that the accused imported products infringe claims 3, 4, 6, 24–25, and 34 of U.S. Patent No. 4,941,310. The notice of investigation named Applica, Inc., and Applica Consumer Products, Inc. (''Applica''); ZeroPack Co., Ltd., (''ZeroPack''); and The Holmes Group, Inc. and The Rival Company (collectively ''the Rival respondents'') as respondents.

On March 29, 2004, the Commission issued notice that it had determined not to review an ID granting the joint motion of Tilia and the Rival respondents to terminate the investigation as to the Rival respondents on the basis of a settlement agreement.

On April 22, 2004, the ALJ issued an ID (Order No. 59) granting the joint motion of complainant Tilia and respondents Applica and ZeroPack to terminate the investigation based on a settlement agreement between Tilia and Applica, and to terminate the investigation as to ZeroPack by withdrawal of the complaint, contingent on the termination of the Applica. The Commission investigative attorney supported the joint motion.

No party filed a petition to review the subject ID.

The authority for the Commission's action 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 CFR 210.42).

Issued: May 20, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–11864 Filed 5–25–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–490]

In the Matter of Certain Power Amplifier Chips, Broadband Tuner Chips, Transceiver Chips, and Products Containing Same; Notice of Commission Determination Not To Review a Final Initial Determination Finding No Violation of Section 337; Termination of the 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 final initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') on April, 2, 2004, finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the above-captioned investigation. Accordingly, the Commission has terminated the investigation with a finding of no violation of section 337.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of the public version of the ID and all 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, SW., Washington, DC 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. General information concerning the Commission may also be obtained by accessing its Internet server (*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.*

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of unfair acts in violation of section 337 in the importation and sale of certain power amplifier chips, broadband tuner chips, transceiver chips, and products containing same, on April 4, 2003, based on a complaint filed by Broadcom Corporation of Irvine, California (''Broadcom''). 68 FR 16551. The only respondent named in the investigation is Microtune, Inc. of Plano, Texas (''Microtune''). The complaint alleged that the imported products of Microtune infringe claim 1 of U.S. Patent No. 6,445,039, (''the '039 patent'') and claim 2 of U.S. Patent No. 5,682,379 (''the '379 patent''). The investigation was subsequently terminated as to the ''379 patent.

On April 2, 2004, the ALJ issued his final ID finding no violation of section 337 based on his findings that claim 1 of the '039 patent is anticipated by two patents and two prior art semiconductors, and invalid due to obviousness. The ALJ also found that the accused non-die paddle products of respondent Microtune infringe claim 1 of the '039 patent, but that Microtune's die paddle products do not infringe that claim. He also found that the '039 patent is not unenforceable due to inequitable conduct.

On April 15, 2004, Broadcom filed a petition for review of the final ID. On April 22, 2004, the Commission investigative attorney and Microtune filed responses.

Having reviewed the record in this investigation, including the parties' written submissions, the Commission determined not to review (*i.e.*, to adopt) the ID in its entirety.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and section 210.42 of the Commission's Rules of Practice and Procedure, 19 CFR 210.42.

Issued: May 20, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–11865 Filed 5–25–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Summary of Commission Practice Relating to Administrative Protective Orders

AGENCY: U.S. International Trade Commission.

ACTION: Summary of Commission practice relating to administrative protective orders.

SUMMARY: Since February 1991, the U.S. International Trade Commission (''Commission'') has issued an annual report on the status of its practice with respect to violations of its administrative protective orders (''APOs'') in investigations under Title VII of the Tariff Act of 1930 in response to a direction contained in the Conference Report to the Customs and Trade Act of 1990. Over time, the Commission has added to its report discussions of APO breaches in Commission proceedings other than those under Title VII and violations of the Commission's rule on bracketing business proprietary information (''BPI'') (the ''24-hour rule''), 19 CFR 207.3(c). This notice provides a summary of investigations of breaches in proceedings under Title VII, sections 202 and 204 of the Trade Act of 1974, as amended, section 421 of the Trade Agreements Act of 1974, as amended, and section 337 of the Tariff Act of 1930, as amended, completed during calendar year 2003. There was one completed investigation of a 24-hour rule violation during that period. The Commission intends that this report educate representatives of parties to Commission proceedings as to some specific types of APO breaches

