

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN SELF-CLEANING LITTER
BOXES AND COMPONENTS THEREOF**

Investigation No. 337-TA-625

**NOTICE OF COMMISSION FINAL DETERMINATION OF VIOLATION OF
SECTION 337; ISSUANCE OF LIMITED EXCLUSION ORDER AND CEASE AND
DESIST ORDERS; TERMINATION OF 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 a violation section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337) by respondents Lucky Litter, L.L.C. of Chicago, Illinois and OurPet's Company of Fairport Harbor, Ohio in the above-captioned investigation. The Commission has issued a limited exclusion order, issued cease and desist orders against the two respondents, and terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Mark B. Rees, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone (202) 205-3116. 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, SW, Washington, DC 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 28, 2007, based on the complaint of Applica Consumer Products, Inc. of Miramar, Florida ("Applica") and Waters Research Company of West Dundee, Illinois ("Waters"). 72 *Fed. Reg.* 73884 (Dec. 28, 2007); 73 *Fed. Reg.* 13566 (Mar. 13, 2008). The complaint alleges 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 self-cleaning litter boxes and components thereof by reason of infringement of U.S. Patent No. RE36,847 (“the ‘847 patent”). The respondents are Lucky Litter, L.L.C. of Chicago, Illinois (“Lucky Litter”) and OurPet’s Company of Fairport Harbor, Ohio (“OurPet’s”).

On December 1, 2008, the presiding administrative law judge (“ALJ”) issued his final initial determination (“ID”), finding that a violation of section 337 has occurred in the importation, sale for importation, or sale after importation of certain self-cleaning litter boxes and components thereof by reason of infringement of claim 33 of the ‘847 patent. His final ID also included his recommendation on remedy and bonding. Respondents Lucky Litter and OurPet’s, complainants Applica and Waters, and the Commission investigative attorney (“IA”) filed petitions (or contingent petitions) for review on December 16, 2008. All parties filed responses to the petitions on December 24, 2008. Complainants also filed a motion to strike on December 23, 2008, to which Lucky Litter and the IA filed oppositions on January 5, 2009.

The Commission determined to review certain issues of claim construction, as well as invalidity due to anticipation, invalidity due to obviousness, and direct and contributory infringement on February 9, 2009. *74 Fed. Reg.* 7263 (Feb. 13, 2009). Per its notice, the Commission also determined to grant Complainants’ motion to strike, and set a schedule for the filing of written submissions on the issues under review, including certain questions posed by the Commission, and on remedy, the public interest, and bonding. The parties have briefed, with initial and reply submissions, the issues under review and the issues of remedy, the public interest, and bonding.

On review, the Commission has determined to (1) affirm the ALJ’s construction of “comb drive” (asserted claims 8, 13, 31-33), “comb drive means” (asserted claims 27, 41-42), “drive means” (asserted claims 24-25), and “mode selector switch . . . moveable between a manual operation position . . . and an automatic operation position” (asserted claim 33); (2) modify the ALJ’s construction of “discharge position adjacent the discharge end wall” (asserted claims 8, 13) to “not distant, nearby,” thereby deleting the synonyms “adjoining, contiguous, abutting, and coterminus;” and (3) construe “coupled to” in the limitation “comb . . . coupled to the comb drive” (asserted claims 31-33) as “coupled or connected, directly or indirectly;” (4) affirm the ALJ’s finding of violation of § 337 as to Respondent Lucky Litter; (5) affirm the ALJ’s finding that the accused Lucky Litter products infringe claim 33 of the ‘847 patent; (6) affirm the ALJ’s finding of violation of § 337 as to Respondent OurPet’s; (7) affirm the ALJ’s finding that the accused OurPet’s products infringe claim 33 of the ‘847 patent; (8) affirm the ALJ’s finding that infringed claim 33 is not invalid due to anticipation or obviousness; and (9) affirm the ID on any other findings under review except insofar as they are inconsistent with the opinion of the Commission.

The Commission determined that the appropriate form of relief in this investigation is (1) a limited exclusion order prohibiting the unlicensed entry of self-cleaning litter boxes and components thereof, including cartridges, covered by claim 33 of U.S. Patent No. Re. 36,847 that

are manufactured abroad by or on behalf of, or imported by or on behalf of, Lucky Litter and OurPet's; and (2) cease and desist orders against Lucky Litter and OurPet's.

The Commission further determined that the public interest factors enumerated in section 337(d)(1) (19 U.S.C. § 1337(d)(1)) do not preclude issuance of the limited exclusion order. Finally, the Commission determined that the bond under the limited exclusion order during the Presidential review period shall be in the amount of 100 percent of the entered value of the imported articles. The Commission's orders were delivered to the President and the United States Trade Representative on the day of their issuance.

The Commission has therefore terminated this 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 sections 210.16(c) and 210.41-.42, 210.50 of the Commission's Rules of Practice and Procedure (19 CFR § 210.16(c) and § 210.41-.42, 210.50).

By order of the Commission.

/s/

Marilyn R. Abbott
Secretary to the Commission

Issued: April 8, 2009S