

**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 ADVISORY OPINION**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has issued an advisory opinion in the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:** Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3104. 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 (<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) ("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 various patents, including U.S. Patent No. 6,558,194 ("the '194 patent"). The notice of institution named eight respondents. After institution, two respondents were terminated based on consent orders and four respondents were found to be in default ("defaulting respondents"). Two respondents, Fu-Ching Technical Industry, Co., Ltd., and Gem Electronics, Inc., remained active.

On October 13, 2009, the Administrative Law Judge (“ALJ”) issued his final initial determination (“ID”) and recommended determination on remedy and bonding. The ALJ found a violation of section 337 by the defaulting respondents in connection with the ‘194 patent. On December 14, 2009, the Commission determined to review the final ID in part, but the Commission did not review the ALJ’s determination with respect to the ‘194 patent. The Commission issued a general exclusion order on March 31, 2010 with respect to the ‘194 patent based on a finding of violation of Section 337 by the defaulting respondents.

On September 12, 2011, non-respondent, Holland Electronics, LLC (“Holland”) filed a request for an advisory opinion under Commission Rule 210.79 (19 C.F.R. § 210.79) that would declare that its coaxial cable connectors, utilizing an axial but not radial compression for deformation, are outside of the scope of the Commission’s March 31, 2010 general exclusion order. Holland further requested that the Commission conduct all proceedings related to the advisory opinion in an expedited manner and not refer the matter to an administrative law judge (ALJ).

On October 31, 2011, the Commission determined to institute an advisory opinion proceeding based on Holland’s request. 76 Fed. Reg. 68504 (November 4, 2011). The Commission directed PPC and the Commission Investigative Attorney (“IA”) to state their views regarding whether they oppose Holland’s request for an advisory opinion that its subject connectors are not covered by the March 31, 2010, general exclusion order, and if so, whether they believe the matter should be referred to an ALJ. *Id.* On November 11, 2011, PPC filed a response in support of Holland’s request for an advisory opinion. On November 14, 2011, the IA also filed a response in support of Holland’s request. Both PPC and the IA stated that it was not necessary to refer this matter to the ALJ.

The Commission has reviewed the parties’ submissions and has determined to grant Holland’s request for an advisory opinion that its products embodying the design set forth in Exhibit H to Holland’s advisory opinion request, and specifically the products listed in Exhibit I to Holland’s request that embody that design, are not covered by the Commission’s general exclusion order issued on March 31, 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 section 210.79(a) of the Commission’s Rules of Practice and Procedure (19 C.F.R. § 210.79(a)).

By order of the Commission.



James R. Holbein  
Secretary to the Commission

Issued: February 9, 2012

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

**In the Matter of**

**CERTAIN COAXIAL CABLE  
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**ADVISORY OPINION**

**I. INTRODUCTION**

On September 12, 2011, Holland Electronics, LLC (“Holland”), a non-respondent, filed a request for an advisory opinion under Commission Rule 210.79 (19 C.F.R. § 210.79) concerning whether its cable connectors are outside of the scope of the Commission’s March 31, 2010, general exclusion order issued in Inv. No. 337-TA-650, *Certain Coaxial Cable Connectors And Components Thereof And Products Containing Same*. According to Holland, its connectors utilize an “axial but not radial compression for deformation.” *See* Exhibit H to Holland’s Advisory Opinion Request. Holland requests an opinion that it has authority to import and sell its connectors under a covenant not to sue signed by complainant John Mezzalingua Associates, Inc., d/b/a PPC, Inc. (“PPC”) and/or that its connectors do not infringe U.S. Patent No. 6,558,194 (“the ‘194 patent”). Holland further requests that the Commission conduct all proceedings related to the advisory opinion in an expedited manner.

## II. PROCEDURAL HISTORY

The Commission instituted this investigation on May 30, 2008, based on a complaint filed by PPC of East Syracuse, New York. 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 various patents, including the '194 patent. The complaint named eight respondents. Holland was not named as a respondent. After institution, two respondents were terminated based on consent orders and four respondents were found to be in default ("defaulting respondents"). Two respondents Fu-Ching Technical Industry, Co., Ltd., and Gem Electronics, Inc., remained active.

