

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

**NOTICE OF THE COMMISSION’S FINAL DETERMINATION FINDING A
VIOLATION OF SECTION 337; ISSUANCE OF A GENERAL EXCLUSION ORDER
AND CEASE AND DESIST ORDERS; TERMINATION OF THE INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 of the Tariff Act of 1930, as amended, in this investigation and has issued a general exclusion order prohibiting the importation of infringing high-density fiber optic equipment and components thereof and cease and desist orders directed against Respondents Leviton Manufacturing Co., Inc. (“Leviton”), Panduit Corporation (“Panduit”), and FS.com Inc. (“FS”).

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, D.C. 20436, telephone 202-205-2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.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 March 24, 2020, based on a complaint filed on behalf of Corning Optical Communications LLC (“Corning”) of Charlotte, North Carolina. 85 FR 16653 (Mar. 24, 2020). The complaint, as supplemented, 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, 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”); 10,120,153 (“the ’153 patent”); 8,712,206 (“the ’206 patent”); 10,094,996 (“the ’996 patent”); and 10,444,456 (“the ’456 patent”). *Id.* The complaint further alleged that a domestic

industry exists. *Id.* The Commission’s notice of investigation named the following as respondents: Total Cable Solutions, Inc. (“TCS”) of Springboro, Ohio; Legrand North America, LLC (“Legrand”) of West Hartford, Connecticut; AFL Telecommunications Holdings LLC (“AFL Holdings”) of Duncan, South Carolina; Huber+Suhner AG of Herisau, Switzerland; Huber + Suhner, Inc. of Charlotte, North Carolina; Shenzhen Anfkome Telecom Co., Ltd. d/b/a Anfkome Telecom (“Anfkome”) of Shenzhen, China; Shanghai TARLUZ Telecom Tech. Co., Ltd. d/b/a TARLUZ (“TARLUZ”) of Shanghai, China; Wulei Technology Co., Ltd. d/b/a Bonelinks (“Wulei Bonelinks”) of Shenzhen, China; FS of New Castle, Delaware; Leviton of Melville, New York; Panduit of Tinley, Illinois; The LAN Wirewerks Research Laboratories Inc. d/b/a Wirewerks (“Wirewerks”) of Quebec, Canada; and The Siemon Company (“Siemon”) of Watertown, Connecticut. *Id.* The notice of investigation also named the Office of Unfair Import Investigations (“OUII”) as a party. *Id.* at 16654.

Respondent Legrand was terminated from the investigation based on withdrawal of the allegations in the complaint pursuant to Commission Rule 210.21(a), 19 CFR 210.21(a). *See* Order No. 5 (Apr. 16, 2020); *unreviewed by* Comm’n Notice (May 7, 2020). The complaint and notice of investigation were amended to substitute AFL Telecommunications LLC for respondent AFL Holdings. 85 FR 44923 (July 24, 2020). Thereafter, Respondent AFL Telecommunications LLC was terminated from the investigation based on a settlement agreement. *See* Order No. 27 (Oct. 20, 2020), *unreviewed by* Comm’n Notice (Nov. 2, 2020). Respondents Huber+Suhner AG, Huber + Suhner, Inc., Anfkome, TARLUZ, and Wulei Bonelinks (collectively, “Defaulting Respondents”) were found in default pursuant to Commission Rule 210.16, 19 CFR 210.16. *See* Order Nos. 7 & 8 (June 9, 2020), *unreviewed by* Comm’n Notice (June 22, 2020); Order No. 13 (Aug. 21, 2020), *unreviewed by* Comm’n Notice (Sep. 15, 2020). Respondent TCS was terminated from the investigation based on a consent order. *See* Comm’n Notice (Sept. 28, 2020). Accordingly, Respondents Panduit, Leviton, Siemon, FS, and Wirewerks (collectively, “Active Respondents”) remain active in the investigation.

As a result of termination of all asserted claims of the ’996 patent and certain other asserted claims, *see* Order No. 11 (July 29, 2020), *unreviewed by* Comm’n Notice (Aug. 13, 2020); Order No. 18 (Sept. 14, 2020), *unreviewed by* Comm’n Notice (Oct. 14, 2020); and Order No. 19 (Oct. 2, 2020), *unreviewed by* Comm’n Notice (Oct. 27, 2020), 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 remain asserted in the investigation.

A prehearing conference and evidentiary hearing were held in this investigation from October 21-26, 2020.

