

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

In the Matter of

**CERTAIN ABRASIVE PRODUCTS
MADE USING A PROCESS FOR
MAKING POWDER PREFORMS, AND
PRODUCTS CONTAINING SAME**

Inv. No. 337-TA-449

LIMITED EXCLUSION ORDER

The Commission has determined that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the unlawful importation, sale for importation, and sale by respondent Kinik Company (“Kinik”) of certain abrasive products manufactured abroad using a process that infringes claims 1, 4, 5, and 8 of U.S. Letters Patent 5,620,489 (“the ‘489 patent”).

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is a limited exclusion order prohibiting the entry for consumption of abrasive articles manufactured by or on behalf of Kinik using a process that infringes the asserted claims of the ‘489 patent. The Commission has also

determined to issue a cease and desist order directed to Kinik.

The Commission has also determined that the public interest factors enumerated in 19 U.S.C. § 1337 (d) and (f) do not preclude issuance of the limited exclusion order or the cease and desist order, and that the bond during the Presidential review period shall be in the amount of five percent of the entered value of the products in question.

Accordingly, the Commission hereby **ORDERS** that:

1. Abrasive products manufactured using a process that infringes one or more of claims 1, 4, 5, and 8 of U.S. Letters Patent 5,620,489 that are manufactured abroad or imported by or on behalf of Kinik Company of Taipei, Taiwan, or any of its affiliated companies, parents, subsidiaries, contractors, or other related business entities, or their successors or assigns, are excluded from entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, for the remaining term of the patent, *i.e.*, until April 8, 2014, except under license of the patent owner or as provided by law.

2. Abrasive products described in paragraph 1 of this Order are entitled to entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, under bond in the amount of five (5) percent of entered value pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337(j), from the day after this Order is received by the President until such time as the President notifies the Commission that

he approves or disapproves this action but, in any event, not later than sixty (60) days after the date of receipt of this action.

3. Pursuant to procedures to be specified by the U.S. Customs Service, as the Customs Service deems necessary, persons seeking to import abrasive products described in paragraph 1 of this Order, other than those described below, may certify that they are familiar with the terms of this Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the products being imported are not excluded from entry under paragraph 1 of this Order. Such certification shall not be permissible with respect to respondent Kinik's DiaGrid[®] CMP pad conditioners, DiaGrid[®] wire saw beads, DiaGrid[®] profile wheels, and DiaGrid[®] turbo diamond discs. At its discretion, the Customs Service may require persons who have provided the certification described in this paragraph to furnish such records or analyses as are necessary to substantiate the certification.

4. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to abrasive products that are imported by and for the use of the United States, imported for, and to be used for, the United States with the authorization or consent of the Government.

5. Complainants' Motion for Leave to Respond to Submissions of Rodel, Inc. and WaferTech Concerning Remedy, the Public Interest, and Bonding (Motion Docket No. 449-038C), and Respondent Kinik Company's Motion for Leave to File Sur

Reply to Complainants' Reply Submission (Motion Docket No. 449-039C) are denied.

6. The Commission may modify this Order in accordance with the procedures described in rule 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.

7. The Secretary shall serve copies of this Order upon each party of record in this investigation, upon Rodel, Inc, headquartered at 3804 East Watkins Street, Phoenix, Arizona 85034, and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and the U.S. Customs Service.

8. Notice of this Order shall be published in the *Federal Register*.

By Order of the Commission.

Marilyn R. Abbott
Secretary

Issued: _____

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**CERTAIN ABRASIVE PRODUCTS
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Investigation No. 337-TA-449

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Kinik Company, 10 Yenping South Road, 100 Taipei City, Taiwan (hereinafter “Kinik”), cease and desist from conducting any of the following activities in the United States: importing, selling, advertising, distributing, marketing, consigning, transferring (except for exportation), offering for sale in the United States and soliciting U.S. agents or distributors for certain abrasive products in violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337.

I.

Definitions

As used in this Order:

(A) “Commission” shall mean the United States International Trade Commission.

(B) “UAS” shall mean Ultimate Abrasive Systems, LLC, 2900 Lookout Place,

Atlanta, Georgia.

(C) “3M” shall mean Minnesota Mining and Manufacturing Company, 3M Center, St. Paul, Minnesota.

(D) “Complainants” shall mean 3M and UAS.

(E) “Respondent” and “Kinik” shall mean Kinik Company, 10 Yenping South Road, 100 Taipei City, Taiwan.

(F) “Person” shall mean an individual, or any nongovernmental partnership, firm, association, corporation, or other legal or business entity other than the Respondent or its majority owned or controlled subsidiaries, their successors, or assigns.

(G) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.

(H) The terms “import” and “importation” refer to importation for entry for consumption, entry for consumption from a foreign-trade zone, and withdrawal from warehouse for consumption under the Customs laws of the United States.

(I) The term “covered product” shall mean abrasive products that are manufactured abroad by Kinik using a process that infringes one or more of claims 1, 4, 5, and 8 of U.S. Letters Patent 5,620,489.

II.

Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, contractors, distributors, controlled (whether by stock ownership or otherwise) and majority owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra*, for, with, or otherwise on behalf of Respondent.

III.

Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by the Order. For the remaining term of U.S. Letters Patent 5,620,489, Respondent shall not:

(A) import or sell for importation into the United States covered product except under

license of the patent owner;

(B) market, distribute, offer for sale, sell, consign, or otherwise transfer (except for exportation) in the United States imported covered product except under license of the patent owner;

(C) advertise covered product for sale in the United States except under license of the patent owner;

(D) solicit U.S. agents or distributors for covered product except under license of the patent owner; or

(E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered product in the United States except under license of the patent owner.

IV.

Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise

prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of U.S. Letters Patent 5,620,489 licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered product by or for the United States.

V.**Reporting**

For purposes of this reporting requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. However, the first report required under this section shall cover the period from the date of issuance of this Order through December 31, 2002. This reporting requirement shall continue in force until such time as Respondent will have truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered product in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission the quantity in units and the value in dollars of covered product that Respondent has imported or sold in the United States after importation during the reporting period and the quantity in units and value in dollars of reported covered product that remain in inventory in the United States at the end of the reporting period.

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

VI.

Record Keeping and Inspection

(A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered product, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of two (2) years from the close of the fiscal year to which they pertain.

(B) For the purposes of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

VII.

Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents,

and employees who have any responsibility for the marketing, distribution, or sale of imported covered product in the United States;

(B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII (A) of this Order, a copy of the Order upon each successor; and

(C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until, April 8, 2014, the date of expiration of U.S. Letters Patent 5,620,489.

VIII.

Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of the Order should be in accordance with section 201.6 of the Commission Rules of Practice and Procedure. 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX.

Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.75, including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, 19 U.S.C. § 1337(f), and any other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if Respondent fails to provide adequate or timely information.

X.

Modification

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.

XI.**Bonding**

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the President pursuant to section 337(j) of the Tariff Act of 1930, 19 U.S.C. § 1337(j), subject to Respondent posting a bond of five (5) percent of entered value of the products in question. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered product imported on or after the date of issuance of this order is subject to the entry bond as set forth in the limited exclusion order issued by the Commission, and is not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. *See* 19 C.F.R. § 210.68. The bond and any accompanying documentation is to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by Section III of this Order.

The bond is to be forfeited in the event that the President approves, or does not disapprove within the Presidential review period, this Order, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports the

products subject to this bond or destroys them and provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the President disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the President, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By Order of the Commission.

Marilyn R. Abbott
Secretary

Issued: _____