DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement

[510S SS08011000 SX064A000 211S180110 52025 SS08011000 SX064A000 21XS501520; OMB Control Number 1029–0080]

Permanent Regulatory Program Requirements—Standards for Certification of Blasters

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before July 27, 2021.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 4556–MB, Washington, DC 20240, or by email to mgehlhar@osmre.gov. Please reference OMB Control Number 1029–0080 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at mgehlhar@osmre.gov, or by telephone at 202–208–2716.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public’s reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The information is used to identify and evaluate new blaster certification programs. Part 850 implements Section 719 of the Surface Mining Control and Reclamation Act (SMCRA). Section 719 requires the Secretary of the Interior to issue regulations which provide for each State regulatory authority to train, examine and certify persons for engaging in blasting or use of explosives in surface coal mining operations. Each State that wishes to certify blasters must submit a blasters certification program to OSMRE for approval.

Title of Collection: Reclamation on Private Lands

OMB Control Number: 1029–0080.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State and Tribal governments.

Total Estimated Number of Annual Respondents: 1.

Total Estimated Number of Annual Responses: 1.

Estimated Completion Time per Response: 320 hours.

Total Estimated Number of Annual Burden Hours: 320.

Respondent’s Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: $0.

An agency may not conduct or sponsor a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).
may also be obtained by accessing its internet server at https://www.usitc.gov.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 24, 2020, based on a complaint filed on behalf of Corning Optical Communications LLC ("Corning") of Charlotte, North Carolina. 85 FR 16653 (Mar. 24, 2020). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain high-density fiber optic equipment and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 9,020,320 ("the '320 patent"); 10,120,153 ("the '153 patent"); 8,712,206 ("the '206 patent"); 10,094,996 ("the '996 patent"); and 10,444,456 ("the '456 patent"). See Comm'n Notice (Nov. 2, 2020). The complaint further alleged that a domestic industry exists. See Order No. 11 (July 29, 2020), reprinted at 85 FR 16654 (Mar. 24, 2020).

The Commission's notice of investigation named the following as respondents: Respondent Legrand of West Hartford, Connecticut; AFL Telecommunications Holdings LLC ("AFL Holdings") of Duncan, South Carolina; Huber+Suhner AG of Herisau, Switzerland; Huber + Suhner, Inc. of Charlotte, North Carolina; Shenzhen Anfkom Telecom Co., Ltd. d/b/a Anfkom Telecom ("Anfkom") of Shenzhen, China; Shanghai TARLUZ Telecom Tech. Co., Ltd. d/b/a TARLUZ ("TARLUZ") of Shanghai, China; Wulei Bonelinks (collectively, "Wulei Bonelinks") of Tarzana, California; Anfkom Telecom Co., Ltd. d/b/a Anfkom Telecom ("Anfkom") of Shenzhen, China; Shenzhen Anfkom Telecom Co., Ltd. d/b/a Anfkom Telecom ("Anfkom") of Shenzhen, China; Wulei Bonelinks ("Wulei Bonelinks") of Shenzhen, China; FS.com Inc. ("FS") of New Castle, Delaware; Leviton Manufacturing Co., Inc. ("Leviton") of Melville, New York; Panduit Corporation ("Panduit") of Tinley Park, Illinois; The LAN Wirewerks Research Laboratories Inc. d/b/a Wirewerks ("Wirewerks") of Quebec, Canada; and The Siemon Company ("Siemon") of Watertown, Connecticut. See Comm'n Notice (Nov. 2, 2020). The complaint and notice of investigation were amended to substitute AFL Telecommunications LLC for respondent AFL Holdings. See Order No. 27 (Oct. 20, 2020), reprinted at 85 FR 44923 (July 24, 2020). Thereafter, Respondent AFL Telecommunications LLC was terminated from the investigation based on a settlement agreement. See Order No. 27 (Oct. 20, 2020), reprinted at 85 FR 44923 (July 24, 2020).


A prehearing conference and evidentiary hearing were held in this investigation from October 21–26, 2020. On March 23, 2021, the ALJ issued his final ID, finding a violation of section 337 with respect to claims 1 and 3 of the '320 patent; claims 11, 12, 14–16, 19, 21, 27, and 28 of the '456 patent; claims 9, 16, 23, and 26 of the '153 patent; and claims 22 and 23 of the '206 patent. The ID also found the Active Respondents have not shown any of the asserted patent claims to be invalid. The ID further found that the economic prong of the domestic industry requirement has been satisfied with respect to all the asserted patents under section 337(a)(3)(B) and (C). See Order No. 27 (Oct. 27, 2020), reprinted at 85 FR 16654 (Mar. 24, 2020).

The prehearing conference and evidentiary hearing were held in this investigation from October 21–26, 2020. On March 23, 2021, the ALJ issued his final ID, finding a violation of section 337 with respect to claims 1 and 3 of the '320 patent; claims 11, 12, 14–16, 19, 21, 27, and 28 of the '456 patent; claims 9, 16, 23, and 26 of the '153 patent; and claims 22 and 23 of the '206 patent. The ID also found the Active Respondents have not shown any of the asserted patent claims to be invalid. The ID further found that the economic prong of the domestic industry requirement has been satisfied with respect to all the asserted patents under section 337(a)(3)(B) and (C). See Order No. 27 (Oct. 27, 2020), reprinted at 85 FR 16654 (Mar. 24, 2020).

