

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN LAMINATED FLOOR
PANELS**

Inv. No. 337-TA-545
**Consolidated Enforcement and Advisory
Opinion Proceedings**

**NOTICE OF INSTITUTION OF CONSOLIDATED FORMAL ENFORCEMENT AND
ADVISORY OPINION PROCEEDINGS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has instituted consolidated enforcement and advisory opinion proceedings relating to the general exclusion order issued at the conclusion of the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: James Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436, telephone (202) 205-3065. Copies of all 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 SW., 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 the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the above-identified investigation on August 3, 2005, based on a complaint filed by Unilin Beheer B.V. of the Netherlands, Flooring Industries Ltd. of Ireland, and Unilin Flooring N.C. L.L.C. of North Carolina. 70 *Fed. Reg.* 44,694 (August 3, 2005). The complaint, as amended, alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain laminated floor panels by reason of infringement of one or more of claims 1, 14, 17, 19-21, 37, 52, 65, and 66 of U.S. Patent No. 6,006,486 ("the '486 patent"); claims 1, 2, 10, 13, 18, 19, 22-24, and 27 of U.S. Patent No. 6,490,836 ("the '836 patent"); claims 1-6 of U.S. Patent No. 6,874,292 ("the '292 patent"); and claims 1, 5, 13, 17, 27 and 28 of U.S. Patent No. 6,928,779 ("the '779 patent"). The investigation was subsequently terminated with respect to the '486 patent.

On July 3, 2006, the ALJ issued his final initial determination (“ID”), finding infringement of claims 10, 18, and 23 of the ‘836 patent with respect to certain accused products. However, he found no infringement of claims 1 and 2 of the ‘836 patent or claims 3 and 4 of the ‘292 patent, except that he did find infringement of claim 1 of the ‘836 patent by several respondents who had previously been found in default. The ALJ further held claims 5 and 17 of the ‘779 patent invalid for lack of written description. However, the ALJ stated that if valid, those claims were infringed by some of respondents’ products. The ALJ recommended a general exclusion order directed to infringing products and cease and desist orders against defaulting domestic respondents.

The Commission received petitions for review from multiple parties. It determined to review several conclusions in the ID, and after further briefing reversed the ALJ on certain of the issues on review. The Commission found that certain accused products did in fact infringe claims 1 and 2 of the ‘836 patent and claims 3 and 4 of the ‘292 patent, as construed. The Commission also held on review that there was no new matter in the ‘779 patent and thus claims 5 and 17 of the ‘779 patent met the written description requirement. On January 5, 2007, the Commission determined that there was a violation of section 337 and issued a general exclusion order under 19 U.S.C. § 1337(d)(2) with regard to products covered by claims 1, 2, 10, 18, or 23 of the ‘836 patent; claims 3 or 4 of the ‘292 patent; or claims 5 or 17 of the ‘779 patent. The Commission also issued cease and desist orders to certain domestic respondents. The United States Trade Representative did not disapprove the Commission’s determination.

Respondents Power Dekor Group Co., Ltd. (“Power Dekor”), Yingbin-Nature (Guandong) Wood Indus. Co., Ltd., and Jiangsu Lodgi Wood Indus. Co., Ltd. appealed the Commission’s final determination to the U.S. Court of Appeals for the Federal Circuit. Power Dekor has since withdrawn from this appeal. The appeal with respect to infringement is limited to claims 1 and 2 of the ‘836 patent and claims 3 and 4 of the ‘292 patent. The appellants also challenge the Commission’s determination that claims 5 and 17 of the ‘779 patent satisfy the written description requirement. The Court has held oral argument but has not issued a decision.

Unilin Beheer B.V. of the Netherlands, Flooring Industries Ltd. sarl of Luxembourg, and Unilin Flooring N.C. LLC of North Carolina (collectively, “Unilin”) filed a complaint on March 24, 2008, and filed a corrected complaint on April 30, 2008, requesting that the Commission institute a formal enforcement proceeding under Commission Rule 210.75 to investigate violations of the general exclusion order. The complaint named as respondent Uniboard Canada, Inc. (Quebec, Canada) (“Uniboard”). On April 15, 2008, Uniboard filed a request for an initial advisory opinion that its products would not violate the general exclusion order. Uniboard requested that the advisory opinion proceeding be consolidated with any enforcement proceeding concerning Uniboard.

Having examined Unilin’s complaint seeking a formal enforcement proceeding and having found that the complaint complies with the requirements for institution of formal enforcement proceedings in Commission rule 210.75, the Commission has determined to

institute a formal enforcement proceeding to determine whether Uniboard is in violation of the Commission's general exclusion order in the above-captioned investigation, and what, if any, enforcement measures are appropriate.

The following entities were named as parties to the formal enforcement proceeding: (1) complainants Unilin Beheer B.V., Flooring Industries Ltd. sarl, Unilin Flooring N.C. LLC, (2) respondent Uniboard Canada Inc., and (3) a Commission investigative attorney to be designated by the Director, Office of Unfair Import Investigations.

Having examined Uniboard's request for an advisory opinion and having found that the request complies with the requirements for institution of an advisory opinion proceeding in Commission rule 210.79, the Commission has determined to institute an advisory opinion proceeding to determine whether the floor panels sought to be imported by Uniboard are covered by the general exclusion order issued in the above-captioned investigation. The following were named as parties to the advisory opinion proceeding: Unilin Beheer B.V., Flooring Industries Ltd. sarl, Unilin Flooring N.C. LLC, Uniboard Canada Inc., and a Commission investigative attorney to be designated by the Director, Office of Unfair Import Investigations.

The Commission has determined to consolidate the formal enforcement and advisory opinion proceedings and has certified the consolidated proceedings to administrative law judge Paul J. Luckern. The administrative law judge may conduct such proceedings as appropriate for the issuance of an enforcement initial determination and an initial advisory opinion.

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 sections 210.75 and 210.79 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.75, 210.79).

By order of the Commission.

/s/

Marilyn R. Abbott
Secretary to the Commission

Issued: June 20, 2008