

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN LITHIUM METAL OXIDE CATHODE
MATERIALS, LITHIUM-ION BATTERIES FOR
POWER TOOL PRODUCTS CONTAINING SAME,
AND POWER TOOL PRODUCTS WITH LITHIUM-
ION BATTERIES CONTAINING SAME**

Inv. No. 337-TA-951

NOTICE OF INITIAL DETERMINATION ON VIOLATION OF SECTION 337

Administrative Law Judge Thomas B. Pender

(February 29, 2016)

On this date, I issued an initial determination on violation of section 337 in the above-referenced investigation. Below are my Initial Determination and the Conclusions of Law from said filing, which are a matter of public record. A complete public version of the Initial Determination will issue when all the parties have submitted their redactions and I have had an opportunity to review such redactions.

SO ORDERED.



Thomas B. Pender
Administrative Law Judge

X. CONCLUSIONS OF LAW

1. The Commission has personal jurisdiction over the parties and subject-matter jurisdiction over the accused products.
2. The importation or sale requirement of Section 337 is satisfied.
3. Complainants' domestic industry products practice claims 1-4, 7, 13, and 14 of U.S. Patent No. 6,677,082 ("the '082 patent").
4. The domestic industry requirement is satisfied with respect to the '082 patent.
5. Umicore does not induce infringement of claims 1-4, 7, 13, and 14 of the '082 patent.
6. Umicore contributorily infringes claims 1-4, 7, 13, and 14 of the '082 patent.
7. The asserted claims of the '082 patent have not been shown to be invalid for lack of enablement.
8. The asserted claims of the '082 patent have not been shown to be invalid for incorrect inventorship.
9. Complainants' infringement claims, with respect to the '082 patent, are not barred by the laches doctrine.
10. There is a violation of Section 337 with respect to the '082 patent.
11. Complainants' domestic industry products practice claims 1-4, 8, 9, and 17 of U.S. Patent No. 6,680,143 ("the '143 patent").
12. The domestic industry requirement is satisfied with respect to the '143 patent.
13. Umicore does not induce infringement of claims 1-4, 8, 9, and 17 of the '143 patent.
14. Umicore contributorily infringes claims 1-4, 8, 9, and 17 of the '143 patent.
15. The asserted claims of the '143 patent have not been shown to be invalid for lack of enablement.
16. The asserted claims of the '143 patent have not been shown to be invalid for incorrect inventorship.
17. Complainants' infringement claims, with respect to the '143 patent, are not barred by the laches doctrine.
18. There is a violation of Section 337 with respect to the '143 patent.

XI. INITIAL DETERMINATION AND ORDER

Based on the foregoing,¹ it is my Initial Determination that there is a violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain lithium metal oxide cathode materials, lithium-ion batteries for power tool products containing same, and power tool products with lithium-ion batteries containing same, in connection with the asserted claims of U.S. Patent Nos. 6,677,082 and 6,680,143.

Furthermore, it is my determination that a domestic industry in the United States exists that practices or exploits U.S. Patent Nos. 6,677,082 and 6,680,143.

The undersigned hereby CERTIFIES to the Commission this Initial Determination, together with the record of the hearing in this investigation consisting of the following: the transcript of the evidentiary hearing, with appropriate corrections as may hereafter be ordered; and the exhibits accepted into evidence in this investigation as listed in the appendices hereto.²

Pursuant to 19 C.F.R. § 210.42(h), this Initial Determination shall become the determination of the Commission unless a party files a petition for review pursuant to 19 C.F.R. § 210.43(a) or the Commission, pursuant to 19 C.F.R. § 210.44, orders on its own motion a review of the Initial Determination or certain issues therein.

¹ The failure to discuss any matter raised by the parties or any portion of the record herein does not indicate that said matter was not considered. Rather, any such matter(s) or portion(s) of the record has/have been determined to be irrelevant, immaterial or meritless. Arguments made on brief which were otherwise unsupported by record evidence or legal precedent have been accorded no weight.

² The pleadings of the parties filed with the Secretary need not be certified as they are already in the Commission's possession in accordance with Commission rules.