

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

In the Matter of

**CERTAIN DIGITAL TELEVISIONS AND
CERTAIN PRODUCTS CONTAINING SAME
AND METHODS OF USING SAME**

**Inv. No. 337-TA-617
Enforcement Proceeding**

**Order No. 27: INITIAL DETERMINATION Finding The
Proview Respondents In Default**

On April 10, 2009, the Commission terminated Investigation No. 337-TA-617 with a finding of violation of section 337 of the Tariff Act of 1930, as amended, by reason of infringement of claims 1, 5, and 23 of United States Patent No. 6,115,074 (“the ‘074 patent”). The Commission issued: (1) a limited exclusion order under 19 U.S.C. § 1337(d)(1), prohibiting the unlicensed entry of certain digital televisions and certain products containing the same that infringe one or more of claims 1, 5, and 23 of the ‘074 patent and are manufactured abroad by or on behalf of, or imported by or on behalf of, certain named respondents, including Proview International Holdings, Ltd. of Hong Kong (“Proview International”), Proview Technology (Shenzhen) Co., Ltd. of China (“Proview Shenzhen”), and Proview Technology, Ltd. of Garden Grove, California (“Proview Technology”) (collectively, “the Proview respondents”); and (2) cease and desist orders directed to several respondents, including Proview Technology. 74 Fed. Reg. 17511 (2009); 74 Fed. Reg. 46793 (2009).

On September 4, 2009, pursuant to 19 C.F.R. § 210.75, the Commission instituted this “formal enforcement proceeding to determine whether the respondents are in violation of the

Commission's limited exclusion order and cease and desist orders issued in the investigation, and what, if any, enforcement measures are appropriate." 74 Fed. Reg. 46793 (2009). The complainants are: Funai Electric Co., Ltd. of Japan; and Funai Corporation of Rutherford, New Jersey (collectively, "Funai"). The named enforcement respondents include the Proview respondents. The Commission Investigative Staff ("Staff"), as represented by the Investigative Attorney ("IA"), is also a party in this proceeding. *Id.*

The Funai complainants have moved in this enforcement proceeding for an order directing the Proview respondents to show cause why they should not be found in default, and upon their failure to show cause, for the issuance of an enforcement initial determination finding them in default. (Motion No. 617-123). Funai's motion is based on the fact that none of the Proview respondents responded to the enforcement complaint and notice of enforcement proceeding. Mot. at 1.

The IA filed a response in support of the issuance of an order to show cause, indicating that if the Proview respondents were to respond to either the motion to show cause, or a show cause order, "the Staff may take a position as to the sufficiency of the response at that time." Staff Resp. at 1.

No response to Funai's motion, however, was received from the Proview respondents or any other respondents.¹

On February 1, 2010, Order No. 24 issued granting, in part, Funai's Motion No. 617-123.

¹ The Commission's Rules provide that if a nonmoving party fails to respond to a motion, it may be deemed to have consented to the granting of the relief requested in the motion. 19 C.F.R. § 210.15(c).

Order No. 24 directed the Proview respondents to file a response, jointly or individually, by the close of business on February 19, 2010, showing cause why they should not be found in default.²

No response to Order No. 24 was filed by any of the Proview respondents.³

In general, a party shall be found in default if it fails to respond to a complaint and notice of investigation, and fails to show cause why it should not be found in default. A party found in default is deemed to have waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation. 19 C.F.R. § 210.16(a)(1) & (b)(3). The Commission's Rules require respondents named in a formal enforcement proceeding to file responses to the enforcement complaint and they provide remedies against enforcement respondents that fail to do so. 19 C.F.R. § 210.75(b)(1) & (b)(2).⁴ Although the Commission Rule pertaining to default, 19 C.F.R. § 210.16, does not specifically refer to enforcement

² Order No. 24 also detailed the circumstances surrounding the service of the enforcement complaint and notice upon the Proview respondents, including additional personal service upon Proview Technology in the United States. Order No. 24 at 3-4.

³ Additionally, pursuant to Order No. 22, a conference was held on February 17, 2010, to prepare for the evidentiary hearing scheduled to commence on March 1, 2010. The conference was attend by all parties, except the Proview respondents. Conf. Tr. 4-5.

⁴ Specifically with respect to a respondent that has failed to respond to an enforcement complaint within 15 days after service, the Commission's Rules provide that:

[T]he Commission, in its discretion, may find the facts alleged in the complaint to be true and take such action as may be appropriate without notice or hearing, or, in its discretion, proceed without notice to take evidence on the allegations set forth in the complaint, provided that the Commission (or administrative law judge, if one is appointed) may permit late filings of an answer for good cause shown.

19 C.F.R. § 210.75(b).

respondents, the Commission has applied the Rule in enforcement proceedings. *See Certain Ink Cartridges and Components Thereof*, Inv. No. 337-TA-565 (Consolidated Enforcement Proceeding and Enforcement Proceeding II), Notice of a Comm'n Determination Not to Review An Initial Determination Finding a Respondent in Default (Feb. 10, 2009) (default pursuant to 19 C.F.R. §§ 210.16 and 210.33 for failure of an enforcement respondent to cooperate in discovery).

Accordingly, having failed to respond to the complaint and notice of institution in this enforcement proceeding, and having failed to respond to Order No. 24 to show cause, it is the INITIAL DETERMINATION of the undersigned that Proview International, Proview Shenzhen, and Proview Technology are in DEFAULT. 19 C.F.R. § 210.16.

Pursuant to 19 C.F.R. § 210.42(h), this initial determination shall become the determination of the Commission unless a party files a petition for review of the initial determination pursuant to 19 C.F.R. § 210.43(a), or the Commission, pursuant to 19 C.F.R. § 210.44, orders on its own motion a review of the initial determination or certain issues contained herein.



Carl C. Charneski
Administrative Law Judge


Issued: February 26, 2010

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PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **ORDER NO. 27** has been served by hand upon the Commission Investigative Attorney, **David O. Lloyd, Esq.**, and the following parties as indicated, on **FEB 26 2010**.



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