

[CORRECTED]

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

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In the Matter of)	
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CERTAIN LENS-FITTED FILM PACKAGES)	Inv. No. 337-TA-406,
)	Consolidated Enforcement
)	and Advisory Opinion
)	Proceedings
_____)	

**NOTICE OF COMMISSION DECISION NOT TO REVIEW THE ADMINISTRATIVE
LAW JUDGE'S SUPPLEMENTAL INITIAL DETERMINATION; DECISION
TO ISSUE CEASE AND DESIST ORDERS AND CIVIL PENALTIES; TERMINATION
OF CONSOLIDATED ENFORCEMENT AND ADVISORY PROCEEDINGS**

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 a supplemental initial advisory opinion (IAO) and enforcement initial determination (EID) issued by the presiding administrative law judge (ALJ) on October 24, 2002, in the above-captioned proceedings under section 337 of the Tariff Act, as amended, 19 U.S.C. § 1337. Notice is also given of the Commission's decision to issue cease and desist orders to four respondents in the proceedings who were found to have violated the Commission's general exclusion order which was issued in the original investigation, and the Commission's decision to levy civil penalties against three respondents who were found to have violated cease and desist orders that were issued in the original investigation.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., telephone 202-205-3104, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436. Copies of all 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 SW., 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-ON-LINE) 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 on 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission’s original investigation in this matter was terminated on June 2, 1999, with a finding of violation of section 337 by 26 respondents by reason of importation or sales after importation of certain lens-fitted film packages (LFFPs) (*i.e.*, disposable cameras) that were found to infringe one or more claims of 15 patents held by complainant Fuji Photo Film Co. (Fuji). 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 at issue, and issued cease and desist orders to twenty domestic respondents. *Id.* Three respondents appealed the part of the Commission’s determination that concerned refurbished cameras to the U.S. Court of Appeals for the Federal Circuit. No party appealed the Commission’s determinations concerning newly-manufactured cameras.

On June 27, 2001, Fuji filed a “Complaint for Enforcement Proceedings Under Rule 210.75, Petition for Modification Under Rule 210.76 and/or Request for Advisory Opinion Under Rule 210.79.” Fuji’s enforcement complaint asserted 22 claims contained in nine utility patents and named twenty entities as respondents. Fuji later withdrew its complaint as to three of the respondents. Fuji’s complaint concerns only newly-manufactured cameras that were not the subject of the appeal to the Federal Circuit. On July 31, 2001, the Commission instituted advisory opinion and enforcement proceedings and referred them to the ALJ for issuance of a separate initial advisory opinion (IAO) and enforcement initial determination (EID). 63 *Fed. Reg.* 40721 (August 3, 2001).

On May 2, 2002, the ALJ issued his IAO and EID in which he made 59 separate infringement determinations involving seven patents, 13 respondents, and 28 different types of accused LFFP. He also recommended the penalties to be assessed against the respondents who were found to have violated the general exclusion order (GEO) or cease and desist orders that were issued in the original investigation. Eight petitions for review of the IAO and/or EID violation issues were filed on May 16, 2002. Responses were filed on May 24, 2002. On June 7, 2002, Fuji filed a supplemental brief concerning the application of intervening Supreme Court precedent, *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd.*, 122 S.Ct. 1831 (May 28, 2002), to the issue of infringement under the doctrine of equivalents. The Commission determined not to review the remainder of the IAO and EID. The Commission also requested comments on the ALJ’s penalty recommendations. Comments were filed by Fuji, the Commission investigative attorney (IA), and respondents Argus Industries, Inc. and Photo Works, Inc. Response comments were filed by Fuji, the IA, Argus, PhotoWorks, Achiever Industries, Ltd., Highway Holdings, Ltd., The Message Group, Inc., and VastFame Camera Ltd. Ad-Tek Specialities, Inc. filed an affidavit

On October 24, 2002, the ALJ issued a supplemental IAO and EID in which he determined that the application of the *Festo* decision did not change his earlier determination that VastFame camera models VN99 and VN991 did not infringe claim 9 of U.S. Patent No. 4,972,649 (the ‘649 patent) under the doctrine of equivalents. Fuji filed a petition for review of the supplemental IAO and EID. VastFame opposed Fuji’s petition. The Commission, having examined the petition for review, and the response thereto determined not to review the findings of the supplemental IAO and EID on the issue of infringement of claim 9 of the ‘649 patent in view of the Supreme Court decision, *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd.*, 122 S.Ct. 183.

The Commission also received written submissions from the parties that addressed the EID's recommendations on civil penalties, the effect of the cease and desist orders recommended in the EID on the public interest, and the amount of bond that should be imposed during the 60-day Presidential review period concerning the cease and desist orders.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission determined: (1) to issue cease and desist orders to defaulted respondents Americam, Inc.; Camera Custom Design a/k/a Title the Moment Inc.; CS Industries a/k/a PLF Inc.; and Penmax, Inc. to prevent them from engaging in unfair acts in the importation and sale of lens-fitted film packages from inventory; (2) that the public interest factors enumerated in subsection (f) of section 337 do not preclude the issuance of the aforementioned cease and desist orders, and that the bond during the Presidential review period shall be in the amount of 100 percent of the entered value of the articles in question; (3) to levy civil penalties against Argus Industries, Inc. in the amount of \$480,000, Ad-Tek Specialities, Inc., in the amount of \$200,000, and PhotoWorks, Inc. in the amount of \$1.6 million for violations of cease and desist orders that the Commission issued at the completion of the *Lens-Fitted Film Packages* investigation.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and sections 210.75 and 210.79 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.75 and 210.79).

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: May 19, 2003