

In the Matter of
**Certain Electrical Connectors and
Products Containing Same**

Investigation No. 337-TA-374

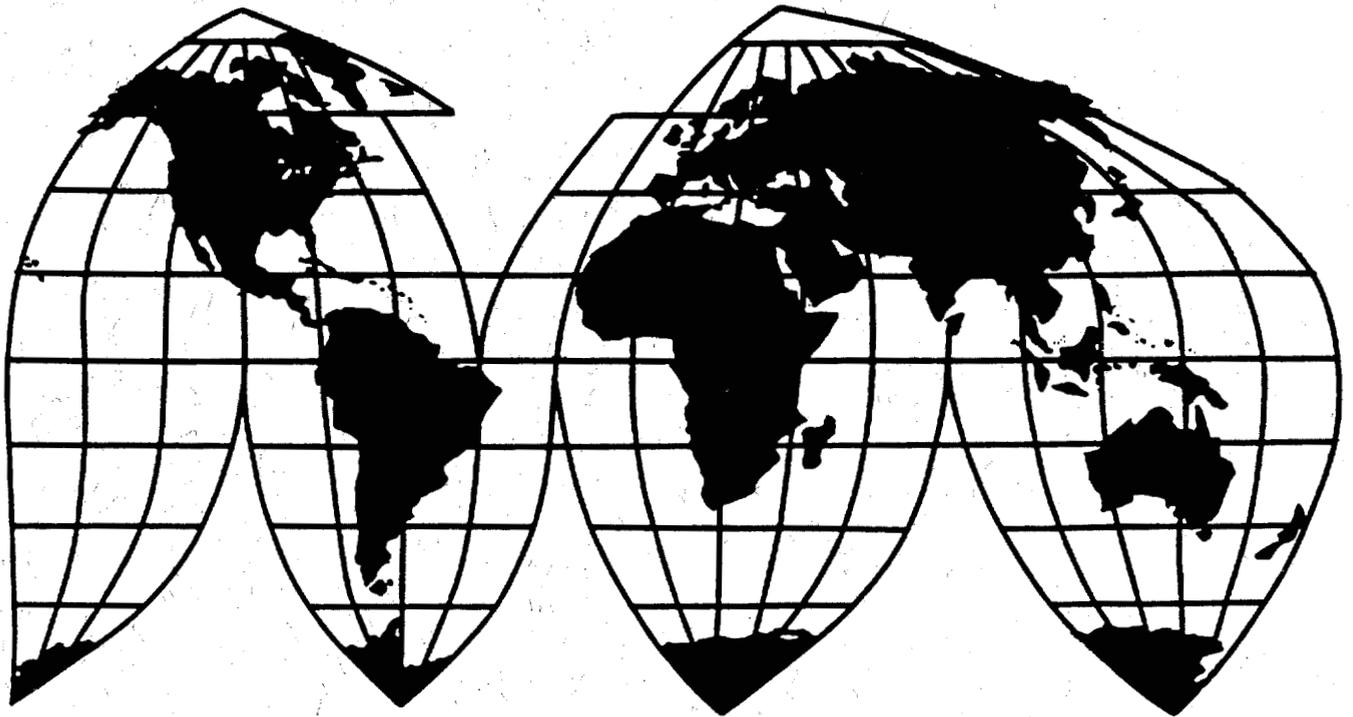
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Publication 2981

July 1996

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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In the Matter of
**Certain Electrical Connectors and
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Publication 2981

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

In the Matter of

**CERTAIN ELECTRICAL
CONNECTORS AND PRODUCTS
CONTAINING SAME**

Inv. No. 337-TA-374

**NOTICE OF ISSUANCE OF LIMITED EXCLUSION ORDER
AND CEASE AND DESIST ORDER AND
TERMINATION OF INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order and a cease and desist order to domestic respondent Foxconn International, Inc. ("Foxconn") in the above-captioned investigation and terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-3116.

SUPPLEMENTARY INFORMATION: This investigation was initiated by the Commission on May 5, 1995, based on a complaint, as supplemented, and a motion for temporary relief filed by AMP Incorporated and The Whitaker Corporation (collectively "complainants"). The following firms were named as respondents: Berg Electronics, Inc ("Berg"); Hon Hai Precision Industry Co., Ltd. ("Hon Hai"); Foxconn International ("Foxconn"); and Tekcon

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Electronics Corp ("Tekcon"). The complaint alleged that respondents have violated 19 U.S.C. § 1337 of the Tariff Act of 1930 ("section 337") by importing and selling certain electrical connectors that infringe claims 17, 18, 20, 21, and 23 of complainants' U.S. Letters Patent 5,383,792 (the "792 patent").

On February 9, 1996 the presiding administrative law judge (ALJ) issued his initial determination (ID) terminating the investigation under Commission rule 210.17 as to the sole remaining respondent, Hon Hai Precision, Ltd. ("Hon Hai"), based on a violation of section 337 (in light of Hon Hai's failure to respond to a motion for summary determination). Specifically, the ALJ made the adverse determination that Hon Hai is in violation of section 337, finding that (1) Hon Hai manufactures electrical connectors which infringe claims 17, 18, 20, 21, and 23 of the patent in issue; (2) Hon Hai imports into the United States, sells for importation, or sells within the United States after importation such connectors; and (3) a domestic industry exists with respect to the articles protected by the patent in issue. In that ID, the ALJ also found that, pursuant to Commission rule 210.16(c), since Foxconn was found to be in default, Foxconn is presumed to violate section 337 by importing into the United States, selling for importation, or selling within the United States after importation certain electrical connectors that infringe claims 17, 18, 20, 21 or 23 of the patent in issue. On February 9, 1996, the ALJ also issued a recommended determination addressing the appropriate form of remedy and the appropriate bond.

On March 13, 1996, the Commission issued notice of its determination not to review the ALJ's final ID, thereby finding a violation of section 337, and requested written submissions on the issues of remedy, the public interest, and bonding. 61 Fed. Reg. 11221

(March 19, 1996). Submissions were received from complainants and the Commission investigative attorney. Respondents Hon Hai and Foxconn did not file submissions.

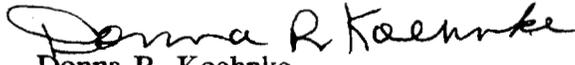
Having reviewed the record in this investigation, including the written submissions of the parties, the Commission made its determinations on the issues of remedy, the public interest, and bonding. The Commission determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed importation of infringing electrical connectors and motherboards containing such electrical connectors manufactured and/or imported by Hon Hai or Foxconn. In addition, the Commission issued a cease and desist order directed to domestic respondent Foxconn requiring that firm to cease and desist from the following activities in the United States: importing, selling, marketing, distributing, offering for sale, or otherwise transferring (except for exportation) in the United States infringing imported electrical connectors and motherboards containing such electrical connectors.

The Commission also determined that the public interest factors enumerated in 19 U.S.C. §§ 1337(d) and (f) do not preclude the issuance of the limited exclusion order and cease and desist order, and that the bond during the Presidential review period shall be in the amount of twenty (20) percent of the entered value of the imported electrical connectors and \$0.20 per imported electrical connector on motherboards containing such connectors. Finally, because the Commission has terminated this investigation, the Commission determined to deny as moot counsel for complainants' motion for withdrawal of appearance in this investigation.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and section 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.50).

Copies of the Commission's remedial orders, the Commission opinion in support thereof, and all other nonconfidential 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. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

By order of the Commission.


Donna R. Koehnke
Secretary

Issued: May 3, 1996

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN ELECTRICAL
CONNECTORS AND PRODUCTS
CONTAINING SAME

Inv. No. 337-TA-374

ORDER

The Commission has previously determined that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the unlawful importation and sale of certain electrical connectors that infringe U.S. Letters Patent 5,383,792.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determinations on the issues of remedy, the public interest, and bonding. The Commission has determined that a limited exclusion from entry for consumption of articles, including certain downstream products, is necessary to provide effective relief in this investigation. Accordingly, the Commission has determined to issue a limited exclusion order prohibiting the unlicensed importation of infringing electrical connectors and motherboard containing such connectors manufactured and/or imported by Hon Hai Precision, Ltd. or Foxconn International, Inc. In addition, the Commission has issued a cease and desist order to domestic respondent Foxconn International, Inc. requiring it to cease and desist from the following activities in the United States: importing,

selling, marketing, distributing, offering for sale, or otherwise transferring (except for exportation) in the United States infringing imported electrical connectors and motherboard containing such connectors.

The Commission has also determined that the public interest factors enumerated in 19 U.S.C. §§ 1337(d) and (f) do not preclude the issuance of the limited exclusion order and the cease and desist order, and that the bond during the Presidential review period shall be in the amount of twenty (20) percent of the entered value of the imported electrical connectors and \$0.20 per imported electrical connector on motherboards containing such connectors.

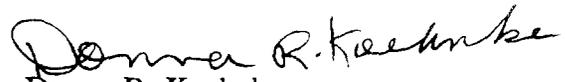
Accordingly, the Commission hereby **ORDERS** that:

1. Electrical connectors covered by claims 17, 18, 20, 21, or 23 of U.S. Letters Patent 5,383,792, that are manufactured and/or imported by or on behalf of Hon Hai Precision Industry Co., Foxconn International, Inc., or any of their affiliated companies, parents, subsidiaries, licensees, contractors, or other related entities, or their successors or assigns, and motherboards containing such electrical connectors, are excluded from entry for consumption into the United States for the remaining term of the patent, except under license of the patent owner or as provided by law.
2. The electrical connectors excluded by paragraph 1 above that are not assembled onto motherboards are entitled to entry into the United States under bond in the amount of twenty (20) percent of the entered value of such items pursuant to subsection (j) of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337(j)) from the day after this Order is received by the President until such time as the President notifies the Commission that he approves or disapproves this action but, in any event, not later than sixty (60) days after the date of receipt of this action.

3. The motherboards containing electrical connectors excluded by paragraph 1 above are entitled to entry into the United States under bond in the amount of \$0.20 per imported electrical connector assembled thereon from the day after this Order is received by the President until such time as the President notifies the Commission that he approves or disapproves this action but, in any event, not later than sixty (60) days after the date of receipt of this action. Persons importing such motherboards during this time period shall certify to the best of their knowledge the number of electrical connectors subject to this Order assembled on such motherboards, pursuant to procedures to be specified by the U.S. Customs Service, as the Customs Service deems necessary, prior to entry or at entry.
4. Pursuant to procedures to be specified by the U.S. Customs Service, as the Customs Service deems necessary, persons seeking to import electrical connectors or motherboards subject to this Order shall certify that they are familiar with the terms of this Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the electrical connectors, or motherboards containing same, being imported are not excluded from entry under paragraph 1 of this Order. At its discretion, the Customs Service may require persons who have provided the certification described in this paragraph to furnish such records or analyses as are necessary to substantiate the certification.
5. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to electrical connectors or motherboards containing same imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.
6. The Commission may modify this Order in accordance with the procedures described in Rule 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.
6. The Secretary shall serve copies of this Order upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and the U.S. Customs Service.