encountered by the Commission and the corresponding types of actions the Commission has taken.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3088. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810. General information concerning the Commission can also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION: Representatives of parties to investigations conducted under Title VII of the Tariff Act of 1930, sections 202 and 204 of the Trade Act of 1974, as amended, section 421 of the Trade Agreements Act of 1974, as amended, and section 337 of the Tariff Act of 1930, as amended, may enter into APOs that permit them, under strict conditions, to obtain access to BPI (Title VII) or confidential business information (''CBI'') (sections 201–204, section 421 and section 337) of other parties. See 19 U.S.C. 1677f; 19 CFR 207.7; 19 U.S.C. 2252(i); 19 CFR 206.17; 19 U.S.C. 1337(n); 19 CFR 210.5, 210.34. The discussion below describes APO breach investigations that the Commission has completed, including a description of actions taken in response to breaches. The discussion covers breach investigations completed during calendar year 2003.

Since 1991, the Commission has published annually a summary of its actions in response to violations of Commission APOs and the 24-hour rule. See 56 FR 4846 (Feb. 6, 1991); 57 FR 12,335 (Apr. 9, 1992); 58 FR 21,991 (Apr. 26, 1993); 59 FR 16,834 (Apr. 8, 1994); 60 FR 24,880 (May 10, 1995); 61 FR 21,203 (May 9, 1996); 62 FR 13,164 (March 19, 1997); 63 FR 25064 (May 6, 1998); 64 FR 23355 (April 30, 1999); 65 FR 30434 (May 11, 2000); 66 FR 27685 (May 18, 2001); 67 FR 39425 (June 7, 2002); 68 FR 28256 (May 23, 2003). This report does not provide an exhaustive list of conduct that will be deemed to be a breach of the Commission's APOs. APO breach inquiries are considered on a case-by-case basis.

As part of the effort to educate practitioners about the Commission's current APO practice, the Commission Secretary issued in March 2001 a third edition of *An Introduction to Administrative Protective Order Practice in Import Injury Investigations* (Pub. L. 3403). This document is available upon request from the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, tel. (202) 205–2000.

I. In General

The current APO form for antidumping and countervailing duty investigations, which the Commission has used since March 2001, requires the applicant to swear that he or she will:

(1) Not divulge any of the BPI obtained under the APO and not otherwise available to him, to any person other than—

(i) personnel of the Commission concerned with the investigation,

(ii) the person or agency from whom the BPI was obtained,

(iii) a person whose application for disclosure of BPI under this APO has been granted by the Secretary, and

(iv) other persons, such as paralegals and clerical staff, who (a) are employed or supervised by and under the direction and control of the authorized applicant or another authorized applicant in the same firm whose application has been granted; (b) have a need thereof in connection with the investigation; (c) are not involved in competitive decisionmaking for an interested party which is a party to the investigation; and (d) have submitted to the Secretary a signed Acknowledgment for Clerical Personnel in the form attached hereto (the authorized applicant shall also sign such acknowledgment and will be deemed responsible for such persons' compliance with the APO);

(2) Use such BPI solely for the purposes of the Commission investigation or for judicial or binational panel review of such Commission investigation;

(3) Not consult with any person not described in paragraph (1) concerning BPI disclosed under this APO without first having received the written consent of the Secretary and the party or the representative of the party from whom such BPI was obtained;

(4) Whenever materials (*e.g.*, documents, computer disks, etc.) containing such BPI are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container (N.B.: storage of BPI on so-called hard disk computer media is to be avoided, because mere erasure of data from such media may not irrecoverably destroy the BPI and may result in violation of paragraph C of the APO);

(5) Serve all materials containing BPI disclosed under this APO as directed by the Secretary and pursuant to section 207.7(f) of the Commission's rules;

(6) Transmit each document containing BPI disclosed under this APO:

(i) with a cover sheet identifying the document as containing BPI,

(ii) with all BPI enclosed in brackets and each page warning that the document contains BPI,

(iii) if the document is to be filed by a deadline, with each page marked ''Bracketing of BPI not final for one business day after date of filing,'' and

(iv) if by mail, within two envelopes, the inner one sealed and marked ''Business Proprietary Information—To be opened only by [name of recipient]'', and the outer one sealed and not marked as containing BPI;

(7) Comply with the provision of this APO and section 207.7 of the Commission's rules;

(8) Make true and accurate representations in the authorized applicant's application and promptly notify the Secretary of any changes that occur after the submission of the application and that affect the representations made in the application (*e.g.*, change in personnel assigned to the investigation);

(9) Report promptly and confirm in writing to the Secretary any possible breach of the APO; and

(10) Acknowledge that breach of the APO may subject the authorized applicant and other persons to such sanctions or other actions as the Commission deems appropriate including the administrative sanctions and actions set out in this APO.

