

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

**Washington, D.C.**

**In the Matter of**

**CERTAIN HANDHELD MAGNIFIERS AND  
PRODUCTS CONTAINING SAME**

**Inv. No. 337-TA-901**

**ORDER NO. 4: INITIAL DETERMINATION GRANTING MOTION TO TERMINATE THE  
INVESTIGATION BASED ON A CONSENT ORDER STIPULATION AND  
PROPOSED CONSENT ORDER**

(March 20, 2014)

On December 18, 2013, Respondents Aumed Group Corp. and Aumed Inc. (“Aumed”) moved to terminate this investigation pursuant to Commission Rules 210.21 (a)(2) and (c)(1)(ii), based on a consent order stipulation and proposed consent order. (Motion Docket No. 901-001.) On December 27, 2013, the Commission Investigative Staff (“Staff”) filed a response in support of the motion.

Commission Rule 210.21(a)(2) states in relevant part that “[a]ny party may move at any time for an order to terminate an investigation in whole or in part as to any or all respondents on the basis of a settlement, a licensing or other agreement ... or consent order , as provided in paragraphs (b), (c) and (d) of this section.” 19 C.F.R. § 210.21(a)(2). Commission Rule 210.21(c)(1)(ii) provides in relevant part that “[i]n investigations under Section 337 of the Tariff Act of 1930, a proposal to terminate by consent order shall be submitted as a motion to the administrative law judge with a stipulation that incorporates a proposed consent order.” 19 C.F.R. § 210.21(c)(1)(ii). Commission Rule 210.21(c)(3) sets forth the information that must be included in the consent order stipulation. 19 C.F.R. § 210.21(c)(3). Commission Rule 210.21(c)(4) sets forth the information that must be included in the proposed consent order. 19 C.F.R. § 210.21(c)(4). A consent order may not include terms beyond or inconsistent with those set forth by Commission Rule 210.21(c)(4). *Id.*

Aumed seek termination of this investigation based on a consent order and consent order stipulation pursuant to Commission Rules 210.21(a)(2) and (c)(1)(ii). Aumed's motion includes a Consent Order Stipulation (Attachment A) and Proposed Consent Order (Attachment B).<sup>1</sup> Aumed's motion states that "there are no agreements, written or oral, express or implied between the parties concerning the subject matter of the Investigation." (Mot. at 1.) The consent order stipulation attached to the Motion was signed by counsel for Aumed on behalf of Aumed on December 18, 2013. At my request, a new consent order stipulation signed by Aumed's Director on February 10, 2014, was substituted for the originally filed consent order stipulation. I find Aumed's consent order stipulation conforms with Commission Rule 210.21(c)(3) and that the proposed consent order is consistent with Commission Rule 210.21(c)(4). *See* 19 U.S.C. § 210.21(c)(3) and (4).

Commission Rule 210.50(b)(2) provides that in the case of a proposed termination by settlement agreement or consent order, the parties may file statements regarding the impact of the proposed termination on the public interest, and the administrative law judge may hear argument, although no discovery may be compelled, with respect to issues relating solely to the public interest. 19 C.F.R. § 210.50(b)(2). In any initial determination terminating an investigation by settlement agreement or consent order, the administrative law judge is directed to consider and make appropriate findings regarding the effect of the proposed settlement on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers. *Id.*

I do not find any public interest concerns militating against termination of the investigation based on the consent order stipulation or the proposed consent order. I also find nothing to suggest that the settlement agreement would impose an undue burden on the public health and welfare, competitive conditions in the

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<sup>1</sup> The consent order stipulation and proposed consent order were filed as public documents. No confidential versions were filed.

U.S. economy, the production of similar or directly competitive articles in the United States, or U.S. consumers. *See* 19 U.S.C. § 1337(d). In fact the public interest favors settlement to avoid needless litigation and to conserve public and private resources. *See Certain Data Storage Systems and Components Thereof*, Inv. No. 337-TA-471, Order No. 51 at 4 (March 11, 2003).

Accordingly, my Initial Determination is to GRANT Motion Docket No. 901-001. This Initial Determination, along with supporting documentation, is hereby certified to the Commission.

Pursuant to 19 C.F.R. § 210.42(h), this Initial Determination shall become the determination of the Commission unless a party files a petition for review of the Initial Determination pursuant to 19 C.F.R. § 210.43(a), or the Commission, pursuant to 19 C.F.R. § 210.44, orders, on its own motion, a review of the Initial Determination or certain issues herein.

