

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN ELECTRICAL CONDUCTOR
COMPOSITE CORES AND
COMPONENTS THEREOF**

Inv. No. 337-TA-995

**ORDER NO. 9: INITIAL DETERMINATION TERMINATING INVESTIGATION
AS TO RESPONDENT MERCURY CABLE & ENERGY, INC.
BASED ON CONSENT ORDER**

(September 23, 2016)

On September 14, 2016, Respondent Mercury Cable & Energy, Inc. (“Mercury”) filed a motion to terminate the investigation as to Mercury based on a proposed consent order (Motion Docket No. 995-004). The Commission Investigative Staff (“Staff”) filed a response in support of the motion on September 20, 2016. The motion indicates that Complainant CTC Global Corporation (“CTC Global”) does not oppose the motion to terminate.

Commission Rule 210.21(a)(2) states in relevant part that “[a]ny party may move at any time for an order to terminate an investigation in whole or in part as to any or all respondents on the basis of a settlement, a licensing or other agreement ... or consent order, as provided in paragraphs (b), (c) and (d) of this section.” 19 C.F.R. § 210.21(a)(2). Commission Rule 210.21(c)(1)(ii) provides in relevant part that “[i]n investigations under Section 337 of the Tariff Act of 1930, a proposal to terminate by consent order shall be submitted as a motion to the administrative law judge with a stipulation that incorporates a proposed consent order.” 19 C.F.R. § 210.21(c)(1)(ii).

Consistent with Commission Rule 210.21(c), the motion contains a statement that there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation. Motion at 2. Consistent with Commission Rule 210.21(c)(1)(ii), the motion includes a Consent Order Stipulation (Exhibit A) and Proposed Consent Order (Exhibit B).

Commission Rule 210.21(c)(3) sets forth the information that must be included in the consent order stipulation. 19 C.F.R. § 210.21(c)(3). The Consent Order Stipulation (Exhibit A) was signed by a representative for Mercury on September 12, 2016. Exhibit A at 4. The Staff reviewed the Consent Order Stipulation and found that it complies with the Commission's requirements. Staff Resp. at 5-7. Consistent with subsection (i)(A) of Commission Rule 210.21(c)(3), the Consent Order Stipulation contains an admission of all jurisdictional facts. Exhibit A at ¶ 1. Consistent with subsection (i)(B), the Consent Order Stipulation contains a statement identifying the asserted claims of U.S. Patent Nos. 7,211,319 and 7,368,162 (the "Asserted Patents"), and a statement that Mercury will not import or sell articles infringing the Asserted Patents. *Id.* at Preamble, ¶ 2.¹ Consistent with subsection (i)(C), the Consent Order Stipulation contains an express waiver of Mercury's rights to seek judicial review. *Id.* at ¶ 4. Consistent with subsection (i)(D), the Consent Order Stipulation contains a statement that Mercury will cooperate with and will not seek to impede the Commission's efforts to gather information. *Id.* at ¶ 5. Consistent with subsection (i)(E), the Consent Order Stipulation contains a statement that the enforcement, modification, and revocation of the consent order will be carried out pursuant to the Commission's Rules. *Id.* at ¶ 6. Consistent with subsection (i)(F), the Consent Order Stipulation includes a statement that the signing is for settlement purposes only

¹ The Consent Order Stipulation further states that Mercury has no existing U.S. inventories of infringing articles. *Id.* ¶ 3.

and does not constitute admission of infringement by Mercury. *Id.* at ¶ 7. Consistent with subsection (i)(G), the Consent Order Stipulation contains a statement that the consent order shall have the same force and effect as is provided in section 337 of the Tariff Act of 1930. *Id.* at ¶ 8. Consistent with subsection (ii)(A), the Consent Order Stipulation contains a statement that the consent order shall not apply with respect to any claim of any intellectual property right that has expired or been found or adjudicated invalid or unenforceable. *Id.* at ¶ 9. Consistent with subsection (ii)(B), the Consent Order Stipulation contains a statement that Mercury will not seek to challenge the validity or enforceability of the Asserted Patents in any administrative or judicial proceeding to enforce the consent order. *Id.* at ¶ 10. Accordingly, I find that the Consent Order Stipulation complies with the requirements of Commission Rule 210.21(c)(3).

