

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

In the Matter of

**CERTAIN POWER SUPPLY
CONTROLLERS AND PRODUCTS
CONTAINING SAME**

Investigation No. 337-TA-541

**NOTICE OF COMMISSION DETERMINATION NOT TO REVIEW A FINAL INITIAL
DETERMINATION OF VIOLATION OF SECTION 337; SCHEDULE FOR FILING
WRITTEN SUBMISSIONS 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 not to review the Administrative Law Judge's ("ALJ") final Initial Determination ("ID") finding a violation of section 337. Notice is further given that the Commission is requesting briefing on remedy, public interest, and bonding with respect to the respondent found in violation.

FOR FURTHER INFORMATION CONTACT: Michelle Walters, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5468. 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://www.usitc.gov/secretary/edis.htm>. 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: On June 13, 2005, the Commission instituted this investigation, based on a complaint filed by Power Integrations, Inc. ("PI") of San Jose, California. The complaint, as amended and supplemented, alleges 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 power supply

controllers and products containing the same by reason of infringement of claims 1-3, 6, 9, and 17-19 of United States Patent No. 6,212,079; claims 1-3, 5, 6, 24, 28, and 29 of United States Patent No. 6,351,398 (“the ‘398 patent”); claims 8 and 12 of United States Patent No. 6,366,481; and claims 1, 4, 9-11, 13, 17, 19, 20, 22, 23, 26, 27, 30, 31, and 34 of United States Patent No. 6,538,908 (“the ‘908 patent”). During the investigation, the Commission allowed PI to terminate the investigation with regard to several claims, leaving only claims 1, 3, 5, and 6 of the ‘398 patent and claims 26 and 27 of the ‘908 patent in this investigation. The complaint named a single respondent, System General Corporation (“SG”).

On May 15, 2006, the ALJ issued a final ID, including his recommended determination on remedy and bonding. In his ID, the ALJ found that SG’s accused products infringe claims 1, 3, 5, and 6 of the ‘398 patent and claims 26 and 27 of the ‘908 patent. Moreover, he concluded that these claims are not invalid for anticipation under 35 U.S.C. § 102 and that the ‘398 patent and the ‘908 patent are not unenforceable due to inequitable conduct. Finally, the ALJ concluded that PI proved that there is a domestic industry in the United States with respect to both patents. As a result, the ALJ recommended issuing a limited exclusion order directed to infringing power supply controllers produced by SG, as well as certain downstream products containing these controllers.

On May 26, 2006, respondent SG filed a petition for review, challenging various aspects of the ALJ’s final ID. On June 5, 2006, PI and the Commission investigative attorney separately filed responses to SG’s petition for review, asserting that the ALJ properly determined that there was a violation of section 337 with regard to the asserted claims.

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 not to review the ALJ’s ID. To the extent SG attempts to challenge PI’s satisfaction of the importation requirement of 19 U.S.C. § 1337(a)(1)(B) in its petition for review, we decline to reconsider the issue. SG failed to file a petition for review challenging the ALJ’s December 12, 2005 ID granting PI’s motion for summary determination that it satisfied the importation requirement, and therefore, SG waived the issue. 19 C.F.R. § 210.43(b)(2).

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 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 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 recommended determination by the ALJ on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is 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 July 10, 2006. Reply submissions must be filed no later than the close of business on July 17, 2006. 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. § 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 sections 210.42-46 and 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42-46 and 210.50).

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: June 30, 2006