



fitted film packages (*i.e.*, disposable cameras) that infringed one or more claims of 15 patents held by complainant Fuji. 63 *Fed. Reg.* 14474 (March 25, 1998). On June 2, 1999, the Commission terminated the investigation, finding a violation of section 337 by all the respondents by reason of infringement of various claims of all 15 patents. 64 *Fed. Reg.* 30541 (June 8, 1999). The Commission issued a general exclusion order prohibiting the importation of LFFPs that infringe any of the claims of the patents at issue, and issued twenty cease and desist orders to domestic respondents.

Respondents Jazz, OptiColor Inc., and Dynatec International Inc. (Dynatec) appealed the portion of the Commission's determination that concerned refurbished LFFPs that were sold by or under license from Fuji, to the U.S. Court of Appeals for the Federal Circuit (Federal Circuit). The portion of the Commission's determination that concerned newly-manufactured LFFPs was not appealed. On August 21, 2001, the Federal Circuit issued its opinion, affirming-in-part, reversing-in-part, and remanding the Commission's determination. *Jazz Photo Corporation et al. v. U.S. International Trade Commission*, 264 F.3d 1094 (Fed. Cir. 2001). On November 21, 2001, the Federal Circuit issued its mandate in the investigation, thereby returning jurisdiction over the investigation to the Commission. The Commission solicited comments from the parties concerning the action that the Commission should take on remand. On January 11, 2002, Jazz, Fuji, Grandway USA, the successor in interests to Dynatec, and the Commission investigative attorney (IA) filed comments. Fuji filed amended comments on January 16, 2002. Fuji, Jazz, Grandway, and the IA filed response comments on January 25, 2002.

On February 6, 2002 Jazz filed a petition to the Supreme Court for a writ of certiorari of a portion of the *Jazz* decision. On March 13, 2002, Fuji filed a cross petition for a writ of certiorari. On June 24, 2002, the Supreme Court denied both petitions.

The Federal Circuit's remand to the Commission concerned a motion filed by Fuji with the Federal Circuit on May 4, 2001. In that motion Fuji requested: (1) a modification of the stay orders to increase the bonds imposed on Dynatec and Jazz (an issue that became moot when the court lifted the stays that it had put in place pending appeal), and (2) an order prohibiting circumvention of Commission's orders by Grandway.<sup>1/</sup> Fuji raised the same issues that it raised in the May 4, 2001 motion to the Federal Circuit in a complaint for enforcement proceedings that it filed with the Commission on June 27, 2001. After negotiations, Fuji and Grandway entered a Stipulated Agreement (SA) on July 19, 2001, which Fuji filed with the Commission on July 20, 2001. In filing the SA with the Commission, Fuji stated that it was withdrawing the allegations that it made against Grandway because the matters complained of in the enforcement complaint were now moot. In view of the SA between Fuji and Grandway and Fuji's statement to the Commission in withdrawing its enforcement complaint against Grandway, the Commission determined that the issues remanded to the Commission by the Federal Circuit in the *Jazz* decision are moot.

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<sup>1/</sup> As noted, Grandway is the successor in interest to Dynatec.

Fuji also requested that the Commission consider its amended "Response to the Commission's Notice of Request for Comments," dated January 16, 2002, as an enforcement complaint against Jazz and two individuals associated with Jazz. The Commission having found that Fuji's filing complies with the requirements for institution of a formal enforcement proceeding, determined to institute formal enforcement proceedings to determine whether Jazz and the two named individuals are in violation of the Commission's general exclusion order and/or cease and desist order issued in the investigation, and what if any enforcement measures are appropriate.

The following were named as parties to the formal enforcement proceeding: (1) complainant Fuji Photo Film Co., Ltd; (2) Jazz Photo Film Co., (3) Jack Benun, Principal Consultant of Jazz (4) Anthony Cossentino, President of Jazz, (5) and a Commission investigative attorney to be designated by the Director, Office of Unfair Import Investigations.

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

By order of the Commission.

Marilyn R. Abbott  
Secretary to the Commission

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