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UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

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

Inv. No. 337-TA-650

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**ORDER NO. 19: DENYING RESPONDENTS' JOINT MOTION FOR SUMMARY
DETERMINATION**

(April 10, 2009)

On February 27, 2009, Respondents Fu Ching Technical Industry Co. Ltd. and Gem Electronics, Inc. (collectively, "Respondents") moved for summary determination that (i) they do not infringe certain claims of U.S. Patent No. 5,470,257 (the "'257 patent'"), (ii) the '257 patent is invalid as anticipated, obvious or indefinite, and (iii) Complainant John Mezzalingua Associates, Inc. d/b/a PPC, Inc. ("PPC") is barred by laches from pursuing this Investigation against Respondents. (Motion Docket No. 650-014.) Respondents request oral argument pursuant to Commission Rule 210.18(b), which request is hereby DENIED.

On March 12, 2009, PPC filed an opposition to Respondents' motion. PPC argues that Respondents failed to comply with the requirements for proving invalidity by clear and convincing evidence. (Resp. Opp. at 32.) PPC also argues that the accused products infringe the '257 patent and disputes Respondents' claim that the locking member and connector body of the accused products are separable by hand. (*Id.* at 19-22.) Notably, PPC indicates that it was not provided

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with the physical samples that Respondents submitted to support their motion. (*Id.* at 20.) On the issue of laches, PPC submits that there is no laches defense for Section 337 patent investigations, and even if there were, Respondents failed to submit any evidence in support of this defense. (*Id.* at 43-44.)

On March 12, 2009, the Commission Investigative Staff (“Staff”) filed a response opposing Respondents’ motion. Staff argues that there are genuine issues of material fact which preclude summary determination on non-infringement. (*Id.* at 5-6.) In addition, Staff argues that Respondents have not shown the asserted claims are indefinite because the specification discloses sufficient corresponding structure if “inseparably couple” is construed as “part of a means-plus-function claim.” (Staff Resp. at 3.) As for Respondents’ other invalidity claims, Staff argues that Respondents fail to set forth a prima facie case of invalidity based on anticipation or obviousness. (*Id.* at 6.) Finally, Staff argues that a laches defense is unavailable to Respondents. (*Id.* at 6-7.)

Based upon the motion papers and responses thereto, the Administrative Law Judge finds as follows.

The Commission Rules permit a party to “move with any necessary supporting affidavits for a summary determination in his favor upon all or any part of the issues to be determined in the investigation.” 19 C.F.R. § 210.18(a). Summary determination “shall be rendered if pleadings and any depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a summary determination as a matter of law.” 19 C.F.R. § 210.18(b). *See also DeMarini Sports,*

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Inc. v. Worth, Inc., 239 F.3d 1314, 1322 (Fed. Cir. 2001); *Wenger Mfg., Inc. v. Coating Machinery Systems, Inc.*, 239 F.3d 1225, 1231 (Fed. Cir. 2001).

“When ruling on a motion for summary judgment, all of the nonmovant’s evidence is to be credited, and all justifiable inferences are to be drawn in the nonmovant’s favor.” *Xerox Corp. v. 3Com Corp.*, 267 F.3d 1361, 1364 (Fed. Cir. 2001). The trier of fact should “assure itself that there is no reasonable version of the facts, on the summary judgment record, whereby the nonmovant could prevail, recognizing that the purpose of summary judgment is not to deprive a litigant of a fair hearing, but to avoid an unnecessary trial.” *EMI Group North America, Inc. v. Intel Corp.*, 157 F.3d 887, 891 (Fed. Cir. 1998).

“[A] moving party seeking to invalidate a patent at summary judgment must submit such clear and convincing evidence of facts underlying invalidity that no reasonable jury could find otherwise.” *SRAM Corp. v. AD-II Engineering, Inc.*, 465 F.3d 1351, 1357 (Fed. Cir. 2006). This burden of showing invalidity by clear and convincing evidence is especially difficult when, as is the present case, Respondents attempt to rely on prior art that was before the patent examiner during prosecution. *PowerOasis, Inc. v. T-Mobile USA, Inc.*, 522 F.3d 1299, 1304 (Fed. Cir. 2008); *American Hoist & Derrick Co. v. Sowa & Sons, Inc.*, 725 F.2d 1350, 1359-60 (Fed. Cir. 1984).

