7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-879]

(Advisory Opinion Proceeding)

Certain Sleep-Disordered Breathing Treatment Systems and Components Thereof

Institution of an Advisory Opinion Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute an advisory opinion proceeding in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Amanda Pitcher Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://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 instituted the underlying investigation on April 25, 2013, based on a complaint filed on March 28, 2013, and supplemented

on April 19, 2013, on behalf of ResMed Corp. of San Diego, California; ResMed Inc. of San Diego, California; and ResMed Ltd. of Australia (collectively, "ResMed"). 78 *FR* 25475 (May 1, 2013). The complaint alleged violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the sale for importation, importation, or sale within the United States after importation of certain sleep-disordered breathing treatment systems and components thereof by reason of infringement of claims 1, 2, 4, 5, 17, and 28 of U.S. Patent No. 6,216,691, claims 1 and 20 of U.S. Patent No. 6,935,337, claim 15 of U.S. Patent No. 7,159,587, claims 1, 5, 6, 11, 12, 18–20, 35, and 36 of U.S. Patent No. 7,487,772, claims 1–7 of U.S. Patent No. 7,614,398, claims 59, 60, 63, and 72–75 of U.S. Patent No. 7,743,767, and claims 17, 21–24, 29, and 32–37 of U.S. Patent No. 7,997,267. The Commission's notice of investigation named as respondents Apex Medical Corp. of New Taipei City, Taiwan and Apex Medical USA Corp. of Brea, California (collectively, "Apex") and Medical Depot Inc., d/b/a Drive Medical Design & Manufacturing of Port Washington, New York. The Office of Unfair Import Investigations participated in the investigation.

Medical Depot Inc. and Apex were previously terminated from the investigation on the basis of consent orders. Order Nos. 8 (unreviewed by the Commission, July 18, 2013) and 11 (unreviewed by the Commission, Aug. 8, 2013).

On September 23, 2013, Apex filed a request with the Commission asking for institution of an advisory opinion proceeding to declare that their redesigned sleep-disordered breathing treatment systems are not covered by the consent order. Apex also requests that the proceeding be conducted expeditiously. ResMed filed a response on October 18, 2013 opposing Apex's request.

The Commission has determined that Apex's request complies with the requirements for institution of an advisory opinion proceeding under Commission rule 210.79. Accordingly, the

Commission has determined to institute an advisory opinion proceeding and referred Apex's request to the Chief Administrative Law Judge to designate a presiding administrative law judge. The following entities are named as parties to the proceeding: (1) Complainant ResMed; (2) respondent Apex; (3) the Office of Unfair Import Investigations.

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: December 11, 2013.

Lisa R. Barton,
Acting Secretary to the Commission.

[FR Doc. 2013-29887 Filed 12/16/2013 at 8:45 am; Publication Date: 12/17/2013]