

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

In the Matter of

**CERTAIN LENS-FITTED FILM
PACKAGES**

**Inv. No. 337-TA-406
(Advisory Opinion Proceedings II)**

**NOTICE OF COMMISSION DETERMINATION TO INSTITUTE ADVISORY OPINION
PROCEEDINGS AND TO DENY A REQUEST FOR INSTITUTION OF ENFORCEMENT
PROCEEDINGS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute advisory opinion proceedings in the above-captioned investigation, and to deny a request for institution of enforcement proceedings.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3012. Copies of the request for an advisory opinion, and all other nonconfidential documents filed in connection with the request, 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 (<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 the matter can be obtained by contacting the Commission's TDD terminal at 202-205-1810.

SUPPLEMENTARY INFORMATION:

The Commission instituted this investigation on March 25, 1998, based on a complaint by Fuji Photo Film Co., Ltd. ("Fuji") of Tokyo, Japan, alleging unfair acts in violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, by several respondents in the importation and sale of certain

lens-fitted film packages (*i.e.*, disposable cameras) (LFFPs) that infringed one or more claims of 15 U.S. patents held by complainant Fuji. On June 2, 1999, the Commission terminated the investigation, finding a violation of section 337 by 26 respondents by reason of importation or sales after importation of LFFPs that were found to infringe one or more claims of the patents in issue. 64 *Fed. Reg.* 30,541 (June 8, 1999). The Commission issued a general exclusion order, prohibiting the importation of LFFPs that infringe any of the claims at issue, including claim 1 of U.S. Patent 4,954,857 (“the ‘857 patent”); claim 1 of U.S. Patent 4,972,649 (“the ‘649 patent”); claim 25 of U.S. Patent 5,381,200 (“the ‘200 patent”); and claim 1 of U.S. Patent Re 34,168 (“the ‘168 reissue patent”). CS Industries Inc. (“CSI”) was not a party to the original investigation.

On July 31, 2001, the Commission instituted formal enforcement and advisory opinion proceedings at Fuji’s request. 66 *Fed. Reg.* 40,721 (Aug. 3, 2001). CSI was named as a party respondent to the enforcement proceeding, and was also named as a party to the advisory opinion proceedings. 66 *Fed. Reg.* 40,721 (Aug. 3, 2001). On May 2, 2002, the presiding administrative law judge (“ALJ”) issued his enforcement initial determination (“EID”) and his initial advisory opinion (“IAO”). The Commission reviewed the EID and the IAO in part and remanded the issue of infringement of claim 9 of the ‘649 patent under the doctrine of equivalents to the ALJ in light of Supreme Court precedent handed down after the EID and the IAO were issued. 67 *Fed. Reg.* 52,741 (Aug. 13, 2002). The Commission also directed interested parties to file comments on the recommended remedy determinations made by the ALJ in the EID. 67 *Fed. Reg.* 52,741 (Aug. 13, 2002). On May 15, 2003, the Commission determined not to review the ALJ’s supplemental IAO and EID, which issued on October 24, 2002. 68 *Fed. Reg.* 28,254 (May 23, 2003). The Commission also issued cease and desist orders against several respondents, including CSI, that were found to have violated the general exclusion order issued in the original investigation. 68 *Fed. Reg.* 28,254 (May 23, 2003).

On June 19, 2003, CSI filed a request pursuant to Commission rule 210.79 for an advisory opinion. On June 30, 2003, complainant Fuji and the Commission investigative attorney (“IA”) filed responses. Fuji’s response included a request for initiation of an enforcement proceeding pursuant to Commission rule 210.75. On July 8, 2003, the IA filed a motion for leave to respond to Fuji’s request for an enforcement proceeding with attached response. On July 9, 2003, CSI filed a motion for leave to reply to the responses of Fuji and the IA with attached reply, and a response to Fuji’s request for an enforcement proceeding. The Commission granted both motions for leave.

The Commission examined CSI’s request for an advisory opinion, and the responses and reply thereto, and determined that the request complies with the requirements for institution of an advisory opinion proceeding under Commission rule 210.79(a). The Commission examined Fuji’s request for an enforcement proceeding and the responses thereto, and determined to deny the request. Accordingly, the Commission determined to institute an advisory opinion proceeding and referred CSI’s request to the presiding ALJ for issuance of an initial advisory opinion.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and Commission rules 210.75(a) and 210.79(a), 19 C.F.R. §§ 210.75(a), 210.79(a).

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: September 3, 2003