8. Notice of this Order shall be published in the *Federal Register*.

By Order of the Commission.


Donna R. Koehnke
Secretary

Issued: May 3, 1996

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

In the Matter of

**CERTAIN ELECTRICAL
CONNECTORS AND PRODUCTS
CONTAINING SAME**

Inv. No. 337-TA-374

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Foxconn International, Inc., 930 W. Maude Avenue, Sunnyvale, California 94086, cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), or soliciting U.S. agents or distributors for electrical connectors covered by claims 17, 18, 20, 21, or 23 of U.S. Letters Patent 5,383,792, and motherboards containing such connectors, in violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337.

I.

(Definitions)

As used in this Order:

(A) "Commission" shall mean the United States International Trade Commission.

(B) "Complainants" shall mean AMP Incorporated, 470 Friendship Road, Harrisburg, Pennsylvania 17105 and The Whitaker Corporation, 4550 New Linden Hill Road, Suite 450, Wilmington, Delaware 19808.

(C) "Foxconn" and "Respondent" shall mean Foxconn International, Inc., 930 W. Maude Avenue, Sunnyvale, California 94086

(D) "Person" shall mean an individual, or any nongovernmental partnership, firm, association, corporation, or other legal or business entity other than Foxconn or its majority owned and/or controlled subsidiaries, their successors, or assigns.

(E) "United States" shall mean the fifty States, the District of Columbia, and Puerto Rico.

(F) "Covered product" shall mean electrical connectors covered by claims 17, 18, 20, 21, or 23 of U.S. Letters Patent 5,383,792, and motherboards containing such connectors.

(G) "Motherboard" shall mean any motherboard entered into the United States under current HTSUS numbers 8536.69 and 8529.90.

(H) The terms "import" and "importation" refer to importation for entry for consumption under the Customs laws of the United States.

II.

(Applicability)

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and/or majority owned business entities, successors,

and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra*, for, with, or otherwise on behalf of Respondent.

III.

(Conduct Prohibited)

The following conduct of Foxconn in the United States is prohibited by the Order. Foxconn shall not:

(A) import or sell for importation into the United States electrical connectors covered by claims 17, 18, 20, 21, or 23 of U.S. Letters Patent 5,383,792 and motherboards containing such connectors for the remaining term of the patent;

(B) market, distribute, offer for sale, sell, or otherwise transfer (except for exportation) in the United States imported electrical connectors covered by claims 17, 18, 20, 21, or 23 of U.S. Letters Patent 5,383,792 and motherboards containing such connectors for the remaining term of the patent;

(C) advertise imported electrical connectors covered by claims 17, 18, 20, 21, or 23 of U.S. Letters Patent 5,383,792 and motherboards containing such connectors for the remaining term of the patent; or

(D) solicit U.S. agents or distributors for imported electrical connectors covered by claims 17, 18, 20, 21, or 23 of U.S. Letters Patent

5,383,792 and motherboards containing such connectors for the remaining term of the patent.

IV.

(Conduct Permitted)

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of U.S. Letters Patent 5,383,792 licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of electrical connectors by or for the United States.

V.

(Reporting)

For purposes of this reporting requirement, the reporting periods shall commence on January 1 and July 1 of each year, and shall end on the subsequent June 30 and December 31, respectively. However, the first report required under this section shall cover the period May 3, 1996 through June 30, 1996. This reporting requirement shall continue in force until the expiration of U.S. Letters Patent 5,383,792, unless, pursuant to subsection (j)(3) of section 337 of the Tariff Act of 1930, the President notifies the Commission within 60 days after the date he receives this Order that he disapproves this Order; provided, however, that Respondent's reporting requirement hereunder shall cease if, in a timely filed report, Respondent shall

report no sales of imported covered product during two (2) successive reporting periods and no remaining inventory of imported covered product.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission the quantity in units and the value in dollars of foreign-made covered product that Respondent has imported or sold in the United States during the reporting period and the quantity in units and value of reported covered product that remains in inventory at the end of the reporting period.

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order.

VI.

(Recordkeeping and Inspection)

(A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of electrical connectors made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of two (2) years from the close of the fiscal year to which they pertain.

(B) For the purposes of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the

Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

VII.

(Service of Cease and Desist Order)

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the marketing, distribution, or sale of electrical connectors in the United States;

(B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII(A) of this Order, a copy of the Order upon each successor; and

(C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the date of expiration of U.S. Letters Patent 5,383,792.

VIII.

(Confidentiality)

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of the Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX.

(Enforcement)

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.75, including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, 19 U.S.C. § 1337(f), and any other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if Respondent fails to provide adequate or timely information.

X.

(Modification)

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.

XI.

(Bonding)

The conduct prohibited by Section III of this Order may be continued during the period in which this Order is under review by the President pursuant to section 337(j) of the Tariff Act of 1930, 19 U.S.C. § 1337(j), subject to Respondent posting a bond in the amount of twenty (20) percent of the entered value of the imported electrical connectors covered by claims 17, 18, 20, 21, or 23 of U.S. Letters Patent 5,383,792, and \$0.20 per electrical connector on motherboards containing such connectors. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products on or after May 3, 1996, are subject to the entry bond as set forth in the limited exclusion order issued by the Commission on May 3, 1996, and are not subject to this bond provision.

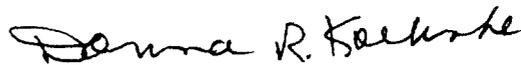
The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection

with the issuance of temporary exclusion orders. Commission Rule 210.68, 19 C.F.R. § 210.68. The bond and any accompanying documentation is to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by Section III of this Order.

The bond is to be forfeited in the event that the President approves, or does not disapprove within the Presidential review period, the Commission's Orders of May 3, 1996, or any subsequent final order issued after the completion of Investigation No. 337-TA-374, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless the products subject to this bond are exported or destroyed by Respondent, and Respondent provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the President disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the President, upon service on Respondent of an Order issued by the Commission based upon application therefor made by Respondent to the Commission.

By Order of the Commission.


Donna R. Koehnke
Secretary

Issued: M ay 3, 1996

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

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In the Matter of))
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CERTAIN ELECTRICAL CONNECTORS) Investigation No. 337-TA-374
AND ARTICLES CONTAINING SAME))
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_____)

COMMISSION OPINION ON REMEDY, THE
PUBLIC INTEREST, AND BONDING

I. INTRODUCTION

This investigation is before us for final disposition of certain issues relating to remedy, the public interest, and bonding. After review of those issues, we determine that the appropriate remedy is a limited exclusion order directed to electrical connectors of respondents Hon Hai Precision Industry Co. Ltd. (Hon Hai) and Foxconn International, Inc. (Foxconn) that infringe claims 17, 18, 20, 21, or 23 of U.S. Letters Patent 5,383,792 ('792 patent) and motherboards containing such electrical connectors, and a cease and desist order directed to domestic respondent Foxconn. We also determine that the statutory public interest factors do not preclude issuance of such remedial orders, and that the amount of the bond during the 60-day Presidential review period shall be 20 percent of the entered value of the infringing electrical connectors and \$0.20 for each infringing electrical connector assembled on a motherboard.

II. PROCEDURAL HISTORY

Based on a complaint, as supplemented, and a motion for temporary relief (Motion No. 374-1) filed by AMP Incorporated and The Whitaker Corporation (collectively “complainants”), we instituted this investigation on May 5, 1995, and subsequently issued a Notice of Investigation.¹ The Notice of Investigation named the following respondents: Berg Electronics, Inc. (“Berg”), Tekcon Electronics Corp. (“Tekcon”), Hon Hai, and Foxconn. The complaint alleged that respondents have violated Section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337 (“section 337”), by importing and selling certain electrical connectors that infringe claims 17, 18, 20, 21, and 23 of complainants’ U.S. Letters Patent 5,383,792 (the “‘792 patent”).

On September 8, 1995, the presiding administrative law judge (ALJ) issued an initial determination (“ID”) (Order No. 25), denying complainants’ motion for temporary relief (based on a lack of irreparable harm). In a separate ID (Order No. 26) issued that same day, the ALJ found respondent Foxconn in default pursuant to Commission rule 210.16 and thus found that Foxconn had waived its right to appear, to be served with documents, and to contest the allegations at issue in this investigation. In his ID on temporary relief (Order No. 25), the ALJ found that, assuming the patent in issue is not invalid and is enforceable, complainants are likely to succeed on the merits in establishing that respondent Hon Hai manufactures electrical connectors that are imported and sold in the United States which infringe claims 17, 18, 20, 21, and 23 of the patent in issue. By notice dated October 10,

¹ 60 Fed. Reg. 25247 (May 11, 1995).

1995, we determined (1) to adopt the ID (Order No. 25) denying complainants' motion for temporary relief, and (2) not to review the ID (Order No. 26) finding Foxconn in default.

In an ID issued on October 27, 1995 (Order No. 31), the ALJ granted complainants' motion to terminate the investigation as to Berg on the basis of withdrawal of the complaint as to that respondent. We determined not to review that ID. In an ID issued on December 11, 1995 (Order No. 35), the ALJ granted a joint motion to terminate the investigation as to Tekcon on the basis of a consent order. We also determined not to review that ID.

On February 9, 1996, the ALJ issued an ID (Order No. 38) terminating the investigation under Commission rule 210.17 as to the sole remaining respondent, Hon Hai, based on a violation of section 337 (in light of Hon Hai's failure to respond to complainants' summary determination motion).² The ALJ also issued a recommended determination ("RD") addressing the appropriate form of remedy and the appropriate bond.³ In particular,

² Specifically, the ALJ made the adverse determination that Hon Hai is in violation of section 337, finding that (1) Hon Hai manufactures electrical connectors which infringe claims 17, 18, 20, 21, and 23 of the patent in issue; (2) Hon Hai imports into the United States, sells for importation, or sells within the United States after importation such connectors; and (3) a domestic industry exists with respect to the articles protected by the patent in issue.

The ALJ also found that, pursuant to Commission rule 210.16(c), Foxconn is presumed to violate section 337 by importing into the United States, selling for importation, or selling within the United States after importation electrical connectors that infringe claims 17, 18, 20, 21, or 23 of the '792 patent. Commission rule 210.16(c) provides, *inter alia*, that:

[a]fter a respondent has been found in default by the Commission, The facts alleged in the complaint will be presumed to be true with respect to the defaulting respondent.

