INTERNATIONAL TRADE COMMISSION

Submission of Questionnaire for OMB Review


ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the U.S. International Trade Commission (Commission) hereby gives notice that it has submitted a request for approval of a questionnaire to the Office of Management and Budget for review.

Purpose of Information Collection: The information requested by the questionnaire is for use by the Commission in connection with analysis of the effectiveness of Section 337 remedial exclusion orders, issued under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).

Summary of Proposal:

(1) Number of forms submitted: two

(2) Title of forms: 2013 USITC Survey Regarding Outstanding '337 Exclusion Orders (General Exclusion Order) and 2013 USITC Survey Regarding Outstanding '337 Exclusion Orders (Limited Exclusion Order)

(3) Type of request: new

(4) Frequency of use: survey, single data gathering, scheduled for FY 2013

(5) Description of responding firms: complainants that obtained exclusion orders from the Commission following investigations under Section 337 that remain in effect at the time of the survey

(6) Estimated number of responding firms: 86

(7) Estimated number of hours to complete the forms: 1 hour or less per responding firm

(8) Information obtained from the questionnaire that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm

Additional Information or Comment: Copies of the questionnaire are posted on the Commission=s Internet server at http://pubapps2.usitc.gov/comments-misc-042 or may be obtained from Anne Goalwin, Acting Director, Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone, 202–205–2574. Comments about the proposals should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503.

Attention: Docket Librarian. All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Andrew Martin, Chief Information Officer, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, who is the Commission=s designated Senior Official under the Paperwork Reduction Act.

General information concerning the Commission may also be obtained by contacting the Secretary at 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the investigation underlying this enforcement proceeding on October 8, 2010, based on a complaint filed by Leviton Manufacturing Co., Inc., of Melville, New York ("Leviton"). 75 FR 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 and products containing the same by reason of infringement of, inter alia, U.S. Patent No. 7,737,809 ("the '809 patent").

On April 27, 2012, the Commission issued a general exclusion order barring entry of ground fault circuit interrupters that infringe certain claims of the '809 patent. The Commission also entered
cease and desist orders against several respondents.

On November 1, 2012, the Commission instituted a proceeding for the enforcement of the Commission’s remedial orders based on an enforcement complaint filed by Leviton. 77 FR 66080 (Nov. 1, 2012). The enforcement complaint alleged that respondents American Electric Depot Inc. (“AED”); Shanghai ELE Manufacturing Corp. (“Shanghai ELE”), and Shanghai Jia AO Electrical Co., Ltd. (“Shanghai Jia AO”) violated the general exclusion order. The enforcement complaint also alleged that other respondents violated cease and desist orders. On February 14, 2013, the presiding administrative law judge (“ALJ”) (Chief Judge Bullock) issued an initial determination finding AED, Shanghai ELE, and Shanghai Jia AO in default. All other respondents settled. On April 10, 2013, the Commission determined not to review the initial determination with respect to the defaulting respondents.

On April 16, 2013, complainant Leviton filed a motion requesting that the Commission issue (1) a cease and desist order against AED; and (2) seizure and forfeiture orders against ground fault circuit interrupters imported or sold by AED, Shanghai ELE, and Shanghai Jia AO. On April 26, 2013, the Commission investigative attorney (“IA”) filed a response supporting Leviton’s motion. No respondent filed a response to Leviton’s motion.

On May 22, 2013, the ALJ issued a recommended determination (“RD”) on remedy. The ALJ drew an inference from AED’s refusal to participate in the enforcement proceeding that AED has commercially significant inventories of infringing articles. Accordingly, the ALJ recommended that the Commission issue a cease and desist order prohibiting AED from selling or distributing infringing articles in the United States. The ALJ declined to recommend seizure and forfeiture orders because he found Leviton failed to show evidence that infringing articles were previously denied entry, as required under Rule 210.75(b)(6)(ii).

In connection with the final disposition of this enforcement proceeding, the Commission may issue or modify a cease and desist order and/or exclusion order in any manner necessary to prevent the unfair practices that were originally the basis for issuing the remedial orders in the original investigation. The Commission may also issue a seizure and forfeiture order upon satisfaction of the conditions in 19 CFR 210.75(b)(6).

Prior to effecting any remedy in this enforcement proceeding, the Commission must consider the effects of a potential remedy upon the public interest. The factors the Commission must consider include the effect that the remedy 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.

Accordingly, the Commission is interested in receiving written submissions that address the public interest factors above and the form of remedy and bonding, if any, that should be ordered.

Written Submissions: Parties to the enforcement proceeding, interested government agencies, and any other interested members of the public are encouraged to file written submissions on the issues of remedy, bonding, and the public interest. Such submissions should address the ALJ’s recommendation on remedy set forth in the RD. Complainant Leviton and the IA are also requested to submit proposed remedial orders for the Commission’s consideration. Initial written submissions and proposed remedial orders must be filed no later than close of business on August 16, 2013. Reply submissions must be filed no later than the close of business on August 30, 2013. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission’s Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (“Inv. No. 337–TA–739 (Enforcement Proceeding)”)

On August 18, 2011, Chief Administrative Law Judge (ALJ) John J. Mulrooney, Jr., issued the attached decision, recommending that I deny the Respondent’s application for a Certificate of Registration as a practitioner. Thereafter, the Government, but not Respondent, filed Exceptions to the decision.

Having reviewed the entire record and the Government’s Exceptions, I have decided to adopt the ALJ’s recommended rulings, findings of fact, conclusions of law, and recommended order except as discussed below.1 I will

1 All citations to the ALJ’s Decision are to the slip opinion as originally issued by him.

I do not adopt the ALJ’s discussion of Factor 2 (the applicant’s experience in dispensing controlled substances) contained in the third paragraph of page 52 of his decision. Nor do I adopt the ALJ’s reasoning that there is “an arguable lack of at least readily apparent ambiguity” in the language of factor two. ALJ at 53 (citing Chevron U.S.A., Inc. v. NRDC, Inc., 467 U.S. 837 (1984))). In short, Congress only directed that the Agency “consider” evidence regarding an applicant’s experience in dispensing controlled substances; nothing in the statute tells the Agency how much weight to give a practitioner’s evidence of, in the ALJ’s words, “having conducted a significant level of sustained activity within the scope of [her] registration for a sustained period.” ALJ at 52.

As set forth in multiple cases, DEA can revoke based on a single act of intentional or knowing diversion, and an applicant’s/registrant’s evidence that she has otherwise complied with the CSA for a sustained period, does not, by itself, refute the Government’s prima facie case. See Dewey C. Mackay, 75 FR 49956, 49977 (2010) (citing Jayan...