

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

In the Matter of

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

Investigation No. 337-TA-615

**NOTICE OF COMMISSION DETERMINATION TO REVIEW IN PART A FINAL
DETERMINATION ON VIOLATION OF SECTION 337; SCHEDULE FOR
BRIEFING ON THE ISSUES ON REVIEW AND ON REMEDY,
PUBLIC INTEREST, AND BONDING; DENIAL OF
MOTION FOR LEAVE TO FILE A REPLY**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) in the above-captioned investigation finding a violation of 19 U.S.C. § 1337 (“section 337”) in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain ground fault circuit interrupters and products containing same by reason of infringement of one or more of claims 1, 7, and 8 of U.S. Patent No. 5,594,398 (“the ‘398 patent”); claims 14, 18, and 30 of U.S. Patent No. 7,283,340 (“the ‘340 patent”); claim 1 of U.S. Patent No. 7,212,386 (“the ‘386 patent”); claims 1 and 15 of U.S. Patent No. 7,164,564 (“the ‘564 patent”); claim 1 of U.S. Patent No. 7,256,973 (“the ‘973 patent”); and claim 52 of U.S. Patent No. 7,154,718 (“the ‘718 patent”).

FOR FURTHER INFORMATION CONTACT: Paul M. Bartkowski, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5432. 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 at <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: This investigation was instituted on September 18, 2007, based on a complaint filed by Pass & Seymour, Inc. (“P&S”) of Syracuse, New York. The complaint, as supplemented, 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 ground fault circuit interrupters and products containing the same by reason of infringement of certain claims of certain United States patents. The complaint named 15 respondents: General Protecht Group, Inc. (“GPG”) of Zhejiang, China; General Protecht Group U.S., Inc. of Atlanta, Georgia; Shanghai ELE Manufacturing Corporation (“ELE”) of Shanghai, China; Shanghai Meihao Electric, Inc. (“Meihao”) of Shanghai, China; Wenzhou Trimone Company (“Trimone”) of Zhejiang, China; Cheetah USA Corp. (“Cheetah”) of Sandy, Utah; GX Electric (“GX”) of Pompano Beach, Florida; Nicor Inc. (“Nicor”) of Albuquerque, New Mexico; Orbit Industries, Inc. (“Orbit”) of Los Angeles, California; The Designer’s Edge (“TDE”) of Bellevue, Washington; Universal Security Instruments, Inc. (“USI”) of Owings Mills, Maryland; Colacino Electric Supply, Inc. (“Colacino”) of Newark, New York; Ingram Products, Inc. (“Ingram”) of Jacksonville, Florida; Lunar Industrial & Electrical, Inc. (“Lunar”) of Miami, Florida; and Quality Distributing, LLC. (“Quality”) of Hillsboro, Oregon.

After institution of the investigation, by separate initial determinations, each of which the Commission determined not to review, respondents Lunar, GX, Ingram, Quality, General Protecht Group U.S., Inc., and USI were terminated from the investigation; the ‘340 patent was added to the investigation; P&S’s motion for summary determination that it satisfied the economic prong of the domestic industry requirement was granted with respect to all asserted patents; and the investigation was terminated with respect to all claims except claims 1, 7, and 8 of the ‘398 patent, claim 1 of the ‘386 patent, claims 14, 18, and 30 of the ‘340 patent, claims 1 and 15 of the ‘564 patent; claims 1, 2, 5, and 6 of the ‘973 patent; and claim 52 of the ‘718 patent.

On September 24, 2008, the ALJ issued his final ID, finding a violation with respect to each patent by each remaining respondent. Respondents ELE (in a joint brief with its respondent customers Cheetah, Colacino, Orbit, and Nicor), Meihao (in a joint brief with its respondent customer TDE), GPG, and Trimone each filed a petition for review of the ID. P&S and the Commission investigative attorney (“IA”) each filed a response to the respondents’ petitions for review. Meihao filed a motion for leave to file a reply to P&S’s response, along with a proposed reply submission.

