

violation. On July 25, 2008, after review, the Commission affirmed the ALJ's final ID with certain modifications and clarifications, and terminated the investigation with a finding of no violation of section 337. The Commission took no position regarding the issue of enforceability of the '858 and '789 patents. On February 24, 2010, the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit") issued its judgment overturning the Commission's findings regarding invalidity of the '858 patent, and non-infringement/lack of domestic industry concerning the '789 patent. *See Crocs, Inc. v. United States Int'l Trade Comm'n*, 598 F.3d 1294, 1311 (Fed. Cir. 2010). The Federal Circuit also specifically "remand[ed] the investigation for a determination of infringement of the '858 patent and any appropriate remedies." *Id.* On July 6, 2010, the Commission remanded the investigation to the ALJ to decide the remaining issue of enforceability of the patents.

On February 9, 2011, the ALJ issued his remand ID finding that the asserted patents were not unenforceable. On February 25, 2011, respondents Effervescent and Double Diamond filed both a joint petition for review of the remand ID and a motion for leave to file the petition two (2) days late. On March 4, 2011, the Commission issued an order declining to grant the motion, but without prejudice to respondents refiling their motion stating good cause for the enlargement of time. On March 16, 2011, respondents Effervescent and Double Diamond filed a joint motion for an enlargement of the time for filing petitions for review of the remand ID. On March 18, 2011, the Commission issued an order granting the motion for an enlargement of time and making responses due on March 28, 2011. On March 28, 2011, Crocs and the Commission investigative attorney ("IA") each filed a brief in response to respondents' petition for review.

On April 25, 2011, the Commission issued notice of its determination not to review the ALJ's remand ID and requested written submissions on the issues of remedy, the public interest, and bonding from the parties and interested non-parties. *See* 76 FR 24052-53 (April 29, 2011). The Commission's notice also included its determination to reaffirm the ALJ's previous ruling that claims 1 and 2 of the '858 patent are infringed by Effervescent's accused products, and that claim 2 of the '858 patent is infringed by Double Diamond's accused products. *See* 73 FR 35710-11 (June 24, 2008); Remand ID at 2 (February 9,

2011) (*citing* Final ID at 121 (April 11, 2008)); Comm'n Op. at 3-4, n. 1 (July 25, 2008). These actions, along with the Federal Circuit's decision, resulted in a finding of a violation of section 337 with respect to both asserted patents by Double Diamond and Effervescent. Holey Soles was found in violation with respect to the '789 patent based on the Federal Circuit's reversal of non-infringement and lack of domestic industry as to this patent. *See Crocs*, 598 F.3d at 1311.

On May 6 and 13, 2011, respectively, complainant Crocs and the IA filed briefs and reply briefs on remedy, the public interest, and bonding. Also, on May 6 and 13, 2011, respectively, respondent Effervescent filed a brief and reply brief on these issues. Respondent Double Diamond filed a reply brief on May 13, 2011.

The Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is both: (1) A general exclusion order prohibiting the unlicensed entry of foam footwear that infringe one or more of (i) claims 1-2 of the '858 patent, and (ii) the claimed design of the '789 patent; and (2) cease and desist orders prohibiting Double Diamond, Effervescent, and Holey Soles from conducting any of the following activities in the United States: Importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for, foam footwear that infringe one or more of (i) claims 1 or 2 of the '858 patent, and (ii) the claimed design of the '789 patent.

The Commission further determined that the public interest factors enumerated in section 337(d)(1) (19 U.S.C. 1337(d)(1)) do not preclude issuance of the general exclusion order or the cease and desist orders. Finally, the Commission determined to set a bond of \$0.00 for Double Diamond's covered products, a bond of \$0.01 per pair of shoes for Holey Soles' covered products, a bond of \$0.05 per pair of shoes for Effervescent's covered products, and a bond of 100% of the entered value (for all other covered products) to permit temporary importation during the period of Presidential review (19 U.S.C. 1337(j)). The Commission's orders and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

The Commission has terminated this investigation. 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 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.50).

Issued: July 15, 2011.

By order of the Commission.

**James R. Holbein,**  
*Secretary to the Commission.*

[FR Doc. 2011-18338 Filed 7-20-11; 8:45 am]

BILLING CODE 7020-02-P

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-717]

### In the Matter of Certain Digital Imaging Devices and Related Software; Notice of Commission Decision Not To Review the ALJ's Final Initial Determination Finding No Violation of Section 337; Termination of 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") final initial determination ("ID") issued on May 12, 2011, finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in this investigation.

#### FOR FURTHER INFORMATION CONTACT:

Panyin Hughes, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-3042. 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, SW., Washington, DC 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 May 19, 2010, based on a complaint filed by Apple Inc. of Cupertino, California ("Apple"). 75 FR 28058 (May 19, 2010). The complaint alleged

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 digital imaging devices and related software by reason of infringement of various claims of United States Patent Nos. 6,031,964 and RE 38,911. The complaint named Eastman Kodak Company of Rochester, New York ("Kodak") as respondent.

