

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN SKIN REJUVENATION
RESURFACING DEVICES,
COMPONENTS THEREOF, AND
PRODUCTS CONTAINING THE SAME**

Investigation No. 337-TA-1262

**NOTICE OF COMMISSION DECISION TO REVIEW, AND ON REVIEW TO VACATE
AND REMAND, AN INITIAL DETERMINATION GRANTING COMPLAINANTS'
MOTION TO AMEND THE COMPLAINT AND NOTICE OF 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. 8) of the presiding administrative law judge (“ALJ”) granting complainants’ motion to amend the complaint and notice of investigation (“NOI”) in the above-captioned investigation to add a claim asserting a violation of 19 U.S.C. 1337(a)(1)(A) (“the product disparagement claim”) against respondent Cutera, Inc. (“Cutera”) of Brisbane, California. On review, the Commission has determined to vacate the ID and to remand the issue to the ALJ for further proceedings.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436, telephone (202) 708-2310. 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 April 21, 2021, the Commission instituted this investigation based on a complaint filed by InMode Ltd. of Yokneam, Israel and Invasix Inc. d/b/a InMode of Lake Forest, California (collectively, “InMode”). 86 FR 20712-13 (Apr. 21, 2021). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), based on the importation into the United States, the sale for importation, or the sale within the United States after importation of certain skin rejuvenation resurfacing devices, components thereof, and products containing the same by reason of infringement of certain claims of U.S. Patent No. 10,799,285. *Id.* The complaint further

alleges that a domestic industry exists. *Id.* The NOI named ILOODA Co., Ltd. of Suwon, Republic of Korea and Cutera as respondents (collectively, “Respondents”). *Id.* The Office of Unfair Import Investigations is not participating in the investigation. *Id.*

On July 27, 2021, InMode filed a motion for leave to amend the complaint and NOI to add the product disparagement claim against Cutera. Respondents opposed the motion.

On August 23, 2021, the ALJ issued the subject ID (Order No. 8) granting InMode’s motion. The ID finds no undue prejudice to Cutera and that good cause exists to grant the motion to amend under Commission Rule 210.14(b)(1) (19 CFR 210.14(b)(1)) because it is undisputed that the alleged product disparagement was discovered after the filing of the initial complaint.

On August 30, 2021, Respondents petitioned for review of the subject ID. On September 7, 2021, InMode filed a response in opposition to Respondents’ petition for review.

The Commission has determined to review the subject ID. On review, the Commission has determined to vacate the ID’s grant of InMode’s motion for leave to amend the complaint and NOI to add the product disparagement claim against Cutera. The Commission finds that the introduction of a new cause of action must comply with the requirements of Commission Rule 210.12(a) (19 CFR 210.12(a)). The issue is remanded to the ALJ for further proceedings. Upon remand, the ALJ shall permit amendment of the complaint and NOI pursuant to Commission Rule 210.14(b)(1) only upon a showing that the proposed amended complaint complies with the requirements of Commission Rule 210.12(a).

The Commission vote for this determination took place on September 22, 2021.

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.



Lisa R. Barton
Secretary to the Commission

Issued: September 22, 2021