

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-114]

In the Matter of: Certain Miniature Plug-In Blade Fuses; Notice of Exclusion Order Modification Proceeding and Request for Comments

AGENCY: U.S. International Trade Commission.

ACTION: Notice and request for written comments.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission is instituting a proceeding under 19 CFR 210.76 to determine whether to modify a provision of the general exclusion order issued in 1983 in the above-captioned investigation. The Commission requests written comments from interested persons on issues specified below in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES:

Effective Date: The modification proceeding is instituted effective February 7, 2001.

Deadline for Written Comments:

Interested persons other than parties to the investigation may file written comments on the matters to be decided in the modification proceeding on or before 5:15 p.m. March 9, 2001.

ADDRESSES: A signed original and twelve (12) copies of each set of comments should be mailed or hand-delivered to Donna R. Koehnke, Secretary, United States International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3061. General information concerning the Commission and the above-captioned investigation also may be obtained by accessing its Internet server (<http://www.usitc.gov>). Hearing-impaired individuals can obtain information concerning this matter by contacting the Commission's TDD terminal at 202-205-1810.

SUPPLEMENTARY INFORMATION:

The Investigation. The Commission instituted the subject investigation in 1982 to determine whether there was a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337 (1978 and 1981 Supp.)) in the importation or sale of certain miniature plug-in blade fuses that allegedly misrepresented their place of geographic origin, infringed the complainant's patents and/or

trademarks, misappropriated the complainant's trade dress, were passed off as merchandise of the complainant, or were the subject of false advertising. The complainant was the patent and trademark owner, Littelfuse, Inc., of Des Plaines, Illinois. The Commission named nine firms in Taiwan and three domestic firms as respondents in the investigation. Their names and addresses, as they appeared in the notice of investigation in 1982, are set forth below:

Fuji Industries, Yang Tye Building, Third Floor, No. 50, Sung Chiang Road, Taipei, Taiwan
 Leumark Industrial Co., Ltd., P.O. Box 38-113, Taipei, Taiwan
 Walter Electronic Co., Ltd., P.O. Box 48-22, Taipei, Taiwan
 Terng Nan Industrial Corp., P.O. Box 55-462, Taipei, Taiwan
 Rite Industrial Corp, P.O. Box 59105, Taipei, Taiwan
 Yueh Jyh Metal Industrial Co., Ltd., No. 257 Fu Hsin Road, Chung Ho City, Taipei Hsien, Taiwan
 M & T Auto Parts, 3038 31st Street, Long Island City, New York 11102
 Speedway, 4140 Eagle Rock Boulevard, Los Angeles, California 90065
 David Art & Handicraft Co., Ltd., P.O. Box 16-133, Taipei, Taiwan
 Tophole Trading Co., Ltd., P.O. Box 17-157, Taipei, Taiwan
 Interchem Corp., 403 West 8th Street, Suite 620, Los Angeles, California 90014
 Zeeman Fuse Manufacturing Corp., 2F and 3F, No. 2, Lane 79, San Chang Road, Nankank District, Taipei, Taiwan

See 47 FR 1448 (Jan. 13, 1982).

The investigation resulted in the issuance of a general exclusion order in 1983, prohibiting, among other things, the entry of imported miniature plug-in blade fuses having a trade dress, *i.e.*, a product configuration and/or packaging, simulating that of complainant Littelfuse. *Certain Miniature Plug-In Blade Fuses*, Inv. No. 337-TA-114, USITC Publication 1337 (Jan. 1983), Commission Action and Order at page 2, ¶ 2 (Jan. 13, 1983).

The Pudenz Litigation. At the time of the investigation, Littelfuse marketed its miniature plug-in blade fuses under various trademarks, including "ATO." Littelfuse continued to use that mark after the investigation ended. Littelfuse also obtained U.S. Trademark Registration No. 1,513,357 ("the '357 registration"), which covers the two-dimensional outline of the ATO fuse, and U.S. Trademark Registration No. 1,553,579 ("the '579 registration"), which covers the three-dimensional configuration of the ATO fuse housing.

Wilhelm Pudenz GmbH, a German firm that was not a respondent in the original section 337 investigation, challenged the validity of the aforesaid trademark registrations by filing a civil action against Littelfuse in the United States District Court for the Northern District of Georgia, Atlanta Division. The district court decided that the individual features of the ATO fuse housing and the overall configuration of those features in the housing are functional and that this functionality renders the '357 and '579 registrations invalid and unenforceable. See the [Unpublished] Judgment and the [Unpublished] Order issued on January 7, 1998, in Civil Action No. 1:95-CV-2445-JTC, *Wilhelm Pudenz GmbH [and] Wickmann USA, Inc. v. Littelfuse, Inc.*

The U.S. Court of Appeals for the Eleventh Circuit affirmed the district court's decision. *Wilhelm Pudenz GmbH v. Littelfuse [sic], Inc.*, 177 F.3d 1204, 51 U.S.P.Q.2d 1045 (11th Cir. 1999).