19 C.F.R. § 210.16(c).

³ The RD was issued pursuant to Commission rule 210.42(a)(1)(ii), 19 C.F.R.

(continued...)

the ALJ recommended that the relief in this investigation be (1) a limited exclusion order directed to (a) the electrical connectors of respondents Hon Hai and Foxconn that infringe claims 17, 18, 20, 21, or 23 of the '792 patent and (b) motherboards containing such electrical connectors, and (2) a cease and desist order directed to domestic respondent Foxconn. The ALJ further recommended that the Hon Hai/Foxconn electrical connectors, and the motherboards containing such connectors, be entitled to entry during the Presidential review period upon the posting of a bond of 20 percent of the entered value of the connectors.

On March 13, 1996, we issued a notice of our determination not to review the ID finding a violation of section 337 and terminating the investigation, and requested written submissions on the issues of remedy, the public interest, and bonding. Complainants and the Commission investigative attorney (IA) filed briefs on the issues of remedy, the public interest, and bonding. No reply briefs were filed. Respondents Hon Hai and Foxconn did not file any written submissions.

This opinion explains the basis for the following determinations:

- (1) Our decision to issue a limited exclusion order.
- (2) Our decision to issue a cease and desist order directed to domestic respondent Foxconn International, Inc.

³(...continued)

210.42(a)(1)(ii), which provides that the ALJ is to issue a recommended determination containing findings of fact and recommendations concerning the appropriate remedy and the amount of the bond.

(3) Our conclusion that the public interest considerations enumerated in section 337(d) do not preclude the issuance of such relief in this investigation.

(4) Our decision that the bond during the Presidential review period shall be in the amount of 20 percent of the entered value of imported electrical connectors covered by the claims in issue of the '792 patent and \$0.20 per infringing electrical connector contained on an imported motherboard.

III. REMEDY

The Commission has broad discretion in selecting the form, scope, and extent of the remedy in a section 337 proceeding.⁴ Under subsections 337(d) and (f), the Commission may issue an exclusion order, a cease and desist order, or both, depending on the circumstances.⁵

In his RD on remedy and bonding, the ALJ recommended issuance of a limited exclusion order directed to electrical connectors within the scope of claims at issue and motherboards containing such connectors, and a cease and a desist order against domestic respondent Foxconn. We agree with the ALJ, and have determined to issue both a limited

⁴ *Hyundai Electronics Industries Col, Ltd. v. United States International Trade Commission*, 899 F.2d 1204 (Fed. Cir. 1990) (affirming Commission remedy determination in *Certain Erasable Programmable Read-Only Memories, Components Thereof, Products Containing Such Memories, and Processes for Making Such Memories*, Inv. No. 337-TA-276, USITC Pub. 2196 (May 1989)); *Viscofan, S.A. v. United States International Trade Commission*, 787 F.2d 544, 548 (Fed. Cir. 1986) (affirming Commission remedy determination in *Certain Processes for the Manufacture of Skinless Sausage Casings and Resulting Products*, Inv. Nos. 337-TA-148 and 169, USITC Pub. 1624 (December 1984)).

⁵ 19 U.S.C. § 1337(d)-(f).

exclusion order directed to the infringing products and motherboards containing such products, and a cease and desist order against domestic respondent Foxconn.⁶

A. Limited Exclusion Order

Having found both Hon Hai and Foxconn in violation of section 337, the ALJ recommended the entry of a limited exclusion order against Hon Hai and Foxconn electrical connectors covered by any of claims 17, 18, 20, 21, or 23 of the patent in issue. Both complainants and the IA supported issuance of such a limited exclusion order against those respondents. Accordingly, since no evidence has been presented in this investigation that would provide a basis for issuance of a general exclusion order, we determine to issue a limited exclusion order prohibiting from entry into the United States certain electrical connectors that infringe claims 17, 18, 20, 21, or 23 of the patent in issue.⁷

B. Downstream Products

As discussed below, complainants also have requested, and the ALJ has recommended, that the Commission issue a limited exclusion order that prohibits the entry of a particular class of downstream products, viz. motherboards, that contain the infringing

⁶ Consistent with the representations of complainants, the limited exclusion order is directed only to entries for consumption.

⁷ We note that complainants did not file a reply brief and therefore have not objected to any of the proposals for remedial action put forth by the IA. In addition, as noted above, defaulting respondents Hon Hai and Foxconn did not file any written submission on the issues of remedy, the public interest, and bonding. Therefore, they did not object to any of the ALJ's, complainants', or the IA's proposals for relief, including those regarding downstream products, discussed *infra*.

electrical connectors.⁸ In determining the proper scope of exclusion orders with respect to downstream products containing infringing products, the Commission has balanced:

complainant's interest in obtaining complete protection from all infringing imports by means of exclusion of downstream products against the inherent potential of . . . [such exclusion to] disrupt legitimate trade in products which were not themselves the subject of a finding of violation of section 337.⁹

In applying this balancing test, the Commission has considered such factors as: (1) the value of the infringing articles compared to the value of the downstream products in which they are incorporated; (2) the incremental detriment to respondents of such exclusion; (3) the burdens imposed on third parties resulting from exclusion of downstream products; (4) the incremental value to complainant of the exclusion of downstream products; (5) the availability of alternative downstream products which do not contain the infringing articles; (6) the likelihood that imported downstream products actually contain the infringing articles and are thereby subject to exclusion; (7) the opportunity for evasion of an exclusion order which does not include downstream products; and (8) the enforceability by Customs of an

⁸ The Commission has authority under section 337 to issue an exclusion order covering downstream products. *In the Matter of Aramid Fibers*, Inv. No. 337-TA-194, USITC Pub. No. 1824 (March 1986).

⁹ *Certain Erasable Programmable Read-only Memories, Components Thereof, Products Containing Such Memories, and Process for Making Such Memories ("EPROMs")*, Inv. No. 337-TA-276 USITC Pub. No. 2196, 12 ITRD 1088 (May 1989), Comm'n Op. at 125, *aff'd*, *Hyundai Electronics Industries Co., v. United States International Trade Commission*, 889 F.2d 1204 (Fed. Cir. 1990) ("Hyundai").

order covering downstream products.¹⁰ This list of factors is not exclusive, as “the Commission may identify and take into account any other factors which it believes bear on the question of whether to extend remedial exclusion to downstream products, and if so to what specific products.”¹¹

The ALJ found that the electrical connectors in issue typically sell for less than \$1.00, and that motherboards that contain these connectors typically contain several electrical connectors and sell for approximately \$80.00 to \$90.00. Thus, the electrical connectors in question represent roughly 2 to 3 percent of the value of the motherboard. The ALJ found that, notwithstanding the low value of the connectors relative to motherboards, the incremental value to complainants in excluding motherboards containing Hon Hai/Foxconn connectors is significant. Specifically, he found that the Hon Hai and Foxconn connectors in issue are designed to be installed on a motherboard, and there is evidence that they have been imported only on motherboards. Hence, he concluded, there would be a significant opportunity to evade any exclusion order that did not prohibit the importation of motherboards containing infringing Foxconn/Hon Hai connectors.

The ALJ also found that the exclusion of motherboards containing Hon Hai/Foxconn connectors would place only a minimal burden on third parties because there are numerous sources of metal latch electrical connectors other than Foxconn and Hon Hai. Moreover, the ALJ found that there are many manufacturers of plastic latch electrical connectors that do not

¹⁰ *EPROMs Comm’n Op.* at 125-126.

¹¹ *Id.* at 126.

infringe the claims in issue. Finally, the ALJ found that a number of connector customers use more than one supplier, and thus their burden in switching from Foxconn or Hon Hai connectors to another brand would be small. Based on the foregoing, the ALJ recommended that the Commission, to ensure that its remedy is effective, include motherboards containing the infringing connectors in the scope of its limited exclusion order.

Complainants argue that the exclusion of motherboards containing metal latch electrical connectors manufactured or imported by Foxconn or Hon Hai is necessary to ensure that the Commission's relief in this investigation is effective. Without such relief, complainants assert, Foxconn and Hon Hai will be free to continue to sell for importation their infringing metal latch electrical connectors virtually unimpeded, simply by selling connectors to motherboard manufacturers for importation. Finally, they assert that, because importers of motherboards can easily obtain licensed or non-infringing electrical connectors for use in the motherboards they import into the United States, such relief will not unduly hinder legitimate trade. They contend that an exclusion order directed to motherboards containing infringing connectors strikes an appropriate balance between the need for effective relief and the practicalities of enforcement.

The IA agrees that electrical connectors are often not separately imported into the United States but are instead imported into the United States on motherboards, and that if an exclusion order does not cover motherboards containing Hon Hai/Foxconn connectors, those connectors could easily continue to be imported into the United States on motherboards. Such a result, argues the IA, would leave complainants with ineffective relief.

The IA notes, however, that Customs has voiced to him certain concerns regarding the scope of any exclusion order that may issue in this investigation. Specifically, in discussions with the IA, Customs expressed concern about administrative difficulties likely to be encountered by Customs in attempting to enforce such an order because of the high volume of motherboards being imported into the United States by multiple importers at multiple ports of entry.¹²

According to the IA, Customs believes that a provision for self-certification by importers (*i.e.*, importers would certify that the imported motherboards do not contain infringing connectors) would facilitate administration of an exclusion order. However, Customs indicated to the IA its view that a certification provision that required *all* importers of motherboards to certify that their products do not contain infringing Hon Hai/Foxconn connectors would be highly burdensome to the numerous importers of motherboards. Such a broad certification requirement also would burden Customs inasmuch as the certification procedure would entail the processing of large numbers of paper documents.

Consequently, to balance the concerns of Customs regarding enforcement of the exclusion order with the legitimate concerns of complainants in securing effective relief, the IA proposes an exclusion order that would require importers of motherboards to submit the appropriate certification only upon the request of Customs. According to the IA, this approach gives Customs the option of not requiring certification in every case, and thus would reduce the burden on Customs of having to process paper entry documents for each

¹² This concern of Customs was noted by the ALJ in the RD at page 6, n.7. To address this concern, the RD observes that the Commission may consider a certification requirement.

shipment of motherboards, while also allowing Customs the flexibility to require certification in circumstances where it determines that such certification is necessary or advisable (where, for example, there is reason to believe that particular shipments of motherboards may contain infringing connectors).

