

requests that the Commission issue a limited exclusion order, cease and desist orders and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, 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 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.

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. 3189") 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 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: December 19, 2016.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2016-30856 Filed 12-21-16; 8:45 am]

**BILLING CODE 7020-02-P**

<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>.

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-951]

### Certain Lithium Metal Oxide Cathode Materials, Lithium-Ion Batteries for Power Tool Products Containing Same, and Power Tool Products With Lithium-Ion Batteries Containing Same Commission's Final Determination; Issuance of a Limited Exclusion Order; Termination of the Investigation

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

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 in this investigation and has issued a limited exclusion order prohibiting importation of infringing lithium metal oxide cathode materials for consumption in the United States.

#### FOR FURTHER INFORMATION CONTACT:

Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-205-3042. 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 SW., Washington, DC 20436, telephone 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<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>. 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 this investigation on March 30, 2015, based on a complaint filed by BASF Corporation of Florham Park, New Jersey and UChicago Argonne LLC of Lemont, Illinois (collectively, "Complainants"). 80 FR 16696 (Mar. 30, 2015). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (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 lithium metal oxide cathode materials, lithium-ion batteries for power tool products containing same, and power tool products with lithium-ion batteries

containing same by reason of infringement of one or more of claims 1–4, 7, 13, and 14 of U.S. Patent No. 6,677,082 (“the ‘082 patent”) and claims 1–4, 8, 9, and 17 of U.S. Patent No. 6,680,143 (“the ‘143 patent”). *Id.* The notice of investigation named the following respondents: Umicore N.V. of Brussels, Belgium; Umicore USA Inc. of Raleigh, North Carolina (collectively, “Umicore”); Makita Corporation of Anjo, Japan; Makita Corporation of America of Buford, Georgia; and Makita U.S.A. Inc. of La Mirada, California (collectively, “Makita”). *Id.* The Office of Unfair Import Investigations is a party to the investigation.

On November 5, 2015, the ALJ granted a joint motion by Complainants and Makita to terminate the investigation as to Makita based upon settlement. *See* Order No. 32 (Nov. 5, 2015). The Commission determined not to review. *See* Notice (Nov. 23, 2015).

On December 1, 2015, the ALJ granted an unopposed motion by Complainants to terminate the investigation as to claim 8 of the ‘082 patent. *See* Order No. 35 (Dec. 1, 2015). The Commission determined not to review Order No. 35. *See* Notice (Dec. 22, 2015).

On February 29, 2016, the ALJ issued his final ID, finding a violation of section 337 by Umicore in connection with claims 1–4, 7, 13, and 14 of the ‘082 patent and claims 1–4, 8, 9, and 17 of the ‘143 patent. Specifically, the ID found that the Commission has subject matter jurisdiction, *in rem* jurisdiction over the accused products, and *in personam* jurisdiction over Umicore. ID at 10–11. The ID found that Complainants satisfied the importation requirement of section 337 (19 U.S.C. 1337(a)(1)(B)). *Id.* at 9–10. The ID found that the accused products directly infringe asserted claims 1–4, 7, 13, and 14 of the ‘082 patent; and asserted claims 1–4, 8, 9, and 17 of the ‘143 patent, and that Umicore contributorily infringes those claims. *See* ID at 65–71, 83–85. The ID, however, found that Complainants failed to show that Umicore induces infringement of the asserted claims. *Id.* at 79–83. The ID further found that Umicore failed to establish that the asserted claims of the ‘082 or ‘143 patents are invalid for lack of enablement or incorrect inventorship. ID at 118–20. The ID also found that Umicore’s laches defense fails as a matter of law (ID at 122–124) and also fails on the merits (ID at 124–126). Finally, the ID found that Complainants established the existence of a domestic industry that practices the asserted patents under 19 U.S.C. 1337(a)(2). *See* ID at 18, 24.

On March 14, 2016, Umicore filed a petition for review of the ID and a motion for a Commission hearing. Also on March 14, 2016, the Commission investigative attorney (“IA”) petitioned for review of the ID’s finding that a laches defense fails as a matter of law in section 337 investigations. Further on March 14, 2016, Complainants filed a contingent petition for review of the ID. On March 22, 2016, the parties filed responses to the petitions for review.

On April 8, 2016, 3M Corporation (“3M”) filed a motion to intervene under Commission Rule 210.19. 3M requested that the Commission grant it “with full participation rights in this Investigation in order to protect its significant interests in the accused materials.”

On May 11, 2016, the Commission determined to review the final ID in part. 81 *FR* 30548–50 (May 17, 2016). Specifically, the Commission determined to review (1) the ID’s contributory and induced infringement findings; (2) the ID’s domestic industry findings under 19 U.S.C. 1337(a)(3)(C); and (3) the ID’s findings on laches. The Commission determined to deny 3M’s motion to intervene, but stated that it would consider 3M’s comments in considering remedy, bonding and the public interest this investigation if a violation of Section 337 is found. Pursuant to Commission rule 210.45 (19 CFR 210.45), Umicore’s request for a Commission hearing was granted.

