INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–419]

Certain Excimer Laser Systems for Vision Correction Surgery and Components Thereof and Methods for Performing Such Surgery; Notice of Decision To Extend the Deadline for Determining Whether To Review an Initial Determination Finding No Violation of Section 337 of the Tariff Act of 1930

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend by seven (7) days, or until January 28, 2000, the deadline for determining whether to review an initial determination (ID) finding no violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3152. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.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: This investigation was instituted on March 1, 1999, based on a complaint by VISX, Inc. (''VISX''), 64 Fed. Reg. 10016–17. The respondents named in the investigation are Nidek Co., Ltd., Nidek Inc., and Nidek Technologies, Inc. Complainant alleges importation and sale of certain excimer laser systems for vision correction surgery that infringe claims of U.S. Letters Patent Nos. 4,718,418 and 5,711,762 (''the '762 patent''). An evidentiary hearing was held from August 18, 1999 to August 27, 1999.

On December 6, 1999, the presiding ALJ (Judge Debra Morriss) issued her final ID finding that complainant VISX failed to establish the required domestic industry, that there was no infringement of any claim at issue, and that the '762 patent was invalid and unenforceable.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and section 210.42(h)(2) of the Commission's Rules of Practice and Procedure, 19 C.F.R. 210.42(h)(2).

Copies of the public version of the ID, and all other nonconfidential 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 S.W., Washington, D.C. 20436, telephone 202–205–2000.

Issued: December 17, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–33479 Filed 12–23–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–385–386 (Review)]

Granular Polytetrafluoroethylene Resin From Italy and Japan

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty orders on granular polytetrafluoroethylene resin from Italy and Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission instituted these reviews on May 3, 1999 (64 FR 23677, May 3, 1999) and determined on August 5, 1999 that it would conduct expedited reviews (64 FR 44537, August 16, 1999).

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on December 21, 1999. The views of the Commission are contained in USITC Publication 3260 (December 1999), entitled Granular Polytetrafluoroethylene Resin from Italy and Japan: Investigations Nos. 731–TA-385–386 (Review).

Issued: December 14, 1999.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioners Crawford and Askey dissenting.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–33477 Filed 12–23–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98–38]

Theodore Neujahr, D.V.M., Continuation of Registration

On July 16, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Theodore A. Neujahr, D.V.M. (Respondent) of Eatonville, Washington, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AN1015331, pursuant to 21 U.S.C. 824(a)(4), and deny any pending applications for renewal or modification of such registration as a practitioner under 21 U.S.C 823(f), for reason that his registration is inconsistent with the public interest.

By letter dated July 28, 1998, Respondent filed a request for a hearing, and following prehearing procedures, a hearing was held in Tacoma, Washington on March 3, 1999, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties submitted proposed findings of fact, conclusions of law, and argument. On July 19, 1999, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision (Opinion), recommending that Respondent's registration be continued and any pending applications be granted. Neither party filed exceptions to Judge Bittner's Opinion, and on August 19, 1999, the record was transmitted to the Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, with one noted exception, the Opinion of the Administrative Law Judge. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Acting Deputy Administrator finds that Respondent received his degree in veterinary medicine in 1979. In 1981, Respondent started his own practice in Eatonville, Washington, where he continues to practice.

Respondent testified that he developed a chemical dependency problem in 1988 or 1989 while going through a divorce. He further testified that ''I found that the pain relievers that I had purchased for animals helped to relieve some of my pain, and I found that the amphetamines made me feel better too.'' According to Respondent, he took approximately three Dexedrine 5 mg. tablets per week and two or three Percodan tablets per week for a period of more than a year. Both of these drugs are Schedule II controlled substances.

Respondent testified that he became concerned about his drug use and contacted a treatment program. On February 23, 1990, Respondent and his receptionist, who was also a close personal friend, met with the doctor in charge of the program. It was agreed that the doctor and Respondent's receptionist would monitor Respondent by requesting that Respondent submit to a urinalysis if they suspected that he had taken a mood altering substance.

