

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

In the Matter of

**CERTAIN HIGH-DENSITY FIBER
OPTIC EQUIPMENT AND
COMPONENTS THEREOF**

**Investigation No. 337-TA-1194
(Advisory Opinion Proceeding)**

ORDER INSTITUTING ADVISORY OPINION PROCEEDING

The Commission instituted the underlying investigation on March 24, 2020, based on a complaint filed on behalf of Corning Optical Communications LLC (“Corning”) of Charlotte, North Carolina. 85 Fed. Reg. 16653-54 (Mar. 24, 2020). The complaint, as supplemented, alleged violations of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain high-density fiber optic equipment and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 9,020,320 (the “’320 patent”), 10,444,456 (the “’456 patent”), 10,120,153 (the “’153 patent”), 8,712,206 (the “’206 patent”), and 10,094,996 (“the ’996 patent”). *Id.* The ’996 patent was subsequently terminated from the investigation. *See* Order No. 11 (July 29, 2020), *unreviewed by* Comm’n Notice (Aug. 13, 2020). The Commission’s notice of investigation named thirteen respondents including, among others, Panduit Corporation (“Panduit”) of Tinley, Illinois; FS.com Inc. (“FS”) of New Castle, Delaware; Leviton Manufacturing Co., Inc. (“Leviton”) of Melville, New York; and The LAN Wirewerks Research Laboratories Inc. d/b/a Wirewerks of Quebec, Canada; and The Siemon Company (“Siemon”) of Watertown, Connecticut (collectively, “Respondents”). *See* Comm’n Op. at 3-5 (Aug. 23, 2021). The remaining respondents were either found in default pursuant to Commission Rule 210.16, or

terminated from the investigation based on withdrawal of the allegations in the complaint or a settlement agreement. *Id.* The notice of investigation also named the Office of Unfair Import Investigations (“OUII”) as a party. *Id.* at 4.

On March 23, 2021, the administrative law judge (“ALJ”) issued a final initial determination (“ID”) finding a violation of section 337 with respect to claims 1 and 3 of the ’320 patent; claims 11, 12, 14-16, 19, 21, 27, and 28 of the ’456 patent; claims 9, 16, 23, and 26 of the ’153 patent; and claims 22 and 23 of the ’206 patent (collectively, “Asserted Patents”).

On May 24, 2021, the Commission determined to review the final ID in part. 86 Fed. Reg. 28890-93 (May 28, 2021). On August 3, 2021, the Commission determined that Corning established a violation of section 337 with respect to claims 1 and 3 of the ’320 patent; claims 11, 12, 14-16, 19, 21, 27, and 28 of the ’456 patent; claims 9, 16, 23, and 26 of the ’153 patent; and claims 22 and 23 of the ’206 patent. 86 Fed. Reg. 43564-66 (Aug. 9, 2021). Among other findings, the Commission affirmed with modifications the ID’s finding that Panduit induced infringement of the asserted claims of the ’320, ’456, and ’153 patents but not the ’206 patent. As a remedy, the Commission determined to issue a general exclusion order (“GEO”) and cease and desist orders (“CDOs”), including one directed to Panduit.

On November 24, 2021, Corning filed a complaint requesting that the Commission institute an enforcement proceeding under Commission Rule 210.75 to investigate alleged violations of the GEO and CDO by Panduit. On December 28, 2021, the Commission determined to institute an enforcement proceeding to determine whether violations of the GEO and CDO have occurred and to determine what, if any, enforcement measures are appropriate. Panduit and OUII were named as parties. The Commission referred the enforcement proceeding to the Chief Administrative Law Judge (“CALJ”) for designation of a presiding ALJ to conduct

any necessary proceedings, issue an Enforcement Initial Determination, and make a recommendation on appropriate enforcement measures, if any.

On November 29, 2021, Panduit, Siemon, and FS filed a notice of appeal with the U.S. Court of Appeals for the Federal Circuit seeking review of the Commission's determination. The appeal (Docket No. 2022-1228) was docketed on December 7, 2021.

On April 18, 2022, Panduit filed a request for an advisory opinion that three new fiber optic equipment designs that it developed do not infringe any asserted claims of the Asserted Patents and are therefore not covered by the GEO and CDO issued in this investigation. Panduit's new designs include: (1) a patch panel design with a density of 192 fiber optic connections in a 1U space; (2) a patch panel design with a density of 144 fiber optic connections in a 1U space; and (3) a new enclosure design with a density of 192 fiber optic connections in a 1U space (collectively, "New Designs"). On April 28, 2022, Corning and OUII filed responses to Panduit's request.

Having reviewed Panduit's request in view of the record below, the Commission has determined to institute an advisory opinion proceeding to ascertain whether Panduit's New Designs infringe claims 1 and 3 of the '320 patent; claims 11, 12, 14-16, 19, 21, 27, and 28 of the '456 patent; claims 9, 16, 23, and 26 of the '153 patent; and claims 22 and 23 of the '206 patent, and are covered by the remedial orders issued in this investigation. The Commission has further determined to refer the matter to the CALJ for assignment to an ALJ for appropriate proceedings and the issuance of an initial advisory opinion ("IAO") at the earliest practicable time, preferably within 120 days of institution but no later than 7 months after institution, as set forth below.

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 hereby instituted to ascertain whether the Panduit's New Designs infringe claims 1 and 3 of the '320 patent; claims 11, 12, 14-16, 19, 21, 27, and 28 of the '456 patent; claims 9, 16, 23, and 26 of the '153 patent; and claims 22 and 23 of the '206 patent.
2. The advisory opinion proceeding shall be limited to the limitations of claims 1 and 3 of the '320 patent; claims 11, 12, 14-16, 19, 21, 27, and 28 of the '456 patent; claims 9, 16, 23, and 26 of the '153 patent; and claims 22 and 23 of the '206 patent identified by Panduit in its request. *See* Request at 45-46.
3. For purposes of the advisory opinion proceeding so instituted, the following are named as parties:
 - a. Panduit;
 - b. Corning; and
 - c. OUII.
4. The Commission refers this advisory opinion proceeding to the CALJ, who shall assign this advisory opinion proceeding to an ALJ for appropriate proceedings and an IAO, to be issued at the earliest practicable time, preferably within 120 days from the date that the Commission's notice to conduct the proceeding is published in the *Federal Register*, but no later than 7 months after institution.
5. The ALJ shall set the target date for completion of this advisory opinion proceeding at two months after the deadline for issuance of the IAO. The target date may be extended based on good cause shown.
6. The parties may petition for review of the ALJ's recommendation within 10 days after service of the recommendation. Any party may file a response to the petition(s) within 5 business days after service of the petition(s).
7. The Secretary to the Commission shall serve a copy of this Order upon the parties to this investigation.
8. Notice of this Order shall be published in the *Federal Register*.

By order of the Commission.

A handwritten signature in black ink, appearing to read 'L.R. Barton', written in a cursive style.

Lisa R. Barton
Secretary to the Commission

Issued: May 18, 2022