UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of
CERTAIN SLEEP-DISORDERED
BREATHING TREATMENT SYSTEMS
AND COMPONENTS THEREOF

Investigation No. 337-TA-879
(Advisory Opinion Proceeding)

INSTITUTION OF AN ADVISORY OPINION PROCEEDING


ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has
determined to institute an advisory opinion proceeding in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Amanda Pitcher Fisherow, 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
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 the underlying
investigation on April 25, 2013, based on a complaint filed on March 28, 2013, and supplemented
on April 19, 2013, on behalf of ResMed Corp. of San Diego, California; ResMed Inc. of San Diego,
California; and ResMed Ltd. of Australia (collectively, “ResMed”). 78 Fed. Reg. 25475 (May 1,
2013). The complaint alleged violations of Section 337 of the Tariff Act of 1930, as amended, 19
U.S.C. § 1337, in the sale for importation, importation, or sale within the United States after
importation of certain sleep-disordered breathing treatment systems and components thereof by
reason of infringement of claims 1, 2, 4, 5, 17, and 28 of U.S. Patent No. 6,216,691, claims 1 and 20
of U.S. Patent No. 6,935,337, claim 15 of U.S. Patent No. 7,159,587, claims 1, 5, 6, 11, 12, 18–20,

Medical Depot Inc. and Apex were previously terminated from the investigation on the basis of consent orders. Order Nos. 8 (unreviewed by the Commission, July 18, 2013) and 11 (unreviewed by the Commission, Aug. 8, 2013).

On September 23, 2013, Apex filed a request with the Commission asking for institution of an advisory opinion proceeding to declare that their redesigned sleep-disordered breathing treatment systems are not covered by the consent order. Apex also requests that the proceeding be conducted expeditiously. ResMed filed a response on October 18, 2013 opposing Apex’s request.

The Commission has determined that Apex’s request complies with the requirements for institution of an advisory opinion proceeding under Commission rule 210.79. Accordingly, the Commission has determined to institute an advisory opinion proceeding and referred Apex’s request to the Chief Administrative Law Judge to designate a presiding administrative law judge. The following entities are named as parties to the proceeding: (1) complainant ResMed; (2) respondent Apex; (3) the Office of Unfair Import Investigations.


By order of the Commission.

Lisa R. Barton
Acting Secretary to the Commission

Issued: December 11, 2013