

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

In the Matter of)	
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CERTAIN AMMONIUM)	Inv. No. 337-TA-477
OCTAMOLYBDATE ISOMERS)	
)	

**NOTICE OF COMMISSION DETERMINATION
OF NO VIOLATION OF SECTION 337;
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 to terminate the above-captioned investigation with a finding of no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. §1337.

FOR FURTHER INFORMATION CONTACT: Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3090. Copies of the Commission order, the public version of the forthcoming Commission opinion in support thereof, the public version of the administrative law judge's (ALJ's) final initial determination (ID), and all other 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) 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 August 20, 2002, based on a complaint filed by Climax Molybdenum Company (Climax) against one respondent, Molychem LLC. (Molychem). *67 Fed. Reg.* 53966. In that complaint, as supplemented, Climax alleged violations of section 337 in the importation into the United States, sale for importation, and/or sale within the United States after importation of certain ammonium octamolybdate isomers by reason of infringement of claim 1 of Climax's U.S. Patent No. 5,985,236. Subsequently, the complaint and notice of investigation were amended to add four additional respondents to the investigation: Anhui Wonder Trade Co., Ltd.; Pudong Trans USA, Inc.; John S. Conner, Inc. (Conner); and Chem-Met International, Inc. One of these respondents, Conner, was eventually terminated from the investigation as the result of a settlement agreement.

On May 15, 2003, the ALJ issued his final ID on violation and his recommended determination on remedy and bonding. The ALJ found no violation of section 337 because he concluded that claim 1 of the '236 patent was invalid on the basis of an on-sale bar under 35 U.S.C. § 102(b). Complainant Climax filed a petition for review of the ID on May 27, 2003. On May 30 and June 3, 2003, respectively, respondent Molychem and the Commission investigative attorney each filed a response to the petition for review. On June 10, 2003, Climax filed a motion for leave to file a reply to the response of the Commission investigative attorney, including its proposed reply. On June 11, 2003, Molychem filed a motion to strike Climax's motion for leave.

On June 30, 2003, the Commission issued notice of its determination to review the ID in its entirety, and set a schedule for the receipt of written submissions on the question of violation of section 337 and on the issues of remedy, public interest, and bonding. The Commission denied Climax's request for oral argument. The Commission also denied Climax's motion for leave to file a reply and Molychem's motion to strike, without prejudice to Climax or Molychem renewing their arguments in their written submissions on review.

Having examined the record in this investigation, including the ALJ's final ID, the written submissions on review, and the responses thereto, the Commission determined to terminate this investigation with a finding of no violation of section 337 for the following reasons:

1. Claim 1 of the '236 patent is invalid under 35 U.S.C. §102(b) as anticipated by the Tytko article and by the Huggins patent.
2. Claim 1 of the '236 patent is invalid under 35 U.S.C. §102(b) because of an on-sale bar.
3. The '236 patent is unenforceable because of inequitable conduct during the prosecution of its underlying application at the U.S. Patent and Trademark Office.

The Commission also determined to deny Molychem's request for oral argument during the review proceeding.

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.

Marilyn R. Abbott
Secretary

Issued: August 20, 2003

