

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

In the Matter of
CERTAIN NITRILE GLOVES

Investigation No. 337-TA-608

AND

In the Matter of
CERTAIN NITRILE RUBBER GLOVES

Investigation No. 337-TA-612

**NOTICE OF COMMISSION DETERMINATION OF NO VIOLATION OF
SECTION 337; TERMINATION OF THE INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that there is no violation of 19 U.S.C. § 1337 by respondents in the above-referenced investigation. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Michelle Walters, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5468. 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 Inv. No. 337-TA-608 on July 6, 2007, based on a complaint filed by Tillotson Corporation d.b.a. Best Manufacturing Company ("Tillotson"). 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 nitrile gloves by reason of infringement of various claims of United States Patent No. Re. 35,616 (“the ‘616 patent”). The complaint named over thirty respondents. The Commission instituted a second investigation, Inv. No. 337-TA-612, on August 22, 2007, based on a complaint filed by Tillotson. That complaint also alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain nitrile gloves by reason of infringement of various claims of the ‘616 patent and named seven respondents. On September 19, 2007, the ALJ consolidated Inv. No. 337-TA-608 with Inv. No. 337-TA-612.

On August 25, 2008, the ALJ issued a final ID and recommended determination on remedy and bonding in the above-referenced consolidated investigation, finding that the active respondents did not violate section 337. Specifically, he found that while the majority of accused gloves infringe claims 17, 18, and 19 of the ‘616 patent, the asserted claims are invalid. He concluded that when the patentees amended the claims through a reissue application filed more than two years after the grant of the original patent, they improperly enlarged the scope of the claims, rendering them invalid. The ALJ further concluded that the claims are invalid because the patentees filed a defective reissue declaration when applying for the reissue patent. He rejected other arguments of invalidity and unenforceability. Accordingly, the ALJ concluded that respondents had not violated section 337.

On September 8, 2008, complainant Tillotson filed a petition for review, as did several respondents. On September 16, 2008, respondents filed a response to complainant’s petition and complainant filed a response to respondents’ petition.

On October 24, 2008, the Commission determined to review a portion of the ALJ’s ID and requested briefing from the parties on the issues under review and on remedy, the public interest, and bonding. On November 10, 2008, complainant Tillotson, certain respondents, and the Commission investigative attorney (“IA”) each filed responses to the Commission’s request for written submissions. On November 17, 2008, complainant, certain respondents, and the IA filed reply submissions.

Having examined the record of this investigation, including the ALJ’s ID and the submissions of the parties, the Commission has determined to affirm the ALJ’s determination that the respondents did not violate section 337 because the asserted claims are invalid under 35 U.S.C. § 251 and 37 C.F.R. § 1.175(a) (1996), but will clarify a portion of his claim construction in a separate opinion.

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

By order of the Commission.

/s/

Marilyn R. Abbott
Secretary to the Commission

Issued: December 22, 2008