On the facts of this investigation, we believe there is justification for exclusion of motherboards containing infringing electrical connectors. While the actual value of the electrical connectors in relation to the value of the motherboard appears to be small, they are of significant value to the assembled product for reasons apart from their cost. Without the presence of such connectors, the motherboard is rendered useless as it is incapable of receiving memory cards.¹³

More importantly, we believe that exclusion of motherboards is warranted in this investigation in order to ensure that exclusion is effective.¹⁴ The incremental benefit to the complainant of exclusion of motherboards appears to be quite substantial. There would be a

¹³ Cf. *EPROMs*, 12 ITRD at 1135 (finding that, even where the actual value of EPROMs may be small in comparison to the value of certain downstream products proposed for exclusion, the downstream products should be excluded because EPROMs are "vital to [their] operation."); *In re Certain Integrated Circuit Telecommunication Chips And Products Containing Same Including Dialing Apparatus*, Inv. No. 337-TA-337, Notice of Issuance of Limited Exclusion Order and Cease and Desist Orders (June 22, 1993) ("*Telecommunication Chips*").

¹⁴ The Commission has in the past indicated that any remedy prescribed for a violation of section 337 must be an effective remedy. See, e.g., *EPROMs*, Inv. No. 337-TA-276, USITC Pub. No. 2196, 12 ITRD 1088, 1134 (May 1989), *aff'd*, *Hyundai*, 14 U.S.P.Q.2d 1396; *In re Certain DRAMs and Components Thereof*, 10 ITRD 1411, 1442 (1987) ("*DRAMs*"). In addition, we note that, in enacting the 1988 amendments to section 337, Congress indicated its intent to make the statute "a more effective remedy for the protection of United States intellectual property rights." See Public Law No. 100-418, § 1341, 102 Stat. 1211-1212 (1988).

significant opportunity to evade any exclusion order that did not prohibit the importation of motherboards containing infringing Hon Hai/Foxconn connectors because Hon Hai and Foxconn connectors are typically sold in Taiwan, incorporated onto motherboards, and then exported to the United States.¹⁵ Thus, an exclusion order that covered only electrical connectors would not exclude Hon Hai and Foxconn connectors that could be imported into the United States on motherboards, and an order covering motherboards would be significantly more valuable to complainants than an order covering only connectors. Conversely, if such relief is granted, Foxconn and Hon Hai would remain free to sell metal latch electrical connectors for use outside the United States and non-infringing plastic latch electrical connectors for use in the United States.

A limited exclusion order covering motherboards would be consistent with the relief ordered in previous investigations. For example, in EPROMs the Commission issued a limited exclusion order that covered certain EPROM-containing downstream products of respondent Hyundai. In determining to exclude such products, the Commission balanced complainant Intel's interest in obtaining complete protection from all infringing imports against the inherent potential of an exclusion order covering downstream products to disrupt legitimate trade in products not themselves the subject of a violation of section 337. The Commission concluded that, based on a balancing of these competing interests, an order

¹⁵ In fact, as the ALJ found, a substantial portion of *all* electrical connectors imported into the United States are imported as part of motherboards due to the nature of the computer industry.

covering certain downstream articles containing infringing EPROMs was warranted and this determination was upheld by the Federal Circuit.¹⁶

While it would be possible to craft a narrower exclusion order, which could for example exclude motherboards from only that country where infringing manufacturers are known to operate (*i.e.*, Taiwan), we have in the past eschewed such an approach, because such remedies generally are susceptible to circumvention. Moreover, in the circumstances of this investigation, where there are motherboard manufactures worldwide, limiting the order to motherboards from Taiwan likely would not represent an adequate remedy given the relative ease with which the order could be circumvented. In our view, the interest in granting an effective remedy outweighs any minor disruption of trade that might be occasioned by the breadth of the proposed exclusion order.¹⁷

¹⁶ *EPROMs*, Comm'n Op. at 126, *aff'd Hyundai*, 899 F.2d at 1209 (Fed. Cir. 1990) (specifically approving balancing of various factors in Commission remedy determination involving exclusion of downstream products).

¹⁷ We note that the proposed exclusion order would not extend to all downstream products that may contain infringing electrical connectors (*e.g.*, computers), but only to those which account for the bulk of imports of infringing electrical connectors. In this respect, we believe that the order would comport with the concerns raised by USTR Kantor in reviewing the Commission's remedial orders in *Certain Integrated Circuit Telecommunication Chips and Products Containing Same, Including Dialing Apparatus*, Inv. No. 337-TA-337, wherein he indicated that:

orders affecting companies that import downstream products containing infringing components, but are not manufacturing the infringing product itself, must be crafted in the narrowest manner that can result in an effective order. Moreover, this issue must be addressed in a factual manner with appropriate support for the conclusion that the order presents the narrowest effective remedy.

(continued...)

Finally, the exclusion of Hon Hai or Foxconn connectors incorporated into motherboards would be enforceable by Customs. We agree with the IA that it would be problematic to require Customs to examine all entries of motherboards in order to determine whether they contain infringing electrical connectors. Consequently, we have determined to include a certification provision in the exclusion order which should make it relatively easy for Customs to administer the order.¹⁸ Pursuant to such a provision, importers of motherboards containing potentially infringing connectors could be permitted to certify that the imported motherboard does not contain electrical connectors that infringe the patent at issue.¹⁹

¹⁷(...continued)

Letter from Michael Kantor, U.S. Trade Representative, to Don E. Newquist, Chairman, U.S.I.T.C. (September 8, 1993).

¹⁸ Evidence indicates that the connectors subject to exclusion bear the word “FOXCONN” and/or “H” logo, and thus would be identifiable through visual inspection without requiring any disassembly. However, it is not clear from the record whether and how these markings could be removed. In addition, given the substantial volume of motherboard imports, a certification provision would be far less burdensome than inspection of import entries. *See Telecommunication Chips*, Commission Opinion on the Issues under Review and on Remedy, the Public Interest, and Bonding at fn. 41 (June 29, 1993) (“Customs indicated that a certification provision would be far less burdensome than inspection of import entries”).

¹⁹ The Commission has allowed such certification by importers in its remedial orders in certain circumstances, such as where testing of the imported products by Customs was not possible or it was not possible for Customs to determine readily whether incoming products are infringing. *See Certain Curable Fluoroelastomer Compositions and Precursors Thereof*, Inv. No. 337-TA-364, USITC Pub. 2890, Comm’n Op. at 4-5 (May 1995). In addition, the Commission has allowed certification in the past for downstream products that were difficult for Customs to disassemble to determine whether the infringing article was incorporated in the downstream product. *EPROMs*, USITC Pub. 2196 Order at 8 (allowing certification for incoming downstream products that may contain EPROMs), *aff’d*, *Hyundai*, 899 F.2d at (continued...)

It likely would be highly burdensome on importers and Customs to require that all imports of motherboards either be certified as containing non-infringing electrical connectors or excluded. Therefore, we also agree with the IA that it would appropriate to limit the certification requirement by permitting Customs the discretion to determine when to require such certification.²⁰ Where there are two equally effective alternatives to effectuate exclusion, we determine to choose the one likely to be least burdensome on importers and Customs.²¹ In this respect, the only burden that would be imposed on non-respondent manufacturers and importers of motherboards is that of complying with the certification provision of the exclusion order, and they would be forced to bear that burden only when Customs requires such certification. Consequently, exclusion of motherboards containing Hon Hai and/or Foxconn connectors should not impose any undue burden on legitimate commerce.

¹⁹(...continued)

1209, 1210 (Fed. Cir. 1990) (finding that allowing certification was "both reasonable and well within [the Commission's] authority"); *see also Telecommunication Chips*, Commission Opinion on the Issues under Review and on Remedy, the Public Interest, and Bonding (June 29, 1993).

²⁰ As noted above, complainants do not object to this form of certification provision or, for that matter, to any of the proposals put forth by the IA.

²¹ *See Telecommunication Chips*, Commission Opinion on the Issues under Review and on Remedy, the Public Interest, and Bonding at 33-34 (Aug. 1993) (noting that "[e]ase of administration by Customs is . . . one factor to be considered in determining whether downstream products . . . should be excluded").

C. Cease and Desist Order

Under section 337(f)(1), the Commission has discretion to issue cease and desist orders in addition to, or in lieu of, an exclusion order.²² The Commission traditionally has issued cease and desist orders only when commercially significant inventories of infringing goods are present in the United States.²³

Because domestic respondent Foxconn refused to provide any reliable information regarding actual U.S. inventory levels, the ALJ recommended that the Commission issue a cease and desist order against Foxconn.²⁴ Complainants and the IA support this

²² Section 337(f)(1) provides:

In addition to, or in lieu of, taking action under subsection (d) . . . of this section, the Commission may issue and cause to be served on any person violating this section . . . an order directing such person to cease and desist from engaging in the unfair methods or acts involved [unless precluded by consideration of enumerated public interest factors.]

19 U.S.C. § 1337(f)(1)(emphasis added). The Commission's purpose in issuing cease and desist orders in patent-based cases typically has been to afford complete relief to complainants where infringing goods are already present in the United States, and thus cannot be reached by issuance of an exclusion order. *See, e.g., Certain Compound Action Metal Cutting Snips*, Inv. No. 337-TA-197, Commission Opinion at 5-7.

²³ *See, e.g., Certain Pressure Transmitters*, Inv. No. 337-TA-304, USITC Pub. 2392 (June 1991) (“*Pressure Transmitters*”); *Certain Strip Lights*, Inv. No. 337-TA-287 (October 3, 1989) (Unpublished opinion); *Certain Nonwoven Gas Filter Elements*, Inv. No. 337-TA-275, USITC Pub. 2129 (September 1988); *Certain Compound Action Metal Cutting Snips*, Inv. No. 337-TA-197, USITC Pub. 1831 (March 1986); *Certain High Intensity Retroreflective Sheeting*, Inv. No. 337-TA-268, USITC Pub. 2121 (September 1988); *Certain Crystalline Cefadroxil Monohydrate*, Inv. No. 337-TA-293 (March 1990) (“*Cefadroxil*”).

²⁴ The Commission has *in personam* jurisdiction over Foxconn, a company doing business at 930 W. Maude Avenue, Sunnyvale, CA 94086, based on proper service of the
(continued...)

recommendation in view of the adverse inferences found against Foxconn resulting from Foxconn's refusal to participate in the investigation.

Although complainants have not submitted evidence that Foxconn has any significant inventories of infringing connectors, absent facts to the contrary, it is reasonable to draw the adverse inference that Foxconn is stocking motherboards containing infringing connectors. The Commission has in the past inferred the existence of "commercially significant" domestic inventories where a respondent has failed to provide evidence to the contrary, and we believe it is appropriate to do so in this investigation.²⁵ Accordingly, we have determined to adopt the ALJ's recommendation and issue a cease and desist order to Foxconn. We have directed Foxconn to cease and desist from any unlicensed importing, selling for importation, marketing, distributing, offering for sale, selling, or otherwise transferring (except for exportation) in the United States imported electrical connectors, and imported motherboards containing electrical connectors, which have been determined to be infringing.