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. The ALJ also issued a Recommended Determination on Remedy and Bonding (“RD”). The RD recommends that should the Commission find a violation of section 337, that the Commission issue a general

exclusion order, cease and desist orders, and impose a bond during the period of Presidential review.

On April 5, 2021, OUII and Respondent Leviton each filed a petition for review of the ID. That same day, Respondents FS, Panduit, Wirewerks, and Siemon (collectively, “Joint Respondents”) also filed a joint petition for review. On April 13, 2021, OUII, Leviton, and Corning each filed a response to the petitions.

On May 24, 2021, the Commission determined to review the ID in part. Notice at 3-6 (May 24, 2021) (“Notice of Review”), *published at* 86 FR 28890-893 (May 28, 2021). Specifically, the Commission determined to review: (1) the ID’s finding that the importation requirement of section 337 is met with respect to the accused products of Respondents Leviton, Panduit, and Siemon; (2) the ID’s interpretation of the “width of the front side of [the] fiber optic module” limitation in the asserted claims of the ’456 patent, and the associated infringement findings; (3) the ID’s construction of “a front opening” in the asserted claims of the ’206 patent, and the associated infringement findings; (4) the ID’s finding that Leviton directly infringes the asserted claims of the ’320 and ’456 patents; (5) the ID’s findings on indirect infringement of the asserted claims of the ’320, ’456, and/or ’153 patents by Respondents Leviton, Panduit, FS, and Siemon; and (6) the ID’s finding that Corning has satisfied the economic prong of the domestic industry requirement under section 337(a)(3)(B) and (C). The Commission solicited briefing on remedy, the public interest, and bonding, as well as on specific issues concerning importation, infringement, and the domestic industry requirement.

On June 7, 2021, the parties filed initial submissions in response to the Commission’s Notice of Review. On June 14, 2021, the parties filed replies to each other’s submissions. In addition, the Commission received comments from the parties on the public interest pursuant to Commission Rule 210.50(a)(4), 19 CFR 210.50(a)(4). The Commission also received comments from Defaulting Respondents Huber+Suhner AG and Huber + Suhner, Inc. in response to the Commission’s notice soliciting public interest comments, 86 FR 22067-68 (Apr. 26, 2021).

Having reviewed the record of the investigation, including the final ID and the parties’ submissions, the Commission has found a violation of section 337 as 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. Specifically, the Commission affirms with modifications the ID’s finding that Respondents Leviton, Panduit, and Siemon satisfy the importation requirement. FS and Wirewerks did not contest importation before the ALJ. With regard to claim construction, the Commission determines to: (1) adopt OUII’s proposed construction for the “width of the front side of [the] fiber optic module” limitation in claims 12 and 28 of the ’456 patent and find that the accused products meet this limitation under the proper construction; and (2) adopt Corning’s proposed construction for the “front opening” limitation in the asserted claims of the ’206 patent and find that the accused products meet this limitation under the proper construction. The Commission affirms with modifications the ID’s finding that the imported article(s) of Respondents Panduit, Siemon, and FS are respectively used by their customers to directly infringe the asserted claims of the ’320, ’456, and ’153 patents at their inducement, and the imported articles of Respondent Leviton are used by its

customers to directly infringe the asserted claims of the '320 and '456 patents at Leviton's inducement. Further, the Commission affirms the ID's finding of no contributory infringement by Respondents Leviton, Panduit, and Siemon, and takes no position on the ID's finding of no contributory infringement by FS. Still further, the Commission takes no position on the ID's finding that Leviton directly infringes the asserted claims of the '320 and '456 patents. Finally, the Commission affirms with modifications the ID's finding that Corning has satisfied the economic prong of the domestic industry requirement under section 337(a)(3).

The Commission has determined that the appropriate remedy is: (1) a general exclusion order prohibiting the entry of infringing high-density fiber optic equipment and components thereof; and (2) cease and desist orders directed to Respondents Leviton, Panduit, and FS. The Commission has determined that the public interest factors do not preclude issuance of the general exclusion order or the cease and desist orders. The Commission has determined that a bond as set forth in the orders is required during the period of Presidential review. 19 U.S.C. 1337(j)(3).

The investigation is terminated. The Commission's reasoning in support of its determinations is set forth more fully in its opinion. The Commission's orders and opinion were delivered to the President and the United States Trade Representative on the day of their issuance.

The Commission vote for this determination took place on August 3, 2021.

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 CFR Part 210.

While temporary remote operating procedures are in place in response to COVID-19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the Complainant complete service for any party/parties without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: August 3, 2021