On October 13, 2009, the presiding administrative law judge ("ALJ") issued his final initial determination ("ID") and recommended determination on remedy and bonding. The ALJ found, *inter alia*, a violation of section 337 by the defaulting respondents in connection with the '194 patent. The ALJ found that the claim terms of the '194 patent were not in dispute and that they should be given their plain and ordinary meaning. He found that the defaulting respondents infringed asserted claims 1 and 2 of the '194 patent and violated section 337 based on substantial, reliable and probative evidence provided by PPC. On December 14, 2009, the Commission determined not to review the ALJ's determination with respect to the '194 patent, and it became the final determination of the Commission. On March 31, 2010, the Commission issued a general exclusion order with respect to the '194 patent based on the finding of infringement by

the defaulting respondents. 75 Fed. Reg. 18236 (April 9, 2010).

On September 12, 2011, Holland filed its request for an advisory opinion under Commission Rule 210.79, asking that the Commission determine that its connectors are outside of the scope of the Commission's March 31, 2010 general exclusion order. Neither PPC nor the Commission Investigative Attorney ("IA") filed a response. On October 31, 2011, the Commission published notice that it had instituted an advisory opinion proceeding based on Holland's request. 76 Fed. Reg. 58040-41. The Commission directed PPC and the IA to state their views regarding whether they opposed Holland's request for an advisory opinion that its connectors are not covered by the March 31, 2010 general exclusion order, and if so, whether they believed that the matter should be referred to an ALJ. *Id.*

On November 11, 2011, PPC filed a response in support of Holland's request for an advisory opinion. On November 14, 2011, the IA also filed a response in support of the advisory opinion request. Both PPC and IA stated that referral to an ALJ was not necessary.

### III. DISCUSSION

#### A. Summary of Holland's Request for an Advisory Opinion

Holland asserts two bases for its request for an advisory opinion that the connectors identified in its request are not covered by the Commission's March 31, 2010 general exclusion order. First, Holland argues that it is authorized to import and sell its connectors at issue because complainant PPC entered into a covenant not to sue with Holland in 2006. Holland argues that this covenant authorizes acts that would otherwise be found infringing. It also notes that the covenant not to sue includes a statement that

the connector design at issue does not infringe any PPC patents. Therefore, Holland argues that its connectors do not violate the general exclusion order.

Second, Holland asserts that its connectors do not infringe the asserted claims of the '194 patent, either literally or under the doctrine of equivalents. Specifically, Holland alleges that several limitations of claims 1 and 2 of the '194 patent are not met by its connectors, including the limitation that the “inwardly tapered annular wall caus[es] said read end portion of said cylindrical sleeve to be deformed inwardly.” As to that limitation, Holland argues that the rear end portion of its cylindrical sleeve is not deformed inwardly during axial compression because the cylindrical sleeve of the axial connectors is not deformed when the compression ring is axially moved over the cylindrical sleeve.

Holland further asserts that each of the considerations in Commission Rule 210.79(a) weighs in favor of issuing an advisory opinion. Thus, it states that an advisory opinion would facilitate enforcement of section 337 by clarifying the scope of the Commission's general exclusion order and reducing its impact on legitimate non-infringing trade. Holland states that an advisory opinion would serve the public interest by allowing authorized products to be imported and that it would assist U.S. Customs and Border Protection (CBP) in enforcing the general exclusion order such that products not covered by the '194 patent would not be excluded from entry. Holland further argues that an advisory opinion would benefit consumers and competition in the United States by preventing anticompetitive effects in the market for coaxial cable connectors and denying PPC a monopoly that extends beyond the scope of the '194 patent.