The APO further provides that breach of an APO may subject an applicant to:

(1) Disbarment from practice in any capacity before the Commission along with such person's partners, associates, employer, and employees, for up to seven years following publication of a determination that the order has been breached;

(2) Referral to the United States Attorney;

(3) In the case of an attorney, accountant, or other professional, referral to the ethics panel of the appropriate professional association;

(4) Such other administrative sanctions as the Commission determines to be appropriate, including public release of or striking from the record any information or briefs submitted by, or on behalf of, such person or the party he represents; denial of further access to BPI in the current or any future investigations before the Commission; and issuance of a public or private letter of reprimand; and

(5) Such other actions, including but not limited to, a warning letter, as the

Commission determines to be appropriate.

Commission employees are not signatories to the Commission's APOs and do not obtain access to BPI through APO procedures. Consequently, they are not subject to the requirements of the APO with respect to the handling of BPI. However, Commission employees are subject to strict statutory and regulatory constraints concerning BPI, and face potentially severe penalties for noncompliance. *See* 18 U.S.C. 1905; Title 5, U.S. Code; and Commission personnel policies implementing the statutes.

An important provision of the Commission's rules relating to BPI is the ''24–hour'' rule. This rule provides that parties have one business day after the deadline for filing documents containing BPI to file a public version of the document. The rule also permits changes to the bracketing of information in the proprietary version within this one-day period. No changes —other than changes in bracketing—may be made to the proprietary version. The rule was intended to reduce the incidence of APO breaches caused by inadequate bracketing and improper placement of BPI. The Commission urges parties to make use of the rule. If a party wishes to make changes to a document other than bracketing, such as typographical changes or other corrections, the party must ask for an extension of time to file an amended document pursuant to section 201.14(b)(2) of the Commission's rules.

II. Investigations of Alleged APO Breaches

Upon finding evidence of an APO breach or receiving information that there is a reason to believe one has occurred, the Commission Secretary notifies relevant offices in the agency that an APO breach investigation file has been opened. Upon receiving notification from the Secretary, the Office of General Counsel (OGC) begins to investigate the matter. The OGC prepares a letter of inquiry to be sent to the possible breacher over the Secretary's signature to ascertain the possible breacher's views on whether a breach has occurred. If, after reviewing the response and other relevant information, the Commission determines that a breach has occurred, the Commission often issues a second letter asking the breacher to address the questions of mitigating circumstances and possible sanctions or other actions. The Commission then determines what action to take in response to the breach. In some cases, the Commission determines that although a breach has occurred, sanctions are not warranted, and therefore has found it unnecessary to issue a second letter concerning what sanctions might be appropriate. Instead, it issues a warning letter to the individual. A warning letter is not considered to be a sanction.

Sanctions for APO violations serve two basic interests: (a) preserving the confidence of submitters of BPI that the Commission is a reliable protector of BPI; and (b) disciplining breachers and deterring future violations. As the Conference Report to the Omnibus Trade and Competitiveness Act of 1988 observed, ''[T]he effective enforcement of limited disclosure under administrative protective order depends in part on the extent to which private parties have confidence that there are effective sanctions against violation.'' H.R. Conf. Rep. No. 576, 100th Cong., 1st Sess. 623 (1988).

The Commission has worked to develop consistent jurisprudence, not only in determining whether a breach has occurred, but also in selecting an appropriate response. In determining the appropriate response, the Commission generally considers mitigating factors such as the unintentional nature of the breach, the lack of prior breaches committed by the breaching party, the corrective measures taken by the breaching party, and the promptness with which the breaching party reported the violation to the Commission. The Commission also considers aggravating circumstances, especially whether persons not under the APO actually read the BPI. The Commission considers whether there are prior breaches by the same person or persons in other investigations and multiple breaches by the same person or persons in the same investigation.

