

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

In the Matter of)

**CERTAIN TOOL HOLDERS, TOOL SETS,
AND COMPONENTS THEREFOR**)

Inv. No. 337-TA-483

**NOTICE OF COMMISSION DECISION NOT TO REVIEW AN INITIAL
DETERMINATION FINDING NO VIOLATION OF SECTION 337
OF THE TARIFF ACT OF 1930 AND TERMINATING THE INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") finding no violation of section 337 of the Tariff Act of 1930 and terminating the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3012. Copies of the ALJ's 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 by notice published in the Federal Register on December 27, 2002, in response to a complaint filed on behalf of Allen-Pal, LLC of San Jose and Los Gatos, California. *67 Fed. Reg.* 79,148 (2002). The complaint, as supplemented, alleged violations of section 337 in the importation into the United States and the sale within the United States after importation of certain tool handles, tool holders, tool sets, and components therefor by reason of infringement of claims 1, 2, 11, 12, 23, 24, 28, 29, and 30 of U.S. Patent No. 5,911,799 ("the '799 patent") and claims 1, 14, 18, 19, 34, 37, 40, and 41 of U.S. Patent No. 6,311,587 ("the '587 patent"). *Id.* The Commission named two respondents, Danaher Corporation of Washington, DC, and Danaher Tool Group of Hunt Valley,

Maryland (collectively, “Danaher”).

On April 22, 2003, the ALJ issued an ID (Order No. 7) terminating the investigation with respect to claims 2, 28, 29, and 30 of the ‘799 patent and with respect to claim 18 of the ‘587 patent. On April 24, 2003, the ALJ issued an ID (Order No. 8) amending the complaint and notice of investigation to add as respondents Hi-Five Products Developing Company of Taichung, Taiwan (“Hi-Five”), and Bobby Hu, of Taichung, Taiwan. Those IDs were not reviewed by the Commission.

On May 27, 2003, the Commission investigative attorney (“IA”) moved, pursuant to Commission rule 210.15(a), for a summary determination of no violation based upon non-infringement of asserted claims 1, 11, 12, 23, and 24 of the ‘799 patent and asserted claims 1, 14, 19, 34, 37, 40, and 41 of the ‘587 patent, the only claims remaining in issue, by the accused tool handles, tool holders, and tool sets imported into and sold in the United States by Danaher. The IA noted that these are the same products that respondents Hi-Five and Hu are accused of selling.

On June 10, 2003, complainant and Danaher filed a joint motion pursuant to Commission rule 210.21(a) and (b) to terminate Danaher as a respondent on the basis of a settlement agreement. On June 11, 2003, Danaher filed a response stating that it would not submit a substantive response to the IA’s motion for summary determination in light of the pending joint motion for termination of the investigation based on a settlement agreement. On June 11, 2003, complainant filed its opposition to the IA’s motion for summary determination. On June 13, 2003, the IA filed a motion for leave to reply to complainant’s opposition with attached reply. On June 18, 2003, complainant filed a reply opposition.

On June 20, 2003, the ALJ issued an ID (Order No. 14) granting the IA’s motion for summary determination and terminating the investigation. The ID found no violation of section 337 by reason of no infringement by any respondent of any of the 12 patent claims remaining in issue in the investigation. The ALJ noted that the June 10, 2003, joint motion for termination was pending before him. ID at 1 n.2. On June 26, 2003, complainant filed a motion for extension of time to file a petition for review of the ID. On June 27, 2003, the Chairman granted the motion and extended complainant’s deadline for filing a petition for review until July 3, 2003. On July 2, 2003, the Commission extended the deadline for determining whether to review the ID until Wednesday, August 13, 2003. No petitions for review of the ID were filed.

This action is taken under the authority of 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.

Marilyn R. Abbott
Secretary to the Commission

Issued: July 28, 2003