

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN CARBURETORS AND  
PRODUCTS CONTAINING SUCH  
CARBURETORS**

Inv. No. 337-TA-1123

**ORDER NO. 56: INITIAL DETERMINATION GRANTING JOINT MOTION OF  
COMPLAINANT WALBRO, LLC AND RESPONDENT GENERAC  
POWER SYSTEMS, INC. TO TERMINATE THE INVESTIGATION  
BASED ON SETTLEMENT AGREEMENT PURSUANT TO  
COMMISSION RULE 210.21(b)**

(June 4, 2019)

On May 20, 2019, Complainant Walbro, LLC (“Walbro”) and Respondent Generac Power Systems, Inc. (“Generac”) filed a joint motion (1123-043) to terminate the Investigation as to Generac based on a settlement agreement.<sup>1</sup> The Commission Investigative Staff (“Staff”) supports the joint motion.

The Commission’s Rules provide that “[a]ny party may move at any time for an order to terminate an investigation in whole or in part as to any or all respondents on the basis of settlement, a licensing or other agreement . . . .” 19 C.F.R. § 210.21(a)(2); *see also Certain Organizer Racks and Prods. Containing Same*, Inv. No. 337-TA-466, Order No. 7 at 2 (Feb. 19, 2001). In the instant proceeding, the motion to terminate is based upon a Settlement Agreement, which appears to resolve the dispute between Walbro and Generac. A copy of said agreement is attached hereto as Exhibit 1. Consistent with 19 C.F.R. § 210.21(b)(1), Walbro and Generac confirm that “[a]part

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<sup>1</sup> In accordance with Commission Rule 210.21(b), Walbro and Generac filed a public version of the settlement agreement.

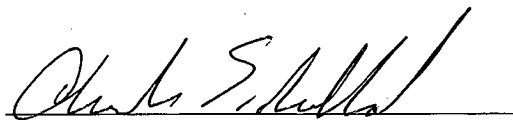
from this Settlement Agreement, there are no agreements, written or oral, express or implied between the Parties concerning the subject matter of the investigation.” (Mot. at 2.)

In any initial determination terminating an investigation by settlement agreement or consent order, 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 United States economy, production of like or directly competitive articles in the United States, and United States consumers. 19 C.F.R. § 210.50(b)(2). Walbro and Generac assert that “it is in the interest of the public and administrative economy to grant this motion [because] Commission policy and the public interest generally favor termination by settlement.” (Mot. at 2.) Staff concurs. (Staff Resp. at 3 (“[T]he Staff submits that the public interest generally favors settlement to avoid needless litigation and to conserve public and private resources.”).) The undersigned agrees that termination of this Investigation does not impose any undue burdens on the public health and welfare, competitive conditions in the United States economy, production of like or directly competitive articles in the United States, or United States consumers.

Accordingly, it is the undersigned’s Initial Determination that the joint motion (1123-043) to terminate this Investigation with respect to Generac based on a settlement agreement be granted. 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.**

  
Charles E. Bullock  
Chief Administrative Law Judge

# EXHIBIT 1

PUBLIC VERSION

SETTLEMENT AND LICENSE AGREEMENT

This Settlement and License Agreement ("**Agreement**") is entered into as of the Effective Date by and between Walbro, LLC, a limited liability company organized under the laws of Delaware, having a place of business at 6242 Garfield Avenue, Cass City, Michigan 48726 ("**Walbro**") and Generac Power Systems, Inc., a Wisconsin Corporation with a place of business located at S45W29290 Highway 59, Waukesha, Wisconsin 53189 ("**Generac**"). Walbro and Generac may each be referred to as a "**Party**" and, collectively, as the "**Parties**."

WHEREAS, Walbro is the owner of all right, title, and interest in the U.S. Patent Nos. 6,394,424 (the '424 Patent), 6,439,547 (the '547 Patent), 6,533,254 (the '254 Patent), 6,540,212 (the '212 Patent) and 7,070,173 (the '173 Patent). Each of these patents is a "**Walbro Patent**", and collectively, the patents are the "**Walbro Patents**";

WHEREAS, Walbro has filed a Complaint with the United States International Trade Commission styled as In the Matter of Certain Carburetors and Products Containing Such Carburetors, Inv. No. 337-TA-1123 ("**the Investigation**");

WHEREAS, Walbro, in its Complaint, alleged that Generac violated Section 337 of the Tariff Act of 1930 (19 U.S.C. § 1137) because Generac imported into the United States and/or sold within the United states after importation Generac's 33cc 4-Stroke Pump having a Ruixing H629 carburetor and DR Mini Tiller Cultivator Pilot-4C (4-Cycle) 40 cc having a Ruixing H629 carburetor;

WHEREAS, Generac denies that it has infringed the claim of any Walbro Patent, and denies that it is liable to Walbro for any infringement or the payment of damages. However, Generac also acknowledges that it imported, or had imported, into the United States and/or sold, or had sold, and is selling, within the United states after importation the Generac Accused Products;

WHEREAS Walbro and Generac desire to enter into a License for the Walbro Patents; and

WHEREAS, Walbro and Generac desire to simultaneously settle all claims and counterclaims presented in, or that are related to, or that may be related to, the Investigation, and also terminate the Investigation only with respect to the Generac Accused Products (as defined below) or other products that Generac has previously made, used, or offered to sell.

NOW, THEREFORE, the Parties agree as follows:

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