

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

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

Inv. No. 337-TA-739

**NOTICE OF COMMISSION DETERMINATION TO REVIEW A FINAL INITIAL
DETERMINATION; SCHEDULE FOR FILING WRITTEN SUBMISSIONS ON THE
ISSUES UNDER REVIEW AND ON REMEDY, THE PUBLIC INTEREST, AND
BONDING**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review the final initial determination issued by the presiding administrative law judge in the above captioned investigation on December 20, 2011, finding no violation of section 337 (19 U.S.C. § 1337). The Commission requests briefing from the parties on certain issues under review and from the parties and the public on remedy, the public interest, and bonding, as indicated in this notice.

FOR FURTHER INFORMATION: Clark S. Cheney, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-2661. 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 October 8, 2010, based on a complaint and an amended complaint filed by Leviton Manufacturing Co., of Melville, New York ("Leviton"). 75 *Fed. Reg.* 62420 (Oct. 8, 2010). The

complaint and amended 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 and products containing the same by reason of infringement of claims 1-7, 9-11, 13-17, 23-26, and 32-36 of U.S. Patent No. 7,463,124 (“the ’124 patent”); claims 1-11, 13-28, 30-59, 61-64, and 74-83 of U.S. Patent No. 7,737,809 (“the ’809 patent”); and claims 1-4 and 8 of U.S. Patent No. 7,764,151 (“the ’151 patent”). The Notice of Investigation named numerous respondents, and during the course of the investigation several of the respondents were found to be in default or were terminated due settlement agreements, consent orders, or withdrawn allegations. Seven respondents remain in the investigation, consisting of Zhejiang Trimone Electric Science & Technology Co. Ltd., of Zhejiang, China (“Trimone”); Fujian Hongan Electric Co, Ltd., of Fujian, China (“Hongan”); TDE, Inc., of Bellevue, Washington (“TDE”); Shanghai ELE Manufacturing Corp., of Shanghai, China (“ELE”); Orbit Industries, Inc., of Los Angeles, California (“Orbit”); American Electric Depot Inc., of Fresh Meadows, New York (“AED”); and Shanghai Jia AO Electrical Co. of Shanghai, China (“Shanghai Jia”).

On December 20, 2011, the presiding administrative law judge (“ALJ”) issued his final initial determination (“ID”) in this investigation finding that the complainant had not sufficiently shown that a domestic industry exists with respect to the three asserted patents and/or articles protected by those patents. Accordingly, the ALJ found no violation of section 337.

On January 6, 2012, the complainant, the Commission investigative attorney, and a group of respondents consisting of Trimone, Hongan, and TDE filed petitions for review of the ID. Respondents ELE, Orbit, AED, and Shanghai Jia have not filed petitions for review of the ID.

Having examined the record of this investigation, including the ALJ’s final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in its entirety.

The parties are requested to brief their positions on only the following issues, with reference to the applicable law and the evidentiary record:

1. Whether the complainant has carried its burden to show the existence of a domestic industry under 19 U.S.C. § 1337(a)(3).
2. Whether the ID implicitly applied a different claim construction when analyzing the validity of the ’121 and ’151 patents than was applied when analyzing infringement of those patents.
3. Whether the ID relied upon unclaimed features of the disclosed inventions when analyzing the validity of the ’121 and ’151 patents.
4. Whether the ID considered all of respondents’ arguments concerning the validity of the ’809 patent.

5. Whether the following asserted patent claims (a) have been properly construed, (b) protect articles for which there is an industry in the United States, (c) are infringed by the accused articles, and (d) have not been shown to be invalid: claim 7 of the '124 patent, claim 4 of the '151 patent, and claims 11 and 43 of the '809 patent.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, in addition to the issues identified above, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005, 70 Fed. Reg. 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on only the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the ALJ's recommendation on remedy and bonding. Complainants and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the dates that each of the asserted patents are set to expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on Friday, March 2, 2012. Reply submissions must be filed no later than the close of business on Friday, March 9, 2012. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 8 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

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 Part 210 of the Commission's Rules of Practice and Procedure (19 C.F.R. Part 210).

By order of the Commission.

James R. Holbein
Secretary to the Commission

Issued: February 21, 2012