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7020-02

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-1136]

Certain Obstructive Sleep Apnea Treatment Mask Systems and Components Thereof; Institution of Investigation pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 10, 2018, under section 337 of the Tariff Act of 1930, as amended, on behalf of Fisher & Paykel Healthcare Limited of New Zealand. Supplements were filed on September 17, 2018, September 18, 2018, and September 26, 2018. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain obstructive sleep apnea treatment mask systems and components thereof by reason of infringement of certain claims of U.S. Patent No. 9,333,315 (“the ’315 patent”); U.S. Patent No. 9,517,317 (“the ’317 patent”); U.S. Patent No. 9,539,405 (“the ’405 patent”); U.S. Patent No. 9,907,925 (“the ’925 patent”); and U.S. Patent No. 9,974,914 (“the ’914 patent”). The complaint further alleges that an industry in the United States exists or is in the process of being established as required by the applicable Federal Statute.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and a cease and desist order

ADDRESSES: The complaint, except for any confidential information contained therein, is 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., Room 112, Washington, D.C. 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: Katherine Hiner, The Office of the Secretary,

Docket Services Division, U.S. International Trade Commission, telephone (202) 205-2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 C.F.R. 210.10 (2018).

Scope of Investigation: Having considered the complaint, as supplemented, the U.S. International Trade Commission, on October 5, 2018, ORDERED THAT –

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1-4, 6-9, 11-15, and 17-19 of the '315 patent; claims 1-20 of the '317 patent; claims 1-20 of the '405 patent; claims 4-20 of the '925 patent; and claims 1-3,

5-8, 11-20, 22, and 25-27 of the '914 patent; and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 C.F.R. 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is "nasal pillow masks for Continuous Positive Airway Pressure (CPAP) treatment of obstructive sleep apnea";

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Fisher & Paykel Healthcare Limited

15 Maurice Paykel Place

East Tamaki, Auckland 2013

PO Box 14 348

Panmure, Auckland 1741

New Zealand

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

ResMed Corp.

9001 Spectrum Center Drive

San Diego, CA 92123

ResMed Inc.

9001 Spectrum Center Drive

San Diego, CA 92123

ResMed Limited
1 Elizabeth Macarthur Drive
Bella Vista NSW 2153
Australia

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not be named as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 C.F.R. 210.13. Pursuant to 19 C.F.R. 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: October 5, 2018.

William Bishop,

Supervisory Hearings and Information Officer.

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