

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 THE COMMISSION'S DETERMINATION TO REVIEW AN INITIAL
DETERMINATION GRANTING IN PART A MOTION FOR SUMMARY
DETERMINATION OF NON-INFRINGEMENT; REQUEST FOR BRIEFING**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 33) finding non-infringement of certain products.

FOR FURTHER INFORMATION CONTACT: Amanda Pitcher Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2737. 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 "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 U.S. Patent No. 8,381,712 ("the '712 patent"), U.S. Patent No. D660,646, and U.S. Patent No. D662,773 patent. The

Commission's notice of investigation, as amended, named several respondents, including Char-Broil, LLC; Zhejiang Fudeer Electric Appliance Co., Ltd; Rankam Metal Products Manufactory Limited, USA; Outdoor Leisure Products, Inc.; Dongguan Kingsun Enterprises Co., Ltd.; Tractor Supply Co.; and Chant Kitchen Equipment (HK) Ltd. (collectively "Respondents").

On March 5, 2014, the Respondents filed a motion for summary determination of non-infringement of the asserted claims of the '712 patent. On March 24, 2014, Complainants opposed the motion. Also on March 23, 2014, the Office of Unfair Import Investigations (OUII) filed a response in partial support of the motion. After considering the motion and responses, on April 8, 2014, the ALJ requested additional briefing from the parties. Order No. 28. The parties filed responses to Order No. 28 on April 11, 2014 and April 14, 2014.

On April 17, 2014, the ALJ granted the Respondents' motion in part. The ALJ found that that certain products do not infringe claims 1-20 of the '712 patent and that a genuine issue of material fact exists with respect to an additional product.

On April 25, 2014, Complainants timely petitioned for review. On May 2, 2014, OUII filed a response. On May 2, 2014, respondents Char-Broil, LLC; Zhejiang Fudeer Electric Appliance Co., Ltd; Rankam Metal Products Manufactory Limited, USA; Outdoor Leisure Products, Inc.; Dongguan Kingsun Enterprises Co., Ltd. filed a joint response. Also on May 2, 2014 respondents Tractor Supply Co.; and Chant Kitchen Equipment (HK) Ltd. filed a joint response.

The Commission has determined to review the subject ID in the entirety. The parties are requested to brief their positions on the issues under review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in responses to the following questions:

1. Discuss whether claim 10 should be treated as a mean-plus-function claim, and more specifically the "openable [] cover means" limitations. In discussing whether the "openable [] cover means" limitations of claim 10 should or should not be treated as means-plus-function limitations, please discuss whether the presumption that these limitations are means-plus-function limitation has been rebutted.
2. If the "openable [] cover means" limitations are determined to be means-plus-function limitations, what impact do the statements and/or amendments made during prosecution have on the construction of the limitations and whether they limit the range of equivalents that would fall within the "openable [] cover limitations."
3. Did the '712 patent applicant clearly and unambiguously, via prosecution disclaimer, disclaim claim scope for the "openable [] cover" limitations of the asserted independent claims? Please

address the applicant's arguments in the September 4, 2012 Appeal Brief.

4. If the "openable [] cover means" limitations are interpreted as means-plus-function limitations, (a) please identify the functions claimed in the "openable [] cover means" limitations of claim 10, as well as what structure in the specification performs the claimed functions of the "openable [] cover means" limitations, and (b) discuss whether the "openable [] cover means" limitations of claim 10 are met by the products at issue in the ID.
5. Discuss what discovery has occurred with respect to the redesigned products (*e.g.*, were the redesigned products part of expert discovery, document productions, contention interrogatories, lists identifying the products at issue, admissions, etc.)? Please include the dates corresponding to the discovery and, if appropriate, the associated EDIS ID numbers. Include in your answer when Complainants were first made aware of each of the redesigned products. Please discuss whether Complainants requested a continuance under Rule 210.18(d) to conduct further discovery.
6. Discuss whether the design of each of the redesigned grills is fixed. Please discuss whether the redesigned grills meet the "openable [] cover" limitations of the asserted independent claims. Please cite to evidence to support your position.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issues identified in this notice. The written submissions must be filed no later than close of business on Wednesday, May 28, 2014. Reply submissions must be filed no later than the close of business on Monday, June 2, 2014. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. The page limit for the parties' initial submissions on the questions posed by the Commission is 25 pages. The parties' reply submissions, if any, are limited to 15 pages.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-895") in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures*, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.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. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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: May 20, 2014