

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN POLYIMIDE FILMS,
PRODUCTS CONTAINING SAME,
AND RELATED METHODS**

Investigation No. 337-TA-772

**NOTICE OF COMMISSION DETERMINATION TO PARTIALLY REVIEW AND
PARTIALLY VACATE THE FINAL INITIAL DETERMINATION OF THE
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 partially review and partially vacate the final initial determination (“final ID” or “ID”) of the presiding administrative law judge (“ALJ”) in the above-captioned investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“section 337”). The ALJ found no violation of section 337.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3065. 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 (<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 May 4, 2011, based on a complaint filed on behalf of Kaneka Corporation of Osaka, Japan (“Kaneka”). 76 *Fed. Reg.* 25373 (May 4, 2011). The complaint alleges violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the sale for importation, importation, or sale after importation of certain polyimide films, products containing same, and related methods by reason of infringement of one or more of claims 1-3 and 9-10 of U.S. Patent No. 6,264,866 (“the ‘866 patent”); claims 1-6 of U.S. Patent No. 6,746,639 (“the ‘639 patent”); claims 1-5 of U.S. Patent No. 7,018,704 (“the ‘704 patent”); and claims 1-20 of U.S. Patent No. 7,691,961 (“the ‘961 patent”). The Commission's notice of investigation named as respondents SKC Kolon PI, Inc. of Gyeonggi-do, South Korea and SKC Corporation of Covington, Georgia (“collectively, “SKC”).

On February 23, 2012, the Commission issued notice of its determination not to review an ID (Order No. 26) that Kaneka has satisfied the importation requirement with respect to all versions of the following SKC products: IN30 (75 um), IN70 (19um), IN 70 (25um), IN70 (50um), IF30 (7.5um), IF70 (12.5um), LV100, LV200, and LV300.

On February 27, 2012, the Commission issued notice of its determination not to review an ID (Order No. 25) terminating the investigation with respect to claims 4-5 of the '704 patent and claims 4, 11, 16, 17, and 20 of the '961 patent.

An evidentiary hearing was held from March 12, 2012, to March 16, 2012.

On May 10, 2012, the ALJ issued a final ID finding no violation of section 337 in the above-identified investigation. Specifically, the ALJ found that there was no violation with respect to the '866 patent, the '639 patent, the '704 patent, or the '961 patent by SKC. The ALJ also issued a recommended determination on remedy and bonding.

On May 22, 2012, Kaneka filed a petition for review of the final ID and on May 23, 2012, SKC filed a contingent petition for review. On May 30, 2012, SKC filed a response to Kaneka's petition, and on May 31, 2012, Kaneka filed a response to SKC's contingent petition.

Having examined the final ID, the petitions for review, the responses thereto, and the relevant portions of the record in this investigation, the Commission has determined to partially review the final ID as follows. With respect to the '866 patent, the Commission has determined to review the finding that Kaneka does not satisfy the technical prong of the domestic industry requirement. With respect to the '704 patent, the Commission has determined to review and vacate as moot the ALJ's alternative findings that the accused products do not infringe, that claim 1 is not invalid for anticipation or obviousness, and that Kaneka does not satisfy the technical prong or the economic prong of the domestic industry requirement. The Commission has determined not to review the ALJ's conclusion that the asserted claims of the '704 patent are invalid for indefiniteness. With respect to the '961 patent, the Commission has determined to review the ALJ's finding that certain of the accused products infringe and certain of the accused products do not infringe claim 9. The Commission has determined not to review the remainder of the ID.

The parties are requested to brief their positions on only the following questions, with reference to the applicable law and the evidentiary record:

- (1) With respect to the '866 patent, would a complainant satisfy the technical prong of the domestic industry requirement if the products offered to satisfy the requirement met the elements of the asserted claims only intermittently or occasionally? *See* ID at 302.
- (2) With respect to claim 9 of the '961 patent, would a person of ordinary skill in the art require all replicates to be within the claimed range? Is there any evidence of record to indicate how a person of ordinary skill in the art would use confidence intervals or

other statistical methods of working with variance to compare replicates with a claimed range?

The Commission does not request briefing on remedy, the public interest, and bonding at this time.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be concise and thoroughly referenced to the record in this investigation, including references to exhibits and testimony. The written submissions must be filed no later than the close of business on August 15, 2012. Reply submissions must be filed no later than the close of business on August 22, 2012. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must do so in accordance with Commission rule 210.4(f), 19 C.F.R. § 210.4(f), which requires electronic filing. The original document and eight true copies thereof must also be filed on or before the deadlines stated above with the Office of the Secretary. 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 19 C.F.R § 201.6. Documents for which confidential treatment is granted by the Commission 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 under Part 210 of the Commission's Rules of Practice and Procedure (19 C.F.R. Part 210).

By order of the Commission.



William R. Bishop
Hearings and Meetings Coordinator

Issued: August 1, 2012