

In the Matter of

CERTAIN COMPACT CYCLOTRONS WITH A PRE-SEPTUM

Investigation No. 337-TA-61

USITC PUBLICATION 1024

DECEMBER 1979

UNITED STATES INTERNATIONAL TRADE COMMISSION

COMMISSIONERS

Joseph O. Parker, Chairman
Bill Alberger, Vice Chairman
George M. Moore
Catherine Bedell
Paula Stern

Kenneth R. Mason, Secretary to the Commission

Address all communications to
Office of the Secretary
United States International Trade Commission
Washington, D.C. 20436

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

In the Matter of)
)
)

CERTAIN COMPACT CYCLOTRONS)
WITH A PRE-SEPTUM)
_____)

Investigation No. 337-TA-61

COMMISSION ACTION, ORDER, AND OPINION

Introduction

The United States International Trade Commission (Commission) conducted an investigation pursuant to the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), concerning alleged unfair methods of competition and unfair acts in the importation of certain compact cyclotrons with a pre-septum into the United States, or in their sale by the owner, importer, consignee, or agent of either, the effect or tendency of which was to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The Commission order and opinion provide for the disposition of investigation No. 337-TA-61 by the full Commission.

Action

Having reviewed the record in the investigation, the Commission on December 5, 1979, unanimously voted to accept the proposed consent order agreement and to grant the motion to terminate the investigation.

Order

Accordingly, the full Commission hereby orders that--

1. The joint motion of all parties to terminate this investigation (motion docket No. 61-3) is granted;
2. Investigation No. 337-TA-61 is terminated effective upon the issuance of this order;
3. The Secretary shall transmit a copy of this order to the President, together with the record with respect thereto, for such review as appropriate pursuant to section 337(g) of the Tariff Act of 1930, as amended (19 U.S.C. 1337(g)).
4. The Secretary shall serve a copy of the notice of termination of investigation and the Commission action, order, and opinion upon each party of record to this investigation and upon the U.S. Department of Health, Education, and Welfare, the U.S. Department of Justice, and the Federal Trade Commission; and
5. The consent order proposed by all of the parties, which provides as follows, is accepted--

CONSENT ORDER
THE PARTIES

1. Complainant The Cyclotron Corporation (hereinafter "TCC") is a California corporation having principal offices at 950 Gilman Street, Berkeley, California.
2. Respondent Instrument AB Scanditronix (hereinafter "Scanditronix") is a corporation of Sweden having a principal place of business at Eskadervagen 12-16, 183 Taby in Sweden.

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of)
)
)

CERTAIN COMPACT CYCLOTRONS)
WITH A PRE-SEPTUM)
_____)

Investigation No. 337-TA-61

NOTICE OF INVESTIGATION

Notice is hereby given that a complaint was filed with the United States International Trade Commission on November 20, 1978, under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), on behalf of The Cyclotron Corporation, 950 Gilman Street, Berkeley, California 94710, alleging that unfair methods of competition and unfair acts exist in the importation of a certain compact cyclotron with a pre-septum into the United States, or in its sale, by reason of the alleged coverage of such compact cyclotron with a pre-septum by the claims of U.S. Letters Patent 3,725,709.

The complaint alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. Complainant requests both temporary and permanent exclusion of said imports from entry into the United States.

Having considered the complaint, the U.S. International Trade Commission, on December 19, 1978, ORDERED THAT --

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), an investigation be instituted to determine, under subsection (c), whether there is, or there is reason to believe that there is, a violation of subsection (a) of this section in the unauthorized importation of certain compact cyclotrons with a pre-septum or components of said cyclotrons into the United States, or in their sale, by reason of the alleged coverage of such compact cyclotrons with a pre-septum by the claims of U.S. Letters Patent 3,725,709, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of this investigation so instituted, the following are hereby named as parties:

(a) The complainant is --

The Cyclotron Corporation
950 Gilman Street
Berkeley, California 94710

(b) The respondents are the following companies alleged to be involved in the unauthorized importation of such articles into the United States, or in their sale, and are parties upon which the complaint and this notice are to be served:

Instrument AB Scanditronix
Eskadervagen 16, S-18354
Taby, Sweden

Medi-Physics, Inc.
5801 Christie Avenue
Emeryville, California 94608

Nucletronix, Inc.
Birch Road
Middleton, Massachusetts 01949

(c) Wilhelm A. Zeitler, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, is hereby named Commission investigative attorney, a party to this investigation;

(3) For the investigation so instituted, Chief Administrative Law Judge Donald K. Duvall, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

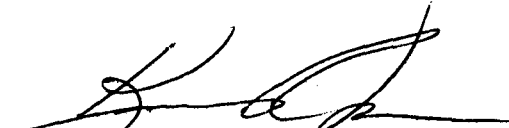
Responses must be submitted by the named respondents in accordance with section 210.21 of the Commission's Rules of Practice and Procedure, as amended (19 CFR 210.21). Pursuant to sections 201.16(d) and 210.21(a) of the Rules, such responses will be considered by the U.S. International Trade Commission if received no later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good and sufficient cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and will authorize the presiding officer and the U.S. International Trade Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and in this notice and to enter both a recommended determination and a final determination containing such findings.

