PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes
3. Ratification List
4. Vote in Inv. No. 731–TA–1206 (Preliminary) (Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan). The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before May 13, 2013; Commissioners'' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before May 20, 2013.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: May 1, 2013.

By order of the Commission.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2013–10648 Filed 5–1–13; 11:15 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–805]

Certain Devices for Improving Uniformity Used in a Backlight Module and Components Thereof and Products Containing Same; Commission Decision To Review in Part a Final Initial Determination on Remand Finding No Violation of Section 337 and on Review To Affirm With Modification; Termination of Investigation With a Finding of No Violation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part the presiding administrative law judge's (''ALJ'') final initial determination on remand (''Remand ID'') issued on February 28, 2013, finding no violation of section 337 of the Tariff Act of 1930, (as amended), 19 U.S.C. 1337 (''section 337''), in the above-captioned investigation, and on review, to affirm the Remand ID's finding of no violation of section 337 with modification. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2301. 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 *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 14, 2011, based on a complaint filed by Industrial Technology Research Institute of Hsinchu, Taiwan and ITRI International Inc. of San Jose, California (collectively ''ITRI''). 76 FR 56796–97 (Sept. 14, 2011). The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain devices for improving uniformity used in a backlight module and components thereof and products containing same by reason of infringement of certain claims of U.S. Patent No. 6,883,932 (''the '932 patent''). The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named as respondents LG Corporation of Seoul, Republic of Korea; LG Electronics, Inc. of Seoul, Republic of Korea; and LG Electronics, U.S.A., Inc. of Englewood Cliffs, New Jersey. The Office of Unfair Import Investigations was named as a participating party. The complaint was later amended to add respondents LG Display Co., Ltd. of Seoul, Republic of Korea and LG Display America, Inc. of San Jose, California to the investigation. Notice (Feb. 2, 2012); Order No. 11 (Jan. 19, 2012). The Commission later terminated LG Corporation from the investigation. Notice (July 13, 2012); Order No. 18 (June 22, 2012).

On October 22, 2012, the ALJ issued his final initial determination (''Final ID''), finding no violation of section 337 as to the '932 patent. The ID included the ALJ's recommended determination (''RD'') on remedy and bonding. In particular, the ALJ found that claims 6, 9 and 10 of the '932 patent are not infringed literally or under the Doctrine of Equivalents by the accused products under his construction of the claim limitation ''structured arc sheet'' found in claim 6. The ALJ also found that ITRI's domestic industry product does not satisfy the technical prong of the domestic industry requirement. The ALJ did find, however, that ITRI has satisfied the economic prong of the domestic industry requirement under 19 U.S.C. 1337(a)(3)(A) and (B). Because he found no infringement and no domestic industry, the ALJ did not reach the issues of patent validity or enforceability. In the event the Commission found a violation of section 337, the ALJ recommended that the appropriate remedy is a limited exclusion order barring entry of LG's infringing products. The ALJ also recommended issuance of cease and desist orders against LG Electronics USA and LG Display America. The ALJ further recommended that LG be required to post a bond of one percent of the entered value of each infringing product during the period of Presidential review.

On November 5, 2012, ITRI filed a petition for review of certain aspects of the Final ID. Also on November 5, 2012, participating respondents LG Electronics, Inc., LG Electronics U.S.A., Inc., LG Display Co., Ltd., and LG Display America, Inc. (collectively ''LG'') filed a contingent petition for review of certain aspects of the ID. No post-RD statements on the public interest pursuant to Commission Rule 210.50(a)(4) or in response to the post-RD Commission Notice issued on October 24, 2012, were filed. *See* 77 FR 65579 (Oct. 29, 2012).

On December 21, 2012, the Commission determined to review the Final ID in its entirety and to remand-in-part to the ALJ to consider the issues of invalidity and patent unenforceability. 77 FR 77092–7093 (Dec. 31, 2012). On January 29, 2013, the Commission determined not to review an ID (Order No. 22) extending the target date for completion of the investigation by four months to June 28, 2013. *See* Notice (Jan. 29, 2013); Order No. 22 (Jan. 9, 2013).

On February 28, 2013, the ALJ issued his Remand ID, finding no violation of section 337. In particular, the ALJ found that the asserted claims of the '932 patent are invalid as anticipated under 35 U.S.C. 102. He further found that the

asserted claims of the '932 patent are not invalid as obvious under 35 U.S.C. 103. The ALJ also found that the asserted claims of the '932 patent are not invalid for failure to satisfy the written description requirement under 35 U.S.C. 112, or for failure to satisfy the definiteness requirement under 35 U.S.C. 112. He further found that the asserted claims are not unenforceable due to inequitable conduct before the U.S. Patent and Trademark Office.

On March 13, 2013, ITRI filed a petition for review of the Remand ID's finding that U.S. Patent Application Publication No. 2003/0107892 to Yao (''Yao '892'') anticipates the asserted claims of the '932 patent. Also on March 13, 2013, LG filed a contingent petition for review of the Remand ID's finding that U.S. Patent No. 5,101,331 to Katoh (''Katoh '331'') does not anticipate asserted claims 6 and 10 of the '932 patent. LG also argues that the Remand ID errs in finding that Japanese Patent Publication 2000–338895 to Azuma (''Azuma '895'') does not anticipate claim 6 of the '932 patent. LG further argues that the Remand ID errs in not finding that the asserted claims of the '932 patent are obvious in light of various combinations of prior art references. On March 21, 2013, ITRI filed a response to LG's contingent petition for review. *See* ITRI's Remand Resp. Also on March 21, 2013, LG filed a response to ITRI's petition for review. *See* LG's Remand Resp. Further on March 21, 2013, the Commission investigative attorney filed a combined response to ITRI's and LG's petitions. *See* IA's Remand Resp.