Holland asserts that it has a compelling business need for the advice because its

connectors are currently being held by CBP at two ports in California, and CBP has indicated that it will not consider the legal import of Holland's covenant not to sue with PPC. CBP's decision is adversely impacting Holland's business because the exclusion of its connectors impacts its daily domestic activities. Holland states that it has framed its request as fully and accurately as possible. Lastly, Holland requests expedited consideration of its request for an advisory opinion and asserts that referral to an ALJ for determination is not necessary.

B. PPC and the IA's Response to Holland's Request

PPC and the IA do not dispute that the products at issue are subject to a covenant not to sue with PPC that covers the specific Holland connectors identified in Holland's request. Specifically, PPC stated that "to the extent that any of Holland's products embody the design illustrated in Exhibit H [to Holland's Request for an Advisory Opinion], PPC is of that view that such products are outside the scope of the [March 31, 2010 general exclusion order]." PPC did not challenge Holland's assertions, and in fact, confirmed that Holland's connectors listed in Exhibit I to Holland's Request for an Advisory Opinion do not fall within the scope of the March 31, 2010 general exclusion order, provided they incorporate the design illustrated in Exhibit H to Holland's request. PPC did not state whether it agreed that Holland's connectors did not infringe the '194 patent, and did not specifically state that the connectors at issue were the subject of a covenant not to sue. PPC's only concern was that any advisory opinion be limited to connectors of the design found in Exhibit H to Holland's request.

The IA's basis for his position was that PPC had not disputed that the connector design in Exhibit H was subject to a covenant not to sue. The IA noted that the

Commission's general exclusion order prohibits the importation of products covered by claims 1 and 2 of the '194 patent, except under license of the patent owner or as provided by law. The IA states that the PPC covenant not to sue is simply a form of a license, and therefore the connectors do not fall within the scope of the order. The IA took no position on whether Holland's connectors infringed the '194 patent.

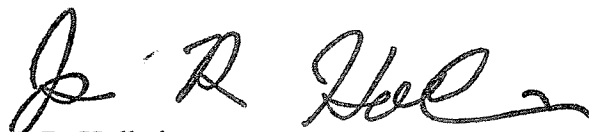
C. Conclusion

We have determined to grant Holland's request for an advisory opinion that the connectors identified in its submission are not covered by the Commission's March 31, 2010 general exclusion order. The parties agree that such an advisory opinion is appropriate. The Commission's March 31, 2010, general exclusion order covers coaxial connectors that infringe claims 1 and/or 2 of the '194 patent, "except under license of the patent owner or as provided by law." The Federal Circuit has equated covenants not to sue with a non-exclusive patent license. See *Transcore, LP v. Electronic Transaction Consultants Corp.*, 563 F.3d 1271, 1275 (Fed. Cir. 2009) ("this court and its predecessors have on numerous occasions explained that a non-exclusive patent license is equivalent to a covenant not to sue"); *Intell. Prop. Dev., Inc. v. TCI Cablevision of Cal., Inc.*, 248 F.3d 1333, 1345 (Fed.Cir. 2001) (defining "a nonexclusive license or 'bare' license" as "a covenant by the patent owner not to sue the licensee"). Accordingly, the Commission determines that Holland's connectors that embody the design contained in Exhibit H and are listed in Exhibit I to Holland's Request for an Advisory Opinion, and which are covered by the PPC covenant not to sue, are not within the scope of the Commission's March 31, 2010 general exclusion order. PPC and the IA agree that Holland's connectors do not fall within the scope of the general exclusion order. In view of our determination,



Holland's argument concerning non-infringement of the '194 patent is moot, and we decline to reach it.

By order of the Commission

A handwritten signature in black ink, appearing to read "J. R. Holbein". The signature is fluid and cursive, with the first and last names being more prominent than the middle initial.

James R. Holbein  
Secretary to the Commission


Issued: February 9, 2012

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

**337-TA-650**

**CERTIFICATE OF SERVICE**

I, James R. Holbein, hereby certify that the attached has been served by hand upon the Commission Investigative Attorney, David O. Lloyd, Esq., and the following parties as indicated on **February 10, 2012.**



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James R. Holbein, Secretary  
U.S. International Trade Commission  
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