

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN KINESIOTHERAPY DEVICES
AND COMPONENTS THEREOF**

Investigation No. 337-TA-823

**NOTICE OF COMMISSION DETERMINATION TO REVIEW THE FINAL INITIAL
DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE AND TO EXTEND
THE TARGET DATE FOR COMPLETION OF THE INVESTIGATION BY TWO
WEEKS TO JUNE 7, 2013**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review the final initial determination (“final ID” or “ID”) of the presiding administrative law judge (“ALJ”) in its entirety in the above-captioned investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“section 337”). The ALJ found no violation of section 337. The Commission has further determined to extend the target date for completion of the investigation by two weeks to June 7, 2013.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3041. 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 (<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 (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, several of which have since been terminated from the investigation based upon consent order stipulations. On July 25, 2012, the Commission determined not to review an ID (Order No. 25) granting Standard Innovation’s motion to withdraw the ‘779 patent from the investigation.

An evidentiary hearing was held from August 21, 2012, to August 24, 2012.

On January 8, 2013, the ALJ issued a final ID finding no violation of section 337. The ALJ also issued a recommended determination on remedy and bonding on January 22, 2013. Specifically, the ALJ found that Standard Innovation had not satisfied the economic prong of the domestic industry requirement. The ALJ found, however, that the accused products infringe the asserted claims, that the asserted claims were not shown to be invalid, and that the technical prong of the domestic industry requirement was shown to be satisfied.

On January 22, 2013, Standard Innovation and the Commission investigative attorney filed petitions for review of the final ID. Also on January 22, 2013, the respondents remaining in the investigation (Lelo Inc., Leloi AB, PHE, Inc. d/b/a Adam & Eve, Nalpac Enterprises, Ltd. d/b/a/ Nalpac, Ltd., E.TC. Inc. d/b/a Eldorado Trading Company, Inc., Williams Trading Co. Inc., Honey’s Place Inc. and Lover’s Lane & Co.) filed a joint contingent petition for review. On January 30, 2013, the parties filed responses to the petitions.

Having examined the final ID, the petitions for review, the responses thereto, and the relevant portions of the record in this investigation, the Commission has determined to review the final ID in its entirety. The Commission has further determined to extend the target date for completion of the investigation by two weeks to June 7, 2013.

The parties are requested to brief their positions on only the following questions, with reference to the applicable law and the evidentiary record:

1. Please provide evidentiary support in the record showing U.S. investments relating to the components that are relied on by complainant to meet the domestic industry requirement, including as appropriate information relating to component providers, contractors, and subcontractors.
2. Please comment on the significance of the relative contribution of domestic inputs as compared to total production (domestic and foreign) of complainant’s products alleged to practice the ‘605 patent.
3. Please provide evidentiary support in the record regarding whether the U.S. investments alleged by complainant are significant or substantial in the context of the complainant’s business, the relevant industry, and market realities.
4. Please explain how component purchasing expenditures for U.S. components not made specifically for the domestic industry products constitute an investment in plant and

equipment, employment of labor or capital, or an investment in exploitation under 19 U.S.C. § 1337(a)(3).

In connection with the final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background information, see the Commission Opinion, *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005, 70 *Fed. Reg.* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be concise and thoroughly referenced to the record in this investigation, including references to exhibits and testimony. Additionally, the parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the ALJ's recommended determination on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is requested to supply the expiration date of the patent at issue and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than the close of business on April 8, 2013, and should be no more than 25 pages. Reply submissions must be filed no later than the close of business on April 15, 2013, and should be no more than 15 pages. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must do so in accordance with Commission rule 210.4(f), 19 C.F.R. § 210.4(f), which requires electronic filing. The original document and eight true copies thereof must also be filed on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 C.F.R § 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and under sections 210.42 - .46, .51(a) of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42 - .46, .51(a)).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', with a stylized flourish at the end.

Lisa R. Barton
Acting Secretary to the Commission

Issued: March 25, 2013