The complaint is available for inspection by interested persons at the Office of the Secretary, U.S. International Trade Commission, 701 E Street

NW., Washington, D.C. 20436, and in the Commission's New York City office, 6
World Trade Center, New York, New York 10048.

By order of the Commission.



Kenneth R. Mason

Secretary

ISSUED: December 22, 1978

3. Respondent Nucletronix, Inc. (hereinafter "Nucletronix") is a corporation of New York, having a principal place of business at Birch Road, Middleton, Massachusetts.

4. Respondent Medi-Physics, Inc. (hereinafter "MPI") is a corporation of Delaware having a principal place of business at Emeryville, California.

5. Wilhelm A. Zeitler, Esquire is the investigative attorney for the International Trade Commission appointed in the Notice of Investigation issued December 22, 1978.

THE ISSUES

6. This investigation was initiated on December 22, 1978, in response to a Complaint filed by TCC. The Complaint alleged that the Respondents Scanditronix, Nucletronix and MPI were importing cyclotrons that incorporated a structure that was covered by TCC's U.S. Letters Patent 3,725,709 and that the importation of a cyclotron covered by this patent was in violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). For purposes of this Consent Order, that cyclotron is designated as an "old cyclotron" and is depicted in Scanditronix drawing C30-4019 (Exhibit I to a copy of an agreement between TCC and Scanditronix to which this Consent Order is attached as Exhibit IV and which is submitted subject to the Protective Order dated January 10, 1979).

7. Respondents Scanditronix and Nucletronix currently have no orders which require the importation of any "old cyclotrons" into the United States.

8. Respondent MPI currently has no order pending with Respondents Nucletronix or Scanditronix or anyone else that would require the importation of an "old cyclotron" into the United States.

9. Respondent Scanditronix has developed a "new cyclotron" having a construction which has been examined by Complainant TCC; the structure is depicted in Exhibit II to the foregoing agreement to which a copy of this Consent Order is attached as Exhibit IV and which is submitted subject to the Protective Order of January 10, 1979.

10. TCC agrees that the "new cyclotrons" do not infringe any of the claims of U.S. Letters Patent 3,725,709 and that the importation of "new cyclotrons" would not constitute an unfair act under the provisions of section 337.

11. Respondents Scanditronix and Nucletronix now intend to import only "new cyclotrons" in the future.

12. For the purpose of this Consent Order and the enforcement hereof, Scanditronix and TCC, having appeared voluntarily and submitted to the personal jurisdiction of the Commission by agreeing to this Consent Order, admit that the Commission has jurisdiction over the subject matter included in the December 22, 1978, Notice of Investigation. This Consent Order is for settlement purposes only and does not constitute a finding by the Commission or an admission by Scanditronix or TCC that section 337 or any other statute or regulation, has or has not been violated.

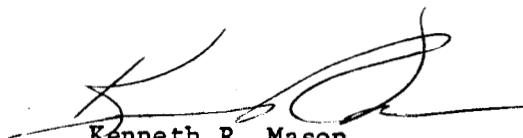
13. The parties waive (1) further procedural requirements, including the requirement that the Commission make a determination under section 337(c) of the Tariff Act of 1930, (2) judicial review of this Consent Order, (3) the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, and (4) any other challenge or contest to the validity of this Consent Order.

14. Any violation of this Consent Order may result in proceedings before the Commission to determine what, if any, sanction should be applied to such violation, including an order of exclusion from entry pursuant to section 337(d).

15. The parties agree that, if this Consent Order is accepted by the Commission, the Commission may, without further notice to the parties, issue its decision containing this Consent Order and make public any information which is not subject to the protective order of January 10, 1979.

16. Respondent Scanditronix agrees, until the expiration of U.S. Letters Patent 3,725,709 on April 3, 1990, or until "old cyclotrons" or extraction systems for them are licensed under said patent or until a court of competent jurisdiction finds that "old cyclotrons" do not infringe the claims of said patent or that said patent is invalid or not enforceable, not to import or cause to be imported "old cyclotrons" into the United States.

