

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN AIR MATTRESS SYSTEMS,
COMPONENTS THEREOF, AND
METHODS OF USING THE SAME**

Investigation No. 337-TA-971

**NOTICE OF A COMMISSION FINAL DETERMINATION OF VIOLATION OF
SECTION 337; ISSUANCE OF A LIMITED EXCLUSION ORDER; TERMINATION OF
INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“the Commission”) has determined that there is a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) (“section 337”) by respondents Sizewise Rentals LLC of Kansas City, Missouri; American National Manufacturing Inc. of Corona, California; and Dires LLC and Dires LLC d/b/a Personal Comfort Beds of Orlando, Florida (collectively, “Respondents”) in the above-captioned investigation. The Commission has issued a limited exclusion order (“LEO”) directed to products of the Respondents and has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone (202) 205-3115. 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, SW, 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 this investigation on November 20, 2015, based on a complaint filed by Select Comfort Corporation of Minneapolis, Minnesota and Select Comfort SC Corporation of Greenville, South Carolina (collectively, “Select Comfort,” or “Complainants”). 80 FR 72738 (Nov. 20, 2015). The complaint alleges violations 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, and the sale within the United States

after importation of certain air mattress systems, components thereof, and methods of using the same by reason of infringement of certain claims of U.S. Patent Nos. 5,904,172 (“the ‘172 patent”) and 7,389,554 (“the ‘554 patent”). *Id.* In addition to the private parties named as respondents, the Commission named the Office of Unfair Import Investigations as a party in this investigation. *Id.*

Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the Commission ordered that the presiding administrative law judge (“ALJ”):

[S]hall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1).

80 FR 72738 (Nov. 20, 2015).

The evidentiary hearing on the question of violation of section 337 was held August 8-12, 2016. The final ID on violation was issued on November 18, 2016. The ALJ issued his recommended determination on remedy, the public interest and bonding on the same day. The ALJ found no violation of section 337 in this investigation. The ALJ recommended that should the Commission find a violation of section 337 in the present investigation, it issue an LEO prohibiting the importation of Respondents’ air controllers and air mattress systems found to infringe the asserted patents. The ALJ also recommended the inclusion of a provision for the ‘554 patent, whereby Respondents could certify that certain imports are not covered by the LEO. The ALJ did not recommend that the Commission issue a cease and desist order in this investigation. The ALJ further recommended a zero bond during the period of Presidential review.

All parties to this investigation filed timely petitions for review of various portions of the final ID, as well as timely responses to the petitions.

On December 13, 2016, Respondents filed a “Motion For a Limited Re-Opening of the Record for Consideration of Prior Art Not Identified By Complainants During Discovery.” Both the IA and Complainants filed timely responsive pleadings opposing Respondents’ motion. The Commission has determined to deny Respondents’ motion to re-open the record.

On December 19, 2016, both Complainants and Respondents filed their respective Public Interest Statement pursuant to 19 CFR 210.50(a)(4). Responses from the public were likewise received by the Commission pursuant to notice. *See* Notice of Request for Statements on the Public Interest (Nov. 29, 2016).

The Commission determined to review various portions of the final ID and issued a Notice to that effect dated January 23, 2017 (“Notice of Review”). 82 Fed. Reg. 8623 (Jan. 27, 2017). In the Notice of Review, the Commission also set a schedule for the filing of written submissions on the issues under review, including certain questions posed by the Commission, and on remedy, the public interest, and bonding. The parties have briefed, with initial and reply submissions, the issues under review and the issues of remedy, the public interest, and bonding.

Having examined the record in this investigation, including the parties’ submissions filed in response to the Notice of Review, the Commission has determined as follows:

(1) To reverse (a) the ID’s finding that Respondents’ P5000, P6000, and Arco products do not meet the “guides” and “stops” limitation of claim 2 of the ‘172 patent; (b) the ID’s finding that the Gen 3 Arco and Platinum 5000/6000 controllers do not meet the “guides” and “stops” limitation of claim 12 of the ‘172 patent; and (c) the ID’s finding that the Gen 3 Arco and Platinum 5000/6000 controllers do not infringe claim 12 of the ‘172 patent;

(2) To affirm the ID’s finding that the ‘172 Accused Products do not meet the claim limitation “pressure monitor means being operably coupled to the processor and being in fluid communication with the at least one bladder for continuously monitoring the pressure in the at least one bladder” in claims 2, 6, 20, 22, and 24 of the ‘172 patent;

(3) To (a) modify the ID’s finding that the ‘172 Accused Products do not infringe claim 9 of the ‘172 patent by striking the words “For the reasons stated above in the discussion of claim 2” in the first full paragraph on page 23 of the ID and, instead, find that the Accused Products do not meet the “continuously monitoring” limitation of claim 9 and therefore do not infringe claim 9 for the reasons detailed in the accompanying Commission Opinion; and (b) affirm the ID’s finding of no induced infringement of claim 9 of the ‘172 patent;

(4) To take no position on the ID’s discussion in the last paragraph on page 20 and the first paragraph on page 21 of the ID. See *Beloit Corporation v. Valmet Oy*, 742 F.2d 1421, 1423 (Fed. Cir.1984) (“*Beloit*”);

(5) To modify the ID’s finding regarding non-infringement of claim 16 of the ‘554 patent by striking the words “For the reasons stated above in the discussion of claim 1,” in the fourth paragraph on page 70 of the ID and instead find that the ‘554 Accused Products do not meet the “air posturizing sleep surface” limitation of claim 16 and therefore do not infringe claim 16 for the reasons detailed in the accompanying Commission Opinion;

(6) To reverse the ID’s determination that the ‘554 Domestic Industry Products do not practice the ‘554 patent and thus do not satisfy the technical prong of the domestic industry requirement with respect to the ‘554 patent and, instead, determine that for the reasons detailed in the accompanying Commission Opinion, Complainants have satisfied the technical prong with respect to the ‘554 patent based only on the U15 and U11 products practicing claim 16 of the ‘554 patent;

(7) To take no position on the ID's determination on whether Complainants satisfied the economic prong with regard to the '554 patent. *See Beloit*, 742 F.2d at 1423.

(8) To reverse the ID's determination regarding the economic prong of the domestic industry requirement with respect to the '172 patent, and find that the economic prong of the domestic industry requirement is satisfied for the '172 patent.

Accordingly, the Commission finds that there is a violation of section 337 with respect to the '172 patent in this investigation. The Commission has determined that the appropriate relief in this investigation includes an LEO prohibiting the unlicensed entry of infringing air mattress systems, components thereof, and methods of using the same that are covered by claims 12 or 16 of the '172 patent and that are manufactured abroad by or on behalf of, or imported by or on behalf of Respondents, or their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns.

The Commission has further determined that the public interest factors enumerated in section 337(d)(1) (19 U.S.C. § 1337(d)(1)) do not preclude issuance of the LEO. Finally, the Commission has determined that the amount of a bond should be set to zero (0) percent of entered value during the period of Presidential review (19 U.S.C. § 1337(j)). The Commission's order was delivered to the President and the United States Trade Representative on the day of its 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.



Lisa R. Barton
Secretary to the Commission

Issued: May 17, 2017