

# EXHIBIT 3

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C.

In the Matter of  
CERTAIN TOBACCO HEATING  
ARTICLES AND COMPONENTS  
THEREOF

Investigation No. 337-TA-1199

COMMISSION OPINION

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On July 27, 2021, the Commission determined to review in part the final initial determination (“FID”) issued by the presiding administrative law judge (“ALJ”) on May 14, 2021. 86 Fed. Reg. 41509-11 (Aug. 2, 2021). On review, the Commission has determined that there has been a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, with respect to claims 27-30 of U.S. Patent No. 9,901,123 (“the ’123 patent”) and claims 1-3 and 5 of U.S. Patent No. 9,930,915 (“the ’915 patent”). This opinion sets forth the Commission’s reasoning in support of that determination.

**I. BACKGROUND****A. Procedural History**

On May 15, 2020, the Commission instituted this investigation based on a complaint filed by RAI Strategic Holdings, Inc., R.J. Reynolds Vapor Company, and R.J. Reynolds Tobacco Company, all of Winston-Salem, North Carolina (collectively, “Reynolds” or “Complainants”). 85 Fed. Reg. 29482-83 (May 15, 2020). The complaint, as supplemented, alleges a violation of section 337 based upon the importation of certain tobacco heating articles and components thereof by reason of infringement of certain claims of the ’238 patent, the ’915 patent, and the ’123 patent (collectively, “the Asserted Patents”). *Id.* The complaint also alleges the existence of a domestic industry. The notice of investigation names the following respondents: Altria Client Services LLC (“ACS”), Altria Group, Inc. (“AGI”), and Philip Morris USA, Inc. (“Philip Morris USA”), all of Richmond, Virginia; Philip Morris International Inc. (“PMI”) of New York, New York; and Philip Morris Products S.A. (“PMP”) of Neuchatel, Switzerland (collectively, “Philip Morris” or “Respondents”). *See id.* The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation. *See id.*

The notice of investigation instructed the presiding ALJ to make findings regarding the public interest. 85 Fed. Reg. at 29482-83.

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Reynolds subsequently amended the complaint and notice of investigation to add allegations of infringement of claim 3 of the '915 patent. Order No. 9 (July 29, 2020), *unreviewed by* Notice (Aug. 18, 2020); *see also* 85 Fed. Reg. 52152 (Aug. 4, 2020).

The Commission later terminated respondents AGI and PMI from the investigation based on Complainants' partial withdrawal of the complaint. *See* Order No. 24 (Dec. 14, 2020), *unreviewed by* Notice (Jan. 5, 2021).

The ALJ held a claim construction hearing on September 17, 2020. FID at 3. On January 6, 2021, the ALJ issued a *Markman* order (Order No. 28) construing certain disputed terms. Order No. 28 (Jan. 6, 2021).

On January 19, 2021, the ALJ granted in part Reynolds's motion for summary determination that it has satisfied the economic prong of the domestic industry requirement under section 337(a)(3)(A) and (B) with respect to the '238 and '915 patents. Order No. 35 at 5-6 (Jan. 19, 2021), *affirmed in part by* Notice (Feb. 18, 2021). On review, the Commission affirmed the grant of summary determination with respect to section 337(a)(3)(A) and provided supplemental analysis. Notice (Feb. 18, 2021). The Commission reviewed but took no position as to the finding that the economic prong was satisfied under section 337(a)(3)(B). *Id.*

Prior to the evidentiary hearing, Reynolds and Philip Morris entered into two stipulations regarding undisputed facts. JX-0011C (Stipulation Among the Private Parties to Narrow the Issues for the Evidentiary Hearing) ("Stip."); JX-0121C (Joint Stipulation Regarding Economic Domestic Industry) ("DI Stip.").

The ALJ held a prehearing conference on January 22, 2021. Hrg. Tr. 1-1603. The ALJ held an evidentiary hearing from January 25 to February 1, 2021. *Id.*

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