In April 1990, a DEA investigator was reviewing DEA order forms used for purchasing Schedule II controlled substances and noticed that Respondent had purchased Dexedrine, which is not commonly used in veterinary practice, and Percodan, which is occasionally used in veterinary practice. On April 6, 1990, the DEA investigator and an investigator with the Washington Board of Pharmacy went to Respondent's office where they discovered that Respondent kept controlled substances in an unlocked drawer in his office and at his residence, which is an unregistered location. Initially, Respondent told the investigators that he was going to use the Dexedrine to treat obese dogs, but ultimately admitted that he had taken the Dexedrine himself. Respondent also said at some point that he had used the Percodan to treat dogs. However, the record does not indicate whether he admitted to the investigators during this meeting that he had taken the Percodan himself.

At the conclusion of this meeting, the DEA investigator gave Respondent the opportunity to voluntarily surrender his Schedule II and IIN privileges. Respondent signed the voluntary surrender form and checked the box that indicated that he was surrendering his DEA registration in Schedules II and IIN ''[i]n view of my alleged failure to comply with the Federal requirements pertaining to controlled substances, and as an indication of my good faith in desiring to remedy any incorrect or unlawful practices on my part.''

Respondent testified that at the time that he surrendered his Schedule II privileges, he was abstaining from controlled substances and alcohol, but that he felt threatened by the two investigators and signed the voluntary surrender form out of fear. Judge Bittner credited Respondent's testimony on this point and found that Respondent perceived that he was being threatened.

On May 23, 1990, Respondent began an outpatient treatment which he completed on January 16, 1991. At the time Respondent entered the program, he had been drug-free for several months. This program consisted of random urinalysis which were all negative, and counseling sessions.

On January 7, 1991, the Washington State Veterinary Board of Governors (Veterinary Board) issued a Statement of Charges against Respondent seeking suspension or revocation of his license to practice veterinary medicine on grounds that he had possessed Schedule II controlled substances for other than legitimate or therapeutic purposes by possessing them for his own use. It is unclear from the record, but it appears that at some point Respondent entered into a stipulation with the Veterinary Board admitting that he possessed Schedule II controlled substances including, but not limited to, Dexedrine, Percodan, and oxycodone with aspirin for other than legitimate or therapeutic purposes. The Veterinary Board suspended Respondent's license to practice veterinary medicine for at least 24 months, but stayed the suspension subject to various terms of probation. Specifically, the Veterinary Board required Respondent to submit quarterly progress reports on his methods of handling stress, his use of and handling of drugs, his mental and physical health, his methods of dealing with legal charges, professional responsibilities and activities and personal activities relating to his practice; to attend at least two Narcotics Anonymous or Alcoholics Anonymous (12-step) meetings per week; to submit to random and observed biological fluid testing at least once per month; not to possess a Schedule II or IIN registration for two years; and not to submit a request for reinstatement of his license for at least two years.

On April 27, 1992, the Veterinary Board accepted a stipulation between Respondent and the State of Washington Department of Health which provided, among other things, that Respondent would sign a contract with the Washington Health Professional Services (WHPS) program and comply with the terms and conditions of that contract, and that if Respondent failed to comply with that contract his license would be subject to disciplinary action by the Veterinary Board.

The WHPS is a division of the Washington Department of Health and is a monitoring program that provides an alternative to license discipline for various health care professions. The WHPS referred Respondent to a chemical dependency and family therapist who reported to the WHPS monthly on Respondent's progress. The therapist testified that he did not recall making any adverse reports regarding Respondent; that he felt that Respondent ''was doing all of the things that a person who is successful in recovery does;'' that he did not violate any of the rules of the program; that he was convinced that Respondent was continuing his recovery and was stable in his lifestyle, and that he thought it would be in the public interest for Respondent to have a DEA registration.

Respondent's case manager with WHPS from December 1993 until November 1994 testified that Respondent complied with his contract with the WHPS; that he consistently attended more 12-step meetings than required; and that all of his urinalyses were negative.

