

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN UV CURABLE COATINGS
FOR OPTICAL FIBERS, COATED
OPTICAL FIBERS, AND PRODUCTS
CONTAINING SAME

Investigation No. 337-TA-1031

NOTICE OF COMMISSION DETERMINATION TO REVIEW IN PART A FINAL
INITIAL DETERMINATION FINDING A VIOLATION OF SECTION 337;
EXTENSION OF TARGET DATE

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (the "Commission") has determined to review in part the final initial determination (the "ID") issued by the presiding administrative law judge ("ALJ") on February 15, 2018, finding a violation of section 337 of the Tariff Act of 1930, as amended, in connection with certain asserted patents. The Commission has also determined to extend the target date for the completion of this investigation from June 18, 2018, to June 25, 2018.

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 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 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>. 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: On December 5, 2016, the Commission instituted this investigation based on a complaint filed by DSM Desotech, Inc. of Elgin, IL; and DSM IP Assets B.V. of Heerlen, Netherlands (collectively, "DSM" or "Complainants"). 81 FR 87588-89 (Dec. 5, 2016). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337"), based upon the importation into the United States, the sale for importation, or the sale within the United States after importation of certain UV curable coatings for optical fibers, coated optical fibers, and products containing same by reason of infringement of one or more of claims 1-8, 10-15, and 18-22 of U.S. Patent No. 6,961,508 ("the '508 patent");

claims 1-10 and 13-15 of U.S. Patent No. 7,171,103 (“the ’103 patent”); claims 2-4, 9, 11-12, and 15 of U.S. Patent No. 7,067,564 (“the ’564 patent”); and claims 1-3, 9, 12, 16-18, 21, and 30 of U.S. Patent No. 7,706,659 (“the ’659 patent”). *Id.* The Commission’s Notice of Investigation named as respondents Momentive UV Coatings (Shanghai) Co., Ltd. of Shanghai, China (“MUV”); and OFS Fitel, LLC of Norcross, Georgia (“OFS”) (collectively, “Respondents”). *Id.* The Office of Unfair Import Investigations (“OUII”) was also named as a party in this investigation. *Id.*

Prior to the evidentiary hearing, DSM withdrew its allegations as to certain patent claims. *See* Order 12 (Apr. 12, 2017), *unreviewed*, Notice of Commission Determination Not to Review an Initial Determination Granting Complainants’ Unopposed Motion to Terminate this Investigation with respect to One Patent Claim (May 11, 2017); Order 50 (Aug. 25, 2017), *unreviewed*, Notice of Commission Determination Not to Review An Initial Determination Withdrawing from the Complaint Certain Allegations Regarding U.S. Patent No. 7,067,564 (Sept. 15, 2017). DSM proceeded at the evidentiary hearing on the following patents and claims: claims 1-8, 11-15, 18-19, 20-21, and 22 of the ’508 patent; claims 1-10 and 13-15 of the ’103 patent; and claims 1-3, 9, 12, 16-18, 21, and 30 of the ’659 patent.

On February 15, 2018, the ALJ issued the ID, which finds only MUV in violation of section 337, and only as to the ’508 and ’103 patents. The ALJ recommended that the Commission issue a limited exclusion order directed to MUV’s infringing products. The ALJ also recommended a bond of forty percent of entered value during the Presidential review period. *See* 19 U.S.C. 1337(j)(3).

On February 27-28, 2018, OUII, DSM, MUV, and OFS filed petitions for review of the ID, and on March 7-8, 2018, the parties filed responses to the petitions. On March 19, 2018, the private parties filed statements on the public interest. The Commission also received comments on the public interest from members of the public.

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

- (1) Whether respondent OFS imports respondent MUV’s accused KS1-043/048 coating.
- (2) Whether claim 30 of ’659 patent is invalid for lack of written description.
- (3) Whether claims 1-8, 11, 15, and 18-19 of the ’508 patent are invalid for lack of written description and enablement.
- (4) Whether claim 21 of the ’508 patent and claims 1-10 and 13-15 of the ’103 patent are invalid for lack of written description and enablement.
- (5) Whether the accused products infringe the ’508, ’103, and ’659 patents.

(6) Whether the technical and economic prongs of the domestic industry requirement have been met for the '508, '103, and '659 patents.

The Commission has determined to not review the remainder of the ID. The Commission does not request any briefing at this time.

This action is taken under the authority of 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.



Lisa R. Barton
Secretary to the Commission

Issued: April 16, 2018

**CERTAIN UV CURABLE COATING FOR OPTICAL
FIBERS, COATED OPTIONAL FIBERS, AND PRODUCTS
CONTAINING SAME**

Inv. No. 337-TA-1031

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served by hand upon the Commission Investigative Staff, Claire K. Comfort, Esq., and the following parties, as indicated, on **April 16, 2018**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

**On Behalf of Complainants DSM Desotech, Inc. and DSM IP
Assets B.V.:**

Christine E. Lehman, Esq.
**FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP**
901 New York Avenue, NW
Washington, DC 20001

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

**On Behalf of Respondent Momentive UV Coatings (Shanghai)
Co., Ltd.:**

Edmond R. Bannon, Esq.
FISH & RICHARDSON P.C.
601 Lexington Avenue, 52nd Floor
New York, NY 10022

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

On Behalf of Respondent OFS Fitel, LLC:

Bradley J. Olson, Esq.
BARNES & THORNBURG, LLP
1717 Pennsylvania Avenue, NW, Suite 500
Washington, DC 20006

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____