

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.**

In the Matter of

**CERTAIN ELECTRONIC CANDLE
PRODUCTS AND COMPONENTS
THEREOF**

Inv. No. 337-TA-1195

**NOTICE OF A COMMISSION DETERMINATION TO REVIEW AN INITIAL
DETERMINATION GRANTING A MOTION FOR SUMMARY DETERMINATION OF
NON-INFRINGEMENT; AND, ON REVIEW, TO TAKE NO POSITION ON CLAIM
CONSTRUCTION AND INFRINGEMENT AND TO REMAND THE INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review an initial determination (“ID”) (Order No. 28) issued by the presiding administrative law judge (“ALJ”) granting summary determination of non-infringement to respondents Sterno Home Inc., Ningbo Huamao International Trading Co., Ltd., and Ningbo Langsheng Artware Co., Ltd. (collectively, “Sterno”) and respondent Lifetime Brands, Inc. (“Lifetime”). On review, the Commission has determined to take no position on claim construction and infringement with respect to Sterno and Lifetime and to remand the investigation as to Sterno and Lifetime in order to permit the ALJ time to rule on pending motions to terminate Sterno and Lifetime on the basis of settlements with Complainants.

FOR FURTHER INFORMATION CONTACT: Benjamin S. Richards, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436, telephone (202) 708-5453. 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 on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 6, 2020, based on a complaint, as supplemented, filed by L&L Candle Company LLC of Brea, California, and Sotera Tschetter, Inc. of St. Paul, Minnesota (“Complainants”). 85 FR 19158 (Apr. 6, 2020). The amended 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 electronic candle products and components thereof by reason of infringement of certain claims of United States

Patent Nos. 8,550,660, 9,366,402, 9,512,971, 9,523,471, and 10,533,718. *Id.* The complaint further alleges that an industry in the United States exists. *Id.* The Commission's notice of investigation named twenty-two respondents, including Sterno and Lifetime. *Id.* at 19159. The Office of Unfair Import Investigations ("OUII") is participating in this investigation. *Id.*

On September 22, 2020, Sterno and Lifetime filed a joint motion for summary determination of non-infringement. The motion was unopposed by Complainants and supported by OUII. On October 13, 2020, the ALJ issued the subject ID granting the motion. As explained in the ID, there was no dispute that Sterno's and Lifetime's accused products do not infringe under the claim constructions adopted by the ALJ in her claim construction order that issued on September 14, 2020. Because the summary determination ruling was dispositive as to Complainants' section 337 allegations against Sterno and Lifetime, the ID terminated the investigation as to both.

On October 26, 2020, pursuant to an extension granted by the Commission Chair, Complainants filed a petition for review of the subject ID. Complainants' petition sought review and reversal of the claim constructions underlying the subject ID's non-infringement findings. Pursuant to an extension granted by the Commission Chair, any responses to Complainants' petition were due on November 9, 2020. In lieu of responses, Sterno and Lifetime filed letters with the Commission indicating that they had reached settlements with Complainants, would not file substantive responses to Complainants' petition, and would shortly file motions to terminate the investigation as to both respondent groups on the basis of settlement. OUII filed a response opposing Complainants' petition on substantive and procedural grounds.

On November 12, 2020, Complainants and Sterno filed a joint motion to terminate the investigation as to Sterno based on settlement. OUII filed a response in support of the motion on November 20, 2020. On November 30, 2020, Complainants and Lifetime filed a joint motion to terminate the investigation as to Lifetime based on settlement. On December 7, 2020, OUII filed its response in support of the Lifetime settlement motion. The ALJ has not ruled on either of the motions as of the date of this notice.

The Commission has determined to review the subject ID. In light of Complainants' settlements with Sterno and Lifetime, the infringement issues addressed in the subject ID and in Complainants' petition for review are now moot. Accordingly, on review, the Commission has determined to take no position on those issues, including the subsidiary claim construction disputes raised in Complainants' petition. Because motions to terminate the investigation as to Sterno and Lifetime on the basis of their settlements with Complainants are currently pending before the ALJ, the Commission has further determined to remand the investigation as to Sterno and Lifetime in order to permit the ALJ to rule on those motions in the first instance.

The Commission vote for this determination took place on December 17, 2020.

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'.

Lisa R. Barton
Secretary to the Commission

Issued: