

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN HEIGHT-ADJUSTABLE
DESK PLATFORMS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1125

**ORDER NO. 13: INITIAL DETERMINATION TERMINATING RESPONDENT
LAMOUNTAIN BASED ON ENTRY OF CONSENT ORDER**

(September 24, 2018)

Complainant Varidesk LLC (“Complainant” or “Varidesk”) and Respondent LaMountain International Group LLC (“LaMountain”) filed a joint motion seeking to terminate this investigation as to LaMountain based upon a consent order stipulation and proposed consent order. Motion Docket No. 1125-015. The Commission Investigative Staff (“Staff”) filed a response supporting the motion. No other party filed a response.

Commission Rule 210.21(c) provides: “A motion for termination by consent order shall contain copies of any licensing or other settlement agreement, any supplemental agreements, and a statement that there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation.” 19 C.F.R. § 210.21(c). The pending motion includes as exhibits a Stipulation and Proposed Consent Order by LaMountain International Group LLC (Exhibit A) and a proposed Consent Order (Exhibit B). Further, movants state: “There are no other agreements, written or oral, express or implied, between these parties concerning the subject matter of the Investigation.” Mot. at 1. The pending motion therefore satisfies the requirements of Commission Rule 210.21(c).

Commission Rule 210.21(c)(3) sets forth the requirements for a consent order stipulation. 19 C.F.R. § 210.21(c)(3). The consent order stipulation (Exhibit A) conforms in large part to Commission Rule 210.21(c)(3). Specifically, the consent order stipulation complies with the requirements of Commission Rules 210.21(c)(3)(i)(A)-(G) and 210.21(c)(3)(ii)(B). The consent order stipulation substantially complies with Commission Rule 210.21(c)(3)(ii)(A), but does not strictly conform with the new rule, which became effective on June 8, 2019. The new rule requires “[a] statement that if any asserted patent claim, . . . has expired or is held invalid or unenforceable by a court or agency of competent jurisdiction or if any article has been found or adjudicated not to infringe the asserted right in a final decision, no longer subject to appeal, this Consent Order shall become null and void as to such expired, invalid, or unenforceable claim or as to any adjudicated article.” *Id.* (emphasis added). The consent order stipulation does not contain the underlined language. *See* Mot. Ex. A ¶ H. The underlined language is, however, present in the proposed consent order. Mot. Ex. B ¶ 10.

Commission Rule 210.21(c)(4) sets forth the requirements for a consent order. 19 C.F.R. § 210.21(c)(4). The proposed consent order (Exhibit B) conforms in large part to Commission Rule 210.21(c)(4). Specifically, the proposed consent order complies with the requirements of Commission Rules 210.21(c)(4)(i)-(ii), 210.21(c)(4)(iv)-(xiii), and 210.21(c)(4)(x)-(xii). The proposed consent order substantially complies with Commission Rule 210.21(c)(4)(iii), which requires “[a] statement that the respondent shall not sell for importation, import, or sell after importation the subject articles, directly or indirectly, and shall not aid, abet, encourage, participate in, or induce the sale for importation, the importation, or the sale after importation except under consent, license from the complainant, or to the extent permitted by the settlement

agreement between complainant and respondent.” Paragraph 3 of the Proposed Consent Order recites:

LaMountain shall not sell for importation, import, or sell after importation any height-adjustable desk platforms that infringe any Asserted Claims, directly or indirectly, and shall not aid, abet, encourage, participate in, or induce the sale for importation, the importation, or the sale after importation any height-adjustable desk platforms that infringe any Asserted Claims; except under consent or license from Varidesk or its successors or assigns.

Mot. Ex. B ¶ 3. The proposed consent order also substantially complies with Commission Rule 210.21(c)(4)(ix), which requires “[a] statement that when the patent . . . expires the Consent Order shall become null and void as to such.” *See* Mot. Ex. B ¶ 9 (“When each of the Asserted Claims expires, this Consent Order shall become null and void as to each such claim.”).

Commission Rule 210.50(b)(2) provides that, in the case of a proposed termination by settlement agreement, consent order, or arbitration agreement, the parties may file statements regarding the impact of the proposed termination on the public interest, and the administrative law judge may hear argument, although no discovery may be compelled, with respect to issues relating solely to the public interest. 19 C.F.R. § 210.50(b)(2). The administrative law judge is directed to consider and make appropriate findings “regarding the effect of the proposed settlement on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers.” *See id.*

The movants state: “Complaint and Respondent LaMountain submit that termination of this Investigation as to Respondent LaMountain will not adversely affect the public interest because it will not affect public health and welfare, competitive conditions of the U.S. economy,

the production of like or directly competitive articles in the United States or U.S. consumers.”

Mot. at 2.

The Staff argues:

[T]he Staff is not aware of any information that would indicate the Consent Order Stipulation or Proposed Consent Order will harm the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, or U.S. consumers. *See* 19 C.F.R. § 210.50(b) (listing public interest factors). Moreover, “the public interest generally favors settlements in order to avoid needless litigation and to conserve public resources.”

...

The Staff believes that terminating this investigation as to LaMountain based on the Consent Order Stipulation and Proposed Consent Order would not be contrary to the public interest.

Staff Resp. at 8-9 (citation omitted).

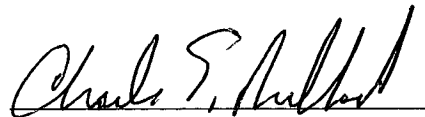
Having considered the arguments submitted by the parties, the undersigned finds no public interest concerns militating against termination of the investigation as to LaMountain. There is nothing to suggest that the proposed consent order would impose an undue burden on the public health and welfare, competitive conditions in the U.S. economy, the production of similar or directly competitive articles in the United States, or U.S. consumers. *See* 19 U.S.C. § 1337(d). The undersigned therefore finds that termination of the investigation as to LaMountain is in the public interest, which favors settlement to avoid needless litigation and to conserve public resources. *See Certain Data Storage Systems and Components Thereof*, Inv. No. 337-TA-471, Order No. 51, at 4 (March 11, 2003).

Accordingly, it is the initial determination of the undersigned that Motion No. 1125-015 is granted. This investigation is hereby terminated as to respondent LaMountain International

Group LLC. This initial determination, along with supporting documentation, is hereby certified to the Commission.

Pursuant to 19 C.F.R. § 210.42(h), this initial determination shall become the determination of the Commission unless a party files a petition for review of the initial determination pursuant to 19 C.F.R. § 210.43(a), or the Commission, pursuant to 19 C.F.R. § 210.44, orders on its own motion a review of the initial determination or certain issues herein.

SO ORDERED.

A handwritten signature in black ink, appearing to read "Charles E. Bullock", written over a horizontal line.

Charles E. Bullock
Chief Administrative Law Judge

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