**SO ORDERED.**

A handwritten signature in black ink, reading "Thomas B. Pender", with a long horizontal flourish extending to the right.

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Thomas B. Pender  
Administrative Law Judge

# **Attachment A**

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

**Before The Honorable Thomas B. Pender  
Administrative Law Judge**

IN THE MATTER OF  
**CERTAIN HANDHELD MAGNIFIERS  
AND PRODUCTS CONTAINING SAME**

Investigation No. 337-TA-901

**AUMED GROUP CORP. AND AUMED INC. CONSENT ORDER STIPULATION**

Concurrent with their motion to terminate, Respondents Aumed Group Corp. and Aumed Inc. ("Aumed") hereby respectfully submit this Consent Order Stipulation. On September 26, 2013, Freedom Scientific, Inc. ("Freedom Scientific" or "Complainant") filed a Complaint with the United States International Trade Commission ("Commission") against Aumed. The Complaint alleged violations of Section 337 based upon the importation into the United States, the sale for importation, or the sale within the United States after importation by Respondents of certain handheld magnifiers that infringe United States Patent No. D624,107 (the "'107 patent") and claims 1-7 of United States Patent No. 8,264,598 (the "'598 patent") (collectively, "the Asserted Patents"). The Commission instituted this Investigation on November 8, 2013.

Pursuant to 19 C.F.R. §210.21(c)(1) and 210.21(c)(3), Aumed hereby stipulates that:

1. Aumed Inc. is a corporation organized and existing under the laws of California, with a principal place of business at 3860 Morrow Lane, Chico, CA 95928. Aumed Group Corp. is a corporation organized and existing under the laws of China, with a principal place of business at Room 712, Huakong Bldg 3, Shangdi East Road, No. 1 Haidian District, Beijing 100085, China.

2. Aumed stipulates to the entry of a Consent Order as outlined below and as expressed in the accompanying Proposed Consent Order.
3. Aumed admits and acknowledges that the Commission has *in rem* jurisdiction over the articles that are the subject of the Complaint and Notice of Investigation. Aumed admits and acknowledges that the Commission has *in personam* jurisdiction over it for the purposes of this Stipulation and the Consent Order. Aumed admits and acknowledges that the Commission has subject matter jurisdiction in this Investigation.
4. Upon entry of the Consent Order, Aumed will cease the importation, distribution, sale, or other transfers (other than exportation) of any handheld magnifiers or products containing same, as illustrated in the Complaint, that infringe the Asserted Patents ("Subject Articles") in the United States, except under consent or license from Freedom Scientific, its successors, or assignees.
5. Upon entry of the Consent Order, Aumed will re-export existing U.S. inventory outside of the United States.
6. Aumed expressly waives all rights to seek judicial review or otherwise challenge or contest the validity of the Consent Order.
7. Aumed will cooperate with and will not seek to impede by litigation or other means the Commission's efforts to gather information under Subpart 1 of Part 210, Title 19 of the Code of Federal Regulations.
8. The enforcement, modification, and revocation of the Consent Order will be carried out pursuant to Subpart 1 of Part 210, Title 19 Code of Federal Regulations, incorporating by reference the Commission's Rules of Practice and Procedure.
9. Aumed's signing of this Stipulation is for settlement purposes only and does not constitute admission by Aumed that an unfair act has been committed.

10. The Consent Order shall have the same force and effect and may be enforced, modified, or revoked in the same manner as is provided in section 337 of the Tariff Act of 1930 and Part 210, Title 19 Code of Federal Regulations, and the Commission's Rules of Practice and Procedure, which are hereby incorporated by reference and the Commission may require periodic compliance reports pursuant to subpart I of Part 210, Title 19 Code of Federal Regulations.
11. The Consent Order shall not apply with respect to any claim of any intellectual property right that has expired or been found or adjudicated invalid or unenforceable by the Commission or a court or agency of competent jurisdiction, provided that such finding or judgment has become final and nonreviewable.
12. Aumed will not seek to challenge the validity of the intellectual property rights in any administrative or judicial proceeding to enforce the Consent Order.

