

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN MULTIPLE MODE OUTDOOR
GRILLS AND PARTS THEREOF**

Inv. No. 337-TA-895

Order No. 40

Pursuant to Commission Rule 210.18, respondents Char-Broil, LLC; Rankam Metal Products Manufactory Limited, USA; and The Brinkmann Corporation (collectively, the “moving respondents”) filed a motion for summary determination of invalidity of U.S. Patent Nos. D660,646 (“the ‘646 patent’”) and D662,773 (“the ‘773 patent’”). Motion Docket No. 895-21.

Complainants A&J Manufacturing, LLC, and A&J Manufacturing, Inc. (collectively, “complainants” or “A&J”) oppose the pending motion. The Commission investigative staff filed a response supporting the motion. Respondents Academy, Ltd.; Ningbo Huige Outdoor Products Co., Ltd.; Outdoor Leisure Products, Inc.; and Dongguan Kingsun Enterprises Co., Ltd. filed a joinder requesting that the motion be granted. No other response was filed.¹

Commission Rules provide that “[a]ny party may move with any necessary supporting affidavits for a summary determination in its favor upon all or part of the issues to be determined in the investigation.” 19 C.F.R. § 210.18(a). Summary determination “shall be rendered if pleadings and any depositions, answers to interrogatories, and admissions on file, together with


¹ The moving respondents filed a motion for leave to file a reply. Motion Docket No. 895-33. Complainants filed a sur-reply. The motion for leave is granted.

the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a summary determination as a matter of law.” 19 C.F.R. § 210.18(b).

The moving respondents argue that the two asserted design patents (the ‘646 patent and the ‘773 patent) “are invalid as a matter of law because they are anticipated under 35 U.S.C. § 102(b) by A&J’s own grill product. A&J began selling a version of its Duo Model #5050 grill in the United States in 2007. The Duo Model #5050 grill embodies the ‘646 and ‘773 patents, but A&J did not file for the ‘646 and ‘773 patents until May 2011. Thus, under 35 U.S.C. § 102(b), these patents are invalid as a matter of law because the grill designs depicted in the patents were on sale in the United States more than one year prior to the application date.” Mem. at 1.

The moving respondents rely on certain photographs of certain grills as evidence of invalidating prior art. *See* Mem. at 28-34; Reply Mem. at 8-11. Complainants challenge the authenticity and facts with respect to those photographs. *See* Opp’n at 16-18; Sur-reply at 7-10. The administrative law judge finds that genuine issues of material fact exist concerning those photographs.

Accordingly, Motion No. 895-21 is denied.



David P. Shaw
Administrative Law Judge

Issued: May 27, 2014

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PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **Order No. 40** has been served by hand upon the Commission Investigative Attorney, **R. Whitney Winston, Esq.**, and the following parties as indicated, on May 28, 2014.



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