The Commission requested the parties to brief their positions on the issues under review with reference to the applicable law and the evidentiary record, and posed specific briefing questions. On May 23, 2016, the parties filed submissions to the Commission’s questions. On June 3, 2016, the parties filed responses to the initial submissions. Interested public entities, including 3M and the Belgian Ambassador also submitted comments on the public interest.

On August 2, 2016, Complainants filed a motion pursuant to 19 CFR 210.15(a)(2) and 19 CFR 210.38(a) for the Commission to reopen the record in this Investigation to admit a July 6, 2016 news article that allegedly includes statements by Umicore Greater China Senior Vice President Chuxian Feng as to this investigation. On August 11 & 12, 2016, Umicore and the IA filed respective oppositions to the motion. The Commission has determined to deny Complainants motion to reopen the record.

The Commission was interested in hearing presentations concerning the appropriate remedy (if any) and the effect that such remedy would have

upon the public interest. The Commission invited Government agencies, public-interest groups, and interested members of the public to make oral presentations on the issues of remedy and the public interest. The Commission held a public hearing on Thursday, November 17, 2016, in the USITC Main Hearing Room. The hearing was limited to the issues of laches, contributory infringement, and the public interest. The hearing consisted of two panels. The first panel was limited to the parties (*i.e.*, complainants, respondents, and the IA), who were given an opportunity to comment on the issues identified above. The second panel consisted of non-party witnesses on the public interest.

The Commission thanks the various entities who appeared to testify on the public interest.

Having examined the record of this investigation, including the final ID, the petitions for review, responses thereto, and all other appropriate submissions, the Commission has determined to reverse the ALJ’s finding that Umicore does not induce infringement. The Commission finds that the record evidence fails to support the ALJ’s finding that Umicore had a good faith belief of non-infringement. The Commission has determined to affirm the ALJ’s finding that Umicore’s laches defense fails on the merits. The Commission vacates and takes no position on the legal question of whether laches is an available defense at the Commission. The Commission has determined to vacate and take no position on the ALJ’s finding that Complainants established the existence of a domestic industry under 19 U.S.C. 1337(a)(3)(C) with respect to BASF.

Having found a violation of section 337 in this investigation, the Commission has determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry of lithium metal oxide cathode materials that infringe one or more of claims 1–4, 7, 13, and 14 of the ‘082 patent, or claims 1–4, 8, 9, and 17 of the ‘143 patent that are manufactured by, or on behalf of, or imported by or on behalf of Umicore N.V. and Umicore USA Inc. or any of their affiliated companies, parents, subsidiaries, agents, or other related business entities, or their successors or assigns.

The Commission has also determined that the public interest factors enumerated in section 337(d) (19 U.S.C. 1337(d)) does not preclude issuance of the limited exclusion order. Finally, the Commission has determined that a bond in the amount of three percent of entered value is required to permit

temporary importation during the period of Presidential review (19 U.S.C. 1337(j)) of lithium metal oxide cathode materials that are subject to the limited exclusion order. The Commission's orders and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

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 16, 2016.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2016-30811 Filed 12-21-16; 8:45 am]

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## INTERNATIONAL TRADE COMMISSION

[USITC SE-16-043]

### Government in the Sunshine Act Meeting Notice

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** December 30, 2016 at 11:00 a.m.

**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205-2000.

**STATUS:** Open to the public.

#### MATTERS TO BE CONSIDERED:

1. *Agendas for future meetings:* None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 701-TA-565 and 731-TA-1341 (Preliminary) (Hardwood Plywood from China). The Commission is currently scheduled to complete and file its determinations on January 3, 2017; views of the Commission are currently scheduled to be completed and filed on January 10, 2017.
5. *Outstanding action jackets:* None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: December 19, 2016.

**William R. Bishop,**

*Supervisory Hearings and Information Officer.*

[FR Doc. 2016-31021 Filed 12-20-16; 4:15 pm]

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. OSHA-2010-0009]

#### The Standard on Presence Sensing Device Initiation (PSDI) (Extension of the Office of Management and Budget's (OMB) Approval of Collections of Information (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for public comments.

**SUMMARY:** OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Standard on Presence Sensing Device Initiation (29 CFR 1910.217(h)).

**DATES:** Comments must be submitted (postmarked, sent, or received) by February 21, 2017.

#### ADDRESSES:

*Electronically:* You may submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Facsimile:* If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693-1648.

*Mail, hand delivery, express mail, messenger, or courier service:* When using this method, you must submit your comments and attachments to the OSHA Docket Office, Docket No. OSHA-2010-0009 Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3653, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., e.t.

*Instructions:* All submissions must include the Agency name and the OSHA docket number (OSHA-2010-0009) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at <http://www.regulations.gov>. For further information on submitting comments see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

*Docket:* To read or download comments or other material in the docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You also may contact Theda Kenney at the address below to obtain a copy of the ICR.

#### FOR FURTHER INFORMATION CONTACT:

Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N-3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693-2222.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Paragraph 1910.217(h) regulates the use of presence sensing devices ("PSDs") used to initiate the operation of mechanical power presses; a PSD (e.g., a photoelectric field or curtain) automatically stops the stroke of a mechanical power press when the device detects an operator entering a danger zone near the press. A