

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.**

In the Matter of

**CERTAIN ELECTRONIC CANDLE
PRODUCTS AND COMPONENTS
THEREOF**

Investigation No. 337-TA-1195

**NOTICE OF A COMMISSION DETERMINATION TO GRANT
COMPLAINANTS' MOTION TO REOPEN THE RECORD, TO VACATE A
PORTION OF AN INITIAL DETERMINATION REGARDING THE DOMESTIC
INDUSTRY, TO VACATE THE GRANT OF SUMMARY DETERMINATION OF
VIOLATION, AND TO REMAND TO AN ALJ FOR FURTHER PROCEEDINGS;
EXTENSION OF THE TARGET DATE**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to grant Complainants' motion to reopen the record. The Commission has also determined to vacate a portion of an initial determination ("ID") (Order No. 41) finding that Complainants are entitled to a summary determination that they satisfied the economic prong of the domestic industry requirement, and thereby vacates the ID's grant of summary determination of violation. The investigation is hereby remanded to an administrative law judge for further proceedings. The target date for completion of the investigation is extended by one month to September 13, 2021.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone (202) 708-5468. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.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 April 6, 2020, based on a complaint filed by complainants L&L Candle Company LLC of Brea, California ("L&L") and Sotera Tschetter, Inc. of St. Paul, Minnesota ("Sotera") (together, "Complainants") that certain electronic candle products and

components thereof manufactured and sold by twenty-two respondents infringe certain claims of U.S. Patent Nos. 8,550,660 (“the ’660 patent”); 9,366,402 (“the ’402 patent”); 9,512,971 (“the ’971 patent”); 9,523,471 (“the ’471 patent”); and 10,533,718 (“the ’718 patent”). 85 Fed. Reg. 19158-59. Of the twenty-two respondents, five were terminated based on consent orders, eight were terminated based on settlement agreements, three were terminated based on a voluntary withdrawal of the complaint due to an inability to serve, and one was terminated based on a summary determination of no importation. The Commission found the remaining five respondents in default for failing to respond to the complaint and notice of investigation and for failing to show cause why they had not done so, or for failing to participate in discovery. These five respondents (“the Defaulting Respondents”) are Veraflame International, Inc. of Vancouver, Canada; Ningbo Mascube Import Export Company of Ningbo City, China; Ningbo Shanhuang Electric Appliance Co. of Ningbo City, China; Yiwu Shengda Art Co., Ltd. of Yiwu City, China; and Virtual Candles Limited of Kent, United Kingdom. None of the Defaulting Respondents was accused of infringing the ’660 patent.

On November 13, 2020, Complainants moved for a summary determination of violation with respect to the ’402, ’971, ’471, and ’718 patents against the Defaulting Respondents and for a recommendation for the issuance of a general exclusion order. On December 4, 2020, the Office of Unfair Import Investigations filed a response that questioned whether Complainants had satisfied the economic prong of the domestic industry requirement, but otherwise supported a finding of violation and the issuance of a GEO. On December 9, 2020, Complainants filed a reply in support of their motion.

On April 2, 2021, the ALJ issued the subject ID and granted Complainants’ motion for a summary determination of violation by each of the five Defaulting Respondents. Order No. 41 (Apr. 2, 2021). The Commission did not receive any petitions for review of the ID or submissions on the public interest. On May 19, 2020, the Commission determined on its own accord to review the ALJ’s finding that Complainants satisfied the economic prong of the domestic industry requirement with respect to any asserted patent. The Commission also sought briefing from the parties on four issues and on remedy, bonding, and public interest. No third-party submissions on remedy, bonding, or the public interest were received.

On June 11, 2021, Complainants filed an unopposed motion to reopen the record for the purpose of submitting 79 previously omitted exhibits. Complainants argue that the omission was inadvertent and nonprejudicial. The Commission has determined grant Complainants’ request to reopen the record and to accept the exhibits into the record.

Having examined the record of this investigation, including the ALJ’s ID and the submissions from the parties, the Commission has determined that Complainants have failed to show that they are entitled to a summary determination that they satisfied the economic prong of the domestic industry requirement. Accordingly, the Commission vacates the ID’s grant of a summary determination on the economic prong and on violation and remands the investigation to an administrative law judge for further proceedings consistent with the opinion and order issued in connection with this matter.

The Commission's determinations are explained more fully in the accompanying opinion.

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', enclosed within a large, loopy oval flourish.

Lisa R. Barton
Secretary to the Commission

Issued: August 13, 2021