Commission Rule 210.21(c)(4) sets forth the information that must be included in the proposed consent order. 19 C.F.R. § 210.21(c)(4). A consent order may not include terms beyond or inconsistent with those set forth by Commission Rule 210.21(c)(4). *Id.* The Staff reviewed the Proposed Consent Order (Exhibit B) and found that it does not appear to have terms beyond, or materially inconsistent with the Commission's rules. Staff Resp. at 7-9. Consistent with subsection (i) of Commission Rule 210.21(c)(4), the Proposed Consent Order contains a statement identifying Complainant CTC Global, Respondent Mercury, and the allegation that certain electrical conductor composite cores and components thereof infringe the Asserted Patents. Exhibit B, Preamble ¶ 1. Consistent with subsection (ii), the Proposed Consent Order contains a statement that Mercury has executed a consent order stipulation. *Id.*, Preamble ¶ 2. Consistent with subsection (iii), the Proposed Consent Order contains a statement that the respondent shall not sell for importation, import into the United States, and/or sell in the United States after importation, any of the subject articles. *Id.* at ¶ 1. The Proposed Consent Order

further contains a statement that Mercury has no existing U.S. inventories of the subject articles, which renders subsection (iv) of Commission Rule 210.21(c)(4) inapplicable. *Id.* at ¶ 2. Consistent with subsection (v), the Proposed Consent Order contains a statement that Mercury shall cease and desist from importing and distributing the subject articles. *Id.* at ¶ 3. Consistent with subsection (vi), the Proposed Consent Order contains a statement that Mercury shall be precluded from seeking judicial review or otherwise challenging or contesting the validity of the consent order. *Id.* at ¶ 5. Consistent with subsection (vii), the Proposed Consent Order contains a statement that Mercury shall cooperate with and shall not seek to impede the Commission's efforts to gather information. *Id.* at ¶ 6. Consistent with subsection (viii), the Proposed Consent Order contains a statement that Mercury and its officers will not seek to challenge the validity or enforceability of the Asserted Patents in any administrative or judicial proceeding to enforce the consent order. *Id.* at ¶¶ 4, 7. Consistent with subsection (ix), the Proposed Consent Order contains a statement that when the Asserted Patents expire, the consent order shall become null and void. *Id.* at ¶ 8. Consistent with subsection (x), the Proposed Consent Order contains a statement that the consent order shall become null and void as to any claim of the asserted patents that is held to be invalid or unenforceable. *Id.* at ¶ 9. Consistent with subsection (xi), the Proposed Consent Order contains a statement that the Investigation is hereby terminated with respect to Mercury. *Id.* at ¶ 10. There are no additional terms in the Proposed Consent Order.

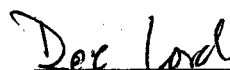
Commission Rule 210.50(b)(2) directs the administrative law judge to consider and make appropriate findings regarding the effect of the proposed settlement on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers. *Id.* 19 C.F.R. § 210.50(b)(2). Mercury submits that termination by consent order will conserve the time and

resources of the private parties and the Commission, and the Staff agrees that the public interest generally favors termination. Motion Mem. at 8-9; Staff Resp. at 10. I find no public interest concerns that would weigh against the termination of Mercury, and I find nothing to suggest that such termination would impose an undue burden on the public health and welfare, competitive conditions in the U.S. economy, the production of similar or directly competitive articles in the United States, or U.S. consumers. *See* 19 U.S.C. § 1337(d). I therefore find that termination of the investigation as to Mercury is in the public interest, which favors settlement to avoid needless litigation and to conserve public resources. *See Certain Electric Skin Care Devices, Brushes and Chargers Therefor, and Kits Containing Same*, Inv. No. 337-TA-959, Order No. 31 at 4-5 (Nov. 30, 2015), *not reviewed by Comm'n Notice* (Dec. 23, 2015).

Accordingly, it is my Initial Determination that Motion Docket No. 995-004 is GRANTED, and Mercury shall be terminated from this investigation pursuant to the Proposed Consent Order attached hereto as Exhibit B.

This Initial Determination, along with supporting documentation, is hereby certified to the Commission. Pursuant to Commission Rule 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 Commission Rule 210.43(a), or the Commission, pursuant to Commission Rule 210.44, orders, on its own motion, a review of the Initial Determination or certain issues contained herein. 19 C.F.R. § 210.42(d).

SO ORDERED.



