

**UNITED STATES INTERNATIONAL TRADE COMMISSION**  
**Washington, D.C. 20436**

**In the Matter of**

**CERTAIN SELF-CLEANING LITTER  
BOXES AND COMPONENTS THEREOF**

**Investigation No. 337-TA-625**

**NOTICE OF DECISION NOT TO REVIEW AN INITIAL DETERMINATION  
GRANTING-IN-PART A MOTION FOR PARTIAL SUMMARY DETERMINATION ON  
THE ANTICIPATION DEFENSE**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the initial determination (“ID”) (Order No. 35) of the presiding administrative law judge (“ALJ”) granting-in-part complainant’s motion for summary determination on the anticipation defense.

**FOR FURTHER INFORMATION CONTACT:** Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 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, S.W., Washington, D.C. 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 December 28, 2007, based on the complaint of Applica Consumer Products, Inc. of Miramar, Florida and Waters Research Company of West Dundee, Illinois (collectively “Complainants”). 72 *Fed. Reg.* 73884 (Dec. 31, 2007); 73 *Fed. Reg.* 13566 (Mar. 13, 2008). The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain self-cleaning litter boxes and components thereof by reason of infringement of various claims of U.S. Patent No. RE36,847. The complaint named Lucky Litter, L.L.C. (“Lucky Litter”) of Chicago, Illinois; Dorskocil Manufacturing Co., Inc. of Arlington, Texas; and OurPet’s Company (“OurPet’s”) of Fairport Harbor, Ohio as respondents.

On July 3, 2008, Complainants filed a motion for summary determination that claims 8, 13-14, 24-25, 27, 31-33, 36-37, 41-42, and 46-48 of the '847 patent are not invalid under 35 U.S.C. § 102. On July 18, 2008, Lucky Litter filed an opposition to the motion only with respect to claims 27 and 33. Also on July 18, 2008, the Commission investigative attorney filed an opposition to the motion with respect to all referenced claims. No other party opposed the motion.

On July 31, 2008, the ALJ issued the subject ID granting the motion in part. The ALJ found Complainants satisfied their burden under Commission Rule 210.18(b) on the issue of OurPet's defense of derivation under 35 U.S.C. § 102(f). No petitions for review were filed.

The Commission has determined not to review the ID.

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 section 210.42 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42).

By order of the Commission.

/s/  
Marilyn R. Abbott  
Secretary to the Commission

Issued: August 19, 2008