

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

In the Matter of

**CERTAIN LASER IMAGEABLE
LITHOGRAPHIC PRINTING PLATES**

Investigation No. 337-TA-636

**NOTICE OF COMMISSION DETERMINATION TO REVIEW IN PART AN INITIAL
DETERMINATION FINDING RESPONDENTS IN VIOLATION OF SECTION 337 AND
ON REVIEW TO AFFIRM THE ADMINISTRATIVE LAW JUDGE'S
DETERMINATION THAT THERE IS A VIOLATION OF SECTION 337; SCHEDULE
FOR BRIEFING ON THE ISSUES ON REVIEW AND ON REMEDY, PUBLIC
INTEREST, AND BONDING**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: The United States International Trade Commission hereby provides notice that it has determined to review in part the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) finding a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) by the remaining respondents in the above-captioned investigation. Specifically, the Commission has determined to modify the ALJ’s claim construction analysis, but to affirm the ALJ’s determination of violation of section 337. Notice is further given that the Commission is requesting briefing on remedy, the public interest, and bonding with respect to the respondents found in violation.

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: This investigation was instituted on March 7, 2008, based on a complaint filed by Presstek, Inc. (“Presstek”) of Hudson, New Hampshire. The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, in the importation into the United States, the sale for importation, and the sale within the United States

after importation of certain laser imageable lithographic printing plates that infringe certain claims of U.S. Patent Nos. 5,339,737 (“the ‘737 patent”) and 5,487,338 (“the ‘338 patent”) and U.S. Trademark Reg. No. 1,711,005 (“the ‘005 trademark”). All assertions relating to the ‘005 trademark were subsequently terminated from the investigation. Certain respondents have been terminated from the investigation, and the remaining respondents are VIM Technologies, Ltd., Hanita Coatings RCA, Ltd., AteCe Canada, Guaranteed Service & Supplies, Inc., Recognition Systems, Inc., and Spicers Paper, Inc. (hereinafter referred to collectively as “Respondents”).

On July 24, 2009, the ALJ issued the subject ID finding that a violation of section 337 has occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain laser imageable lithographic printing plates by reason of infringement of one or more of claims 1, 10, and 27 of the ‘737 patent and by reason of infringement of one or more of claims 20, 21, and 23 of the ‘338 patent.

Respondents filed a combined petition for review of the ID, which Presstek and the Commission investigative attorney opposed. Having reviewed the record of this investigation, including Respondents’ petition for review and the responses thereto, the Commission has determined to review certain aspects of the ID relating to claim construction. On review, the Commission has determined to modify the ID by supplementing the ALJ’s claim construction analysis for reasons that will be provided in the Commission’s opinion on remedy, the public interest, and bonding, and has determined to affirm the ALJ’s determination of violation of section 337.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease-and-desist orders that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or 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 orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission’s action. *See Presidential*

Memorandum of July 21, 2005, 70 *Fed. Reg.* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under 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 if a remedy is ordered.

WRITTEN SUBMISSIONS: The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainants and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the dates that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on October 6, 2009. Reply submissions, if any, must be filed no later than the close of business on October 13, 2009. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document 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* 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.

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 210.42 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42).

By order of the Commission.

/s/
Marilyn R. Abbott
Secretary to the Commission

Issued: September 24, 2009