I. Non-Infringement

The Administrative Law Judge finds that summary determination with respect to non-infringement is not appropriate. The Administrative Law Judge finds that genuine material issues of fact remain relating to at least (i) whether the locking member of Respondents’ accused products is separable from the connector body and (ii) whether a radially protruding circular

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shoulder is present on Respondents' accused products at a first position, and that good cause does not exist to grant this portion of the motion in lieu of a trial of all issues on the merits.

II. Indefiniteness.

Patent claims are presumed valid. 35 U.S.C. § 282; *Exxon Research & Eng'g Co. v. United States*, 265 F.3d 1371, 1375 (Fed. Cir. 2001). According to the Federal Circuit, a claim is indefinite only if the claim is “insolubly ambiguous, and no narrowing construction can properly be adopted. . . . If the meaning of the claim is discernible, even though the task may be formidable and the conclusion may be one over which reasonable persons will disagree, we have held the claim sufficiently clear to avoid invalidity on indefiniteness grounds.” *Exxon*, 265 F.3d at 1375.

The Administrative Law Judge declines to engage in binding claim construction at this time. However, assuming *arguendo* that the claim language “engagement means” in independent Claim 1¹ of the '257 patent is “expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof,” the Administrative Law Judge finds that there is adequate corresponding structure described in the specification. 35 U.S.C. § 112 ¶6.

The parties essentially do not dispute that the specified function for “engagement means” is “inseparably couple,” although PPC elaborates that the function is “to inseparably couple said locking member to said connector body at a first position.” (Mot. Mem. at 10; Staff Resp. at 3; PPC Opp. at 41.) As Staff points out, the specification provides detailed figures and written descriptions that describe adequate corresponding structure. (*See, e.g.*, Resp. Opp. Ex. 1, at Fig.

¹ While PPC asserts Claims 1-5 and 10 of the '257 patent, Claims 2-5 and 10 are dependent on Claim 1.

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1, Fig. 5, Col. 2:8-11, 5:37-43.) PPC further identifies descriptions of corresponding structure in the patent and prosecution history. (*See, e.g., id.* at Figs. 2-3, Col. 4:11-22; Ex. 2 at PPC/ITC010286.) These descriptions are sufficient to show that the “engagement means” language of Claim 1 is not “insolubly ambiguous.” This finding is consistent with the analysis made by the Southern District of Florida when construing the ‘257 patent claims. (Mot., Ex. 2 at 15-18.)²

As a result, the Administrative Law Judge finds as a matter of law that the language “engagement means,” if construed as means-plus-function pursuant to 35 U.S.C. § 112 ¶6, does not render Claim 1 of the ‘257 patent indefinite.

III. Invalidity Based on Anticipation or Obviousness.

A. Anticipation.

In order to show invalidity based on anticipation under 35 U.S.C. § 102, Respondents must prove by clear and convincing evidence that each and every element of a patent claim is disclosed in a single piece of prior art. *Lewmar Marine, Inc. v. Barient, Inc.*, 827 F.2d 744, 747 (Fed. Cir. 1987); *SRAM*, 465 F.3d at 1357.

The Administrative Law Judge finds that Respondents fail to cite to any evidence or undertake any analysis to show by clear and convincing evidence that each and every element of any of Claims 1-5 and 10 of the ‘257 patent are disclosed in a single piece of prior art. (Mot. Mem. at 36-37.)

² Respondents argue that PPC is bound by the District Court’s construction that “engagement means” is means-plus-function format, yet they do not explain how the District Court’s finding of sufficient supporting structure may have been incorrect. (Mot. Mem. at 10.)

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B. Obviousness.