The Commission's rules permit economists or consultants to obtain access to BPI under the APO if the economist or consultant is under the direction and control of an attorney under the APO, or if the economist or consultant appears regularly before the Commission and represents an interested party who is a party to the investigation. 19 CFR 207.7(a)(3) (B) and (C). Economists and consultants who obtain access to BPI under the APO under the direction and control of an attorney nonetheless remain individually responsible for complying with the APO. In appropriate circumstances, for example, an economist under the direction and control of an attorney may be held responsible for a breach of the APO by failing to redact APO information from a document that is subsequently filed with the Commission and served as a public document. This is so even though the attorney exercising direction or control over the economist or consultant may also be held responsible for the breach of the APO.

The records of Commission investigations of alleged APO breaches in antidumping and countervailing duty cases are not publicly available and are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552, section 135(b) of the Customs and Trade Act of 1990, and 19 U.S.C. 1677f(g).

The breach most frequently investigated by the Commission involves the APO's prohibition on the dissemination of BPI to unauthorized persons. Such dissemination usually occurs as the result of failure to delete BPI from public versions of documents filed with the Commission or transmission of proprietary versions of documents to unauthorized recipients. Other breaches have included: the failure to bracket properly BPI in proprietary documents filed with the Commission; the failure to report immediately known violations of an APO; and the failure to supervise adequately non-legal personnel in the handling of BPI.

Counsel participating in Title VII investigations have reported to the Commission potential breaches involving the electronic transmission of public versions of documents. In these cases, the document transmitted appears to be a public document with BPI omitted from brackets. However, the BPI is actually retrievable by manipulating codes in software. The Commission has found that the electronic transmission of a public document containing BPI in a recoverable form was a breach of the APO.

The Commission advised in the preamble to the notice of proposed rulemaking in 1990 that it will permit authorized applicants a certain amount of discretion in choosing the most appropriate method of safeguarding the confidentiality of the BPI. However, the Commission cautioned authorized applicants that they would be held responsible for safeguarding the confidentiality of all BPI to which they are granted access and warned applicants about the potential hazards of storage on hard disk. The caution in that preamble is restated here:

> [T]he Commission suggests that certain safeguards would seem to be particularly useful. When storing business proprietary information on computer disks, for example, storage on floppy disks rather than hard disks is recommended, because deletion of information from a hard disk does not necessarily erase the information, which can

often be retrieved using a utilities program. Further, use of business proprietary information on a computer with the capability to communicate with users outside the authorized applicant's office incurs the risk of unauthorized access to the information through such communication. If a computer malfunctions, all business proprietary information should be erased from the machine before it is removed from the authorized applicant's office for repair. While no safeguard program will insulate an authorized applicant from sanctions in the event of a breach of the administrative protective order, such a program may be a mitigating factor.

Preamble to notice of proposed rulemaking, 55 FR 24100, 24103 (June 14, 1990).

The Commission has recently disposed of an APOB investigation concerning a section 337 investigation. In that case, to be summarized with other cases completed in 2004, attorneys failed to notify the Commission about their receipt of a subpoena from another government agency that would require the disclosure of BPI obtained under the APO. Counsel in section 337 investigations are reminded that Commission rule 210.34(d)(1) requires that the Commission be notified in writing immediately by anyone receiving such a subpoena or court or administrative order, discovery request, agreement, or other written request seeking disclosure to persons who are not permitted access to the information under either a Commission protective order or Commission rule 210.5(b). Commission rule 210.34(d)(2) provides that the Commission may impose sanctions upon any person who willfully fails to comply with section 210.34(d)(1). Failure to comply with that rule may also be considered an aggravating circumstance in determining an appropriate sanction for a breach connected with compliance with the subpoena or order.

III. Specific Investigations in Which Breaches Were Found

The Commission presents the following case studies to educate users about the types of APO breaches found by the Commission. The studies provide the factual background, the actions taken by the Commission, and the factors considered by the Commission in determining the appropriate actions. The Commission has not included some of the specific facts in the descriptions of investigations where disclosure of such facts could reveal the identity of a particular breacher. Thus, in some cases, apparent inconsistencies in the facts set forth in this notice result from the Commission's inability to disclose particular facts more fully.