On May 12, 2011, the ALJ issued his final ID, finding no violation of section 337 by Kodak with respect to any of the asserted claims of the asserted patents. Specifically, the ALJ found that the accused products do not infringe the asserted claims of the '964 patent. The ALJ also found that none of the cited references rendered the asserted claims obvious, and that Kodak is not a co-owner of the patent. Regarding the '911 patent, the ALJ found that the accused products do not infringe its asserted claims. The ALJ also found that the prior art anticipates and invalidates the asserted claims and that Kodak is not a co-owner of the patent. The ALJ concluded that an industry exists within the United States that practices the '911 patent but that a domestic industry does not exist with respect to the '964 patent as required by 19 U.S.C. 1337(a)(2).

On June 1, 2011, Apple filed a petition for review of the ALJ's findings related to the '964 patent. Apple did not petition for review of any of the ALJ's findings related to the '911 patent. On June 9, 2011, the Commission investigative attorney ("IA") and Kodak filed respective responses to Apple's petition for review. Neither the IA nor Kodak filed petitions or contingent petitions for review of the ID.

Having examined the record of this investigation, including the ALJ's final ID, the petition for review, and the responses thereto, the Commission has determined not to review the subject ID.

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 210.42-46 of the Commission's Rules of Practice and Procedure (19 CFR 210.42-46).

By order of the Commission.  
Issued: July 18, 2011.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2011-18435 Filed 7-20-11; 8:45 am]

**BILLING CODE 7020-02-P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Air Act, Sections 113(b) and 304(a), 42 U.S.C. 7413(b), 7604(a)

Notice is hereby given that on July 13, 2009, a proposed Second Amendment Consent Decree in United States of America; Commonwealth of Pennsylvania; City of Philadelphia; State of Oklahoma; and State of Ohio v. Sunoco, Inc., Civil Action 05-02866, was lodged with the United States District Court for the Eastern District of Pennsylvania.

This Second Amendment to the Consent Decree amends the Consent Decree entered by the Court on March 20, 2006 as well as the First Amendment to the Consent Decree entered by the Court on June 3, 2009. Specifically, the Second Amendment changes the date of completion of installation of pollution control equipment from June 2013 to June 2015. The second Amendment requires Sunoco to perform other pollution control measures in the interim time period, including lowering emissions limits and installing controls on other equipment to achieve greater reduction of emissions.

The Department of Justice will receive for a period of 30 days from the date of this publication comments relating to the Amended Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to [pubcomment-ees.enrd@usdoj.gov](mailto:pubcomment-ees.enrd@usdoj.gov) or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States of America; Commonwealth of Pennsylvania; City of Philadelphia; State of Oklahoma; and State of Ohio v. Sunoco, Inc.*, Civil Action 05-02866, D.J. Ref. 90-5-2-1-1744/1.

The Amended Consent Decree may be examined at the Office of the United States Attorney, Zane D. Memeger, 615 Chestnut Street, Ste. 1250, Philadelphia, PA 19106, (215) 861-8200.

During the public comment period, the consent decree may also be examined on the following Department of Justice Web site, [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). A copy of the Amended Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no.

(202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$6.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**Maureen M. Katz,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2011-18363 Filed 7-20-11; 8:45 am]

**BILLING CODE 4410-15-P**

## DEPARTMENT OF JUSTICE

### Notice of Proposed Consent Decree Under the Clean Air Act

Notice is hereby given that on July 13, 2011, a proposed Consent Decree was lodged with the District Court of Massachusetts, in *United States v. Polyfoam Corp.*, Civil Action No. 4:11-cv-40134.

In this action, the United States sought penalties and injunctive relief for the Defendant's violations of the Clean Air Act, 42 U.S.C. 7401 *et seq.*, at its molded foam manufacturing facility in Northbridge, Massachusetts. To resolve the United States' claims, the Defendant will pay a penalty of \$127,500, and will install air emission controls at its plant to reduce its emissions of Volatile Organic Compounds into the air.

The Department of Justice will receive comments relating to the proposed Consent Decrees for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to [pubcomment-ees.enrd@usdoj.gov](mailto:pubcomment-ees.enrd@usdoj.gov) or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to the matter as *United States v. Polyfoam Corp.*, DOJ Ref. No. 90-5-2-1-09522.

The proposed Consent Decree may be examined at the Office of the United States Attorney, United States Courthouse, 1 Courthouse Way, Suite 9200, Boston, MA 02210, and at the United States Environmental Protection Agency, 5 Post Office Square, Suite 100, Boston, Massachusetts 02109.

During the public comment period, the proposed agreement may also be examined on the following Department of Justice Web site: [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). Copies of the proposed agreements may also be obtained by mail from the Consent