

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

In the Matter of

**CERTAIN R-134a COOLANT
(OTHERWISE KNOWN AS 1,1,1,2-
TETRAFLUOROETHANE)**

Investigation No. 337-TA-623

**NOTICE OF COMMISSION DETERMINATION TO REVERSE THE REMAND
DETERMINATION OF THE PRESIDING ADMINISTRATIVE LAW JUDGE AND TO
TERMINATE THE INVESTIGATION IN ITS ENTIRETY WITH A FINDING OF NO
VIOLATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to reverse the conclusion reached in the Remand Determination (“RID”) issued by the presiding administrative law judge (“ALJ”) in the above-captioned investigation that the only remaining asserted claim of U.S. Patent No. 5,559,276 (“the ‘276 patent”) is not obvious. The Commission finds that the claim would have been obvious to one of ordinary skill in the art and is therefore invalid. The Commission affirms the RID’s conclusion that the asserted claim was not anticipated.

FOR FURTHER INFORMATION CONTACT: Paul M. Bartkowski, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5432. 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 31, 2007, based on a complaint filed by INEOS Fluor Holdings Ltd., INEOS Fluor Ltd., and INEOS Fluor Americas L.L.C. (collectively, “Ineos”). The complaint alleged 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 R-134a coolant (otherwise known as 1,1,1,2-tetrafluoroethane) by reason of infringement of various claims of United States Patent No. 5,744,658. Complainants subsequently added

allegations of infringement with regard to United States Patent Nos. 5,382,722 and the '276 patent, but only claim 1 of the '276 patent remains at issue in this investigation. The complaint named two respondents, Sinochem Modern Environmental Protection Chemicals (Xi'an) Co., Ltd. and Sinochem Ningbo Ltd. Two additional respondents were subsequently added: Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd. and Sinochem (U.S.A.) Inc. The four respondents are collectively referred to as "Sinochem."

On December 1, 2008, the ALJ issued his final ID, finding that Sinochem had violated section 337. He concluded that respondents' accused process infringed claim 1 of the '276 patent and that the domestic industry requirement had been met. He also found that claim 1 was not invalid and that it was not unenforceable. The Commission determined to review the ALJ's final ID with regard to the effective filing date of the asserted claim, anticipation, and obviousness. By order dated January 30, 2009, the Commission supplemented the ALJ's reasoning regarding the effective filing date, and remanded the investigation to the ALJ to conduct further proceedings related to anticipation and obviousness. To accommodate the remand, the Commission extended the target date to June 1, 2009 and instructed the ALJ to issue the RID by April 1, 2009.

The ALJ issued the RID on April 1, 2009. The RID concluded that Sinochem's arguments concerning anticipation and obviousness were waived under the ALJ's ground rules and, alternatively, that the arguments were without merit. Sinochem filed a petition for review of the RID. The Commission investigative attorney ("IA") and Ineos opposed Sinochem's petition.

On June 1, 2009, the Commission determined to review the RID in its entirety and requested briefing on certain questions. The Commission determined to extend the target date to August 3, 2009, to accommodate its review.

Having examined the record of this investigation, including the ALJ's RID and the submissions of the parties, the Commission has determined to reverse the conclusion of nonobviousness of claim 1 of the '276 patent in the RID. In so finding, the Commission has determined to rely on certain party admissions and other evidence as to the state of the prior art. The Commission has determined to take no position on the RID's conclusions relating to obviousness arguments based on prior art references identified in the Commission's remand instructions, including the RID's conclusions on whether arguments as to those references have been waived. The Commission has also determined not to rely on the RID's conclusions as to anticipation and waiver of anticipation arguments. The Commission has further determined to deny Sinochem's motion to strike portions of Ineos's response to its written submission and for leave to file a reply to that submission. The Commission has determined also to deny Sinochem's motion to conform pleadings to evidence taken. These findings terminate the Commission's investigation.

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 Rule 210.45 of the Commission's Rules of Practice and Procedure (19 C.F.R. Part 210.45).

By order of the Commission.
Marilyn R. Abbott, Secretary to the Commission

/s/
William R. Bishop
Acting Secretary to the Commission

Issued: August 3, 2009