Case 1: The Commission determined that two attorneys breached the APO when one of the attorneys failed to delete BPI from the public version of a prehearing brief. The attorney who was responsible for preparing the public version of the brief and who failed to delete the BPI was the lead attorney and the firm's APO Compliance Officer. However, this was his first title VII investigation before the Commission. The second attorney, a name partner and more senior attorney in the firm, participated substantially in the investigation and participated in the drafting of the confidential version of the brief. The Commission found that the senior attorney had also breached the APO because, despite the more junior attorney's inexperience and the lengthy series of APO breaches that had been caused by various members of his firm, he did not participate in the preparation of the public brief and/or supervise the junior attorney more closely to prevent a new breach.

Because he was the lead attorney and the firm's APO Compliance Officer, the Commission determined that the junior attorney would receive a private letter of reprimand, even though it was his first breach, no non-signatories had read the BPI, he took immediate corrective measures to cure the breach, and his firm changed its APO procedures to avoid future breaches of this type. Although the attorney claimed that his inexperience with bracketing BPI may have played a part in the errors, the Commission determined that he should be held to a higher standard of care because the purpose of his position as APO Compliance Officer was to prevent breaches like the one he failed to prevent in this matter. The Commission also considered the fact that the attorney took the APO Compliance position with the knowledge that several members of his firm had been investigated over a relatively short period of time for prior APO breaches, and that aggressive review of his firm's submissions was therefore necessary.

The Commission determined to sanction the senior attorney by publishing in the **Federal Register** a public letter of reprimand and to suspend him for a period of six months from access to APO information in any Commission investigation. In addition, the Commission ordered that at least two attorneys review all documents to be filed with the Commission by his law firm for APO compliance for a period of five years from the date of publication of the sanction in the **Federal Register**. The Commission decided to issue the public letter of reprimand and suspend the attorney because this was his fourth breach within a relatively short period of time. In addition, the attorney had been publicly sanctioned within the past two years, but not suspended. The Commission found that although none of the attorney's prior breaches was egregious enough to warrant a public reprimand when considered separately, the public reprimand was warranted for the series of breaches that demonstrated a disturbing and unacceptable pattern of overall failure to safeguard information released under APO.

Case 2: The Commission issued a private letter of reprimand to an attorney for failing to redact CBI from the public version of a prehearing brief. The brief was a joint brief with another law firm, but the Commission found that the attorney from the other law firm and a consultant and a second attorney from the breaching attorney's law firm were not responsible for the final review of the brief. A private letter of reprimand was issued even though this was the attorney's first breach of a Commission APO, the breach was inadvertent, the attorney's firm changed its APO procedures to avoid future breaches of this type, and the attorney took immediate corrective measures to cure the breach once he was informed that there was a possible breach. The Commission decided to issue a private letter of reprimand because the Commission received no assurance from the attorney that non-signatories had not read the CBI. The Commission sent the attorney two letters of inquiry and a letter seeking his comments on possible sanctions and mitigating circumstances. All of the letters asked for his comments on whether a non-signatory had read the CBI. The attorney did not address the question in the first or third letters; in the second letter he merely stated that he could not confirm with the recipients of the CBI that only APO signatories had viewed the CBI. The attorney never explained why he could not confirm the facts. The Commission noted that more than one firm which was a recipient of the brief were non-signatories of the APO. Thus, without sufficient followup or explanation from the attorney and because CBI was made available to several non-signatories, the Commission presumed that the CBI was viewed by a non-signatory of the APO.

Case 3: An economic consultant prepared and distributed an exhibit at a Commission hearing. The exhibit contained CBI that was taken from tables that were bracketed as confidential APO information in the Prehearing Staff Report. During the hearing, the consultant was informed of the possible breach and he took immediate steps to retrieve the exhibit.

All but one or two copies were retrieved. The consultant had argued that the information was not CBI because later in the investigation it was determined that the data itself was erroneous and corrected data was included in the Posthearing Staff Report. The Commission determined that the information was CBI since it was taken from a Commission document that was clearly marked as containing CBI. The Commission sanctioned the consultant with a private letter of reprimand because the breach was intentional; the Commission presumed that a non-signatory reviewed the CBI since one or two of the exhibits were not retrieved and non-signatories attended the hearing; and the consultant had previously been found to have breached an APO and was issued a warning letter within a reasonably short period before the occurrence of this breach. The Commission took into consideration the consultant's immediate attempts to retrieve the exhibit and the fact that his consulting firm modified its procedures to avoid similar breaches in the future.

