

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

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

**Investigation No. 337-TA-739
(Advisory Opinion Proceeding)**

INSTITUTION OF AN ADVISORY OPINION PROCEEDING

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute an advisory opinion proceeding in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clark S. Cheney, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2661. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on October 8, 2010, based on a complaint filed by Leviton Manufacturing Co., Inc. of Melville, New York ("Leviton"). 75 *Fed. Reg.* 62420 (Oct. 8, 2010). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ground fault circuit interrupters ("GFCIs") and products containing the same by reason of infringement of, inter alia, U.S. Patent No. 7,737,809 ("the '809 patent"). In the course of proceedings, the Commission entered cease and desist orders against numerous defaulting foreign and domestic respondents, including Menard, Inc. of Eau Claire, Wisconsin. In connection with briefing to the Commission on remedy and the public interest, non-party Pass & Seymour, Inc. of Syracuse, New York ("P&S") argued for a carve-out for P&S GFCIs from any

general exclusion order. P&S argued that Leviton deliberately avoided naming P&S as a respondent or accusing P&S's products, and that any exclusion order ought not reach P&S's products. The Commission rejected P&S's argument, and issued a general exclusion order, but invited P&S to "avail itself of other Commission procedures to obtain a ruling as to whether its products are subject to the general exclusion order." Comm'n Op. 91-92 (Apr. 27, 2012).

On August 29, 2012, Leviton filed a complaint for enforcement proceedings under Commission rule 210.75(b). Among Leviton's allegations was that Menard violated the cease and desist order by selling P&S GFCIs. *See* Enforcement Compl. ¶¶ 64-67. On November 1, 2012, the Commission instituted the enforcement proceeding sought by Leviton. *77 Fed. Reg.* 66080 (Nov. 1, 2012). On November 2, 2012, P&S moved to intervene as a respondent, and on November 27, 2012, the ALJ substantially granted that motion. Order No. 71 at 4-5 (Nov. 27, 2012) (granting motion to intervene, but limiting P&S's participation to issues of infringement and remedy). Leviton subsequently entered a Settlement and License Agreement with P&S, and Menard and P&S were terminated from the enforcement proceeding. Order No. 76 (Feb. 4, 2013), *not reviewed*, Notice (Mar. 1, 2013).

On November 20, 2013, P&S filed a request with the Commission for an advisory opinion pursuant to Commission rule 210.79, with regard to certain redesigned P&S products. On December 2, 2013, Leviton opposed. On December 16, 2013, P&S moved for leave to file a reply, which P&S appended to its motion. The Commission has determined to grant P&S's motion for leave to file the reply.

Upon consideration of this matter, the Commission has determined to institute an advisory opinion proceeding under Commission rule 210.79 and has issued an order concerning the scope of that proceeding. The Commission has referred P&S's request to the Chief Administrative Law Judge to designate a presiding administrative law judge for the proceedings. The following entities are named as parties to the proceeding: (1) complainant Leviton; (2) respondent P&S; and (3) the Office of Unfair Import Investigations.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 C.F.R. Part 210).

By order of the Commission.



Lisa R. Barton
Acting Secretary to the Commission

Issued: February 4, 2014