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

Having reviewed the record of the investigation, including the final ID, the parties' submissions to the ALJ, the petitions for review, and the responses thereto, the Commission has determined to review the ID in part. Specifically, the Commission has determined to review: (1) The ID's finding that the importation requirement of section 337 is met with respect to the accused products of Respondents Leviton, Panduit, and Siemon; (2) the ID's interpretation of the "width of the front side of the fiber optic module" limitation in the asserted claims of the '456 patent, and the associated infringement findings; (3) the ID's construction of "a front opening" in the asserted claims of the '206 patent, and the associated infringement findings; (4) the ID's finding that Leviton directly infringes the asserted claims of the '320 and '456 patents; (5) the ID's findings on indirect infringement of the asserted claims of the '320, '456, and/or '153 patents by the accused products of Respondents Leviton, Panduit, FS, and Siemon; and (6) the ID's finding that Corning has satisfied the economic prong of the domestic industry requirement under section 337(a)(3)(B) and (C). The Commission has determined not to review any other findings presented in the final ID.

In connection with its review, the Commission requests responses to the following questions. The parties are requested to brief their positions with reference to the applicable law and the existing evidentiary record.

1. To determine whether an imported article, which does not satisfy all elements of an asserted patent claim, is an "article that infringes" within the meaning of section 337 when the respondent-importer uses the imported article to directly infringe the asserted patent claim after importation: a. Would it be appropriate for the Commission to consider whether there is a sufficient nexus between the imported article and the alleged unfair acts? b. Would it be appropriate for the Commission to consider the following factors: (i) Whether the imported article is a material part of the claimed invention, (ii) whether it is especially designed and/or configured for use in an infringing manner, (iii) whether it has substantial noninfringing uses, and (iv) the extent to which it is modified or combined with other articles after importation?

Please consider the applicable Court and Commission precedent, including Suprema, Inc. v. International Trade
Comm’n, 796 F.3d 1338 (Fed. Cir. 2015), and please apply your analysis to the facts of this investigation with respect to Leviton’s alleged direct infringement of the asserted claims of the ‘320 and ‘456 patents.

2. With regard to Leviton, please address with citation to the record whether any of the U.S.-sourced parts and assembly steps in the United States for Leviton’s enclosures relate to the claims asserted against Leviton.

3. Please provide citation to any record evidence of sales of the accused products by Leviton, Panduit, Siemon, or FS. In addition, please discuss the relevance, if any, of such sales in determining whether there is direct infringement of the ‘320, ‘456, and/or ‘153 patents by third-parties.

4. With citation to the record evidence please discuss whether there are any non-infringing uses of the accused products that provide at least 98 fiber optic connections per 1U space as required by claim 1 of the ‘320 patent or at least 144 fiber optic connections per 1U space required by claim 3 of the ‘320 patent. In addition, please discuss the relevance, if any, of such non-infringing uses in assessing the knowledge requirement for inducement by Leviton, Panduit, Siemon, and FS and in determining whether there is direct infringement of the ‘320, ‘456, and/or ‘153 patents by third-parties.

5. Does the record evidence show that Leviton, Panduit, Siemon, and FS copied Corning’s EDGE products, including designing and developing their accused products to support the same high fiber density as Corning’s EDGE products and with the goal of capturing EDGE’s customers and the same segment of the market?


7. The Federal Circuit has stated that section 337 does not protect mere importers. See, e.g., Schaper Mfg. Co. v. Int’l Trade Comm’n, 717 F.2d 1368, 1372–73 (Fed. Cir. 1983). Please explain whether Complainant’s asserted domestic industry differs from that of a mere importer, including by discussing: (A) How the Commission and the Federal Circuit have considered such investments in prior investigations, and (B) how the facts of this investigation should be assessed in light of applicable precedent. Also address the extent to which the activities relied upon to show satisfaction of the economic prong (e.g., field engineering and Pioneer-related expenses) need to take place in the United States either as a legal or a practical matter, such that those activities would not distinguish a domestic industry from a mere importer.


The parties are invited to brief only the discrete issues requested above. The parties are not to brief other issues on review, which are adequately presented in the parties’ existing filings. In connection with the final disposition of this investigation, the statute authorizes issuance of, inter alia, (1) an exclusion 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 the respondents 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 likely to do so. For background, see Certain Devices for Connecting Computers via Telephone Lines, Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm’n Op. at 7–10 (Dec. 1994).

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and/or a cease and desist order 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 U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission’s determination. See Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under 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 a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues identified in this notice. The parties’ opening submissions should not exceed 80 pages, and their reply submissions should not exceed 50 pages. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding.

In their initial submissions, Complainant is also requested to identify the remedy sought and Complainant and OFI are requested to submit proposed remedial orders for the Commission’s consideration. Complainant is further requested to state the dates that the Asserted Patents expire, to provide the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on Monday, June 7, 2021. Reply submissions must be filed no later than the close of business on Monday, June 14, 2021. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Please ensure that written submissions must file the original document electronically on or before the deadlines.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission and must include a full statement of the reasons why the Commission should grant such treatment. All such requests should be directed to the Secretary to the Commission.

Persons with questions regarding filing should contact the Secretary, (202) 205–2000.

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