The Commission also investigated whether attorneys in two law firms had breached the APO in this matter. One of the law firms had included the consultant on its APO application and the lead attorney for that firm had agreed to exercise direction and control over the consultant's handling of the APO materials. Another law firm also had hired the consultant to assist in the same investigation, but on a different product than that of the first law firm. That second firm gave the consultant the information on this second product and it was for this product that the exhibit had been prepared and concerning which the Commission hearing was held. The consultant was not included on the APO application of the second law firm, but was entitled to have the information on any product in this multiproduct investigation as long as he was included on one APO application. The Commission found that none of the attorneys in the second firm breached the APO because none was responsible for preparation of the exhibit and they had not signed an APO application agreeing to exercise direction and control over the consultant's handling of APO materials. The Commission issued a no violation breach to the lead attorney in the second firm, but admonished him to be more attentive in preventing breaches in the future.

The Commission determined that the lead attorney in the first law firm breached the APO by failing to provide adequate supervision over the handling of CBI and by permitting the release of CBI by an economic consultant under the attorney's direction and control, especially in light of the fact that the consultant in question previously had breached an APO in a prior case that also had involved the lead attorney and his firm. The Commission determined to issue the lead attorney in the first firm a warning letter, in spite of the aggravating circumstances that existed in this case, because of the unusual circumstances of the APO in this multiproduct investigation which permitted the consultant to receive CBI from another attorney and work separately from the attorneys in the first law firm.

Case 4: The Commission determined that two attorneys breached the APO by failing to return or destroy all copies of the CBI disclosed under the APO within 60 days of completion of the Commission's investigation and by using the retained documents for a purpose other than the Commission's investigation.

The attorneys represented a party in a section 201 investigation. They argued that the failure to return or destroy the documents on a timely basis was inadvertent as they were not sure when the Commission investigation had ended. They also argued that the documents, although retained by them, were not used for any other purpose than the Commission investigation.

The Commission found conflicting statements in the submissions from the attorneys. Relying primarily on the initial statements regarding the breaches, the Commission found that the breach was not inadvertent, and that the attorneys had retained the documents so they could review them in preparing their client's product exclusion submission to USTR. In reaching its decision, the Commission did not equate mere retention with use, but found that something more had occurred.

The Commission denied the attorneys' request for reconsideration of the finding that the documents were used for something other than the Commission's investigation because the arguments were made during the breach phase of the Commission's investigation or they could have been made.

There were several mitigating circumstances in this matter, including the facts that it was the first APO breach for both attorneys, there was no evidence that unauthorized persons gained access to the CBI, and the attorneys' law firm has instituted a written policy of checking the **Federal Register** on a daily basis for Commission notices. There were also aggravating circumstances that led the Commission to issue a private letter of reprimand to both attorneys. The breach was not inadvertent; the attorneys interpreted the APO, without seeking Commission guidance, to allow them to retain APO documents beyond the date set by the APO for return or destruction of APO documents; and the attorneys committed a second breach in their use of the APO documents for a purpose other than the Commission's investigation.

Case 5: The Commission found that an attorney and a legal assistant breached the APO by serving a document containing BPI upon individuals not authorized to view BPI. The Commission issued private letters of reprimand to both individuals.

The document had been prepared for filing and service by the legal assistant and signed by the attorney. The legal assistant mistakenly used the public service list instead of the APO service list to serve the document. Consequently, two law firms ineligible to receive BPI were served with the document. A lawyer in one of those firms opened the envelope and read the document long enough to determine that it contained BPI that he was ineligible to receive. At that point, the lawyer stopped reading and notified the attorney who signed the document about the possible breach. Once notified, the attorney was able to retrieve the document from both ineligible law firms, including from the second ineligible law firm which had not opened the sealed envelope.