Having examined the record of this investigation, including the ALJ's Final ID, the petitions for review, and the responses thereto, the Commission has determined to review the Remand ID in part. In particular, the Commission has determined to review the Remand ID's finding that Yao '892 anticipates claims 6, 9, and 10 of the '932 patent, and on review, finds that Yao '892 anticipates the asserted claims based on modified reasoning. The Commission has also determined to review the Remand ID's finding that LG has not shown by clear and convincing evidence that Katoh '331 does not anticipate claims 6 and 10 of the '932 patent, and on review, finds that Katoh '331 does not anticipate the asserted claims based on modified reasoning. The Commission has determined not to review the remaining issues decided in the Remand ID.

With respect to other issues the Commission determined to review in the Final ID, the Commission affirms the Final ID's construction of the limitation ''structured arc sheet'' of claim 6 of the '932 patent. The Commission also finds that the accused products do not infringe the asserted claims of the '932 patent based on slightly modified reasoning. The Commission further finds that ITRI has failed to satisfy the technical prong of the domestic industry requirement based on slightly modified reasoning. The Commission affirms the Final ID's finding that ITRI has satisfied the economic prong of the domestic industry requirement.

The investigation is terminated. A Commission opinion will issue shortly.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46 and 210.50).

By order of the Commission.
Issued: April 29, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–10444 Filed 5–2–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 12–59]

Top RX Pharmacy; Decision and Order

On November 8, 2012, Chief Administrative Law Judge (ALJ) John J. Mulrooney, II, issued the attached Recommended Decision. Neither party filed exceptions to the Recommended Decision.

Having reviewed the record in its entirety, I have decided to adopt the ALJ's recommended rulings, findings of fact, and conclusions of law, except as discussed below.[1] I have also decided to adopt the ALJ's recommended order.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration FT3034117, issued to Top RX Pharmacy, be, and it hereby is, revoked. I further order that any pending application of Top RX Pharmacy, to renew or modify the above registration, be, and it hereby is, denied. This Order is effective immediately.[2]

Dated: April 25, 2013.

Michele M. Leonhart,

Administrator.

Anthony Yim, Esq., and Frank Mann, Esq., for the Government
Jeffrey C. Grass, Esq., for the Respondent

RECOMMENDED RULINGS, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION OF THE ADMINISTRATIVE LAW JUDGE

Chief Administrative Law Judge John J. Mulrooney, II. On August 1, 2012, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause and Immediate Suspension of Registration (OSC/ISO) immediately suspending and proposing to revoke the DEA

[1] In his discussion of Factor Five—such other conduct which may threaten public health and safety—the ALJ cited the Agency's decision in *Paul Weir Battershell,* 76 FR 44359, 44368 n.27 (2011), for the proposition that ''although a registrant's non-compliance with the Food, Drug, and Cosmetic Act *is not relevant under Factor Five,* consideration of such conduct may properly be considered on the narrow issue of assessing a respondent's future compliance with the CSA.'' Recommended Decision at 53 (slip op.) (emphasis added). However, as *Battershell* makes clear, it is not the case that such conduct is irrelevant under factor five, but simply, that such conduct, by itself, is not dispositive of whether a respondent's continued registration is consistent with the public interest. *See* 76 FR at 44368 n.27. Thus, evidence of non-compliance with provisions of the FDCA is relevant ''for the limited purpose of assessing the likelihood of [a] [r]espondent's future compliance with the CSA.'' *Id.* (citing *Wonderyears, Inc.,* 74 FR 457, 458 (2009)); *see also 4 OTC, Inc.,* 77 FR 35031, 35032–33 (2012).

Also, in his discussion of Respondent's failure to accept responsibility, the ALJ opined that ''[t]here is nothing in the record to rebut the persuasive record evidence that the conduct of the owner and PIC exceeded inaction and rose to the level of willing complicity in controlled substance diversion on a massive scale.'' Recommended Decision at 56. I agree that the evidence clearly shows that Respondent's principals knowingly diverted controlled substances. However, to the extent the ALJ's reasoning suggests that ''inaction'' on the part of a pharmacy's principals in dispensing prescriptions does not violate their duty under federal law to dispense only those prescriptions which have been ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice,'' 21 CFR 1306.04(a), it is inconsistent with federal law. *See United States* v. *Seelig,* 622 F.2d 207, 213 (6th Cir. 1980) (upholding jury instruction that knowledge may be inferred from evidence that pharmacists ''deliberately closed their eyes to what would otherwise be obvious to them''); *Grider Drug #1 & Grider Drug #2,* 77 FR 44070, 44097 (2012) (quoting *Ralph J. Bertolino,* 55 FR 4729, 4730 (1990) (''When prescriptions are clearly not issued for legitimate medical purposes, a pharmacist may not intentionally close his eyes and thereby avoid [actual] knowledge of the real purpose of the prescriptions.'')). As these cases make clear, inaction on the part of a pharmacist who fills a prescription can by, itself, support a finding of a violation of 21 CFR 1306.04(a) and the revocation of a registration.

As the ALJ noted earlier in his decision, when the circumstances surrounding a prescription present a red flag as to the prescription's legitimacy, that red flag must be resolved conclusively to show that the prescription is legitimate prior to dispensing it. Recommend Decision at 44. Indeed, the circumstances surrounding the prescription may be such that it cannot be dispensed. *See Holiday CVS, L.L.C., d/b/a CVS/Pharmacy Nos. 219 and 5195,* 77 FR 62316, 62317–22 (2012).

[2] Based on the egregious acts proven on this record, I conclude that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.