²⁴(...continued)

complaint and notice of investigation and Foxconn's filing of an answer to the complaint.

²⁵ See *Cefadroxil* Comm'n Op. at 41-42; *EPROMs*, Inv. No. 337-TA-276, USITC Pub. 2196 (May 1989)(while the existence of significant inventories was not conclusively proven, it could be reasonably assumed from the record that such inventories were present because a party has failed to provide evidence to the contrary).

IV. THE PUBLIC INTEREST

Before granting relief, the Commission must consider the effect that such relief would have on "the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers."²⁶ The legislative history of this provision, added to section 337 by the Trade Act of 1974, indicates that the Commission should decline to issue relief when the adverse effect on the public interest would be greater than the interest in protecting the patent holder.²⁷ Complainants and the IA both submit that entry of permanent relief in the form of a limited exclusion order directed to infringing Hon Hai/Foxconn electrical connectors (and motherboards containing same) and a cease and desist order directed to Foxconn would not raise any public interest concerns under 19 U.S.C. §§ 1337(d) or (f). They note that there is no evidence that the U.S. demand for such products could not be supplied by complainants,

²⁶ 19 U.S.C. §§ 1337(d) and (f). *See also Rosemount v. United States Int'l Trade Comm'n*, 15 U.S.P.Q.2d at 1572, 910 F.2d 819 (Fed. Cir. 1990) ("*Rosemount*"). In *Rosemount*, the Federal Circuit, in affirming the *Pressure Transmitters* decision, stated:

We also agree with the Commission's rejection of the view that the public interest inevitably lies on the side of the patent owner because of the public interest in protecting patent rights . . . other public interest factors are delineated in the above-quoted section 1337(e)(1) and must be taken into account.

Rosemount, 910 F.2d at 822, 15 U.S.P.Q.2d at 1572.

²⁷ *See S. Rep. 1298, 93rd Cong., 2d Sess. 197 (1974).*

by complainants' licensee, or by non-infringing alternatives in the absence of the Foxconn and Hon Hai products.²⁸ They also note that there are no public health concerns in this case.

Based on the evidence of record, we agree that the issuance of a limited exclusion order and a cease and desist order to Foxconn would not have an adverse effect on the public interest. First, the public interest favors the protection of U.S. intellectual property rights.²⁹ Second, the evidence indicates that complainants, together with their licensee, can supply enough electrical connectors to serve the U.S. market. In addition, the patented metal latch electrical connectors compete with plastic latch connectors that perform the same function and are readily available in the U.S. market. Finally, electrical connectors are not the type of product that has in the past raised public interest concerns (such as, for example, drugs or medical devices) and we are not aware of any other public interest concern that would militate against entry of the remedial orders we have determined to issue. Accordingly, we

²⁸ Specifically, complainants contend that they are operating at less than full capacity and can supply enough electrical connectors to replace those that would be excluded.

²⁹ See *Rosemount*, 15 U.S.P.Q.2d at 1572 (Fed. Cir. 1990)(patent protection is a dominant factor in determining the public's interest in granting relief). In this regard, we also note that the Commission has declined to grant relief on public interest grounds in only three cases. In *Certain Automatic Crankpin Grinders*, Inv. No. 337-TA-60, U.S.P.Q. 71 (ITC 1979), the Commission denied relief because of an overriding national policy interest in maintaining and increasing the supply of fuel efficient automobiles, coupled with the domestic industry's inability to supply domestic demand. In *Certain Inclined Field Acceleration Tubes*, Inv. No. 337-TA-67, USITC Pub. 1119 (1980), the Commission denied relief because there was an overriding public interest in continuing basic atomic research using the imported acceleration tubes, which were of a higher quality than the domestic product. Finally, in *Certain Fluidized Supporting Apparatus*, Inv. No. 337-TA-182/188, USITC Pub. No. 1667 (1984), the Commission denied relief because the domestic producer could not supply demand for hospital beds for burn patients within a commercially reasonable time, and no therapeutically comparable substitute for care of burn patients was available.

agree with complainants and the IA that the statutory public interest factors do not preclude issuance of relief in this investigation. We therefore conclude that the issuance of the requested relief would have no adverse effect on the public interest.

V. BONDING

If the Commission enters an exclusion and/or cease and desist order, respondents may continue to import and sell their products during the pendency of Presidential review under a bond in an amount determined by the Commission to be “sufficient to protect the complainant from injury.”³⁰ The bond should not be set so high as to effectively prevent importation during the Presidential review period. The period of Presidential review is relatively short, however, and the consequences of any bond are therefore likely to be short-lived.

The ALJ found that respondents’ connectors typically sell for 15 to 20 percent below complainants’ prices and that the price of motherboards in relation to the price of connectors can vary, depending on computer types and other factors. Thus, to protect complainants from injury, he recommends that the excluded articles be entitled to enter the United States during the Presidential review period under a bond in the amount of 20 percent of their entered value. Using the same methodology, complainants and the IA also urge that the bond during the 60-day Presidential review period should be set at 20 percent of the entered value of the imported electrical connectors.

³⁰ 19 U.S.C. §§ 1337(e) and (j)(3); Commission rule 210.50(a)(3).

With respect to motherboards containing infringing connectors, Customs has advised the IA that, if a bond is also to be set on motherboards during the Presidential review period, it will be difficult for Customs to ascertain the entered value of the connectors assembled on the motherboard. Accordingly, Customs recommends that the Commission set a fixed per unit bond amount for Hon Hai/Foxconn electrical connectors imported into the United States already assembled on motherboards.

We agree with the ALJ (as well as complainants and the IA) that a 20 percent bond is appropriate in this case. The method used by the ALJ (and supported by complainants and the IA) -- setting the bond amount based on evidence of margins of underselling -- is the approach traditionally taken by the Commission in setting bond in section 337 investigations, and, we believe, comports with the new statutory requirement that the amount of the bond be "sufficient to protect the complainant from injury."³¹ In determining the bond amount applicable to motherboards containing respondents' infringing metal latch electrical connectors, we have also acknowledged Customs' administrative concerns and set a fixed per unit bond amount.³² Therefore, consistent with our determination that the bond be set at 20 percent of the entered value of the connectors, the bond on motherboards is set at \$0.20 for each infringing electrical connector assembled thereon. This method, which is similar to

³¹ See, e.g., *Certain Nonwoven Gas Filter Elements*, 11 ITRD 1391, 1399 (1988).

³² Complainants did not object to the IA's proposal regarding the appropriate fixed amount bond for motherboards containing infringing connectors.

the approach taken by the Commission when it set bond on downstream products in *DRAMs*,³³ is reflected in the exclusion order issued in this investigation.

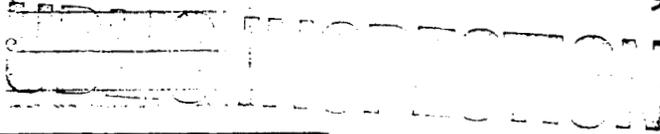
³³ See *DRAMs*, 10 ITRD at 1444-1445 (setting bond at \$0.22 for 64K DRAMs and \$0.52 for 256 DRAMs and basing bond on downstream products on the number of DRAMs contained in the products).

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

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In the Matter of)
)
CERTAIN ELECTRICAL)
CONNECTORS AND PRODUCTS)
CONTAINING SAME)
)
)

Investigation No. 337-TA-374

Final Recommended Determination

Paul J. Luckern, Administrative Law Judge

Pursuant to an initial determination (Order No. 38) finding Hon Hai in violation of section 337, and terminating the investigation as to the last remaining respondent, this is the administrative law judge's recommended determination, issued under Commission rule 210.42(a)(1)(ii), in which he recommends a limited exclusion order directed to Hon Hai/Foxconn electrical connectors that infringe any of claims 17, 18, 20, 21 or 23 of the '792 patent, and directed to motherboards containing such connectors, a cease and desist order against Foxconn, and a bond of 20 percent of the entered value of the connectors.

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ABBREVIATIONS

CSub	-	Complainant's Submission On Remedy And Bonding
CPX	-	Complainants' Physical Exhibit
CX	-	Complainants' Documentary Exhibit
FF	-	Recommended Findings of Fact
JX	-	Joint Exhibit
Tr	-	Transcript of TEO Hearing
SSub	-	Staff's Submission On Remedy And Bonding
SX	-	Staff's Documentary Exhibit

I. Procedural History

Based on a complaint, as supplemented, and a motion for temporary relief (Motion No. 374-1) filed by complainants AMP Incorporated and The Whitaker Corporation (AMP), the Commission instituted this investigation on May 5, 1995, and subsequently issued a Notice of Investigation, 60 Fed. Reg. 25247 (May 11, 1995). The Notice of Investigation named the following respondents: Berg Electronics, Inc. (Berg), Tekcon Electronics Corp. (Tekcon), Hon Hai Precision Industry Co. Ltd. (Hon Hai), and Foxconn International, Inc. (Foxconn). Order No. 24, pursuant to Commission rule 210.17, found adverse inferences against Hon Hai. In an initial determination (Order No. 25) which issued on September 8, 1995, the administrative law judge denied AMP's motion for temporary relief.

An initial determination (Order No. 23), which issued on September 8, 1995, found Foxconn in default pursuant to Commission rule 210.16 and thus found that Foxconn had waived its right to appear, to be served with documents and to contest the allegations at issue in this investigation.¹ Order No. 31, which issued on October 27, 1995, granted complainants' Motion No. 374-45 to terminate the investigation as to Berg.² Order No. 35, which issued on December 11, 1995, granted a joint Motion No. 374-54 to terminate the investigation as to Tekcon.³ Order No. 38, an initial

¹ By notice dated October 10, 1995, the Commission determined (1) to adopt the initial determination (Order No. 25) denying complainants' motion for temporary relief, and (2) not to review Order No. 23 finding Foxconn in default.

Commission rule 210.16(c) provides, *inter alia*, that:

After a respondent has been found in default by the Commission, The facts alleged in the complaint will be presumed to be true with respect to the defaulting respondent.

Thus, Foxconn is presumed to violate section 337 by importing into the United States, selling for importation, or selling within the United States after importation certain electrical connectors that infringe claims 17, 18, 20, 21 or 23 of the '792 patent.

² The Commission in a notice dated November 28, 1995 determined not to review Order No. 31.

