

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN GROUND FAULT CIRCUIT
INTERRUPTERS AND PRODUCTS
CONTAINING SAME**

**Investigation No. 337-TA-739
(Advisory Opinion Proceeding)**

ORDER

The Commission instituted this investigation on October 8, 2010, based on a complaint filed by Leviton Manufacturing Co., Inc. of Melville, New York (“Leviton”). *75 Fed. Reg.* 62420 (Oct. 8, 2010). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended (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 ground fault circuit interrupters (“GFCIs”) and products containing the same by reason of infringement of, inter alia, U.S. Patent No. 7,737,809 (“the ’809 patent”). In the course of proceedings, the Commission entered cease and desist orders against numerous defaulting foreign and domestic respondents, including Menard, Inc. of Eau Claire, Wisconsin. In connection with briefing to the Commission on remedy and the public interest, non-party Pass & Seymour, Inc. of Syracuse, New York (“P&S”) argued for a carve-out for P&S GFCIs from any general exclusion order. P&S argued that Leviton deliberately avoided naming P&S as a respondent or accusing P&S’s products, and that any exclusion order ought not reach P&S’s products. The Commission rejected P&S’s argument, and issued a general exclusion order, but invited P&S to “avail itself of other Commission procedures to obtain a ruling as to whether its products are subject to the general exclusion order.” Comm’n Op. 91-92 (Apr. 27, 2012).

On August 29, 2012, Leviton filed a complaint for enforcement proceedings under Commission rule 210.75(b). Among Leviton's allegations was that Menard violated the cease and desist order by selling P&S GFCIs. *See* Enforcement Compl. ¶¶ 64-67. On November 1, 2012, the Commission instituted the enforcement proceeding sought by Leviton. 77 Fed. Reg. 66080 (Nov. 1, 2012). On November 2, 2012, P&S moved to intervene as a respondent, and on November 27, 2012, the ALJ substantially granted that motion. Order No. 71 at 4-5 (Nov. 27, 2012) (granting motion to intervene, but limiting P&S's participation to issues of infringement and remedy). Leviton subsequently entered a Settlement and License Agreement with P&S, and Menard and P&S were terminated from the enforcement proceeding. Order No. 76 (Feb. 4, 2013), *not reviewed*, Notice (Mar. 1, 2013).

On November 20, 2013, P&S filed a request with the Commission for an advisory opinion pursuant to Commission rule 210.79, with regard to certain redesigned P&S products. In particular, P&S seeks an opinion as to whether importation of its redesigned GFCIs, without authorization from Leviton, would violate the Commission's remedial orders entered in this investigation on April 27, 2012. On December 2, 2013, Leviton opposed. On December 16, 2013, P&S moved for leave to file a reply, which P&S appended to its motion. The Commission has granted the motion to reply.

Upon consideration of this matter, the Commission hereby ORDERS that:

1. Pursuant to Commission rule 210.79(a), 19 C.F.R. § 210.79(a), an advisory opinion proceeding is instituted to provide an opinion as to whether importation of P&S's redesigned GFCIs, without authorization from Leviton, would violate the Commission's remedial orders entered in this investigation on April 27, 2012.

2. For purposes of the advisory opinion proceeding so instituted, the following are named as parties:
 - a. Leviton Manufacturing Co., Inc. of Melville, New York;
 - b. Pass & Seymour, Inc. of Syracuse, New York;
 - c. The Office of Unfair Import Investigations.
3. The request for an advisory opinion is certified to the Chief Administrative Law Judge, Charles A. Bullock for assignment to a presiding administrative law judge for the appropriate proceeding and issuance of an initial advisory opinion ("IAO"). The advisory opinion proceedings are to be completed as expeditiously as practicable. The administrative law judge may conduct any proceedings he or she deems necessary, including taking evidence and ordering discovery, to issue the IAO.
4. The IAO shall construe any terms of claims 1-4, 6, 8-11, 13, 15-16, 35-37, 39, and 41-46 of the '809 patent ("the asserted claims") that the parties materially dispute. The IAO shall compare each limitation of the asserted claims to P&S's redesigned GFCIs and make findings as to whether P&S's redesigned GFCIs practice each limitation. After making the foregoing findings, the IAO shall provide an opinion as to whether importation of P&S's redesigned GFCIs, without authorization from Leviton, would violate the Commission's remedial orders entered in this investigation on April 27, 2012.
5. Petitions for review of the IAO may be filed within ten calendar days after service of the IAO. Responses to such petitions may be filed within five business days after service of any petitions for review.
6. The IAO shall become the Commission's advisory opinion within 45 days after service of the IAO, unless the Commission orders review of the IAO or changes the deadline for determining whether to review the IAO.
7. A copy of this Order shall be served upon each party of record in this investigation.
8. Notice of this order shall be published in the *Federal Register*.

By order of the Commission.



Lisa R. Barton
Acting Secretary to the Commission

Issued: February 4, 2014

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CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served by hand upon the Office of Unfair Import Investigations, and the following parties as indicated, on **February 5, 2014**.



Lisa R. Barton, Acting Secretary
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

**COMPLAINANT LEVITON MANUFACTURING CO.,
INC.:**

Leviton Manufacturing Co., Inc.
201 North Service Road
Melville, New York 11747

☐ Via Hand Delivery
☒ Via Overnight Mail
☐ Via First Class Mail
☐ Other: _____

REQUESTOR PASS & SEYMOUR, INC.:

Pass & Seymour, Inc.
50 Boyd Avenue
Syracuse, NY 13209

☐ Via Hand Delivery
☒ Via Overnight Mail
☐ Via First Class Mail
☐ Other: _____