

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

In the Matter of

**CERTAIN SLEEP-DISORDERED
BREATHING TREATMENT SYSTEMS
AND COMPONENTS THEREOF**

Inv. No. 337-TA-879

NOTICE OF INSTITUTION OF INVESTIGATION

Institution of investigation pursuant to 19 U.S.C. § 1337

AGENCY: U.S. International Trade Commission

ACTION: Notice

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 28, 2013, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on behalf of ResMed Corporation of San Diego, California; ResMed Incorporated of San Diego, California; and ResMed Limited of Australia. A letter supplementing the Complaint was filed on April 19, 2013. The complaint 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 sleep-disordered breathing treatment systems and components thereof by reason of infringement of certain claims of U.S. Patent No. 6,216,691 (“the ’691 patent”), U.S. Patent No. 6,935,337 (“the ’337 patent”), U.S. Patent No. 7,159,587 (“the ’587 patent”), U.S. Patent No. 7,487,772 (“the ’772 patent”), U.S. Patent No. 7,614,398 (“the ’398 patent”), U.S. Patent No. 7,743,767 (“the ’767 patent”), and U.S. Patent No. 7,997,267 (“the ’267 patent”). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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, Room 112, Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (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>.

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2560.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.10 (2012).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on April 24, 2013, ORDERED THAT —

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain sleep-disordered breathing treatment systems and components thereof that infringe one or more of claims 1, 2, 4, 5, 17 and 28 of the '691 patent; claims 1 and 20 of the '337 patent; claim 15 of the '587 patent; claims 1, 5, 6, 11, 12, 18-20, 35 and 36 of the '772 patent; claims 1-7 of the '398 patent; claims 59, 60, 63, 72-75 of the '767 patent; and claims 17, 21-24, 29, 32-37 of the '267 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

ResMed Corporation
9001 Spectrum Center Drive
San Diego, CA 92123

ResMed Incorporated
9001 Spectrum Center Drive
San Diego, CA 92123

ResMed Limited
1 Elizabeth Macarthur Drive
Bella Vista NSW 2153
Australia

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Apex Medical Corporation
No. 9, Min Sheng Street
Tu-Cheng, New Taipei City, 23679
Taiwan

Apex Medical USA Corporation
615 North Berry Street, Suite D
Brea, California 92821

Medical Depot Incorporated,
d/b/a Drive Medical Design & Manufacturing
99 Seaview Boulevard, Suite 210
Port Washington, New York 11050

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW, Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.13. Pursuant to 19 C.F.R. §§ 201.16(d) – (e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.



Lisa R. Barton
Acting Secretary to the Commission

Issued: April 25, 2013