

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

In the Matter of)

CERTAIN MALE PROPHYLACTIC)
DEVICES)

Inv. No. 337-TA-546

**NOTICE OF COMMISSION DETERMINATION TO REVERSE AN INITIAL
DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE THAT SECTION 337
HAS BEEN VIOLATED; TERMINATION OF INVESTIGATION WITH A
FINDING OF NO VIOLATION OF SECTION 337**

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 presiding administrative law judge's finding of violation of section 337 of the Tariff Act, as amended, and has terminated the investigation with a finding of no violation of section 337.

FOR FURTHER INFORMATION CONTACT: Mark B. Rees, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3116. The public version 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, S.W., 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 this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on August 5, 2005, based on a complaint filed on behalf of Portfolio Technologies, Inc., of Chicago, Illinois. 70 *Fed. Reg.* 45422. The complaint, as amended and supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 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 male prophylactic devices by reason of infringement of claims 1-27, 31-33, and 36 of U.S. Patent No. 5,082,004. The respondents named in the investigation are Church & Dwight Co., Inc., of Princeton, New Jersey; Reddy Medtech, Ltd., of Tamil Nadu, India; and Intellx, Inc., of

Petoskey, Michigan.

On June 30, 2006, the presiding administrative law judge (“ALJ”) issued a final initial determination (“ID”) in which he ruled that there is no violation of section 337 of the Tariff Act of 1930, as amended. He found that certain valid claims were infringed, but concluded that there was no domestic industry under the economic prong of the domestic industry requirement. All parties petitioned for review of various parts of the final ID.

On September 29, 2006, the Commission determined to review the issues of claim construction, infringement, invalidity due to anticipation, and domestic industry, and requested briefing on these issues and certain subissues. 71 *Fed. Reg.* 58875 (Oct. 5, 2006). On December 5, 2006, the Commission determined to affirm in part, reverse in part, and remand in part the final ID. Among other things, the Commission reversed the ALJ’s finding of no domestic industry under the economic prong. The Commission also determined to extend the target date for completion of the investigation until June 5, 2007. The date was subsequently moved to June 21, 2007, by an unreviewed ID.

On March 19, 2007, the ALJ issued his remand ID, in which he ruled that there is a violation of section 337 based on the infringement of certain valid claims and found that there is a domestic industry. In further briefing before the Commission, all parties claimed error.

Upon consideration of the parties’ submissions and the record in this proceeding, the Commission has determined to reverse the ALJ’s finding of violation of section 337 and has terminated the investigation with a finding of no violation. In reaching this conclusion, the Commission has reversed the ALJ’s finding that the accused products infringe certain claims of U.S. Patent No. 5,082,004, as well as his finding that certain claims of that patent are invalid as anticipated by the prior art.

The authority for this notice is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, and in section 210.45(c) of the Commission’s Rules of Practice and Procedure (19 C.F.R. § 210.45(c)).

By order of the Commission.

/s/

William R. Bishop
Acting Secretary to the Commission

Issued: June 21, 2007