On October 5, 1992, Respondent executed a renewal application for his DEA registration, answering ''No'' to the question, hereinafter referred to as the liability question, which asks, ''Has the applicant ever been convicted of a crime in connection with controlled substances under State or Federal law, or ever surrendered or had a Federal controlled substance registration revoked, suspended, restricted or denied, or ever had a State professional license or controlled substance registration revoked, suspended, denied, restricted or placed on probation?'' Respondent testified while he knew that he had surrendered a portion of his DEA registration in 1990, he did not know how to answer the liability question. According to Respondent, he asked the instructors at continuing education courses that, ''if you voluntarily give up a portion of your DEA registration is that for cause and does that mean that you have to answer that question 'yes' and they told me that it was not true if you voluntarily give it up.'' Respondent also testified that he relied upon statements of the investigators that his ''license'' would not be affected if he signed a confession and if he did whatever the treatment program told him to do; that he tended to confuse his

license to practice veterinary medicine and his DEA registration; and that the investigators also told him that he could reapply for registration to handle Schedule II and IIN substances later.

Respondent testified that he was ''quite nervous'' when he sent off his application but that when he received his updated Certificate of Registration, he concluded that he had answered the question properly. On September 30, 1995, Respondent executed another renewal application for his DEA registration and answered ''No'' to essentially the same liability question. Respondent testified that in executing this application, he did not give the question ''any thought at all'' because he knew how he had answered the similar question on the 1992 application and it had been granted with no difficulty. In 1995, Respondent sought registration in Schedules II, IIN, III, IIIN, IV and V.

On November 3, 1995, another DEA investigator telephoned Respondent to verify information on his 1995 renewal application. The investigator testified that she read the liability question from the 1995 application to Respondent and that Respondent said that the answer to the question was ''No.'' According to the investigator, she then asked Respondent, ''[Y]ou've never had any action taken?'' and Respondent again stated ''No.''

Respondent testified that the investigator caught him off guard and he was convinced that he had answered the liability question on the 1992 and 1995 renewal applications correctly. Respondent further testified that after he hung up with the investigator he realized that he had made a mistake, but he did not know how to contact the investigator. Respondent also testified that if he remains registered with DEA, he would find someone to help him answer the liability questions properly on his next renewal application.

At the hearing, Respondent testified that he has not had any relapses since he stopped using controlled substances in 1990, and that he has a good support network in place. Respondent's case manager with the WHPS testified that completing an adequate number of years in a monitored recovery program greatly decreases the likelihood of a relapse, and that she was not aware of any reason that Respondent should not be authorized to handle controlled substances.

Pursuant to 21 U.S.C. 824(a)(1), the Deputy Administrator may revoke a DEA Certificate of Registration upon a finding that the registrant has materially falsified an application for registration. DEA had previously held that in finding that there has been a material falsification of an application, it must be determined that the applicant knew or should have known that the response given to the liability question was false. See Martha Hernandez, M.D., 62 FR 6145 (1997); Herbert J. Robinson, M.D., 59 FR 6304 (1994).

It is undisputed that Respondent answered ''No'' to the liability question on his 1992 and 1995 renewal applications despite the fact that his state veterinary license was placed on probation and he had surrendered his Schedule II and IIN privileges. Respondent testified that he did not know how to answer the question, since he did not think that he had surrendered his Schedule II privileges ''for cause.'' However, there is no indication that Respondent even attempted to contact the DEA investigator who obtained the surrender from Respondent for guidance. Yet, even if one were to accept Respondent's explanation, it would not explain why Respondent did not disclose that his state veterinary license was placed on probation.

The Acting Deputy Administrator finds that Respondent knew or should have known that his responses were false. Answers to the liability question are always material because DEA relies on the answers to these questions to determine whether it is necessary to conduct an investigation prior to granting an application. See Bobby Watts, M.D., 58 FR 46995 (1993); Ezzat E. Majd Pour, M.D., 55 FR 47547 (1990). DEA has previously held that it is the registrant's ''responsibility to carefully read the question and to honestly answer all parts of the question.'' Martha Hernandez, M.D., 62 FR at 61147. Therefore, grounds exist to revoke Respondent's DEA Certificate of Registration pursuant to 21 U.S.C. 824(a)(1).