Dee Lord
Administrative Law Judge

Exhibit A

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

**Before the Honorable Dee Lord
Administrative Law Judge**

In the Matter of CERTAIN ELECTRICAL CONDUCTOR COMPOSITE CORES AND COMPONENTS THEREOF
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Investigation No. 337-TA-995

CONSENT ORDER STIPULATION

WHEREAS, the United States International Trade Commission on May 11, 2016 (81 *Fed. Reg.* 30340 (May 16, 2016)), instituted the above-captioned investigation under Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), based upon the amended complaint filed by Complainant CTC Global Corporation (“CTC Global” or “Complainant”), which alleged unfair acts in the importation into the United States, the sale for importation into the United States, and the sale within the United States after importation of certain electrical conductor composite cores and components thereof, by, among others, Respondent Mercury Cable & Energy, Inc. (“Mercury”), in violation of Section 337 with respect to claims 1, 3-6, 9, 12-15, 20-23, 25-27, 29, 30, 36, 38, 44, 52, 59-62, 64-67, and 69-71 of U.S. Patent No. 7,211,319 (the “319 patent”) and claims 1-3, 8-10, 20, 21, 26, 27, 29, 33-37, 51, 58, and 63-65 of U.S. Patent No. 7,368,162 (the “162 patent”).

WHEREAS, Mercury is willing to accept entry of the Consent Order submitted concurrently herewith by the International Trade Commission and agrees to all waivers and other provisions as required by 19 C.F.R. § 210.21; and

WHEREAS, Mercury agrees to all terms set forth in the Consent Order.

IT IS HEREBY STIPULATED by Mercury in support of the Motion for an Order Terminating the Investigation as to Mercury by Entry of a Consent Order as follows:

1. The Commission has subject matter jurisdiction over this investigation. The Commission has *in rem* jurisdiction over the accused electrical conductor composite cores and components thereof that are the subject of the complaint in this investigation. The Commission also has in personam jurisdiction over Mercury for purposes of this Stipulation and the proposed Consent Order.

2. Mercury, including its officers, directors, employees, agents, and any entity or individual acting on its behalf and with its authority, agrees, upon entry of the Consent Order, that it will not sell for importation, import into the United States or sell in the United States after importation, directly or indirectly, or aid, abet, encourage, participate in, or induce the sale for importation, importation into the United States or sale in the United States after importation of electrical conductor composite cores and components thereof that infringe any of claims 1, 3-6, 9, 12-15, 20-23, 25-27, 29, 30, 36, 38, 44, 52, 59-62, 64-67, and 69-71 of the '319 patent or any of claims 1-3, 8-10, 20, 21, 26, 27, 29, 33-37, 51, 58, and 63-65 of the '162 patent, except under consent or license from Complainant.

3. Mercury has no existing U.S. inventories of imported electrical conductor composite cores and components thereof that are accused of infringing the '319 and '162 patents (the "Accused Products").

4. Mercury expressly waives all rights to seek judicial review or otherwise challenge or contest the validity of the Consent Order.

5. Mercury will cooperate with and will not seek to impede by litigation or other means the Commission's efforts to gather information under Subpart I of the Commission's Rules of Practice and Procedure, 19 C.F.R. Subchapter C, Part 210.

6. The enforcement, modification and revocation of the Consent Order will be carried out pursuant to Subpart I of the Commission's Rules of Practice and Procedure, 19 C.F.R. Subchapter C, Part 210.

7. The signing of this Stipulation is for settlement purposes only and does not constitute admission by Mercury that an infringement of the '319 patent or '162 patent and/or an unfair act, unlawful act, or any act of importation of the Accused Products has been committed.

8. The Consent Order shall have the same force and effect and may be enforced, modified, or revoked in the same manner as is provided in section 337 of the Tariff Act of 1930 and this part for other Commission actions, and the Commission may require periodic compliance reports pursuant to subpart I of this part to be submitted by Mercury.

9. The Consent Order shall not apply with respect to any claim of an intellectual property right that has expired or been found or adjudicated invalid or unenforceable by the Commission or a court or agency of competent jurisdiction, provided that such finding or judgment has become final and nonreviewable.

10. Mercury will not seek to challenge the validity or enforceability of the patents that form the basis for the complaint in any administrative or judicial proceeding to enforce the Consent Order.