The mitigating circumstances in this case included the fact that the breach was inadvertent, neither the attorney nor the legal assistant had any prior breaches within the recent past, they made prompt efforts to limit the possibility of disclosure to persons not on the APO, and they took steps to prevent breaches in the future. The aggravating circumstances that supported the issuance of private letters of reprimand were the facts that a person not subject to the APO viewed the BPI and that the breach was discovered by someone other than the attorney or legal assistant.

Case 6: The Commission determined that one attorney breached the APO by failing to ensure, as lead counsel in a Commission investigation, that all of the law firm personnel who would be working with BPI contained in documents received under APO were signatories to the APO. One other attorney in the firm had access to and used BPI under the APO notwithstanding that he was not a signatory to the APO. The Commission

found that this attorney had violated 19 CFR 201.15.

An attorney in the law firm discovered that one of the attorneys working on the investigation in the law firm was not on the APO service list after the investigation had been completed. He notified the Commission immediately about the possible breach. In determining that the lead attorney should receive a private letter of reprimand, the Commission considered the mitigating circumstances that the firm discovered the breach and notified the Commission immediately, the lead attorney voluntarily conducted classes for his firm concerning the handling of BPI, the breach was inadverent, and the non-signatory attorney handled the APO materials as if he were a signatory. However, the Commission also considered the aggravating circumstance that the lead attorney had received a warning letter in a previous breach investigation within the recent past.

In determining to issue a warning letter to the non-signatory attorney, the Commission stated that it considers ''good cause'' for imposition of a warning letter pursuant to 19 CFR 201.15 to be the equivalent of a breach of an APO. However, it decided not to issue any sanction for the attorney's conduct because this was the only breach-equivalent action in which he had been involved within the two-year period generally examined by the Commission for purposes of determining sanctions, his action was not willful, he treated BPI as if he had signed the APO, and he reported and remedied the objectionable conduct shortly after he had learned of it.

Case 7: The Commission issued a warning letter to an economist after finding he breached the APO by transmitting exhibits containing BPI to a non-signatory copy vendor. The economist had substantial experience handling APO material in Commission title VII investigations. He was working on the investigation under the direction and control of an attorney in a law firm. Prior to the economist taking the exhibits to the copy vendor, the attorney supervising him had reviewed the documents to be sure there was no BPI in them. After the attorney's review, the economist decided to add another document to the exhibits that included BPI. Although from earlier discussions with the attorney the economist had reason to question whether the vendor was a signatory to the APO, he handed the documents directly to the copy vendor without determining whether the vendor was a signatory to the APO.

The Commission considered whether the economist, the attorney, and the lead attorney on the investigation breached the APO. The Commission determined that the attorney did not breach the APO. Although he was, in general, responsible for the economist's actions, he could not reasonably have foreseen that the economist would have inserted an APO document into the exhibits. The attorney had approved the exhibits and did not anticipate any additions to them. The Commission determined that the lead attorney had not breached the APO because he had reasonably delegated his supervisory responsiblities over the economist to the attorney and that attorney was experienced and had no prior breaches that would have put the lead attorney on notice that more supervision was necessary.

The law firm and the economist had argued that a breach did not occur because there was no BPI in the exhibits. They argued that the information that was considered BPI was publicly available. The Commission found that, although a small part of the BPI had been made public during the preliminary phase of the investigation, the remainder was BPI and included questionnaire responses or clarification to questionnaire responses.

The Commission determined to issue a warning letter to the economist because the breach was unintentional, this was his first breach, and the copy vendor merely copied the documents and did not review the BPI. In addition, once the economist realized that a breach might have occurred, he immediately notified the attorney, who took prompt and effective action to stop any further dissemination of the BPI. The Commission noted in its letters to the economist and attorney that the Commission was not notified of the possible breach for 30 days after it was discovered. The Commission stated that it will expect more prompt notification by them with regard to any possible APO breaches in the future, in compliance with the APO which requires signatories to ''[r]eport promptly * * * any possible breach.''

Case 8: The Commission issued warning letters to three attorneys and two international trade analysts in one firm for permitting a legal secretary to have access to CBI even though he had not signed the APO Acknowledgment for Clerical Personnel and, therefore, his name was not included on the Secretary's confidential certificate of service. The attorneys and international trade analysts were all signatories to the APO and had worked on the Commission's investigation. The Commission decided to issue a warning letter instead of sanctions because the breach was inadvertent, it was the attorneys' and analysts' first breach, they reported the breach promptly to the Commission, and they took corrective measures to prevent similar breaches in the future.

