

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN KINESIOTHERAPY DEVICES
AND COMPONENTS THEREOF**

**Investigation No. 337-TA-823
(Advisory Opinion Proceeding)**

**NOTICE OF A COMMISSION DECISION TO ADOPT A REPORT ISSUED BY THE
OFFICE OF UNFAIR IMPORT INVESTIGATIONS AS AN ADVISORY OPINION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has decided to adopt the report prepared by the Office of Unfair Import Investigations (“OUII”) as the Commission’s advisory opinion in the above-captioned proceeding.

FOR FURTHER INFORMATION CONTACT: Michael Haldenstein, 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 January 10, 2012, based on a complaint filed by Standard Innovation Corporation of Ottawa, ON, Canada and Standard Innovation (US) Corp. of Wilmington, Delaware (collectively, “Standard Innovation”). 77 *Fed. Reg.* 1504-05 (Jan. 10, 2012). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), by reason of infringement of certain claims of United States Patent Nos. 7,931,605 (“the ’605 patent”) and D605,779 (“the ’779 patent”). The complaint named twenty-one business entities as respondents, including Lelo Inc. and Leloi AB (collectively, “Lelo”). On July 25, 2012, the Commission determined not to review an ID (Order No. 25) granting complainants’ motion to withdraw the ’779 patent from the investigation.

On June 17, 2013, the Commission issued its final determination finding that Standard Innovation had proven a violation of section 337 based on the infringement of the asserted claims of the '605 patent. Based on evidence of a pattern of violation and difficulty ascertaining the source of the infringing products, the Commission issued a general exclusion order against certain kinesiotherapy devices and components thereof that infringe the asserted claims of the '605 patent. The Commission also issued cease and desist orders against certain respondents, including Lelo Inc.

On September 30, 2013, Lelo filed a request with the Commission asking for institution of an advisory opinion proceeding to declare that its new kinesiotherapy devices are not covered by the general exclusion order or the cease and desist order issued against Lelo Inc. Standard Innovation filed a response on November 12, 2013, opposing Lelo's request.

On February 7, 2014, the Commission determined that Lelo's request complied with the requirements for institution of an advisory opinion proceeding under Commission Rule 210.79. The Commission therefore determined to institute an advisory opinion proceeding and assigned the proceeding to OUII. 79 *Fed. Reg.* 8731-32 (Feb.13, 2014). The Commission assigned OUII the task of investigating and preparing a report concerning Lelo's new kinesiotherapy devices, and it named Standard Innovation and Lelo as parties to the proceeding.

On May 5, 2014, OUII issued a report concluding that the new kinesiotherapy devices developed by Lelo are not covered by the general exclusion order and cease and desist order against Lelo, Inc. issued in the underlying investigation. In so doing, OUII concluded, *inter alia*, that 1) Lelo met its burden of showing non-infringement with respect to the claim term "elongate outer arm;" 2) Lelo failed to meet its burden of showing non-infringement with respect to the claim element "at least one of the inner and outer arms are generally tear-drop shaped." On May 15, 2014, Standard Innovation and Lelo filed comments on the report prepared by OUII. On May 22, 2014, Standard Innovation and Lelo filed replies to the comments.

After reviewing the report and the submissions of Standard Innovation and Lelo, the Commission has decided to adopt the report issued by OUII as its advisory opinion in this proceeding.

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: June 30, 2014