

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

In the Matter of:

**CERTAIN COMPOSITE AEROGEL
INSULATION MATERIALS AND
METHODS FOR MANUFACTURING
THE SAME**

Investigation No. 337-TA-1003

**ORDER NO. 37: GRANTING COMPLAINANT'S MOTION TO REOPEN
PROCEEDINGS FOR RECEIPT OF ADDITIONAL
EVIDENCE**

(April 6, 2017)

On March 24, 2017, pursuant to Commission Rule 210.42(g), Complainant Aspen Aerogels, Inc. ("Complainant") filed a Notice of Motion to Reopen Proceedings for Receipt of Additional Evidence ("Motion") and Memorandum in Support of its Motion ("Memorandum"). (Motion Docket No. 1003-032; Mot, at 1; 19 C.F.R. § 210.42(g)). Specifically, Complainant seeks to reopen the proceedings for receipt of the following additional evidence: (1) a March 21, 2017 Decision from the United States Patent and Trademark Office Patent Trial and Appeal Board ("PTAB") "Denying Institution of *Inter Partes* Review" of U.S. Patent No. 6,989,123 ("123 patent"); and (2) a March 23, 2017 Decision from the PTAB "Denying Institution of *Inter Partes* Review" of U.S. Patent No. 7,780,890 ("890 patent"). (Mot. at 1; Mem. at 1.).

Alternatively, Complainant requests that this Court take judicial notice of these two (2) PTAB decisions. (Mot. at 1; Mem. at 1.).

Complainant certified that on March 23, 2017, it met and conferred with Respondent Guangdong Alison Hi-Tech Co., Ltd. ("Respondent Alison") and Respondent Nano Tech Co., Ltd. ("Respondent Nano") (collectively, "Respondents") and Commission Investigative Staff

(“Staff”) regarding this Motion. (*Id.*). According to Complainant, Respondents opposed the Motion and Staff indicated it would provide its position after reviewing the papers. (*Id.*).

On March 27, 2017, Respondents filed their opposition to Complainant’s Motion (“Opposition”). (Doc. ID No. 606751.). On April 5, 2017, Staff filed a response (“Staff’s Response”) opposing Complainant’s motion to reopen the proceedings but not opposing Complainant’s request for judicial notice. (Staff Resp. at 2.).

On September 15, 2016, Respondent Alison filed a petition for *inter partes* review of claims 15-17 and 19 of the ’123 patent, which Respondent Alison argues are invalid in this Investigation. (Mot. at Ex. 1; Doc. ID No. 605106.). On October 28, 2016, Respondent Alison filed a separate petition for *inter partes* review of claims 11-13, 15, 17-19, and 21 of the ’890 patent, which Respondent Alison also contends are invalid in this Investigation. (Mot. at Ex. 2; Doc. ID No. 605106.). On March 21, 2017 and March 23, 2017, the PTAB issued decisions denying Respondent Alison’s petitions with respect to the ’123 patent and the ’890 patent, respectively. (Mot. at Exs. 5, 6.).

Commission Rule 210.42(g) provides that “[a]t any time prior to the filing of the initial determination, the administrative law judge may reopen the proceedings for the reception of additional evidence.” 19 C.F.R. § 210.42(g). When, as here, the additional evidence in question did not exist at the time the evidentiary record was closed, Rule 210.42(g) has been used to reopen the record. *Certain R-134A Coolant (Otherwise Known As 1,1,1,2 Tetrafluoroethane)*, Inv. No. 337-TA-623, Order No. 26, 2008 WL 4234548 at *2 (Sept. 11, 2008). Moreover, the PTAB decisions discuss at length multiple pieces of prior art that Respondents have relied upon in this Investigation, including Respondents’ primary reference, Ramamurthi (RX-0011), and other pieces of prior art such as Nakanishi (RX-0009) that were a focus of Respondents’ and


Complainant's presentations during the February evidentiary hearing. (Mot. at Exs. 5, 6.). Thus, these decisions are relevant and may inform the issues in this Investigation. This Court recognizes that the PTAB decisions are not final decisions and are based on a different evidentiary standard and record, and will consider these differences accordingly. *See, e.g.*, 35 U.S.C. §§ 314(a), 318; *St. Jude Med., Cardiology Div., Inc. v. Volcano Corp.*, 749 F.3d 1373, 1375 (Fed. Cir. 2014);

Federal Rule of Evidence 201 permits a court to judicially notice a fact that is not subject to reasonable dispute because it can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b)(2). A court can take judicial notice at any stage of a proceeding, but must take judicial notice if a party requests it and the court is supplied with the necessary information. Fed. R. Evid. 201(c)(2) and (d). There is no dispute that the two (2) decisions submitted with Complainant's Motion were issued by the U.S. Patent and Trademark Office ("PTO") and Complainant has supplied the Court with the information necessary to take judicial notice of the decisions.

Having considered Complainant's Motion, Respondents' Opposition, and Staff's Response, I am reopening the proceedings to receive CX-2269 (March 21, 2017 PTAB Decision Denying Institution of Petition for *Inter Partes* Review of the '123 patent) and CX-2270 (March 23, 2017 PTAB Decision Denying Institution of Petition for *Inter Partes* Review of the '890 patent) into evidence. *Certain R-134A Coolant*, 2008 WL 4234548 at *2. Additionally, I am taking judicial notice of these two (2) PTAB decisions. *See, e.g., Certain Bassinet Products, Inv.* No. 337-TA-597, Order No. 18 (Dec. 6, 2007) (EDIS Doc. ID 287660) (taking judicial notice of

PTO decision to grant reexamination request without offering view as to the effect of the PTO's decision on the investigation).

SO ORDERED.



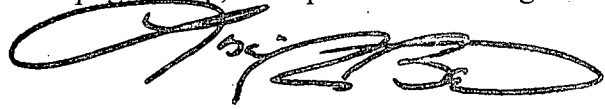
Mary Jean McNamara
Administrative Law Judge

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PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served by hand upon the Commission Investigative Attorney, Yoncha Kundupoglu, Esq., and upon the following parties as indicated on **April 6, 2017**.



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