Dated: February 10, 2014

Respectfully submitted,  
AumedGroup Corp. and Aumed Inc.

by: 

Title: Director

# **Attachment B**



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

**Before The Honorable Thomas B. Pender  
Administrative Law Judge**

IN THE MATTER OF

**CERTAIN HANDHELD MAGNIFIERS  
AND PRODUCTS CONTAINING SAME**

Investigation No. 337-TA-901

**[PROPOSED] CONSENT ORDER**

The United States International Trade Commission ("Commission") has instituted an investigation of at the request of Complainant Freedom Scientific ("Complainant" or "Freedom Scientific") against Respondents Aumed Group Corp. and Aumed Inc. ("Aumed"). The Complaint alleged violations of Section 337 based upon the importation into the United States, the sale for importation, or the sale within the United States after importation by Respondents of certain handheld magnifiers that infringe United States Patent No. D624,107 (the "'107 patent") and claims 1-7 of United States Patent No. 8,264,598 (the "'598 patent") (collectively, "the Asserted Patents"). Aumed has executed a consent order stipulation and moved for an Initial Determination terminating this investigation as to Aumed by entry of a consent order. Respondents have executed a Consent Order Stipulation consistent with Commission Rules.

Pursuant to 19 C.F.R. §210.21(c), the motion is hereby GRANTED and the following  
SO ORDERED:

A. Aumed has admitted and acknowledged that the Commission has *in rem* jurisdiction over the articles that are the subject of the Complaint and Notice of Investigation. Aumed has admitted and acknowledged that the Commission has *in personam* jurisdiction over it for the purposes of this Stipulation and the Consent Order.

Aumed has admitted and acknowledged that the Commission has subject matter jurisdiction in this Investigation.

B. Effective immediately upon the entry of this Consent Order, Aumed shall not sell for importation, import, or sell after importation any handheld magnifier or product containing same, as illustrated in the Complaint, that infringe the Asserted Patents (collectively, "Subject Articles"), directly or indirectly, and shall not aid, abet, encourage, participate in, or induce the sale for importation, the importation, or the sale after importation except under consent or license from Freedom Scientific.

C. Effective immediately upon the entry of this Consent Order, Aumed shall cease and desist from importing and distributing Subject Articles covered by the Asserted Patents.

D. Upon entry of the Consent Order, Aumed will re-export existing U.S. inventory outside of the United States.

E. Aumed shall be precluded from seeking judicial review or otherwise challenging or contesting the validity of this Consent Order.

F. Aumed shall cooperate with and shall not seek to impede by litigation or other means the Commission's efforts to gather information under subpart I of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

G. Aumed and its officers, directors, employees, agents, and any entity or individual acting on its behalf and with its authority shall not seek to challenge the validity or enforceability of the '598 patent and the '107 patent in any administrative or judicial proceeding to enforce the Consent Order.

H. Upon expiration of the term of the '598 patent and the '107 the Consent Order shall become null and void as to such patent.

I. If any Asserted Patent is held invalid or unenforceable by a court or agency of competent jurisdiction or as to any Subject Articles that has been found or adjudicated not to infringe the asserted right in a final decision, no longer subject to appeal, this Consent Order shall become null and void as to such invalid or unenforceable claim.

J. This Investigation is hereby terminated with respect to Aumed, provided, however, that enforcement, modification, or revocation of the Consent Order shall be carried out pursuant to Subpart I of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

BY ORDER OF THE COMMISSION:

Date:

Lisa Barton, Acting Secretary  
U.S. International Trade Commission

**IN THE MATTER OF CERTAIN HANDHELD  
MAGNIFIERS AND PRODUCTS CONTAINING SAME**

**337-TA-901**

**CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **PUBLIC ORDER NO. 4 INITIAL DETERMINATION** has been served upon James Wiley, Esq., of Unfair Import Investigations and the following parties via first class mail and air mail where necessary on

**MAR 21 2014**



Lisa R. Barton, Acting Secretary  
U.S. International Trade Commission  
500 E Street, SW, Room 112A  
Washington, DC 20436

**FOR COMPLAINANT ROHM FREEDOM SCIENTIFIC, INC.**

Matthew B. Lowrie, Esq.  
**FOLEY & LARDNER LLP**  
111 Huntington Avenue  
Boston, MA 02199

( ) Via Hand Delivery  
(☒) Via Express Delivery  
( ) Via First Class Mail  
( ) Other: \_\_\_\_\_

**FOR RESPONDENTS AUMED GROUP CORP. & AUMED INC.:**

James B. Altman, Esq.  
**FOSTER, MURPHY, ALTMAN & NICKEL, PC**  
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( ) Other: \_\_\_\_\_