By Order of the Commission.


Kenneth R. Mason
Secretary

Issued: December 21, 1979

OPINION OF THE COMMISSION

Procedural History

The present investigation was instituted by the Commission on December 22, 1978, on the basis of a complaint filed by The Cyclotron Corporation of Berkeley, California, pursuant to section 337 of the Tariff Act of 1930. Notice of the institution of the investigation was published in the Federal Register of December 28, 1978 (43 F.R. 60674). The complaint alleged unfair methods of competition and unfair acts in the importation of certain compact cyclotrons with a pre-septum into the United States, or in their sale, by reason of their alleged coverage by the claims of U.S. Letters Patent 3,725,709. Named as respondents in the proceeding were Instrument AB Scanditronix, of Taby, Sweden, Medi-Physics, Inc., of Emeryville, California, and Nucletronix, Inc., of Middleton, Massachusetts. The investigation was referred by the Commission for further proceedings to an administrative law judge (ALJ).

On June 19, 1979, all of the parties, including the Commission investigative attorney, filed a joint motion to terminate the investigation with the ALJ. The motion was docketed as motion No. 61-3. Attached to the joint motion was an agreement signed by the complainant and Instrument AB Scanditronix. The agreement incorporates a proposed consent order. The proposed consent order provides that the parties waive (1) further procedural requirements, including the requirement that the Commission make a determination under section 337(c) of the Tariff Act, (2) judicial review of

the consent order, (3) the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, and (4) any other challenge or contest to the validity of the consent order. The consent order states that respondents do not concede the infringement issue, but signed the consent order for settlement purposes only. The consent order further provides that, if it is accepted by the Commission, the Commission may, without further notice to the parties, issue a decision containing the consent order and make public that information which is not "business confidential" in nature. The consent order provides that violation of the consent order may result in proceedings before the Commission to determine what, if any, sanction should be applied to such violation, including a possible order of exclusion.

On June 28, 1979, the ALJ filed a recommended determination with the Commission recommending that the Commission terminate the investigation. The ALJ also certified to the Commission the parties' joint motion to terminate (motion 61-3) and the accompanying consent order agreement.

On October 16, 1979, the Commission issued a notice seeking public comment on the proposed consent order agreement. The notice was published in the Federal Register of October 24, 1979 (44 F.R. 61270), and interested persons were given 10 days in which to request a hearing on the matter and 30 days in which to file comments. Other than a statement by the Commission investigative attorney that the proposed consent order is in the public interest, no requests or comments were received by the Commission.

Discussion

The Commission notes that the Administrative Procedure Act provides that agencies are to consider "offers of settlement" where "the public interest permit(s)" (see 5 U.S.C. 554(c)(1)). After considering the record, we have concluded for the following reasons that the public interest will be served by the acceptance of the proposed consent order agreement and termination of the investigation.

First, the consent order agreement does not appear to be anti-competitive. While respondent Scanditronix does not admit that its compact cyclotrons with a pre-septum infringe complainant's patent, it has agreed to cease importing or causing to be imported into the United States except under license compact cyclotrons of the type allegedly covered by the claims of U.S. Letters patent 3,725,709. Respondents are not precluded from importing into (or exporting to) the United States other types of compact cyclotrons.

Second, assuming that the terms of the agreement are adhered to, termination will eliminate further expenditure of Government resources in connection with the investigation.

Third, no comments, adverse or otherwise, with respect to the consent order agreement or the public interest were received from interested Federal agencies or members of the public. The Commission investigative attorney filed a statement why the consent order is in the public interest.

Finally, the Commission notes that the consent order and consent order agreement provide that the Commission will retain jurisdiction over this matter despite the termination of the investigation. If the consent order is

violated, the Commission may institute further proceedings to determine what, if any, action should be taken with respect to such violation.

Library Cataloging Data

U.S. International Trade Commission.

In the matter of: certain compact
cyclotrons with a pre-septum. Investiga-
tion no. 337-TA-61. Washington, 1979.

8 p. 28 cm. (USITC Publication
1024)

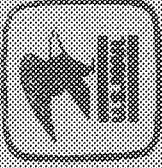
1. Nuclear physics. 2. Atomic energy.
 3. Nuclear engineering. I. Title.
- II. Title: Certain compact cyclotrons with
a pre-septum. III. Title: Cyclotrons with
a pre-septum.

UNITED STATES
INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C. 20436

OFFICIAL BUSINESS

ADDRESS CORRECTION REQUESTED

Postage And Fees Paid
U.S. International Trade Commission



ADDRESS CHANGE
 Remove from List
 Change as Shown
Please detach address label and mail to address shown above.