

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

Before the Honorable Thomas B. Pender
Administrative Law Judge

In the Matter of

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

Inv. No. 337-TA-890

NOTICE OF INITIAL DETERMINATION ON VIOLATION OF SECTION 337

(August 22, 2014)

On August 21, 2014, I issued an initial determination on violation of Section 337 and recommended determination in the above-referenced Investigation. Below are the Conclusions of Law from that Initial Determination, which are a matter of public record. A complete public version of the Initial Determination will issue after the parties have identified their confidential business information, pursuant to Commission Rule 210.5(f).

SO ORDERED.

A handwritten signature in black ink, appearing to read "Thomas B. Pender", is written over a horizontal line.

Thomas B. Pender
Administrative Law Judge

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INITIAL DETERMINATION ON VIOLATION OF SECTION 337

(August 22, 2014)

It is the Initial Determination of this Administrative Law Judge that a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, has occurred 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, in connection with claims 1, 9, 32, 89, and 92 of U.S. Patent No. 7,178,527, claims 19, 21, 32, and 36 of U.S. Patent No. 7,950,392, claims 32, 33, 34, and 53 of U.S. Patent No. 7,997,267, claims 30, 37, and 38 of U.S. Patent No. 7,341,060, claims 1, 3, 5, 11, 28, 30, 31, and 56 of U.S. Patent No. 8,312,883, and claim 2 of U.S. Patent No. RE 44,453.

It is also the Initial Determination of this Administrative Law Judge that a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, has not occurred 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, in connection with claims 13, 51, 52, and 55 of U.S. Patent No. 7,926,487.

Conclusions of Law:

1. The Commission has personal jurisdiction over the parties and subject-matter jurisdiction over the accused products.

2. The importation or sale requirement of Section 337 is satisfied.

U.S. Patent No. 7,178,527:

3. The Original iVolve Nasal and New iVolve Nasal infringe claims 1, 9, 32, 89, and 92 of the '527 Patent, and the iVolve Full Face infringes claim 1 of the '527 Patent.
4. The domestic industry requirement is satisfied with respect to the '527 Patent.
5. No claim of the '527 Patent has been shown to be invalid.
6. There has been a violation of Section 337 with respect to the '527 Patent.

U.S. Patent No. 7,950,392:

7. The Original iVolve Nasal and New iVolve Nasal infringe claims 19, 21, 29, 32, and 36 of the '392 Patent, and the iVolve Full Face infringes claims 19, 21, 32, and 36 of the '392 Patent.
8. The domestic industry requirement is satisfied with respect to the '392 Patent.
9. No claim of the '392 Patent has been shown to be invalid.
10. There has been a violation of Section 337 with respect to the '392 Patent.

U.S. Patent No. 7,997,267:

11. The Original Willow and the New Willow infringe claims 32, 33, and 34 of the '267 Patent. The Original iVolve Nasal, New iVolve Nasal, Original iVolve N2, New iVolve N2 – Plan A, New iVolve Nasal N2 – Plan B, and iVolve Full Face infringe claims 32, 33, 34, and 53 of the '267 Patent.
12. The domestic industry requirement is satisfied with respect to the '267 Patent.
13. No claim of the '267 Patent has been shown to be invalid.
14. There has been a violation of Section 337 with respect to the '267 Patent.

U.S. Patent No. 7,926,487:

15. The Original Willow infringes claims 13, 51, 52, and 55 of the '487 Patent. The Original iVolve Nasal, New iVolve Nasal, Original iVolve N2, New iVolve N2 – Plan A, and iVolve Full Face infringe claims 13, 51, and 52 of the '487 Patent.
16. The domestic industry requirement is satisfied with respect to the '487 Patent.
17. Claims 51 and 55 of the '487 Patent are invalid as anticipated pursuant to 35 U.S.C. § 102.

18. Claims 13, 51, 52, and 55 of the '487 Patent are invalid as obvious pursuant to 35 U.S.C. § 103.
19. There is no violation of Section 337 with respect to the '487 Patent.

U.S. Patent No. 7,341,060:

20. The Original Willow infringes claims 30, 37, and 38 of the '060 Patent.
21. The domestic industry requirement is satisfied with respect to the '060 Patent.
22. No claim of the '060 Patent has been shown to be invalid.
23. There has been a violation of Section 337 with respect to the '060 Patent.

U.S. Patent No. 8,312,883:

24. The Original Willow infringes claims 1, 3, 5, 11, 28, 30, 31, and 56 of the '883 Patent.
25. The domestic industry requirement is satisfied with respect to the '883 Patent.
26. No claim of the '883 Patent has been shown to be invalid.
27. There has been a violation of Section 337 with respect to the '883 Patent.

U.S. Patent No. RE 44,453:


28. The InH2 humidifier infringes claims 2, 4, and 7 of the '453 Patent.
29. The domestic industry requirement is satisfied with respect to the '453 Patent.
30. Claims 1, 4, and 7 of the '453 Patent are invalid as anticipated pursuant to 35 U.S.C. § 102.
31. Claim 2 of the '453 Patent has not been shown to be invalid.
32. There has been a violation of Section 337 with respect to the '453 Patent.

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BREATHING TREATMENT SYSTEMS AND COMPONENTS
THEREOF**

337-TA-890

CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **PUBLIC NOTICE INITIAL DETERMINATION** has been served upon, **The Office of Unfair Import Investigations** and the following parties on August 22, 2014.



Lisa R. Barton, Secretary
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FOR COMPLAINANTS ResMED CORP, ResMED INC, & ResMED LTD.:

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