

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  

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NOTICE OF REVIEW-IN-PART, NONREVIEW-IN-PART, AND REMAND OF  
ENFORCEMENT INITIAL DETERMINATION AND INITIAL ADVISORY  
OPINION TO THE PRESIDING ADMINISTRATIVE LAW JUDGE

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 and remand to the presiding administrative law judge (ALJ) the initial advisory opinion (IAO) and the enforcement initial determination (EID) issued by the ALJ on May 2, 2002, in the above-captioned proceedings under section 337 of the Tariff Act as amended, 19 U.S.C. § 1337. Specifically, the Commission determined to review and remand to the ALJ an issue of infringement under the doctrine of equivalents in view of the Supreme Court's decision in *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd.*, 122 S.Ct. 1831 (May 28, 2002). The Commission determined not to review the remainder of the IAO and EID.

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://dockets.usitc.gov/eol/public>. 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 LFFPs to the U.S. Court of Appeals for the Federal Circuit. No party appealed the Commission's determinations concerning newly-manufactured LFFPs.

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 presiding ALJ for issuance of a separate initial advisory opinion (IAO) and enforcement initial determination (EID). 63 *Fed. Reg.* 40721 (August 3, 2002).

On May 2, 2002, the ALJ issued his IAO and EID in which he made 59 separate infringement determinations involving seven patents and 13 respondents and 28 different types of accused LFFP. Eight petitions for review of the IAO and/or EID 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. Responses to Fuji's motion were filed on June 19 and June 24, 2002, by the Commission investigative attorneys (IAs) and respondent Vastfame Camera Ltd., respectively.

The Commission, having examined the petitions for review and the responses thereto, determined to review the findings of the IAO and EID on the issue of infringement of claim 9 of U.S. Letters Patent 4,972,649 in view of the Supreme Court decision, *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd.*, 122 S.Ct. 1831, which was handed down after the IAO and EID were issued. The Commission has determined not to review any other part of the IAO or EID.

In connection with final disposition of the enforcement proceedings, the Commission may issue cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of lens fitted film packages. If the Commission contemplates issuance of cease and desist orders, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to

investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission issues cease and desist orders, the conduct prohibited by any cease and desist order may be continued during the sixty (60) day period in which the cease and desist orders are under review by the President pursuant to subsection (j) of section 337, 19 U.S.C. § 1337(j). During this period, the subject articles would be entitled to be sold under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

The Commission may also levy civil penalties for violations of cease and desist orders that it issued at the completion of the *Lens-Fitted Film Packages* investigation.

**WRITTEN SUBMISSIONS:** The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on remedy, the public interest, and bonding. Such submissions should address the recommended remedy determinations made by the ALJ in the EID that issued on May 2, 2002, including the ALJ's recommendations with regard to civil penalties. Complainant and the Commission investigative attorneys are also requested to submit proposed cease and desist orders for the Commission's consideration. The written submissions and proposed cease and desist orders must be filed no later than close of business on August 28, 2002. Response submissions must be filed no later than the close of business on September 6, 2002. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* section 201.6 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

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

Issued: August 7, 2002