

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

In the Matter of

**CERTAIN SELF-CLEANING LITTER
BOXES AND COMPONENTS THEREOF**

Investigation No. 337-TA-625

**NOTICE OF DECISION TO REVIEW AND MODIFY AN INITIAL DETERMINATION,
FINDING THAT THE ECONOMIC PRONG OF THE DOMESTIC INDUSTRY
REQUIREMENT IS MET, TO INCLUDE THE RELATED CLARIFYING ORDER**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review an initial determination (“ID”) (Order No. 28) issued by the presiding administrative law judge (“ALJ”) granting the motion of complainant Applica Consumer Products, Inc. (“Applica”) for summary determination regarding the economic prong of the domestic industry requirement and on review to modify it to include the clarification subsequently issued by the ALJ (Order No. 34).

FOR FURTHER INFORMATION CONTACT: Mark B. Rees, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3116. Copies of non-confidential 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 at <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 December 28, 2007, based on a complaint filed by then-separate corporate entities Applica Incorporated and Applica Consumer Products, Inc. of Miramar, Florida (the former subsequently merged with and into the latter); and Waters Research Company of West Dundee, Illinois. 72 *Fed. Reg.* 73884 (Dec. 28, 2007) (notice of investigation); 73 *Fed. Reg.* 13566 (Mar. 13, 2008) (notice of amendment of complaint and notice of investigation to reflect corporate merger). The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States

after importation of certain self-cleaning litter boxes and components thereof by reason of infringement of various claims of U.S. Patent No. RE36,847. The complaint named Lucky Litter, L.L.C. of Chicago, Illinois; Doscocil Manufacturing Co., Inc. of Arlington, Texas; and OurPet's Company of Fairport Harbor, Ohio as respondents.

On July 1, 2008, Applica filed a motion for summary determination that it satisfied the economic prong of the domestic industry requirement. Respondents did not oppose the motion, and the Commission investigative attorney ("IA") filed a response in support of it. On July 21, 2008, the ALJ issued the subject ID granting the motion. Based on the undisputed, material facts, he found the economic prong met as a matter of law.

On July 25, 2008, the IA filed a request, supported by Applica, for clarification of the ID that undisputed evidence of Applica's economic activity as allocated to articles allegedly protected by the asserted patent, rather than simply Applica's aggregate economic activity, supported the motion's grant. The ALJ issued a clarification of the subject ID on July 28, 2008 (Order No. 34) in which he itemized specific economic activity on an allocated basis that supported his finding that Applica had proved the economic prong of the domestic industry requirement.

No petitions for review were filed.

The Commission has determined to review and modify the ID to include the clarifying order, Order No. 34.

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 210.42 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42).

By order of the Commission.

/s/
Marilyn R. Abbott
Secretary to the Commission

Issued: August 8, 2008