

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

In the Matter of

**CERTAIN COAXIAL CABLE CONNECTORS
AND COMPONENTS THEREOF AND
PRODUCTS CONTAINING SAME**

Investigation No. 337-TA-650

**NOTICE OF COMMISSION DETERMINATION TO REVIEW-IN-PART A FINAL
DETERMINATION FINDING A VIOLATION OF SECTION 337; SCHEDULE FOR
FILING WRITTEN SUBMISSIONS ON THE ISSUES UNDER REVIEW AND ON
REMEDY, THE PUBLIC INTEREST, AND BONDING; EXTENSION OF THE TARGET
DATE TO MARCH 17, 2010**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review a portion of the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on October 13, 2009, finding a violation of section 337 and to request briefing on the issues under review and on remedy, the public interest, and bonding. The Commission has also determined to extend the target date in the above-identified investigation to March 17, 2010.

FOR FURTHER INFORMATION CONTACT: Daniel E. Valencia, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-1999. 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, S.W., Washington, D.C. 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 30, 2008, based on a complaint filed by John Mezzalingua Associates, Inc. d/b/a PPC, Inc. of East Syracuse, New York (“PPC”). *73 Fed. Reg.* 31145 (May 30, 2008). 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 coaxial cable connectors and components thereof and products containing the same by

reason of infringement of U.S. Patent Nos. 5,470,257 (“the ‘257 patent”); D440,539 (“the ‘539 patent”); 6,558,194 (“the ‘194 patent”); and D519,076 (“the ‘076 patent”). The complaint named eight respondents. After institution, two respondents were terminated from the investigation based on consent orders, and the following four respondents were found in default: Hanjiang Fei Yu Electronics Equipment Factory of China; Zhongguang Electronics of China; Yangzhou Zhongguang Electronics Co. of China; and Yangzhou Zhongguang Foreign Trade Co. Ltd. of China (collectively, “defaulting respondents”). The only respondents actively remaining in this investigation are Fu-Ching Technical Industry Co., Ltd. of Taiwan (“Fu-Ching”) and Gem Electronics, Inc. of Windsor, Connecticut (“Gem”) (collectively, “active respondents”).

On October 13, 2009, the ALJ issued his final ID finding, based on substantial, reliable, and probative evidence, that the defaulting respondents violated section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain coaxial cable connectors and components thereof and products containing the same by reason of infringement of the ‘257, ‘539, ‘076, and ‘194 patents. The ALJ found that the active respondents have not violated section 337. Along with the ID, the ALJ issued a recommended determination on remedy and bonding (“RD”). The Commission investigative attorney (“IA”) and complainant PPC filed petitions for review of the ID on October 30, 2009. The active respondents filed a contingent petition for review of the ID on October 30, 2009. The IA, the active respondents, and PPC each filed responses to the petitions for review on November 9, 2009.

Having examined the record of this investigation, including the ALJ’s final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in part. In particular, the Commission has determined to review (1) the findings and conclusions relating to whether a violation of section 337 has occurred with respect to the ‘257 patent, including the issues of claim construction, infringement, validity, and domestic industry and (2) the ID’s finding that PPC has met the domestic industry requirement for the ‘539 patent.

The parties are requested to brief their positions on the issues under review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in responses to the following:

- (1) With regard to the claim term “fastener means” in claim 1 of the ‘257 patent, do the inner circular shoulder 42 and the circular groove 44 shown in the ‘257 patent “attach said end connector to said system component,” as claimed?
- (2) Is there evidence in the record that the structure of the disclosed “fastener means” is important to the invention of claim 1 of the ‘257 patent? *See IMS Tech., Inc. v. Haas Automation, Inc.*, 206 F.3d 1422 (Fed. Cir. 2000).
- (3) What are the proper legal principles for determining whether an alleged equivalent performs a claimed function of a means-plus-function limitation in substantially the same way as the corresponding structure disclosed in the patent? Do male and female BNC

connectors, male and female RCA connectors, and female F-connectors perform the attachment function in substantially the same way as the cylindrical internally threaded structure of the “fastener means” of the ‘257 patent?

(4) With respect to the claim term “engagement means” in claim 1 of the ‘257 patent, please explain how the corresponding structure “accommodate[s] *limited* axial movement of said locking member relative to said connector body *between said first position and a second position?*”

(5) Does the second shoulder 50b shown and described in the ‘257 patent perform part of the claimed function of “accomodat[ing] limited axial movement . . . ?”

(6) If the second shoulder 50b is part of the corresponding structure, how does this affect the ALJ’s findings on the issues of infringement, validity, and domestic industry with respect to the ‘257 patent?

(7) Does the normal intended use of the accused connectors of the active respondents involve separation of the locking member from the connector body? In the context of your answer, please explain your position on whether the accused connectors infringe claim 1 of the ‘257 patent.

(8) With regard to the domestic industry requirement, please cite any evidence in the record that would indicate that, with respect to the Arris Digicon S connector found by the ALJ to practice the ‘539 patent, there is in the United States “substantial investment in plant and equipment” under 19 U.S.C. §1337(a)(3)(A) or “significant employment of labor or capital” under 19 U.S.C. § 1337(a)(3)(B).

(9) Please cite evidence in the record that PPC has or has not made a “substantial investment in . . . exploitation” of the ‘539 patent? In your discussion of “investment in . . . exploitation” of the ‘539 patent, please separately address engineering activities, research and development activities, and licensing activities. With respect to investments in licensing, please identify and describe those investments and activities that pre-date litigation from those that are related to, or post-date litigation.

The parties and members of the public are also asked to comment on the interpretation of section 337(a)(3) as it pertains to licensing.

(10) The statute provides, in part, that “an industry in the United States shall be considered to exist if there is in the United States, with respect to the articles protected by patent, copyright, trademark, or mask work concerned . . . (C) substantial investment in its exploitation, including engineering, research and development, or licensing.” In determining whether “investment” in “licensing” is “substantial,” is all spending in connection with licensing efforts by an intellectual property owner are properly considered “investment” and, if so, do some kinds of spending in connection with

licensing efforts merit full weight in the Commission's analysis of whether total investment is "substantial" while others merit less weight?

(A) Does Congress's use of the term "exploitation" in section 337(a)(3)(C) require the Commission to give greater weight to licensing efforts directed to bringing the protected article to market as opposed to, for example, efforts seeking to require an existing producer to take a license for a product it already makes? Is it significant that Congress grouped "licensing" with "engineering" and "research and development" in describing exploitation in section 337(a)(3)(C)?

(B) To what extent do legal fees paid by an intellectual property rights holder in litigation with targeted licensees and/or infringers represent investments in the exploitation of an intellectual property right within the meaning of section 337(a)(3)(C)?

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 *Fed. Reg.* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation and members of the public are invited to file written submissions addressing questions (10), (A), and (B) set forth above regarding the domestic industry requirement of section 337(a)(3)(C). Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the ALJ's recommendation on remedy and bonding set forth in the RD. Complainants and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the dates that the patents at issue expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on Wednesday, January 13, 2010. Reply submissions must be filed no later than the close of business on Wednesday, January 27, 2010. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

TARGET DATE: The target date is extended from February 15, 2010 to March 17, 2010.

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 and 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42-46 and 210.50).

By order of the Commission.

/s/
Marilyn R. Abbott
Secretary to the Commission

Issued: December 14, 2009