

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

In the Matter of

**CERTAIN HOME VACUUM
PACKAGING PRODUCTS**

Inv. No. 337-TA-496

**NOTICE OF COMMISSION DETERMINATION DENYING A MOTION FOR
TEMPORARY RELIEF**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to adopt in part the initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on December 16, 2003, thereby denying complainant’s motion for temporary relief in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-3152. Copies of the Commission order, the public version of the Commission opinion in support thereof, the public version of the 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. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. 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>.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 18, 2003, based upon a complaint filed by Tilia, Inc. and Tilia International (collectively, "Tilia"). 68 *Fed. Reg.* 49521-522. At the same time, the Commission provisionally accepted a motion for temporary relief filed by Tilia. In its complaint, Tilia alleges that the accused imported products infringe claims 3, 4, 6, 24-25, and 34 of U.S. Patent No. 4,941,310 ("the '310 patent"). The temporary relief motion was limited to claim 34 of the '310 patent. The notice of investigation named Applica, Inc.; Applica Consumer Products, Inc.; ZeroPack Co., Ltd.; The Holmes Group, Inc.; and The Rival Company as respondents.

On August 18, 2003, the temporary relief proceedings were designated "more complicated" by the ALJ, thereby extending the statutory deadline for issuance by the Commission of a decision on the motion for temporary relief from 90 to 150 days from the date of institution, *i.e.*, until January 15, 2004. On September 9, 2003, the ALJ held a hearing regarding the interpretation of claim 34 of the '310 patent solely for the purposes of temporary relief. On September 17, 2003, the ALJ issued Order No. 5 setting forth his construction of claim 34 for the purposes of temporary relief.

The evidentiary hearing on temporary relief was conducted on September 30, October 1, and October 7, 2003. On December 16, 2003, the ALJ issued an ID denying complainant's motion for temporary relief. On December 29, 2003, all parties filed written comments concerning the ID. Responses to the comments were filed on December 31, 2003. Complainant Tilia also requested oral argument before the Commission on the temporary relief ID.

Having examined the relevant record in this investigation, including Order No. 5, the ID, the written comments on Order No. 5 and the ID, and the replies thereto, the Commission determined to adopt the ID, except that it determined to set aside the ALJ's finding that the Taunton patent "inherently" discloses the trough means of claim 34 of the '310 patent, to set aside the ALJ's finding that there is a reasonable likelihood of success on the merits that claim 34 of the '310 patent is invalid as obvious, and to vacate the ALJ's finding that the public interest does not favor the issuance of temporary relief to complainant Tilia. The Commission also determined to deny complainant Tilia's request for oral argument on the temporary relief ID.

This action is taken under the authority of section 337(e) of the Tariff Act of 1930, as amended (19 U.S.C. § 1337(e)), and section 210.66 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.66.

By order of the Commission.

Marilyn R. Abbott
Secretary

Issued: January 15, 2004