Having examined the record of this investigation, including the ALJ’s final ID and the submissions of the parties, the Commission has determined to deny Meihao’s motion for leave to file a reply, and has determined to review the final ID in part. Specifically, the Commission has determined to review (1) the ALJ’s construction of “unitary, electrically conducting member carrying a pair of spaced electrical contacts” in the asserted claims of the ‘398 patent and related issues of infringement, domestic industry, and validity; (2) the ALJ’s construction of “mounting means” in the asserted claims of the ‘398 patent and related issues of infringement, domestic industry, and validity; (3) the ALJ’s construction of “latching means” in the ‘398 patent and

related issues of infringement, domestic industry, and validity; (4) the ALJ's conclusion that the asserted claims of the '340 patent are not invalid; (5) the ALJ's construction of "an actuator assembly configured to provide an actuator signal in response to the fault detection or the wiring state detection signal" in claim 1 of the '386 patent and related issues of infringement, domestic industry, and validity; (6) the ALJ's construction of "the circuit interrupter being configured to disconnect the first conductive path from the second conductive path in response to the actuator signal in the reset state" in claim 1 of the '386 patent and related issues of infringement, domestic industry, and validity; (7) the ALJ's determination that claim 1 of the '386 patent is not invalid; (8) the ALJ's determination of infringement of claim 1 of the '973 patent regarding ELE's 2006 GFCIs; and (9) the ALJ's construction of "cantilever" in claim 52 of the '718 patent and related issues of infringement, domestic industry, and validity. The Commission requests briefing based on the evidentiary record on these topics. The Commission is particularly interested in responses to the following questions:

Regarding the '398 patent:

- (1) How would modifying the construction to more clearly provide meaning to the terms "unitary" and "carrying" affect the determinations of infringement, validity, and domestic industry, if at all?
- (2) Please specifically address the statement made in reference to the Doyle and Van Haaren patents in CX-9, PS-ITC 336699, referenced in P&S's response to the petitions for review, in your response to question (1).
- (3) Is "mounting" a required function of the claimed "mounting means"? If so, what structure from the '398 patent performs the function of "mounting"?
- (4) How would modifying the structure identified as corresponding to the "latching means" to include the "latch member" disclosed in the '398 patent affect the determinations of infringement, validity, and domestic industry?
- (5) Does the structure in Trimone's 2006 GFCIs accused of meeting the "mounting means" limitation permit movement to a "second position, wherein both of said pair of contacts are in spaced, circuit-breaking relation to said pair of terminals"?

Regarding the '340 patent:

- (1) Does the DiSalvo patent's statement that "[c]losing the reset contacts activates the operation of the circuit by, for example simulating a ground fault . . ." constitute a disclosure of "a predetermined signal not simulating a fault condition"? If so, are the asserted claims of the '340 patent obvious over the DiSalvo patent?
- (2) Does the Neiger patent's disclosure of a circuit that detects a miswire condition constitute a disclosure of "at least one detection circuit . . . configured to generate a predetermined

signal in response to detecting a proper wiring condition,” under the ALJ’s construction of “detection”? If so, are the asserted claims of the ‘340 patent obvious over the Neiger patent?

- (3) Please address any remaining arguments, that were previously raised, in favor of obviousness/nonobviousness of the asserted claims of the ‘340 patent that were not discussed in response to questions (1) and (2).

Regarding the ‘386 Patent:

- (1) What effect would a construction that recognizes that the “configured to disconnect” limitation requires the device to trip in response to an actuator signal—whether that actuator signal is generated in response to either a fault detection signal or a wiring state detection signal—in the reset state have on infringement, domestic industry, and validity? Please provide record evidence supporting your conclusions under such a construction.
- (2) Please provide specific limitations of claim 1 of the ‘386 patent that are not disclosed in the DiSalvo patent, and supporting evidentiary citations.

Regarding the ‘973 patent:

In what way is the “user-accessible housing feature” in ELE’s device, that is, the hole, in communication with the switch element?

Regarding the ‘718 patent:

What effect would modifying the ALJ’s construction of “cantilever” to adopt Meihao’s proposed construction have on the determinations of infringement, validity, and domestic industry regarding the ‘718 patent?

Furthermore, 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 being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, 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 and prescribed by the Secretary of the Treasury. 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 the issues under review. The submissions should be concise and thoroughly referenced to the record in this investigation, including references to exhibits and testimony. Additionally, 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 recommended determination by the ALJ on remedy and bonding. Further, regarding the potential issuance of a general exclusion order, the Commission requests briefing specific to whether the statutory criteria set forth in section 337(d)(2) are met in this investigation. 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 the patents 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 December 22, 2008. Reply submissions must be filed no later than the close of business on December 31, 2008. 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 12 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. § 201.6. 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 section 210.42 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42).

By order of the Commission.

/s/

Marilyn R. Abbott
Secretary to the Commission

Issued: December 8, 2008