³ The Commission, in a notice dated January 23, 1996, determined not to review Order No. 35.

determination, which issued February 9, 1996, determined that Hon Hai was in violation of section 337, pursuant to Commission rules 210.17 and 210.42(a)(1)(i) and terminated the investigation as to the remaining respondent Hon Hai.

Neither complainants nor the staff requested any hearing on the remedy and bonding issues. Pursuant to Order Nos. 36 and 37 complainants and the staff filed submission on those issues. Order No. 39, which issued on February 9, 1996, admitted into evidence certain items for use in the remedy and bonding recommendation.

This matter is ready for a recommended determination on remedy and bonding.

II. Jurisdiction

The Commission has in rem and subject matter jurisdiction under section 337, because the alleged unfair methods of competition and unfair acts involve the importation into the United States of certain electrical connectors and products containing same that infringe claims 17, 18, 20, 21 or 23 of the '792 patent.

The Commission requires a finding of in personam jurisdiction to enforce any cease and desist order under section 337(f)(2). Certain Large Video Matrix Display Systems, Inv. No. 337-TA-75, 213 USPQ 475, Commission Opinion (June 19, 1981) (Video Matrix).⁴ In this investigation, AMP is seeking a cease and desist order against Foxconn. The Commission has in personam jurisdiction over Foxconn, a company doing business at 930 W. Maude Avenue, Sunnyvale, CA 94086, based on proper service of the complaint and notice of investigation, Foxconn's filing of an answer to the complaint, and the appearance of Foxconn manager Mr. Wei Te Chung at the hearing on temporary

⁴ A finding of personal jurisdiction is unnecessary for the issuance of a cease and desist order "directed solely at importation or for the enforcement of any cease and desist order by means of exclusion of articles." Video Matrix Comm'n Op. at fn 10.

relief.⁵

III. Analysis

Complainants, in their initial submissions on remedy and bonding, argued that Foxconn's and Hon Hai's metal latch SIMM connectors that infringe certain claims of the '792 patent and mother boards containing them should be excluded; that the Commission should issue cease-and-desist orders against Foxconn and Hon Hai; and that the Commission should set bond at a level of 20 percent of the entered value of the infringing connectors.

The staff argued for the entry of a limited exclusion order directed against Hon Hai and Foxconn electrical connectors that are covered by any of claims 17, 18, 20, 21 or 23 of the patent in issue and that are imported for consumption,⁶ and that in order to ensure effective relief any exclusion order should cover mother boards containing Hon Hai/Foxconn connectors. The staff further argued that a cease and desist order against Foxconn was appropriate, but that any cease and desist order against Hon Hai was not appropriate. The Staff argued that complainants' proposal of a 20 percent bond was reasonable to protect complainants from injury during the Presidential review period.

Complainants, in their reply submission, did not object to "any of the positions or findings of fact proposed in the Staff's Brief."

A. Remedy

1. Limited Exclusion Order

Both complainants and the staff have argued that a limited exclusion order should issue against Foxconn and Hon Hai electrical connectors that are covered by any of claims 17, 18, 20, 21 or 23 of

⁵ Mr. Chung appeared and gave testimony at the hearing on July 6, 1995, after Foxconn had "withdrawn" from the investigation (Tr. at 2034). He stated that "Foxconn is an American Company, and we respect American law system. So Foxconn sent me to attend this hearing." (Tr. at 2028).

⁶ The staff represented that complainants' counsel has confirmed that complainants are not seeking to exclude the accused connectors other than "for consumption."

the patent in issue (the '792 patent). As both Hon Hai and Foxconn have been found to violate section 337, by importing into the United States, selling for importation, or selling within the United States after importation certain electrical connectors that infringe claims 17, 18, 20, 21 or 23 of the '792 patent, the administrative law judge recommends the entry of a limited exclusion order against those respondents.

2. Downstream Products

Complainants argued that, to ensure entry of effective relief, the Commission should exclude metal latch SIMM connectors manufactured or imported by Foxconn or Hon Hai and mother boards containing them; that recognizing the need to balance the need for effective relief against the practicalities of enforcement, complainants are not seeking an order excluding all products containing Foxconn's and Hon Hai's infringing metal latch SIMM connectors but are only seeking an exclusion order that reaches the one class of products where the metal latch SIMM connectors are used most frequently; that in order to minimize any disruption of legitimate trade complainants are not seeking exclusion of computers containing respondents' infringing metal latch SIMM connectors; that while an order excluding only mother boards will not provide complainants complete relief, it is the minimum necessary to deter respondents' unfair trade practices; and that without the requested relief, Foxconn and Hon Hai will be free to continue to sell for importation their infringing metal latch SIMM connectors.

The staff argued that electrical connectors are often not directly imported into the United States but are instead imported into the United States in motherboards; that if an exclusion order does not cover motherboards containing Hon Hai/Foxconn connectors, those connectors could easily continue to be imported into the United States in mother board products and complainants would not obtain effective relief against the infringing connectors; and that in order to ensure effective relief any exclusion order should cover motherboards containing the Hon Hai/Foxconn connectors from

whatever source.

Before issuing an exclusion order covering downstream products, the Commission has balanced:

the complainant's interest in obtaining complete protection from all infringing imports by means of exclusion of downstream products against the inherent potential of [an] . . . exclusion order, when extended to downstream products, to disrupt legitimate trade in products which were not themselves the subject of a finding of violation of section 337.

Certain Erasable Programmable Read-only Memories, Components Thereof, Products Containing Such Memories, and Processes for Making Such Memories, Inv. No. 337-TA-276, USITC Pub No. 2196, Commission Opinion at 125 (May 1989), (EPROMs)aff'd, Hyundai Electronics Industries Co. v. U.S. Int'l Trade Comm'n, 889 F.2d 1204, 14 USPQ2d 1396 (Fed. Cir. 1990). In EPROMs, the Commission enumerated factors to be considered before issuing an order covering downstream products. These factors include:

[T]he value of the infringing articles compared to the value of the downstream products in which they are incorporated, the identity of the manufacturer of the downstream products, (i.e., are the downstream products manufactured by the party found to have committed the unfair act, or by third parties), the incremental value to complainant of the exclusion of downstream products, the incremental detriment to respondents of such exclusion, the burdens imposed on third parties resulting from exclusion of downstream products, the availability of alternative downstream products which do not contain the infringing articles, the likelihood that imported downstream products actually contain the infringing articles and are thereby subject to exclusion, the opportunity for evasion of an exclusion order which does not include downstream products, and the enforceability of an order by Customs, etc.

EPROMs Comm'n Op. at 125-126. Moreover, the above list of factors is not exclusive, as "the Commission may identify and take into account any other factors which it believes bear on the question of whether to extend remedial exclusion to downstream products, and if so to what specific products." Id.

The administrative law judge finds that the electrical connectors in issue typically sell for less than \$1.00, and that motherboards that contain these connectors typically contain several electrical connectors, as well as other components (FF 21). Typical motherboards sell for approximately

\$80.00 to \$90.00, and the electrical connectors in issue represent roughly 2 to 3 percent of the value of the motherboard (FF 13, 20 - 23). Thus, the value of the connectors is relatively small compared to the value of the downstream products in which they are incorporated.

The incremental value to complainants in excluding motherboards containing Hon Hai or Foxconn connectors is significant. While there is no evidence that either Hon Hai or Foxconn manufacture or import motherboards, and the exclusion of motherboards would cover non-parties that use Hon Hai or Foxconn electrical connectors, the Hon Hai and Foxconn connectors in issue are designed to be installed on a motherboard, and there is evidence that they have been imported on motherboards (FF 1-5, 30). Hence, there would be a significant opportunity to evade any exclusion order that did not prohibit the importation of motherboards containing infringing Foxconn or Hon Hai connectors because Hon Hai and Foxconn connectors are typically sold in Taiwan, incorporated onto motherboards and then imported into the United States (FF 6-12, 16-18, 28-31, 40, 41, 47). Thus, an exclusion order that covered only electrical connectors would not exclude Hon Hai and Foxconn connectors that could be imported into the United States on motherboards, and an order covering motherboards would be significantly more valuable to complainants than an order covering only connectors.

The exclusion of Hon Hai or Foxconn connectors, incorporated into motherboards, would be enforceable by Customs. Evidence indicates that these connectors contain the word "FOXCONN" or and "H" logo, and thus would be identifiable through visual inspection without requiring any disassembly (FF 3-5, 27).⁷ Hence exclusion of motherboards containing Hon Hai and/or Foxconn

⁷ Customs has expressed reservations about an exclusion order that would cover motherboards, "due to the high volume of motherboards that are imported into the United States each year at multiple ports of entry (SSub at 9). In light of these concerns, the Commission may consider a certification requirement, such as the one used by the Commission in Certain Integrated Circuit Telecommunication Chips and Products Containing Same, Inv. No. 337-TA-337, Commission Opinion on the Issues under Review and on Remedy, the Public Interest, and Bonding at fn 41 (June 29, 1993) ("Customs indicated that a certification provision would be far less burdensome than inspection of import entries").

connectors should not impose any undue burden on legitimate commerce.

The administrative law judge finds that the exclusion of motherboards containing Hon Hai or Foxconn connectors would place only a minimal burden on third parties because there are numerous sources of metal latch electrical connectors, other than Foxconn and Hon Hai (FF 48). Moreover, there are many manufacturers of plastic latch electrical connectors that do not infringe the claims in issue (FF 48). A number of connector customers use more than one supplier, and thus their burden in switching from Foxconn or Hon Hai connectors to another brand would be small (FF 49).

Based on the foregoing, the administrative law judge recommends that, to provide effective relief, any exclusion order should include motherboards.

3. Cease and Desist Order

The Commission is granted the authority to issue cease and desist orders under Section 337(f)(1). The Commission will issue a cease and desist order where a respondent has a sufficient inventory of infringing goods in the United States. See Certain Crystalline Cefadroxil Monohydrate, Inv. No. 337-TA-293, Commission Opinion on Remedy, the Public Interest and Bonding at 37-42 (March 15, 1990) (Cefadroxil), and Certain Plastic Encapsulated Integrated Circuits, Inv. No. 337-TA-315, USITC Pub. 2574, Commission Opinion at 37 (November, 1992). Complainant has not submitted evidence that Foxconn has any significant inventories of infringing connectors (CSub at 12). However, the Commission has inferred the existence of “commercially significant” domestic inventories where a respondent has failed to provide evidence to the contrary. See Cefadroxil Comm’n Op. at 41-42. Foxconn has refused to provide any reliable information regarding actual inventory levels. Thus, the administrative law judge recommends that the Commission issue a cease and desist order against Foxconn.