Also, pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive, the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See Henry J. Schwartz, Jr., M.D., 54 FR 16422 (1989).

As to factor one, it is undisputed that Respondent's state veterinary license was suspended for 24 months, with the suspension stayed and his license placed on probation subject to various conditions. It is also undisputed that Respondent entered into a Stipulation with the state where by he agreed to enter into a contract with the WHPS. However, his state license is now unrestricted and he is authorized to handle controlled substances in the State of Washington. But as Judge Bittner noted, ''inasmuch as State authorization is a necessary but not sufficient condition for a DEA registration, * * * this factor is not determinative.''

Regarding factor two, it is undisputed that Respondent used his DEA Certificate of Registration and official order forms to obtain Schedule II controlled substances which he then abused himself for about a year in 1988 or 1989. However, this behavior was a result of Respondent's chemical dependency for which he has received treatment. He has not abused controlled substances since 1990, and he has a good support network in place to help prevent any relapse. There is no other evidence that Respondent has improperly dispensed controlled substances.

As to factor three, there is no evidence that Respondent has ever been convicted under State or Federal laws relating to the manufacture, distribution, or dispensing of controlled substances.

Regarding factor four, there is evidence in the record that Respondent has failed to comply with applicable laws relating to controlled substances. By furnishing false information on his applications for DEA registration, Respondent violated 21 U.S.C. 843(a)(4)(A). By using DEA order forms to obtain controlled substances for his own use, Respondent violated 21 U.S.C. 828(e), and by dispensing controlled substances for other than legitimate medical purposes, Respondent violated 21 U.S.C. 841(a)(1). Further, Respondent

violated 21 CFR 1301.75(b) by failing to maintain adequate physical security of controlled substances. It also appears from evidence in the record that Respondent violated various provisions of Washington state law.

As to factor five, other than Respondent's material falsification of his applications for registration, there is no evidence that Respondent has engaged in any other conduct that may threaten the public health and safety.

The Acting Deputy Administrator agrees with Judge Bittner's conclusion that the Government has made a *prima facie* case that Respondent's continued registration would be inconsistent with the public interest. Respondent used his privileges as a DEA registrant to obtain controlled substances to support his chemical dependency, and he materially falsified his 1992 and 1995 renewal applications.

However, he has undergone treatment for his chemical dependency and has not abused controlled substances since 1990. Further, evidence in the record suggests that there is little likelihood of Respondent relapsing. The Acting Deputy Administrator finds it noteworthy that Respondent first sought treatment for his chemical dependency on his own and not at the direction of another.

Judge Bittner also found it significant that ''there is no evidence that [Respondent] improperly handled controlled substances in any way since 1992, when he regained a DEA registration.'' However, the Acting Deputy Administrator can find no evidence in the record that Respondent ever completely lost his DEA privileges. It is true that he surrendered his Schedule II and IIN privileges in 1990. But it appears from the evidence in the record that Respondent has had a DEA registration since 1981. Therefore, the Acting Deputy Administrator finds it significant that there is no evidence that Respondent has improperly handle controlled substances in any way since 1990.

Regarding the material falsification of Respondent's renewal applications, the Acting Deputy Administrator agrees with Judge Bittner who noted that ''Respondent acknowledged that he falsified his applications, he apparently regretted that conduct, and I believe that he will not repeat it.''

Judge Bittner concluded ''that the evidence that Respondent has remained drug free for more than eight years prior to the hearing and it remorseful about his prior behavior weighs in favor of continuing his registration.'' As a result, Judge Bittner recommended that Respondent's DEA registration be continued. The Acting Deputy Administrator agrees.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AN1015331, previously issued to Theodore Neujahr, D.V.M. be, and it hereby is, continued and renewed in Schedules II, IIN, III, IIIN, IV and V.

Dated: December 14, 1999.

Julio F. Mercado,

Acting Deputy Administrator.

[FR Doc. 99–33506 Filed 12–23–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the Provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''general Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None.