMed"). 81 *Fed. Reg.* 31255-56 (May 18, 2016). The complaint

alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain sleep-disordered breathing treatment systems and components thereof that infringe one or more claims of U.S. Patent No. RE44,453; the '551 patent; the '691 patent; and the '860 patent. The notice of investigation named the following 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 (collectively "BMC"). The Office of Unfair Import Investigations ("OUII") is not participating in the investigation.

On August 5, 2016, ResMed filed a motion to terminate the investigation as to claims 3, 4, 7, 12, 14, 18, 21, 23, 29, 31, and 32 of the '551 patent; claims 19, 21, 23, 24, 26, 27, and 29 of the '860 patent; and claims 3, 11, 12, 16-19, 23, 25-27, 29, 30, 41-43, 52-55, 57, 58, 61-65, 70-76, 78-81, 83, 84, 86-88, 90, 91, 93-99, 102, 103, 105, 112-120, 122-138, 143-150, 153-155, 160, 161, 164, 165, 167, and 173 of the '691 patent based upon withdrawal of allegations pertaining to those claims from the complaint. On August 10, 2016, the ALJ found the motion deficient because it did not indicate that the termination was without reservation. On August 15, 2016, ResMed filed a renewed motion to terminate the investigation as to the above-identified claims based upon withdrawal of allegations pertaining to those claims from the complaint. BMC did not oppose the renewed motion. On August 19, 2016, the ALJ issued the subject ID, granting ResMed's renewed motion. The ALJ pointed to Commission Rule 210.21(a) and found that no extraordinary circumstances prohibited granting the renewed motion. No petitions for review of the ID were filed.

On September 13, 2016, the Commission determined to review the subject ID. The Commission noted that a motion for termination of an investigation based on withdrawal of the complaint must comply with Commission Rule 210.21(a)(1), which requires that the motion "contain a statement that there are no agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation, or if there are any agreements concerning the subject matter of the investigation, all such agreements shall be identified, and if written, a copy shall be filed with the Commission along with the motion." 19 C.F.R. § 210.21(a)(1). The Commission found that while ResMed's initial motion contained the required statement, the renewed motion omits the statement.

The Commission directed ResMed to supplement its renewed motion with a statement that complies with Commission Rule 210.21(a)(1) by September 29, 2016. Responses to ResMed's supplement were to be filed by October 7, 2016.

On September 22, 2016, ResMed filed a submission, supplementing its renewed motion, and in compliance with Commission rule 210.21(a)(1) stated that "there are no agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation with respect to these claims." On October 3, 2016, the ALJ issued Order No. 14, which is titled "Amended Initial Determination," granting ResMed's motion to terminate the investigation as to the above identified claims. No other responses were received.

ResMed's renewed motion, as supplemented, fully complies with Commission Rule 210.21(a)(1). Accordingly, on review, the Commission has determined to affirm the subject ID (Order No. 7). Order No. 14 to the extent it relates to the termination of the above identified claims is moot.

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: November 2, 2016