A patent claim is invalid for obviousness “if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” 35 U.S.C. § 103. “Obviousness under 35 U.S.C. § 103 is a question of law, with underlying factual considerations regarding (1) the scope and content of the prior art, (2) the differences between the prior art and the claimed invention, (3) the level of ordinary skill in the art, and (4) any relevant secondary considerations.” *Ball Aerosol and Specialty Container, Inc. v. Limited Brands, Inc.*, 555 F.3d 984, 991 (Fed. Cir. 2009) (citing *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966)).

The Administrative Law Judge finds that Respondents fail to meet the clear and convincing standard for showing that Claims 1-5 and 10 of the ‘257 patent “would have been obvious at the time the invention was made to a person having ordinary skill in the art.” For example, Respondents have not adduced facts to show the level of ordinary skill in the art at the time the invention was made. (Mot. Mem. at 39-40.) The Administrative Law Judge further finds that genuine issues of fact remain with respect to the underlying considerations for obviousness, particularly relating to the scope and content of the prior art.

IV. Laches.

The Administrative Law Judge finds that Respondents have failed to set forth supporting evidence for their claim that PPC exercised unreasonable and inexcusable delay in bringing this Investigation such that Respondents were materially prejudiced. (Mot. Mem., at 40.) Respondents

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cite to no evidence, either in their brief or Statement of Material Facts, to support their conclusory statements that PPC was aware of the accused products in June 2001, that PPC received an opinion letter regarding the accused products, or that PPC was in any way prejudiced. (*Id.*) As a result, the Administrative Law Judge finds that Respondents fail to show with respect to laches that there is no genuine issue as to any material fact such that the Respondents would be entitled to a summary determination as a matter of law.

Furthermore, as Staff and PPC point out, laches does not provide a respondent accused of patent infringement with any meaningful defense in a Section 337 investigation. (Staff Resp. at 6-7.) “[L]aches as it pertains to patent-based cases does not, as a matter of law, work to curtail the type of prospective relief sought in [Section] 337 cases.” *Certain Personal Watercraft and Components Thereof*, Inv. No. 337-TA-452, Order No. 54 at 2 (U.S.I.T.C., September 19, 2001) (citing *Certain EPROM, EEPROM, Flash Memory & Flash Microcontroller Semiconductor Devices & Products Containing Same*, Inv. No. 337-TA-395, Comm’n Op., Supplemental Views of Chairman Bragg at 11, n. 65 (U.S.I.T.C., July 9, 1998)). *See also Certain Bearings and Packaging Thereof*, Inv. No. 337-TA-469, Initial Determination Concerning Violation of Section 337 and Recommended Determination on Issues Concerning Permanent Relief at 27 (U.S.I.T.C., April 10, 2003) (“[L]aches is never a valid defense to patent infringement claims brought before the Commission.”)

Accordingly, the Administrative Law Judge DENIES Respondents’ motion (Motion Docket No. 650-014) in full.

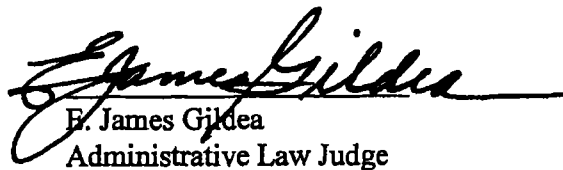
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Administrative Law Judges a statement as to whether or not it seeks to have any portion of this document deleted from the public version. The parties' submissions may be made by facsimile and/or hard copy by the aforementioned date.

Any party seeking to have any portion of this document deleted from the public version thereof must submit to this office a copy of this document with red brackets indicating any portion asserted to contain confidential business information. The parties' submissions concerning the public version of this document need not be filed with the Commission Secretary.

SO ORDERED.

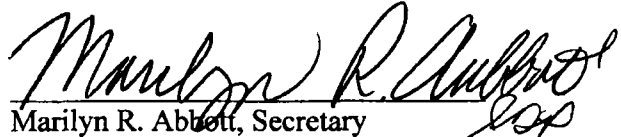

E. James Gildea
Administrative Law Judge

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337-TA-650

CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached has been served upon, **Kevin Baer, Esq.**, Commission Investigative Attorney, and the following parties via first class mail and air mail where necessary on April 17, **2009**.


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