AMP had initially requested that the Commission issue a cease and desist order not only against Foxconn but also against Hon Hai, to prevent them from importing, selling for importation, or selling

after importation infringing electrical connectors (CSub at 12). The staff argued that a cease and desist order against Foxconn is appropriate, but not against Hon Hai (SSub at 11).⁸ It was argued that it is Commission practice to decline to issue cease and desist orders against purely foreign respondents, citing Certain Reclosable Plastic Bags and Tubing, Inv. No. 337-TA-266, Commission Opinion at 5 (Nov. 30, 1987). AMP, in its reply submission, did not object to the staff's position. In view of the fact that Hon Hai is a Taiwanese corporation, the administrative law judge recommends that no cease and desist order issue against Hon Hai.

B. Bond

If the Commission enters an exclusion and/or cease and desist order, respondents may continue to import and sell their products during the pendency of Presidential review under a bond in an amount determined by the Commission to be "sufficient to protect the complainant from injury." 19 U.S.C. § 1337(e), Commission rule 210.50(a)(3). Both complainants and the staff believe that a bond of 20 percent would be appropriate. (CSub at 14; SSub at 12). Complainants argued that a bond based on the value of connectors contained on the mother board is similar to the approach taken by the Commission when it set bond on downstream products in Certain Dynamic Random Access Memories, Components Thereof, and Products Containing Same, Inv. No. 337-TA-242, Commission Opinion (February 7, 1990) (Setting bond at \$.22 for 64K DRAMS and \$.52 for 256 DRAMS and basing bond on downstream products on the number of DRAMS in the articles).

The administrative law judge finds the only reliable price information on the present record indicates respondents connectors typically sell for [] (FF 31-33, 38). He also finds that the price of mother boards in relation to the price of connectors can vary, depending on computer types and other factors (FF 20-23). Thus, he recommends a bond of 20

⁸ Apparently, complainant agreed to limit its request for a cease and desist order to Foxconn when it stated that it did "not object to any of the positions or findings of fact proposed in the Staff's Brief." (CSub at 1).

percent of the connectors entered value as appropriate to protect the complainants from injury.

IV. Findings of Fact

1. The products at issue in this investigation are electrical connectors, used to connect a single in-line memory module (SIMM card or SIMM) to a circuit board. The SIMM card is sometime referred to as a "daughter card," while the circuit board is known as a "mother board." SIMM cards are commonly used to provide memory for computers because they provide a large amount of memory in a small space. They are designed to be inserted or removed by the end user. This gives the manufacturers, sellers, and users a simple way to upgrade computer memory. The mother board, in contrast, forms a permanent part of a device, such as a computer. (CX-239; CX-241).
2. The SIMM connectors at issue in this investigation connect daughter cards to mother boards whereby the daughter cards are rotated into the SIMM connectors. At the hearing, witnesses variously referred to the SIMM connectors at issue as "cam-in" or "rotate and latch" type connectors. (CX-239; CX-241; Bruggeworth, Tr. 882; Williamson, Tr. 430; Strich, Tr. 2863; JX-22, p. 109; Staff Exs. 2-5).
3. Physical Exhibit CPX-29 is a metal latch SIMM connector having vertical orientation and tin plated contacts and a molded indication that it is Hon Hai product. (Simonic, Tr. 1132-33; CPX-29).
4. Physical Exhibit CPX-31 is a metal latch vertical orientation cam-in SIMM socket with tin plated contacts having an identification mark on it indicating that it is manufactured by Hon Hai. (Simonic, Tr. 1134; CPX-31).
5. CPX-29 and CPX-31 are metal latch SIMM connectors manufactured and sold by Foxconn/Hon Hai. (Simonic, Tr. 1132-34; JX-011, p. 19; CPX-29; CPX-31).
6. More mother boards that include metal latch SIMM sockets are produced in Taiwan than any other place in the world. (Bruggeworth, Tr. 945; Peterson, Tr. 1437; JX-32, p. 85).
7. It is common knowledge in the industry that printed circuit boards assembled in Taiwan make

their way back into the United States. These printed circuit boards contain metal latch SIMM connectors. (Bruggeworth, Tr. 945-946).

8. Taiwanese mother board manufacturers represent approximately 80% of the world's mother board making capacity. (CX-74; Peterson, Tr. 1439).

9. An article in Electronic Business News dated March 6, 1995 estimated that 80% of the world's mother boards are assembled in Taiwan. (CX-15; CX-15A).

10. Approximately 39% of the mother boards manufactured in Taiwan are imported into the United States. (Peterson, Tr. 1440).

11. Dixie Drybread-Erdman estimates approximately one-third of all mother boards made are imported into the United States. (JX-32, pp. 85-86).

12. The United States represents the largest consumer of mother boards in the world. (Peterson, Tr. 1440).

13. Metal latch SIMM connectors account for roughly 2 to 3% of the total cost of a mother board. This does not include the microprocessor on the mother board. (Bruggeworth, Tr. 1050-1051).

14. Mother boards imported from Taiwan typically do not have the microprocessor on them when they are imported into the United States. The reason is because of the duties associated with microprocessors at the boarder. A mother board is considered a computer when it is loaded with the microprocessor. (Bruggeworth, Tr. 1051; Simonic, Tr. 1098-99).

15. Mother boards for desktop computers are universally imported into the United States without DRAM chips or CPU chips. (Simonic, Tr. 1098).

16. The following OEM and ODM computer manufacturers purchase mother boards from Taiwan:

[

] (CX-74).

17. [

] import mother boards into the United States. (JX-32, pp. 85-86).

18. Digital Equipment Taiwan will assemble connectors on its mother boards in Taiwan and export those mother boards for sale in countries outside of Taiwan. DEC Taiwan will export these mother boards into the United States. []

19. [] AST Research manufacturers mother boards in Hong Kong and mainland China. []

] there is an indication that AST Research will transfer production of all of its mother boards to China within the next two years. AST Research has no mother board assembly capacity in the United States. AST Research, however, sells computers in the United States. []

20. After attending a Comdex trade show in November of 1994, it was Mr. Simonic's belief that the price for a 486 CPU mother board was between \$90 to \$100. In June of 1995, however, Mr. Simonic met with a representative of AMP Taiwan in Harrisburg and was informed that the price for a 486 CPU mother board is now approximately \$80 to \$90. It is Mr. Simonic's understanding that the prices of components contained on the mother board had decreased since November of 1994 and the decrease in price of these components was reflected in the decrease in price of 486 CPU mother board. (Simonic, Tr. 1149-1150).

21. The electrical connectors at issue typically sell for less than \$1.00. (See RBX 1b (Hoffman Statement)). Motherboards that are imported into the United States typically contain several electrical connectors along with many other components. In 1995, motherboards sold for approximately \$80.00 to \$90.00, with the value of the electrical connectors contained thereon consisting of roughly 2 to 3 percent of the value of the motherboards. (Bruggeworth, Tr. 1050-51; Simonic, Tr. 1149-50).

22. In Mr. Simonic's experience, the price of a mother board designed for a particular CPU will decline over time. (Simonic, Tr. 1096).

23. Mr. Simonic's estimate as to the average price for a mother board designed for use with the

Pentium CPU is in the range of \$150 to \$170. Mr. Simonic based this estimate on his attendance at the Comdex Trade Show in April 1995. (Simonic, Tr. 1097).

24. Most of the major mother board manufacturers and industry leaders participated in the April 1995 Comdex Trade Show. (Simonic, Tr. 1098).

25. Metal latch SIMM connectors are used in printers, personal computers, work station applications, and mother boards. (JX-3, pp. 103).

26. Any product that contains a SIMM card contains a SIMM connectors. (JX-3, pp. 103).

27. Mr. Simonic has seen Hon Hai SIMM sockets that have a capital H marked in the molded housing. Mr. Simonic has also seen connectors that have the name Foxconn stamped on them. (Simonic, Tr. 1127).

28. During negotiations for all of Digital Equipment Corporation's requirements for SIMM sockets on a global basis, Foxconn was offering a cam-in SIMM connector with metal latches and tin plating, vertical orientation in competition with AMP, Molex, and Berg. []

29. []

[] AMP was selling metal latch cam-in SIMM connectors to DEC Taiwan, but that recently DEC had begun to place orders with Foxconn for a similar product, a metal latch cam-in SIMM connector similar to AMP's 822021-4 with tin plating and metal latches, vertical orientation. []

30. [] a Foxconn metal latch SIMM connector from Bull Electronics in Brighton, Massachusetts, which in turn obtained it from Bull Taiwan, the international procurement organization for Taiwan. []

31. Foxconn was quoting to Bull a price of just under [] each for part number AP07200-A4, a metal latch SIMM connector. []

32. Exhibit CX-210 is a memorandum from Richard Kohn of AMP U.S. Sales & Marketing to

Frank Woelfling of The Whitaker Corporation dated February 1, 1995. [

] (CX-210).

33. [

] (Bruggeworth, Tr. 900-02, 936;

CX-236).

34. [There is no FF 34]

35. [

] (JX-2,

p. 45; Anderson, Tr. 2588).

36. Foxconn was bidding for IBM's metal latch SIMM connector business for both Great Britain and Austin, Texas. (CX-287).

37. [

]

(CX-287).

38. [

] (Peterson, Tr. 1396;

CX-301).

39. AMP competed with Foxconn for business at Digital Equipment under the 1995 RFQ where Foxconn was offering a cam-in SIMM connector with metal latches and tin plating in a vertical orientation. []

40. [] has received samples of the type of connector represented by CPX-29 from an AMP Taiwan salesman, [

] that Foxconn/Hon Hai was offering a part that

was competitive with the type of SIMM socket that AMP was selling to DEC prior to Foxconn obtaining part of the DEC business. []

41. []

] (Simonic, Tr. 1131; CX-211).

42. Foxconn has been placed on the approved vendor list of the mother board purchaser of SCI's product. []

43. One instance of head-to-head bidding or competition between AMP and Foxconn for metal latch SIMM socket business occurred during global negotiations for the IBM PC company's business. []

44. Pacific Rim competitors such as Foxconn are attacking the level 2 marketplace in the United States with low prices, which is particularly seen in Foxconn's offering of metal latch SIMM sockets. (Bruggeworth, Tr. 933-934; CX-236).

45. []

] (Bruggeworth, Tr. 1060-61).

46. AMP competed with Foxconn/Hon Hai for business in 40 degree angle metal latch SIMM sockets at AST Research. []

47. Foxconn sells metal latch SIMM connectors to mother board manufacturers and Foxconn is one of the dominant players in the mother board segment. []

48. There are numerous sources of electrical connectors other than Foxconn and Hon Hai. (See RBX 1b (Hoffman Statement)). Alternative products include the metal latch SIMM connectors sold by the AMP (the largest manufacturer of connectors in the world) and Complainants' licensee, Molex

(CX-216 at 194791), as well as the less expensive plastic latch SIMM connectors manufactured by numerous companies worldwide. (Hoffman, RBX 1b; Hoffman, Tr. 3607).

