

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-997

**NOTICE OF COMMISSION DETERMINATION TO REVIEW AN INITIAL
DETERMINATION GRANTING A MOTION TO TERMINATE THE INVESTIGATION
AS TO CERTAIN ASSERTED CLAIMS**

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 presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 7) granting complainants' motion to terminate the investigation as to claims 3, 4, 7, 12, 14, 18, 21, 23, 29, 31, and 32 of U.S. Patent No. 8,020,551 ("the '551 patent"); claims 19, 21, 23, 24, 26, 27, and 29 of U.S. Patent No. 9,072,860 ("the '860 patent"); and claims 3, 11, 12, 16-19, 23, 25-27, 29, 30, 41-43, 52-55, 57, 58, 61-65, 70-76, 78-81, 83, 84, 86-88, 90, 91, 93-99, 102, 103, 105, 112-120, 122-138, 143-150, 153-155, 160, 161, 164, 165, 167, and 173 of U.S. Patent No. 8,006,691 ("the '691 patent") based upon withdrawal of allegations pertaining to those claims from the complaint.

FOR FURTHER INFORMATION CONTACT: Panyin A Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3042. 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 <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: The Commission instituted Inv. No. 337-TA-997 on May 18, 2016, based on a complaint filed by ResMed Corporation of San Diego, California; ResMed Incorporated of San Diego, California; and ResMed Limited of New South Wales, Australia (collectively, “ResMed”). 81 *Fed. Reg.* 31255-56 (May 18, 2016). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in 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 that infringe one or more claims of U.S. Patent No. RE44,453; the ’551 patent; the ’691 patent; and the ’860 patent. The notice of investigation named the following respondents: BMC Medical Co., Ltd. of Beijing, China; 3B Medical, Inc. of Lake Wales, Florida; and 3B Products, L.L.C., of Lake Wales, Florida (collectively “BMC”). The Office of Unfair Import Investigations (“OUII”) is not participating in the investigation.

On August 5, 2016, ResMed filed a motion to terminate the investigation as to claims 3, 4, 7, 12, 14, 18, 21, 23, 29, 31, and 32 of the ’551 patent; claims 19, 21, 23, 24, 26, 27, and 29 of the ’860 patent; and claims 3, 11, 12, 16-19, 23, 25-27, 29, 30, 41-43, 52-55, 57, 58, 61-65, 70-76, 78-81, 83, 84, 86-88, 90, 91, 93-99, 102, 103, 105, 112-120, 122-138, 143-150, 153-155, 160, 161, 164, 165, 167, and 173 of the ’691 patent based upon withdrawal of allegations pertaining to those claims from the complaint. On August 10, 2016, the ALJ found the motion deficient because it did not indicate that the termination was without reservation. On August 15, 2016, ResMed filed a renewed motion to terminate the investigation as to the above-identified claims based upon withdrawal of allegations pertaining to those claims from the complaint. BMC did not oppose the renewed motion. On August 19, 2016, the ALJ issued the subject ID, granting ResMed’s renewed motion. The ALJ pointed to Commission Rule 210.21(a) and found that no extraordinary circumstances prohibited granting the renewed motion. No petitions for review of the ID were filed.

The Commission has determined to review the subject ID. A motion for termination of an investigation based on withdrawal of the complaint must comply with Commission Rule 210.21(a)(1). Commission Rule 210.21(a)(1) requires that the motion “contain a statement that there are no agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation, or if there are any agreements concerning the subject matter of the investigation, all such agreements shall be identified, and if written, a copy shall be filed with the Commission along with the motion.” 19 C.F.R. § 210.21(a)(1). While ResMed’s initial motion contained the required statement, the renewed motion omits the statement. Thus, ResMed’s renewed motion fails to meet this requirement.

ResMed is directed to file a submission with the Commission that supplements its renewed motion with a statement that complies with Commission Rule 210.21(a)(1). ResMed’s supplemental submission to the Commission must be filed by September 29, 2016. Any responses to ResMed’s submission must be filed by October 7, 2016.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to Commission Rule 210.4(f), 19 C.F.R. 210.4(f). Submissions should refer to the investigation number (“Inv. No. 997”) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, https://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.) Persons with questions regarding filing should contact the Secretary, (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to 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 by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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: September 13, 2016