

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN VAPORIZER DEVICES, CARTRIDGES
USED THEREWITH, AND COMPONENTS
THEREOF**

Inv. No. 337-TA-1368

**INITIAL DETERMINATION ON VIOLATION OF SECTION 337 AND
RECOMMENDED DETERMINATION ON REMEDY AND BOND**

Administrative Law Judge Doris Johnson Hines

(August 23, 2024)

Appearances:

For Complainants JUUL Labs, Inc. and VMR Products LLC:

S. Alex Lasher and K. Kevin Chu of Quinn Emanuel Urquart & Sullivan, LLP, Washington, DC; Kevin P.B. Johnson and Victoria F. Maroulis of Quinn Emanuel Urquart & Sullivan, LLP, Redwood Shores, CA; Andrew M. Holmes and Iman Lordgoode of Quinn Emanuel Urquart & Sullivan, LLP, San Francisco, CA; and Michael T. Renaud of Mintz Levin Cohn Ferris Glovsky and Popeo, P.C., Boston, MA.

For Respondents NJOY LLC, NJOY Holdings, Inc., Altria Group, Inc., Altria Group Distribution Company, and Altria Client Services LLC:

Anish R. Desai, Elizabeth S. Weiswasser, Adam B. Banks, John J. Nolan, Kathryn E. Leicht, Ian Moore, Barry Zhang, Tom Yu, Derek E. Biehn, Aaron J. Curtis, and Daniel M. Lifton of Weil, Gotshal & Manges LLP, New York, NY; W. Sutton Ansley, Christopher M. Pepe, Amanda K. Branch, Matthew D. Sieger, Eric C. Westerhold, and Taylor J. Lawrence of Weil, Gotshal & Manges LLP, Washington, DC; Adrian C. Percer and Anne Cappella of Weil, Gotshal & Manges LLP, Redwood Shores, CA; and Beth Wilkinson, Brian L. Stekloff, James Rosenthal, and Alysha Bohanon of Wilkinson Stekloff LLP, Washington, DC.

For the Office of Unfair Import Investigations:

Margaret D. Macdonald, Anne Goalwin, and Monisha Deka, Washington, DC.

NJOY Exhibit 1045.001

NJOY v. Juul

IPR2024-00231

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mode may result in the device heating without the user drawing on it, which [may] provide a non-ideal user experience, may waste [] battery life and vaporizable material, and in devices without temp[erature] control may overheat the vaporizable material, which can produce e-juice degradants that taste bad and are potentially more harmful when vaporized than the original contents of the e-juice formulation.” *Id.* at 2:58–65.

Failure modes are avoided, according to the patent, by including “a pressure sensor that regulates the baseline pressure readings (which may be actual pressure readings or may be unconverted sensor readings, such as capacitance measurements) during a blow and/or a draw through the mouthpiece to prevent instability that may otherwise result from blowing into the mouthpiece.” *Id.* at 3:44–54. The patent explains that “[t]he first side of the pressure sensor may be exposed to a first air path through the mouthpiece and a second side of the pressure sensor is exposed to a second air path open to ambient pressure, and wherein the second air path is sealed from the first air path by a gasket around the pressure sensor.” *Id.* at 4:38–42. The specification explains that the pressure sensor may be:

any differential pressure sensor, such as MEMS [microelectromechanical systems], capacitive pressure sensors (e.g., including a capacitive membrane), or any force collector type pressure sensors that use a transducer to measure pressure or pressure differences (e.g., diaphragm, piston, etc.), piezoresistive, electromagnetic, piezoelectric, optical, potentiometric, resonant (including MEMS), etc. Differential pressure sensors may measure the distance between two pressures, one connected on different sides of the sensor. This includes pressure sensors in which one side is open/connected to ambient atmosphere (pressure).

Id. at 4:49–60.