11. This Consent Order Stipulation and Consent Order are in the public interest.

Exhibit B

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

CERTAIN ELECTRICAL CONDUCTOR
COMPOSITE CORES AND
COMPONENTS THEREOF

Inv. No. 337-TA-995

PROPOSED CONSENT ORDER

The United States International Trade Commission on May 11, 2016 (81 *Fed. Reg.* 30340 (May 16, 2016)), instituted the above-captioned investigation under Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), naming two respondents, including Respondent Mercury Cable & Energy, Inc. (“Mercury”), based upon the amended complaint filed by Complainant CTC Global Corporation (“CTC Global” or “Complainant”) that alleged unfair acts in the importation into the United States, the sale for importation into the United States, and the sale within the United States after importation of certain electrical conductor composite cores and components thereof, by, among others, Respondent Mercury, in violation of Section 337 with respect to claims 1, 3-6, 9, 12-15, 20-23, 25-27, 29, 30, 36, 38, 44, 52, 59-62, 64-67, and 69-71 of U.S. Patent No. 7,211,319 (the “319 patent”) and claims 1-3, 8-10, 20, 21, 26, 27, 29, 33-37, 51, 58, and 63-65 of U.S. Patent No. 7,368,162 (the “162 patent”).

Mercury has executed a Consent Order Stipulation in which it agrees to the entry of this Consent Order and to all waivers and other provisions as required by Commission Rule of Practice and Procedure 210.21(c) (19 C.F.R. § 210.21(c)). Mercury has filed a Motion to Terminate the Investigation as to Mercury based on a Consent Order.

IT IS HEREBY ORDERED THAT:

1. Upon the entry of this Consent Order, Mercury shall not sell for importation, import into the United States, or sell in the United States after importation, directly or indirectly, or aid, abet, encourage, participate in, or induce the sale for importation, importation into the United States or sale in the United States after importation of electrical conductor composite cores and components thereof that infringe any of claims 1, 3-6, 9, 12-15, 20-23, 25-27, 29, 30, 36, 38, 44, 52, 59-62, 64-67, and 69-71 of U.S. Patent No. 7,211,319 (the “’319 patent”) or any of claims 1-3, 8-10, 20, 21, 26, 27, 29, 33-37, 51, 58, and 63-65 of U.S. Patent No. 7,368,162 (the “’162 patent”), except under consent or license from Complainant.
2. Mercury has no existing U.S. inventories of imported electrical conductor composite cores and components thereof that are accused of infringing the ‘319 and ‘162 patents (the “Accused Products”).
3. Mercury shall cease and desist from importing and distributing Accused Products in the United States.
4. This Consent Order shall be applicable to and binding upon Mercury Cable & Energy, Inc. and its officers, directors, agents, servants, attorneys, employees, affiliates, and all persons, firms, or corporations acting or claiming to act on its behalf or under its direction or authority.
5. Mercury shall be precluded from seeking judicial review or otherwise challenging or contesting the validity of this Consent Order.
6. Mercury shall cooperate with and shall not seek to impede by litigation or other means the Commission's efforts to gather information under Subpart I of the Commission's Rules of Practice and Procedure, 19 C.F.R. Part 210.

7. Mercury and its officers, directors, employees, agents, and any entity or individual acting on its behalf and with its authority shall not seek to challenge the validity or enforceability of the claims of the '319 patent and '162 patent in any administrative or judicial proceeding to enforce the Consent Order.

8. Upon the expiration of the '319 patent and/or '162 patent, this Consent Order shall become null and void as to each such expired patent.

9. This Consent Order shall become null and void as to any claim of any intellectual property right that is held invalid or unenforceable by a court or agency of competent jurisdiction or as to any article that has been found or adjudicated not to infringe the asserted right in a final decision, no longer subject to appeal.

10. This investigation is hereby terminated with respect to Mercury Cable & Energy, Inc., provided, however, that enforcement, modification, or revocation of the Consent Order shall be carried out pursuant to Subpart I of the Commission's Rules of Practice and Procedure, 19 C.F.R. part 210.

BY ORDER OF THE COMMISSION:

Lisa A. Barton
Secretary to the Commission

Issued: October __, 2016

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served by hand upon the Commission Investigative Attorney, **Paul A. Gennari, Esq.**, and the following parties as indicated, on **September 23, 2016**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
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On Behalf of Complainant CTC Global Corporation:

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 Via Express Delivery
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 Other: _____

On Behalf of Respondents Mercury Cable & Energy, Inc.:

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