The Commission did not issue a warning letter to the legal secretary, but cautioned him to ensure in future investigations that he has signed the Acknowledgement before accessing CBI.

Case 9: The Commission found that an attorney breached the APO by electronically transmitting a prehearing brief that contained both masked and not redacted BPI and BPI that had been neither masked nor redacted to two non-signatories of the APO. The Commission issued a private letter of reprimand because at least one of the non-signatories read the BPI that had neither been masked nor redacted and there was a delay in the attorney's notification of the Commission about the possible breach. In reaching this decision, the Commission considered the mitigating circumstances that the attorney had no prior breaches, he notified the Commission of the breach, and he immediately took appropriate corrective measures.

During the breach phase of the investigation, the attorney argued that the electronic ''whiting-out'' of the BPI was sufficient to protect it. In response, the Commission noted that it has consistently found that it is a breach of the APO to send an electronic document to persons not on the APO in which the BPI had been electronically masked or ''whited-out'' since the BPI can be retrieved by altering the software print codes. The Commission also dismissed the attorney's arguments that the BPI that had neither been masked nor redacted was not BPI. The Commission found that most of the data in question had been questionnaire responses that were bracketed as BPI in the prehearing report. Questionnaire responses are treated by the Commission as BPI in their entirety, unless the information is otherwise available from a public source, or is a non-numerical characterization of aggregate trends. The Commission considered certain public sources that the attorney claimed revealed the information, but found that the exact information was not publicly available.

Case 10: The Commission determined that an attorney breached the APO in a section 337 investigation by transmitting a confidential version of a brief filed in the appeal of the Commission investigation to persons who were not signatories to the APO. The Commission stated in the warning letter to the attorney that this finding

was consistent with prior determinations when the Commission determined that making CBI available to unauthorized persons constitutes a breach of the APO, regardless of whether the unauthorized persons actually viewed the CBI.

The Commission determined to issue the warning letter to the attorney instead of a sanction because the breach was unintentional, he had no prior warnings or sanctions regarding APO breaches within the recent past, he took prompt action to remedy the breach, and no non-signatory to the APO actually read the electronically transmitted brief.

Rule Violation: The Commission issued a warning letter to an attorney for violating the Commission's 24-hour rule, 19 CFR 207.3. On the day following the filing of a confidential prehearing brief in a Commission investigation, the attorney filed a public version of the brief and a revised confidential version. Both versions contained additions to and deletions of text on several pages and there were several pages missing from an exhibit. The Commission found that this violated the 24-hour rule because that rule specficially precludes changes other than bracketing changes and the deletion of confidential information during the 24-hour period after the original filing. The Commission noted that the rule allowed attorneys to seek leave to make other changes but, in this case, the attorney did not.

The Commission issued a warning letter instead of a sanction because the changes appeared to be inadvertent and the attorney had no record of a rule violation or APO breach within the recent past.

IV. Investigations in Which No Breach Was Found

There were two APOB investigations in which the Commission determined that the APO had not been breached. One involved testimony at a hearing that might have disclosed BPI. Through its investigation the Commission determined that the information disclosed was not BPI because it was publicly available. In the other investigation, the Commission's staff determined that no BPI was served on a party that was not on the APO service list because the data belonged to the attorney's own client and was not other company data received under the APO.

By order of the Commission.

Issued: May 20, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–11862 Filed 5–25–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: Application for an Amended Federal Firearms License.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until July 26, 2004. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact David Adinolfi, ATF National Licensing Center, Room 400, 2600 Century Parkway, NE., Atlanta, Georgia 30345.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for an Amended Federal Firearms License.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5300.38. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Individual or households. The form is used when a Federal firearms licensee makes application to change the location of the firearms business premises. The applicant must certify that the proposed new business premises will be in compliance with State and local law for that location.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 18,000 respondents will complete a 1 hour and 15 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 22,500 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: May 19, 2004.

Brenda E. Dyer,

Department Deputy Clearance Officer, PRA, Department of Justice.

[FR Doc. 04–11767 Filed 5–25–04; 8:45 am]

BILLING CODE 4410–FY–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(1)), the Attorney General shall, prior to issuing a registration under this Section to a