A. Whether Mr. McAlexander Is One of Skill

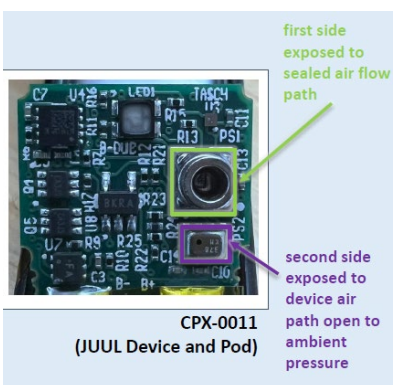
JLI disputes that NJOY’s expert, Mr. McAlexander, is one of skill in the art. JLI Reply at 56–57. Ground Rule 14.1 states that “[a]ny issue for which a party has the burden of proof that is

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not addressed in detail in the initial post-hearing [] brief shall be deemed abandoned or withdrawn.” Order No. 2 (EDIS Doc. ID 801846). JLI, which has the burden on this issue, did not raise this challenge in its initial post-hearing brief. As a result, JLI abandoned this challenge.

Even if not abandoned, however, JLI is wrong. The level of skill agreed to by JLI is “at least a B.S. degree in Mechanical Engineering, Electrical Engineering, Industrial Design, Product Design, or similar field, with at least two years of industry experience in one of these fields, and such a [person of ordinary skill in the art] would have been familiar with electrically powered vaporizing articles, their components or the underlying technologies.” JLI Br. at 9 and NJOY Br. at 3.

Mr. McAlexander satisfies the first part of the level of skill because he has a bachelor’s degree in electrical engineering. McAlexander Tr. at 937:23–938:2. He has at least two years of industry experience in that field. *Id.* at 938:12–25. The remainder of the level of skill, under which JLI apparently contends Mr. McAlexander’s testimony should be excluded, does not require specific experience with e-cigarettes or e-cigarette vaporizing. It instead identifies familiarity “with electrically powered vaporizing articles, their components or the underlying technologies.” Mr. McAlexander testified that he has patents “directed to technologies that are relevant or similar to the technologies” in this investigation. *Id.* at 939:22–940:11. This was not challenged by JLI at the evidentiary hearing. The evidence supports that Mr. McAlexander qualifies as one of ordinary skill in the art. As a result, his testimony from that vantage point will not be excluded. *Kyocera*, 22 F.4th at 1377–78 (excluding expert testimony from individual who was not one of ordinary skill in the art on “any issue that is analyzed through the lens of an ordinarily skilled artisan”).



Alarcon Tr. at 475:13–19 and CDX-0004.173, annotating CPX-0011.

The evidence supports that the JUUL [REDACTED] includes two MEMS pressure sensors that work together to sense differential pressure with a first side of the pressure sensor exposed to a sealed air path and a second side of the pressure sensor exposed to ambient air, which outputs readings indicative of the differential pressure between ambient and a pressure in the sealed airflow path. Alarcon Tr. at 466:4–476:18 and *see* 469:15-22 (PS1 and PS2 “work together to output a differential . . . sensor reading.” “[T]ogether, these two pressure sensing components, along with the MCU, the resultant is a differential pressure” “[b]etween ambient and the sealed air flow path, which is where the user is puffing.”) and White Tr. at 233:11–17 (“[REDACTED] we implemented a dual MEMS sensor, which relies on two components. One component, again, facing the air path or the place where the user is applying a pressure through a puff, and one component applied to ambient, to measure what's happening around the device. Again, it uses that comparison to create a differential pressure signal”) and 240:1–7 (“the microprocessor will take the two readings from both MEMS components, it will compare them and come up with a single differential reading. Then . . . it compares that differential reading to a threshold value that's stored on the device. If it exceeds that threshold, the device will send power to the coil and generate vapor for the customer.”).

[REDACTED]

Under 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 under 19 C.F.R. § 210.43(a) or the Commission orders on its own motion a review of the Initial Determination or certain issues therein under 19 C.F.R. § 210.44. 19 C.F.R. § 210.42(d).

XIV. ORDER

Within seven days of the date of this document, the parties shall jointly submit a single proposed public version of this document with any proposed redactions indicated in red. If the parties submit excessive redactions, they may be required to provide declarations from individuals with personal knowledge, justifying each proposed redaction and specifically explaining why the information sought to be redacted meets the definition for confidential business information set forth in 19 C.F.R. § 201.6(a). To the extent possible, the proposed redactions should be made electronically in a single PDF file with the proposed redactions submitted as “marked” but not yet “applied.” The proposed redactions should be submitted via email to JohnsonHines1368@usitc.gov and not filed on EDIS.

SO ORDERED.


Doris Johnson Hines
Administrative Law Judge