

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN ELECTRONIC NICOTINE
DELIVERY SYSTEMS AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1139

**NOTICE OF A COMMISSION DETERMINATION TO REVIEW IN
PART AN INITIAL DETERMINATION GRANTING IN PART
COMPLAINANT'S MOTION FOR SUMMARY DETERMINATION OF
IMPORTATION, INFRINGEMENT, AND DOMESTIC INDUSTRY**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part an initial determination ("ID") (Order No. 35) of the presiding administrative law judge ("ALJ") granting in part the Complainant's motion for summary determination of importation, infringement, and domestic industry. The Commission has determined to remand to the ALJ for clarification regarding the analysis of infringement and the statement regarding mootness.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, D.C. 20436, telephone 202-205-3228. 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, SW, Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://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: On December 13, 2018, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337") based on a complaint filed on behalf of Juul Labs, Inc. ("JLI") of San Francisco, California. 83 *Fed. Reg.* 64156-57 (Dec. 13, 2018). The complaint, as amended and supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain

electronic nicotine delivery systems and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 10,070,669; 10,076,139; 10,045,568; 10,058,130; and 10,104,915 (collectively, “the Asserted Patents”). *Id.* The Commission’s notice of investigation names twenty-one respondents, including Zlab S.A. of Punta del Este – Maldonado, Uruguay; SS Group Holdings of Shenzhen City, China; and Shenzhen Yibo Technology Co. Ltd. of Shenzhen City, China (collectively, “the Ziip Respondents”); Eonsmoke LLC of Clifton, New Jersey (“Eonsmoke”); ALD Group Ltd. of Shenzhen City, China (“ALD”); Shenzhen Joecig Technology Co., Ltd. of Shenzhen City, China (“Joecig”); and Vapor 4 Life Holdings, Inc. of Northbrook, Illinois (“V4L”) (all collectively, “Motion Respondents”). *Id.*; *see also* Order No. 26 (May 21, 2019), *not reviewed*, Notice (June 14, 2019) (amending the complaint and notice of investigation). The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation. *Id.*

On June 7, 2019, JLI filed a motion for summary determination of importation and infringement as to Motion Respondents’ accused products as well as the satisfaction of the domestic industry requirement. *See* ID at 1; *see also* JLI’s Amended Motion for Summary Determination Regarding Importation, Infringement, and Domestic Industry (“JLI’s Motion”). On June 14, 2019, JLI filed an amended motion. *Id.*

On June 26, 2019, ALD and Joecig jointly filed a response in opposition to JLI’s Motion, but on July 26, 2019, they filed a notice to withdraw the response. ID at 1. No other Motion Respondents filed a response to JLI’s Motion. *Id.*

On July 1, 2019, OUII filed a response supporting JLI’s Motion in part. ID at 2.

On July 8, 2019, JLI filed a motion for leave to file a reply. ID at 1-2. The ID grants JLI leave to file the reply, which is attached to the motion for leave as Exhibit A. *Id.*

On July 19, 2019, JLI filed an update withdrawing JLI’s Motion as to the importation requirement for ALD, Joecig, and their accused products. *Id.* at 1 (n.2).

On August 5, 2019, the ALJ issued the subject ID granting the motion for summary determination in part. *See* ID. The ID finds that JLI is entitled to summary determination of importation with respect to the Ziip Respondents and their accused products; Eonsmoke and its accused products; and V4L and certain V4L accused products. ID at 4-11. The ID’s analysis of whether the Ziip Respondents’ accused products infringe the Asserted Patents states, “the question of whether Ziip accused products contain or perform each limitation of asserted claims is moot.” *Id.* at 11. The ID does not specifically state whether summary determination of infringement as to the Ziip Respondents is denied or granted nor the reasoning supporting grant or denial of the motion as to this issue. *Id.*

The Commission has determined to review the subject ID in part. Specifically, the Commission reviews the ID’s analysis as to infringement and statement regarding mootness on page 11. ID at 11.

The Commission remands to the ALJ for clarification of the analysis and statement regarding mootness on page 11, and for clarification as to whether the ID grants or denies summary determination that the Ziip Respondents infringe the Asserted Patents and reasoning in support thereof. The Commission does not seek further briefing at this time. Further, the Commission's review in part and remand does not change the target date for completion of the investigation.

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', written in a cursive style.

Lisa R. Barton
Secretary to the Commission

Issued: September 4, 2019