

Commission (“Commission”) has determined to review in part the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on January 28, 2020, finding no violation of section 337 of the Tariff Act of 1930, as amended (“section 337”), in connection with the asserted patent. The Commission has determined to take no position on the issues under review. The Commission has also determined to affirm the ID’s findings that the asserted patent claims are invalid. This investigation is terminated with a finding of no violation of section 337.

**FOR FURTHER INFORMATION CONTACT:** Ron Traud, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–3427. 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](mailto: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, telephone 202–205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on December 14, 2018, based on a complaint filed by Ingevity Corp. and Ingevity South Carolina, LLC, both of North Charleston, South Carolina (together, “Ingevity”). 83 FR 64356. The complaint, as supplemented, alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain multi-stage fuel vapor canister systems and activated carbon components thereof by reason of infringement of certain claims of U.S. Patent No. RE38,844 (“the ‘844 patent”). *Id.* The Commission’s notice of investigation named as respondents MAHLE Filter Systems North America, Inc. of Murfreesboro, Tennessee; MAHLE Filter Systems Japan Corp. of Saitama, Japan; MAHLE Sistemas de Filtracion de Mexico de C.V. of Monterrey, Mexico; MAHLE Filter Systems Canada, ULC of Tilbury, Canada (altogether, “MAHLE”); Kuraray Co., Ltd. of Tokyo, Japan (“Kuraray”); Kuraray America, Inc. of Houston, Texas; and Nagamine Manufacture Co., Ltd. of Manno, Japan (“Nagamine”). *Id.* The Commission subsequently amended the complaint and notice of investigation to add Calgon Carbon

Corporation (“Calgon”) as a respondent and to remove Kuraray America, Inc. as a respondent. 84 FR 11555 (Mar. 27, 2019). The remaining respondents are collectively referred to herein as “Respondents.” The Office of Unfair Import Investigations is not participating in this investigation. 83 FR 64356.

On January 28, 2020, the ALJ issued the final ID, which finds that Respondents did not violate section 337. More particularly, the final ID found, *inter alia*: (1) Ingevity, its customers, and operators of the domestic industry articles have been shown to practice the asserted claims of the ‘844 patent; (2) the domestic industry requirement is satisfied with respect to the ‘844 patent; (3) Respondent MAHLE directly and/or indirectly infringes the asserted claims of the ‘844 patent; (4) Respondents Kuraray and Nagamine indirectly infringe the asserted claims; (5) the asserted claims of the ‘844 patent have been shown to be invalid under 35 U.S.C. 102 and/or 35 U.S.C. 103 over the Delphi prior invention, or the combination of the Delphi prior invention with other references; (6) the asserted claims of the ‘844 patent have been shown to be invalid under 35 U.S.C. 102 and/or 35 U.S.C. 103 over Meiller and/or Park and other references; (7) independent claim 18 of the ‘844 patent, and those depending therefrom, have been shown to be invalid under 35 U.S.C. 112 for indefiniteness, but independent claims 1, 31, and 43, and those depending therefrom, have not been shown to be invalid under 35 U.S.C. 112 for indefiniteness; and (8) patent exhaustion does not bar Ingevity’s sought relief.

On February 10, 2020, the private parties filed petitions for review of the final ID, and on February 18, 2020, the private parties filed responses.

Having examined the record in this investigation, including the final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in part. In particular, the Commission has determined to review the following issues:

(1) Whether the asserted claims are invalid under 35 U.S.C. 103 over Meiller and/or Park and other references.

(2) Whether the asserted claims are invalid under 35 U.S.C. 112 for indefiniteness related to the claim terms identified by the parties as the Volume Terms, including the final ID’s discussion of the scope of the Volume Terms.

(3) Whether the accused products infringe the asserted claims of the ‘844

patent, and whether Respondents indirectly infringe the asserted claims of the ‘844 patent.

(4) Whether Ingevity’s sale of its HCA carbons to MAHLE that are later incorporated into a subset of Accused Canisters that also contain BAX carbons exhausts Ingevity’s patent rights as to those Accused Canisters.

(5) Whether Ingevity satisfied the domestic industry requirement of section 337.

(6) Whether Ingevity demonstrated satisfaction of the importation requirement of section 337, as set forth in the final ID beginning on page 34 through the carryover paragraph on page 35.

(7) Whether Ingevity illegally tied the sales of its products to allowing its customers to practice the ‘844 patent.

The Commission has determined to not review the remainder of the final ID.

The Commission has determined to take no position on the issues under review. Accordingly, this investigation is terminated with a finding of no violation of section 337 based on the unreviewed findings of the final ID that the asserted claims have been shown to be invalid under 35 U.S.C. 102 and/or 35 U.S.C. 103 over the Delphi prior invention, or the combination of the Delphi prior invention with other references. This investigation is hereby terminated.

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.

Issued: April 7, 2020.

**Lisa Barton,**

*Secretary to the Commission.*

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## INTERNATIONAL TRADE COMMISSION

### Notice of Amended Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

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**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has received an amended complaint entitled *Certain Spa Pumps, Jet Pump Housings, Pedicure Spas, Components Thereof, and Products Containing the Same, DN 3432*; the

Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

**FOR FURTHER INFORMATION CONTACT:** Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email [EDIS3Help@usitc.gov](mailto:EDIS3Help@usitc.gov).

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (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 has received a second amended complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Luraco Health & Beauty, LLC, on April 6, 2020. The original complaint was filed on February 4, 2020 and a notice of receipt of complaint; solicitation of comments relating to the public interest published in the **Federal Register** on February 10, 2020. The Commission received a first amended complaint on March 17, 2020 and a notice of receipt of complaint; solicitation of comments relating to the public interest published on March 23, 2020. The second amended complaint alleges 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 spa pumps, jet pump housings, pedicure spas, components thereof, and products containing the same. The second amended complaint names as respondents: GTP International Corporation, Dallas, TX; Lac Long U.S. Inc., Westminster, CA; Lac Long Co., Ltd, Vietnam; and Alfa Nail Supply, Inc. Baton Rouge, LA. The complainant requests that the Commission issue a general exclusion order or in the alternative a limited exclusion order and cease and desist orders.

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

- (i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;
- (ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;
- (iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;
- (iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and
- (v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

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 § 210.4(f)

of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number ("Docket No. 3432") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, Electronic Filing Procedures).<sup>1</sup> 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 CFR 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,<sup>2</sup> solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.<sup>3</sup>

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: April 7, 2020.

**Lisa Barton,**

*Secretary to the Commission.*

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<sup>1</sup> Handbook for Electronic Filing Procedures: [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf).

<sup>2</sup> All contract personnel will sign appropriate nondisclosure agreements.

<sup>3</sup> Electronic Document Information System (EDIS): <https://edis.usitc.gov>.