The Modification Proceeding. During the investigation, the nonfunctional nature of the asserted design features was one criterion the Commission applied in determining that Littelfuse's trade dress was entitled to protection from unauthorized copying. See USITC Pub. 1337, Commission Opinion at 19-21. The district and appellate courts have concluded, however, that as disclosed in the '357 and '579 registrations, individual features of the ATO fuse housing and the overall configuration of those features in the housing are functional. See the district court's Order of January 7, 1998, at Findings of Fact and Conclusions of Law, Functionality, 13-26; and 177 F.3d at 1212, 51 U.S.P.Q.2d at 1050.

Complainant Littelfuse has admitted that the product configuration covered by the exclusion order is substantially similar to the product configuration covered by Littelfuse's '357 and '579 trademark registrations. Written Report [of Complainant Littelfuse, Inc.] (Aug. 2, 2000) at page 2, ¶ 7. That admission and other considerations prompted the Commission to institute a proceeding, under 19 CFR 210.76, to determine whether the trade dress/product configuration provision of the section 337 general exclusion order should be modified in light of the judicial findings.

The Commission Order issued along with this notice discusses (1) the changed conditions of fact or law and the public interest reasons that prompted the Commission to institute the modification proceeding, (2) the specific modification that the Commission is contemplating, (3) the supporting materials and arguments,

and (4) the filing of written submissions by parties to the investigation.

The Commission expects to reach a determination in this proceeding without conducting a public hearing or delegating the proceeding to an administrative law judge for a hearing and a recommended determination.

All nonconfidential documents filed in the investigation, listed in the Commission Order issued along with this notice, or filed in the modification proceeding are or will be made available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Commission's Office of the Secretary, Dockets Branch, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202-205-1802.

In addition, the Commission Order issued along with this notice, Littelfuse's written report, the Commission investigative staff's written comments on that report, and all nonconfidential documents filed in the modification proceeding will be available for inspection on the Commission's website. To access them from the Home Page of the Commission's Internet server, click on "EDIS ON-LINE," click on "337" under "Home," click on "337 114 Violation Miniature Plug-In Blade Fuses," and then click on the specific document to be reviewed.

Written Comments. Interested persons who are not parties to the investigation may file written comments on (1) the conditions of fact or law and the public interest reasons set forth in the Commission Order of January 30, 2001, that prompted the Commission to institute the proceeding, (2) the specific modification that the Commission is contemplating, and (3) any other issues that will aid the Commission in determining whether to modify the trade dress/product configuration provision of the exclusion order. Such comments must be filed in accordance with the Commission's Rules of Practice and Procedure, particularly the relevant provisions of 19 CFR 201.6, 201.8 (except for the number of copies prescribed by 201.8(d)), 201.14, 201.16, and 210.4 through 210.7.

Issued: February 1, 2001.

By Order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01-3195 Filed 2-6-01; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.
TIME AND DATE: February 12, 2001 at 2 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205-2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701-TA-413 and 731-TA-913-918 (Preliminary) (Stainless Steel Bar from France, Germany, Italy, Korea, Taiwan, and the United Kingdom)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on February 12, 2001; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on February 20, 2001.)

5. Outstanding action jackets:
(1) Document No. EC-01-003: Approval of final report in Inv. No. 332-413 (The Economic Impact of U.S. Sanctions with Respect to Cuba).

(2) Document No. ID-01-001: Approval of study coverage, objectives, methodology, travel requirements, annotated outline, and revised staffing plan and work schedule in Inv. No. 332-423 (The Effects of EU Policies on the Competitive Position of the U.S. and EU Horticultural Products Sector).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: February 2, 2001.

By order of the Commission:

Donna R. Koehnke,

Secretary.

[FR Doc. 01-3331 Filed 2-5-01; 3:13 pm]

BILLING CODE 7020-02-U

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.
TIME AND DATE: February 13, 2001 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436 Telephone: (202) 205-2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701-TA-355 and 731-TA-659-660 (Review) (Grain-Oriented Silicon Electrical Steel from Italy and Japan)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on February 23, 2001.)

5. Outstanding action jackets:
(1) Document No. EC-01-003: Approval of final report in Inv. No. 332-413 (The Economic Impact of U.S. Sanctions with Respect to Cuba).

(2) Document No. ID-01-001: Approval of study coverage, objectives, methodology, travel requirements, annotated outline, and revised staffing plan and work schedule in Inv. No. 332-423 (The Effects of EU Policies on the Competitive Position of the U.S. and EU Horticultural Products Sector).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: February 2, 2001.

By order of the Commission:

Donna R. Koehnke,

Secretary.

[FR Doc. 01-3332 Filed 2-5-01; 3:13 pm]

BILLING CODE 7020-02-U

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 99-3 CARP DD 95-98]

Distribution of 1995, 1996, 1997, and 1998 Digital Audio Recording Technology Royalties

AGENCY: Copyright Office, Library of Congress.

ACTION: Distribution Order.

SUMMARY: The Librarian of Congress, upon the recommendation of the Register of Copyrights, is adopting the determination of the Copyright Arbitration Royalty Panel ("CARP") and issuing an order announcing the allocation of the royalty fees in the 1995, 1996, 1997, and 1998 Musical Works Funds. These fees are paid to the Copyright Office by importers and manufacturers of Digital Audio Recording Devices and Media ("DART") who distribute these products in the United States.

EFFECTIVE DATE: The percentages announced in this Order are effective as of February 7, 2001.