49. Most connectors customers split their business between a number of connector suppliers in order to ensure a continuity of supply. (JX-2 at 27; Anderson, Tr. at 2579-80).

V. Remedy and Bond Recommendations

- 1. A limited exclusion order against Foxconn and Hon Hai electrical connectors, and including motherboards that contain those connectors.**
- 2. A Cease and desist order against respondent Foxconn.**
- 3. A bond of 20 percent of entered value.**

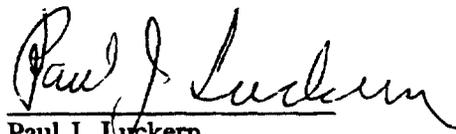
VI. Order

The administrative law judge hereby CERTIFIES to the Commission this recommended determination together with the record consisting of the exhibits admitted into evidence on the remedy and bonding issues. The pleadings of the parties are not certified, since they are already in the Commission's possession in accordance with Commission's rules.

Further it is ORDERED that:

1. In accordance with Commission rule 210.39, all material heretofore marked in camera because of business, financial, and marketing data found by the administrative law judge to be cognizable as confidential business information under Commission rule 210.5(a) is to be given in camera treatment continuing after the date of this investigation is terminated.

2. Counsel for the parties shall have in the hands of the administrative law judge those portions of this recommended determination which contain bracketed confidential business information to be deleted from the public version of the initial determination, and all attachments thereto, no later than Friday, February 23, 1996. Any such bracketed version shall not be served by telecopy on the administrative law judge. If no version is received from a party it will mean that the party has no objection to removing the confidential status, in its entirety, from this initial determination.


Paul J. Lyckern
Administrative Law Judge

Issued: February 9, 1996

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

PUBLIC INSPECTION

RECEIVED
OFC OF THE SECRETARY
IN THE MATTER OF)
)
)
CERTAIN ELECTRICAL)
CONNECTORS AND PRODUCTS)
CONTAINING SAME)
)

Investigation No. 337-TA-374

**NOTICE OF COMMISSION DECISION NOT TO REVIEW
AN INITIAL DETERMINATION FINDING A VIOLATION
OF SECTION 337, AND OF THE SCHEDULE FOR FILING WRITTEN
SUBMISSIONS ON REMEDY, THE PUBLIC INTEREST, AND BONDING**

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OFC OF THE SECRETARY
IN THE MATTER OF

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined not to review the initial determination (ID) issued on February 9, 1996, by the presiding administrative law judge (ALJ) in the above-captioned investigation. That ID found a violation of section 337 of the Tariff Act of 1930 in the importation and sale of certain electrical connectors.

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3116. Copies of the nonconfidential version of the ID and all other nonconfidential 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. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 8, 1995, based on a complaint filed by AMP Inc. of Harrisburg, Pennsylvania and The Whitaker Corporation of Wilmington, Delaware (collectively "complainants"). 60 Fed. Reg. 25247. The following firms were named as respondents: Berg Electronics, Inc; Hon Hai Precision Industry Co., Ltd. (Hon Hai); Foxconn International (Foxconn); and Tekcon Electronics Corp. On September 8, 1995, the presiding ALJ issued an initial determination ID (Order No. 24) finding adverse inferences against Hon Hai and an ID (Order No. 26) finding Foxconn in default. On February 9, 1996, the ALJ issued an ID

(Order No. 38) making the additional adverse inference that Hon Hai violated section 337. No petitions for review of this ID were received. On February 9, 1996, the ALJ also issued a recommended determination on the issues of remedy and bonding.

In connection with final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents Foxconn and Hon Hai 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 are likely to do so. For background, see the Commission Opinion, In the Matter of Certain Devices for Connecting Computers via Telephone Lines, Inv. No. 337-TA-360.

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 President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a 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 remedial orders are issued.

WRITTEN SUBMISSIONS: The parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the February 9, 1996, recommended determination by the ALJ. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on March 28, 1996. Reply

submissions must be filed no later than the close of business on April 4, 1996. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) 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 is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and rules 210.42, 210.49 and 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42, 210.49 and 210.50).

By order of the Commission.


Donna R. Koehnke
Secretary

Issued: March 13, 1996

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

PUBLIC INSPECTION

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SECRETARY
FEB 28 1996

In the Matter of)
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CERTAIN ELECTRICAL)
CONNECTORS AND PRODUCTS)
CONTAINING SAME)
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)

Investigation No. 337-TA-374

Order No. 38: Initial Determination Terminating The Investigation Pursuant to Commission Rule 210.42(a)(1)(i) As To The Remaining Respondent Hon Hai Based On A Violation Of Section 337 By Hon Hai

On November 1, 1995, complainants AMP Incorporated and The Whitaker Corporation (AMP) filed their Motion Docket No. 374-49 for summary determination of violation of section 337 against Hon Hai Precision Industry Ltd. (Hon Hai). Hon Hai's response was due by November 13, 1995. Hon Hai did not respond to Motion No. 374-49. In the initial determination (Order No. 25), which issued on September 8, 1995, while the administrative law judge denied complainants' Motion No. 374-1 for temporary relief, he found, based on the evidentiary record, that assuming the patent in issue (the '792 patent) is not invalid and is enforceable, complainants are likely to succeed on the merits in establishing that Hon Hai manufactures electrical connectors that are imported and sold in the United States which infringe claims 17, 18, 20, 21 or 23 of the patent in issue and also that complainants would be entitled, as a matter of law, to a determination that their investments in the manufacture of metal latch SIMM connectors satisfy the economic prong of the domestic industry requirement.¹

¹ On October 10, 1995 the Commission determined to adopt the administrative law judge's initial determination (Order No. 25).

On November 20, 1995, complainants moved for the issuance of an adverse inference under Commission rule 210.17 finding that Hon Hai is in violation of 19 U.S.C. §1337 (section 337) (Motion Docket No. 374-53).² AMP, in support of Motion No. 364-53, argued that Commission rule 210.17(c) states that failures to act such as a “[f]ailure to respond to a motion for summary determination [Motion Docket No. 374-49] under § 210.18” may provide the basis for the administrative law judge to draw adverse inferences and issue adverse determinations and orders, including a determination on violation of section 337, and that Hon Hai’s failure to respond to Motion No. 374-49 warrants the issuance of an adverse determination against Hon Hai.³

The staff, in a response dated November 28, 1995, responding to Motion Nos. 374-49 and 374-53, argued that Commission rule 210.17 provides that a “[f]ailure to respond to a motion for summary determination” may provide a basis for the administrative law judge to “draw adverse inferences and to issue findings of fact, conclusions of law, determinations (including a determination on violation of section 337 of the Tariff Act of 1930), and orders that are adverse to the party who fails to act;” and that Commission rule 210.15(c) provides that if a nonmoving party does not respond to a written motion within the time set by the administrative law judge for such a response, the nonmoving party “may be deemed to have consented to the granting of the relief asked for in the motion.” It is argued that Hon Hai has failed to respond to complainants’ Motion No. 374-49 for summary determination against it and hence under Commission rule 210.17 adverse inferences may be drawn against Hon Hai and a determination may be made that Hon Hai has violated section 337,

² Order No. 24, which was filed on September 8, 1995, pursuant to Commission rule 210.17, found certain adverse inferences against Hon Hai based on the failure of Hon Hai to participate meaningful in the temporary relief phase of this investigation.

³ In addition to Commission rule 210.17, cited by complainants, Commission rule 210.15 provides that if a nonmoving party does not respond to a written motion within the time set by the administrative law judge for such a response, the nonmoving party “may be deemed to have consented to the granting of the relief asked for in the motion.”

which is the relief requested by complainants. Thus the staff argued that complainants' Motion No. 374-53 for an adverse inference that Hon Hai is in violation of section 337 should be granted, "particularly in view of the fact that there is record evidence that supports a determination that Hon Hai has violated Section 337." The staff, however, argued that factual findings regarding the separate elements of a section 337 violation are not required under Commission rule 210.17 in order to impose an adverse inference as a sanction for failing to respond to a summary determination motion.

Based on Hon Hai's failure to respond to complainants' Motion No. 374-49 and its failure to participate meaningful in this investigation (See Order No. 24), the administrative law judge finds that Hon Hai is in default under Commission rule 210.17 and therefore makes the adverse determination that Hon Hai is in violation of section 337 in that (1) Hon Hai manufactures electrical connectors which infringe claims 17, 18, 20, 21 and 23 of the patent in issue, (2) Hon Hai imports into the United States, sells for importation, or sells within the United States after importation such connectors, and (3) a domestic industry exists with respect to the articles protected by the patent in issue.

While Commission rule 210.42 does not explicitly require the administrative law judge to grant a motion pursuant to Commission rule 210.17 by initial determination, Commission rule 210.42(a)(1)(i) provides that "the administrative law judge shall certify the record to the Commission and shall file an initial determination on whether there is a violation of section 337. . . ." The administrative law judge has determined, pursuant to Commission rule 210.17, that there is a violation of section 337 by the last remaining respondent Hon Hai,⁴ and hence is granting

⁴ The notice of investigation named the following respondents: Berg Electronics, Inc. (Berg), Hon Hai, Foxconn International Inc. (Foxconn) and Tekcon Electronics Corp. (Tekcon). Order No. 23, which issued on September 8, 1995, was an initial determination finding Foxconn in default pursuant to Commission rule 210.16 and thus finding that Foxconn had waived its right to appear, to be served with documents and to contest the allegations at issue in this investigation. By notice dated October 10 the Commission determined not to review Order No. 23. Order No. 31, which issued on October 27, 1995, granted complainants' Motion No. 374-45 to terminate the investigation as to Berg. The Commission in a notice dated November 28, 1995 determined not to

complainants' Motion No. 374-53 by initial determination.

This initial determination is hereby CERTIFIED to the Commission, together with supporting documentation. Pursuant to Commission rules 210.42 and 210.42(h)(2) this initial determination shall become the determination of the Commission within forty five (45) days after the date of service hereof unless the Commission, within that time after the date of such service, shall have ordered review of the initial determination or certain issues therein or by order has changed the effective date of the initial determination.

This initial determination will be made public unless a bracketed confidential version is received by the administrative law judge no later than Friday, February 23, 1996.


Paul J. Luckern
Administrative Law Judge

Issued: February 9, 1996

review Order No. 31. Order No. 35, which issued on December 11, 1995, granted a joint motion to terminate the investigation as to Tekcon. The Commission in a notice dated January 23, 1996 determined not to review Order No. 35.