

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of)	
)	
CERTAIN ZERO-MERCURY-ADDED)	Inv. No. 337-TA-493 (Remand)
ALKALINE BATTERIES, PARTS)	
THEREOF, AND PRODUCTS)	
CONTAINING SAME)	

**NOTICE OF COMMISSION DECISION TO TERMINATE REMANDED
INVESTIGATION WITH A FINDING OF NO VIOLATION**

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 remanded investigation with a finding of no violation of section 337.

FOR FURTHER INFORMATION CONTACT: Christal Sheppard, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2301. 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 on June 2, 2003, based on a complaint filed by Energizer Holdings, Inc. and Eveready Battery Company, Inc. (collectively, "EBC"), both of St. Louis, Missouri. 68 *Fed. Reg.* 32771 (June 2, 2003). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain zero-mercury-added alkaline batteries, parts thereof, and products containing same by reason of infringement of claims 1-12 of U.S. Patent No. 5,464,709 ("the '709 patent"). The complaint and notice of investigation named 26 respondents and were later amended to include an additional firm as a respondent. The investigation has

been terminated as to claims 8-12 of the '709 patent. Several respondents have been terminated from the investigation for various reasons.

On October 1, 2004, the Commission issued notice in the original investigation that it had determined to terminate the investigation with a finding of no violation of section 337 on the basis that the asserted claims of the '709 patent were invalid for indefiniteness. EBC appealed the Commission's final determination to the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit"). On January 25, 2006, the Federal Circuit issued its decision in the appeal, reversing the Commission's final determination and remanding the investigation to the Commission. *Energizer Holdings, Inc. v. International Trade Commission*, 435 F.3d 1366 (Fed. Cir. 2006). The Federal Circuit issued its mandate on March 20, 2006. On April 14, 2006, the Commission issued an order directing all parties to the investigation to provide comments on how this investigation should proceed, including comments on whether and to what extent the investigation should be remanded to the ALJ.

Having considered the record in this investigation, including the comments received pursuant to the Commission's order of April 14, 2006, the Commission has determined to terminate this investigation with a finding of no violation of section 337. Specifically, the Commission has determined that the asserted claims are invalid for failure to meet the written description requirement and that, if valid, they are not infringed by respondents' products. Vice Chairman Aranoff and Commissioner Lane dissented from the Commission's final determination.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and sections 210.41-.51 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.41-.51).

By order of the Commission.

/S/

Marilyn R. Abbott
Secretary to the Commission

Issued: February 23, 2007