

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN HIGH-PERFORMANCE
GRAVITY-FED WATER FILTERS AND
PRODUCTS CONTAINING THE SAME**

Investigation No. 337-TA-1294

**NOTICE OF THE COMMISSION'S FINAL DETERMINATION FINDING NO
VIOLATION OF SECTION 337; TERMINATION OF THE INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined that there is no violation of section 337 in the above-captioned investigation, reversing the administrative law judge’s (“ALJ”) final initial determination (“ID”) in this investigation on review. The Commission has determined to grant in part complainant’s motion to strike waived arguments and new evidence.

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 may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On January 31, 2022, the Commission instituted this investigation based on a complaint filed by Brita LP (“Brita”) of Neuchatel NE, Switzerland. 87 FR 4913 (Jan. 31, 2022). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain high-performance gravity-fed water filters and products containing the same by reason of infringement of claims 1-6, 20, 21, 23, and 24 of U.S. Patent No. 8,167,141 (“the ’141 patent”). *Id.* The Commission’s notice of investigation named nine respondents: Mavea LLC of West Linn, Oregon and Brita GmbH of Taunusstein, Switzerland (collectively, “the Mavea Respondents”); Ecolife Technologies, Inc. of City of Industry, California and Qingdao Ecopure Filter Co., Ltd. of Shandong Province, China (collectively, “the Aqua Crest Respondents”); Kaz USA, Inc. and Helen of Troy Limited, both of El Paso, Texas (collectively, “PUR Respondents”); Zero Technologies, LLC of Treviso, Pennsylvania; Culligan International Co. of

Rosemont, Illinois (collectively, “ZeroWater Respondents”); and Vestergaard Frandsen Inc. of Baltimore, Maryland (“LifeStraw”). *Id.* The Office of Unfair Import Investigations is not participating in this investigation. *Id.*

On May 3, 2022, the ALJ issued an ID granting a motion to terminate the investigation as to the Mavea Respondents based upon settlement. Order No. 13 (May 3, 2022), *unreviewed by* Comm’n Notice (May 24, 2022).

On June 1, 2022, the ALJ issued an ID granting a motion to terminate the investigation as to claims 20, 21, and 24 of the ’141 patent based upon withdrawal of the allegations in the complaint as to these claims. Order No. 19 (June 1, 2022), *unreviewed by* Comm’n Notice (June 21, 2022).

On June 2, 2022, the ALJ held a *Markman* hearing. The ALJ issued a *Markman* Order construing the claim terms in dispute on July 20, 2022. Order No. 30 (July 20, 2022).

On September 22, 2022, the ALJ issued an ID granting a motion to terminate the investigation as to the Aqua Crest Respondents based upon withdrawal of the allegations in the complaint as to these respondents. Order No. 43 (Sept. 22, 2022), *unreviewed by* Comm’n Notice (Oct. 11, 2022).

The ALJ held an evidentiary hearing from August 17-19, August 22-23, and October 13, 2022, and received post-hearing briefs thereafter.

On February 28, 2023, the ALJ issued the final ID finding a violation of section 337. The ID found that “because of importation stipulations of all Accused Products,” the importation requirement under 19 U.S.C. 1337(a)(1)(B) is satisfied. ID at 12-13. The ID also found that Brita successfully proved that all of the Accused Products infringe the asserted claims of the ’141 patent (claims 1-6 and 23). *Id.* at 69-105. The ID further found that Respondents failed to show by clear and convincing evidence that the asserted claims are invalid for lack of written description (*Id.* at 169-204), enablement (*Id.* at 205-250), anticipation (*Id.* at 153-169), or for reciting ineligible subject matter under 35 U.S.C. 101 (*Id.* at 250-269). Finally, the ID found that Brita proved the existence of a domestic industry that practices the ’141 patent as required by 19 U.S.C. 1337(a)(2). *Id.* at 105-117, 269-285.

The ID included the ALJ’s recommended determination on remedy and bonding (“RD”). The RD recommended, should the Commission find a violation, issuance of a limited exclusion order against all respondents and cease and desist orders against the PUR Respondents and LifeStraw. ID/RD at 258-291. The RD also recommended imposing a bond in the amount of one hundred percent (100%) of entered value for PUR’s and ZeroWater’s infringing products imported during the period of Presidential review and \$6 per unit for infringing LifeStraw products imported during the period of Presidential review. *Id.* at 291-295.

On March 13, 2023, Respondents and Brita filed respective petitions for review of the ID. On March 21, 2023, the parties filed responses to the petitions.

On May 24, 2023, Respondents moved for leave to file a notice of supplemental authority regarding their petition for review. Specifically, Respondents sought to submit the recent U.S. Supreme Court decision in *Amgen Inc. v. Sanofi*, No. 21-757 (May 18, 2023), as being directly relevant to the lack of enablement of the asserted. On June 28, 2023, the Commission issued a Notice granting the motion. 88 FR 42951 (July 5, 2023).

In its Notice on June 28, 2023, the Commission also determined to review the final ID in part. *Id.* at 42950-53. Specifically, the Commission determined to review the following findings: (1) construction of the claim term “filter usage lifetime claimed by a manufacturer or seller of the filter,” (2) written description, (3) enablement, (4) section 101, (5) anticipation, and (6) the economic prong of the domestic industry requirement. The Commission requested the parties to brief certain issues under review and to brief the issues of remedy, the public interest, and bonding. *Id.*

On July 14, 2023, the parties filed initial submissions in response to the Commission’s request for briefing. On July 21, 2023, the parties filed reply submissions. The parties also filed a number of motions and oppositions, which we address below.

On July 24, 2023, Complainant Brita filed a motion to strike waived arguments and new evidence in Respondents’ Reply in Response to the Commission Notice of Review. On August 3, 2023, Respondents filed an opposition to the motion. On August 8, 2023, Brita moved for leave under Commission Rule 210.15(c) to file a reply to Respondents’ opposition. On August 18, 2023, Respondents filed an opposition to Brita’s motion. The Commission has determined to grant in part Brita’s motion as it pertains to introducing new dictionary definitions for “validate” and “claim” for being waived. The Commission has determined to otherwise deny the motion. The Commission has further determined to deny Brita’s motion for leave to file a reply to Respondents’ opposition as unnecessary.

Upon review of the parties’ submissions, the ID, and evidence of record, the Commission has determined that Brita has failed to show that Respondents violated section 337 by reason of the importation and sale of articles that infringe asserted claims 1-6 and 23 of the ’141 patent. Specifically, on review, the Commission has determined to (1) vacate the ID’s construction of the claim term “filter usage lifetime claimed by a manufacturer or seller of the filter” and finds the claim limitation indefinite, (2) reverse the ID’s finding that the asserted claims are not invalid for lack of written description, (3) reverse the ID’s findings that the asserted claims are enabled, (4) take no position on the ID’s section 101 analysis and findings, (5) take no position on the ID’s anticipation analysis and findings, and (6) take no position on the ID’s findings on the economic prong of the domestic industry requirement. The Commission’s reasoning is set forth in its opinion issued herewith.

The investigation is hereby terminated with a finding of no violation of section 337.

The Commission vote for this determination took place on September 19, 2023.

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 CFR Part 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', enclosed within a large, loopy oval flourish.

Lisa R. Barton
Secretary to the Commission

Issued: September 19, 2023