

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

**In the Matter of**

**CERTAIN LENS-FITTED  
FILM PACKAGES**

**Investigation No. 337-TA-406**

**NOTICE OF COMMISSION DECISION TO REVIEW IN PART AN INITIAL  
DETERMINATION AND ON REVIEW TO AFFIRM THE DETERMINATION OF THE  
ADMINISTRATIVE LAW JUDGE THAT CLAIM 15 OF U.S. PATENT NO. 4,884,087  
IS NOT INVALID**

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

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review in part an initial determination ("ID") issued by the presiding administrative law judge ("ALJ") determining that claim 15 of United States Patent No. 4,884,087 (the "'087 patent") is not invalid. Specifically, the Commission has determined to review the portion of the ALJ's claim interpretation that relies on law of the case. On review, the Commission has determined to take no position with respect to that analysis, but to affirm the ALJ's claim construction based on his independent finding that the preamble to claim 15 is a claim limitation.

**FOR FURTHER INFORMATION CONTACT:** Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3104. 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 enforcement proceeding on July 31, 2001, based on a complaint filed by Fuji Photo Film Co., Ltd. ("Fuji"). Fuji sought to enforce a general exclusion order issued as a result of an initial investigation conducted by the Commission, Inv. No. 337-TA-406, *Certain Lens-Fitted Film Packages*. The initial investigation involved newly made and refurbished lens-fitted film packages and involved numerous Fuji patents, including the '087 patent. The initial investigation also involved numerous respondents, twenty six of whom were found to violate section 337 of the Tariff Act of 1930. Respondent VastFame Camera, Ltd. ("VastFame") was not a party to the initial investigation, and its VN99 and VN991 cameras were not at issue in that investigation.

During the enforcement proceedings, VastFame pled as a defense that claim 15 of the '087 patent was invalid under 35 U.S.C. §§ 102 and 103(a). The ALJ refused to consider invalidity, ruling that no defense could be raised in the enforcement proceeding. The Commission adopted this ruling. VastFame appealed this ruling to the Federal Circuit, which reversed and remanded the case for further proceedings. *See VastFame Camera, Ltd. v. Int'l Trade Comm'n*, 386 F.3d 1108 (Fed. Cir. 2004). VastFame did not challenge the ALJ's determination that the VN99 and VN991 cameras infringe claim 15 of the '087 patent.

On June 23, 2005, the ALJ precluded VastFame from raising new invalidity defenses under 35 U.S.C. § 112, and, on June 25-26, 2005, the ALJ conducted an evidentiary hearing on the remaining invalidity issues. On September 9, 2005, the ALJ issued his final ID, in which he held that the asserted prior art references, Japanese Unexamined Utility Model Publication Nos. 53-127934 and 48-46622, do not anticipate claim 15 of the '087 patent and that they do not render the claimed invention obvious in combination with Dutch Patent No. 6,708,486.

On September 23, 2005, VastFame filed a petition for review, arguing that the ALJ improperly concluded that claim 15 is not invalid. On September 30, 2005, the Commission's investigative attorney filed a response to VastFame's petition, and on October 3, 2005, Fuji also filed a response. Both asserted that VastFame had not shown any clear error of fact, error of law, or abuse of discretion in the ALJ's ID that would merit Commission review.

Having examined the record of this investigation, including the ALJ's final ID, the petition for review, and the responses thereto, the Commission has determined to review in part the ALJ's ID. Specifically, the Commission has determined to review the portion of the ALJ's claim interpretation that relies on law of the case. On review, the Commission has determined to take no position with respect to that analysis, but to affirm the ALJ's claim construction based on his independent finding that the preamble to claim 15 is a claim limitation.

The Commission hereby requests that the parties provide written submissions within five (5) business days of the issuance of this notice indicating whether there are any further proceedings required by the Commission to complete this remand.

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.

Marilyn R. Abbott  
Secretary to the Commission

Issued: October 27, 2005