

**BECKER &  
POLIAKOFF**

Legal and Business Strategists

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## **ITC Litigation: Maximizing your Relationship with U.S. Customs and Border Protection**

January 27-28, 2009

Washington, D.C.

# Exclusion Orders and CBP

- CBP Binding Ruling Process
- CBP Protest Process
- CBP Area/Port Director Exclusion Order Notification to Importer Process

# CBP Binding Ruling Process

## 19 CFR Part 177

- Prospective Transactions
- Requested by any Person
  - ◆ In Writing
  - ◆ Samples or Photos or Drawings
  - ◆ Addressed to R&R, OIT, Washington, D.C.
  - ◆ Privileged or Confidential Information
  - ◆ Request Oral Discussion
  - ◆ Ruling is Official Position of CBP
  - ◆ Published 90 days after Issuance

**IPRS for  
Exclusion  
Order  
Issued  
June 15, 1999  
by IPR Branch,  
CBP HQ**



Keyword certain



HELP | AF

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Effective Date: 6/15/1999  
Expiration Date: 7/25/2012

**Exclusion Order**



Customs Recordation Number: EXC 337TA406

Title	CERTAIN LENS-FITTED FILM PACKAGES
Product	DISPOSABLE CAMERAS
Description	ONE TIME USE CAMERAS, SINGLE USE CAMERAS AND DISPOSABLE CAMERAS
Owner Name	FUJI PHOTO FILM CO., LTD.
Gray Market Importations Restricted	NO
Agency Office Registration Number	337-TA-406
Firm	CUSTOMS AND BORDER PROTECTION
Contact Name	PAUL PIZZECK, IPR ATTORNEY 1300 PENN. AVENUE NW/MINT ANNEX 1300 PENN. AVENUE NW/MINT ANNEX WASHINGTON, DC 20229
Phone Number	(202) 572-8710

**Issue:** Whether the sample cameras are within the scope of ITC's General Exclusion Order in Investigation No: 337-TA-406 such that they are excluded from entry for consumption into the U.S.?

In Investigation No: 337-TA-406, the ITC determined that certain LFFP infringed claims under one or more of 15 patents owned by Fuji Photo Film Co., Inc.

The ITC ordered that LFFP that infringed any of the patents be excluded for consumption into the U.S., and notified CBP accordingly.

# CBP Binding Rulings on Lens-Fitted Film Packages:

HQ 468780 (March 27, 2000)

HQ 468842 (March 27, 2000)

HQ 470154 (January 26, 2001)

HQ 472462 (July 25, 2002)

HQ 474182 (November 6, 2003)

# HQ 475295

(February 20, 2004)

Imported Product within the scope of ITC Limited Exclusion Order issued pursuant to Investigation No: 337-TA-365.

(Certain Audible Alarm Devices by Divers)

Holding: “Aquatec’s Scub-Alert may not be entered for consumption into the United States. In accordance with our finding, this Office will notify all ports of entry.”

# Protest of CBP Decisions Regarding Exclusion Orders

19 CFR Part 174

- CBP Form 19 (in quadruplicate)
  - Filed by Importer
  - Filed with local CBP Area/Port Director
  - Filed within 180 days of written notice by CBP excluding merchandise from entry
  - Specific description of merchandise
  - Justification for objection

**Issue: Whether cameras that are the subject of the Protest are within the scope of the General Exclusion Order by the ITC such that they are excluded from entry for consumption into the U.S.?**

HQ 471057 (June 21, 2001)

HQ 472103 (June 5, 2002)

Protest No: 3001-01-100115

Lens Fitted Film Packages

General Exclusion Order

Investigation No: 337-TA-406

# Holding by CBP:

The sample cameras are within the scope of the general Exclusion Order issued by the ITC in Investigation No: 337-TA-406, and are excluded from entry for consumption into the United States.

The Protest should be denied in full.

# **Customs Directive 2310-006A**

**Issued December 16, 1999**

**Subject: Exclusion Orders**

Provides guidance to CBP Area/Port Directors regarding standard written notification of such exclusion to the importer.

# **ITC Investigation No: 337-TA-522**

## **(Certain Ink Markers and Packaging thereof)**

**The protected trade dress is as follows:**

**A distinctive gray, tapered, cigar-shaped barrel; a tapered, fully-colored cap that contrasts with the gray color of the barrel; and a cap-to-barrel ratio of approximately 1/3 to 2/3 (a 1:2 ratio) of the total size of the marker.)**



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## Sample CBP Letter to Importer of Excluded Merchandise for ITC Investigation No: 337-TA-5

301 East Ocean Blvd, Suite 700  
Long Beach, CA 90802



U.S. Customs and  
Border Protection

Import Inc.  
Hopewell Road  
Tampa, Florida 33619

Dear Sir:

This is to advise you that the following shipment is deemed excludable from entry into the United States by Order of the U.S. International Trade Commission for violation of the Commission's General Exclusion Order dated October 25, 2005:

Patent/Trademark/Copyright Registration Number: Sanford Trade  
U.S. International Trade Commission Case No: 337-TA-522  
Article Denied Entry: "Permanent Markers"  
Quantity: 40 cartons  
Vessel/Airline: APL Korea  
Bill of Lading: LU0624  
Date of Denial of Entry: October 15, 2008

You have 30 days from the date of this letter to export the subject merchandise from the United States. If the merchandise is not exported within 30 days, it will be disposed of under Customs and Border Protection supervision pursuant to 19 CFR § 12.39(b)(3) and (c)(5).

A copy of this notice is being furnished to the U.S. International Trade Commission. You are hereby notified that any future attempt to import such articles may result in the articles being seized and forfeited.

Sincerely,

Todd A. Hoffman  
Port Director

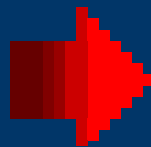
cc: U.S. International Trade Commission  
Customs and Border Protection, Office of Regulations & Rulings

## Miscellaneous Issues:

# Jazz Photo Corp. v. United States

(Slip Op. 04-146, CIT 2004)

Jazz challenged denial by CBP of its Protest in which it argued that CBP improperly excluded its merchandise pursuant to ITC Exclusion Order Inv. No: 337-TA-406.



## Held:

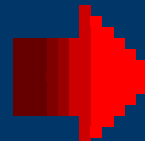
Jazz satisfied legal requirements of the first sale and those cameras may enter the U.S. Others are properly excluded and must be exported or destroyed under CBP supervision.

# Miscellaneous Issues:

## Eaton Corporation v. United States

(Slip Op. 05-121, CIT 2005)

Eaton claimed lack of enforcement by CBP for ITC Investigation No: 337-TA-503 (Certain automated technical transmission systems for medium-duty and heavy-duty trucks and components thereof).



Eaton filed an application for a TRO, a preliminary injunction, and an application for an immediate Order to Show Cause.

### Held:

Eaton's Motion for a Preliminary Limited Injunction is Granted.

CBP is enjoined from permitting entry for consumption into the U.S. of parties identified in the Limited Exclusion Order.

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