

position on the issues of validity and unenforceability in the initial determination (ID) issued by the presiding administrative law judge (ALJ) on February 1, 1995, in the above-captioned investigation in accordance with *Beloit Corporation v. Valmet Oy, TVW Paper Machines, Inc. and the United States International Trade Commission*, 742 F.2d 1421 (Fed. Cir. 1984). The Commission has also vacated as moot ALJ Order No. 52. Finally, the Commission has determined to grant a joint motion to terminate certain respondents on the basis of a settlement agreement, and to deny a motion to intervene in the investigation.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3098.

SUPPLEMENTARY INFORMATION: On February 1, 1993, Tanabe Seiyaku Co., Ltd. (Tanabe) and Marion Merrell Dow, Inc. (MMD) (collectively "complainants") filed a complaint under section 337 alleging unfair acts in the importation and sale of diltiazem hydrochloride and diltiazem preparations ("diltiazem") by nine proposed respondents: (1) Abic Ltd. of Netanya, Israel ("Abic"); (2) Gyma Laboratories of America, Inc. of Garden City, New York ("Gyma"); (3) Profarmaco Nobel SRL of Milan, Italy; (4) Mylan Pharmaceuticals, Inc. of Morgantown, West Virginia; (5) Mylan Laboratories, Inc. of Pittsburgh, Pennsylvania (collectively referred to as the "Profarmaco respondents"); (6) Orion Corporation Fermion of Espoo, Finland; (7) Interchem Corporation of Paramus, New Jersey; (8) Copley Pharmaceuticals, Inc. of Canton, Massachusetts; and (9) Rhone-Poulenc Rorer, Inc. of Collegeville, Pennsylvania (collectively referred to as the "Fermion respondents"). Complainants alleged infringement of claim 1 of U.S. Letters Patent 4,438,035 ("the '035 patent"). On March 25, 1993, the Commission voted to institute an investigation of the complaint of Tanabe and MMD. 58 FR 16846 (March 31, 1993).

On May 6, 1993, complainants moved to amend the complaint and notice of investigation to add Plantex U.S.A., Inc. as a respondent. On May 20, 1993, the ALJ issued an ID amending the complaint and notice of investigation to add Plantex as a respondent. Plantex participated in the investigation with respondent Abic, Inc.

On February 1, 1995, the presiding ALJ issued his final ID finding that there was no violation of section 337. He found that claim 1 of the '035 patent

was not infringed by any of respondents' processes, that claim 1 was invalid as obvious under 35 U.S.C. 103, and that the '035 patent was unenforceable because of complainants' inequitable conduct during reexamination proceedings before the U.S. Patent and Trademark Office. In a separate order (Order No. 52), issued on the same date, the ALJ granted respondents' motion for evidentiary sanctions against complainants.

On March 30, 1995, the Commission determined to review the following issues in the ID: (1) Claim interpretation; (2) whether claim 1 of the '035 patent is infringed by respondents' processes; (3) whether claim 1 of the '035 patent is invalid as obvious under 35 U.S.C. 103; (4) whether the '035 patent is unenforceable; and (5) Order No. 52. Order No. 52 was considered to be part of the ID. The Commission posed several specific questions for the parties. The Commission also requested information on the status of the Abic respondents.

On April 13, 1995, complainants and Abic Ltd. and Plantex U.S.A. ("the Abic respondents") filed a joint motion to terminate the investigation as to the Abic respondents on the basis of a settlement agreement. Additionally, on April 13, 1995, Mr. James Gambrell filed a motion to intervene in the investigation.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rule 210.56 (19 CFR 210.56).

Copies of the Commission's Order, the Commission Opinion in support thereof, the nonconfidential version of the 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. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

Issued: June 1, 1995.

By order of the Commission.

Donna R. Koehnke,
Secretary.

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INTERSTATE COMMERCE COMMISSION

[No. 41573¹]

Anacomp, Inc.; Crest Manufacturing Incorporated; Godfrey Marine; Harrison International Incorporated; Health and Personal Care Distribution Conference, Inc.; National Small Shipments Traffic Conference, Inc.; and Truckpro Parts & Service, Inc.—Petition for Declaratory Order—Certain Rates and Practices of Churchill Truck Lines, Inc. (Trans-Allied Audit Company, Inc.)

AGENCY: Interstate Commerce Commission.

ACTION: Institution of declaratory order proceeding.

SUMMARY: The Commission is instituting a proceeding under 49 U.S.C. 10321 and 5 U.S.C. 554(e) to determine whether the collection of undercharges by or on behalf of Churchill Truck Lines, Inc. (Churchill) or Trans-Allied Audit Company, Inc. (Trans-Allied), based on recharacterization of the service provided by Churchill as regular route instead of irregular route, constitutes an unreasonable practice under 49 U.S.C. 10701(a).

DATES: Comments by or on behalf of Churchill or Trans-Allied and any person desiring to submit comments in support of their position are due June 27, 1995. Petitioners' replies and any comments from all other interested persons are due July 7, 1995.

ADDRESSES: The original and 10 copies of comments and replies, which should refer to No. 41573, must be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423. One copy of comments by or on behalf of Churchill or Trans-Allied must be served simultaneously on petitioners' representatives: Richard H. Streeter, 1401 Eye Street, N.W., Suite 500, Washington, DC 20005; and Daniel J. Sweeney, 1750 Pennsylvania Ave., NW., Washington, DC 20006.

¹ This notice embraces docket Nos. 41561, 41567, 41574, and 41575, which involve separately filed petitions seeking declaratory relief from undercharges sought by Churchill Truck Lines, Inc., so that the parties in those proceedings may be served with a copy of this notice. Those proceedings are not consolidated with this one, but parties to those proceedings may request that their proceedings be held in abeyance pending resolution of this proceeding. In No. 41561, a procedural schedule was established by decision served April 18, 1995; in No. 41567, a procedural schedule was established by decision served April 28, 1995; and in Nos. 41574 and 41575, procedural schedules will be established unless the parties request otherwise.