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## Fed. Circ. Clears Chinese Electrical Devices In 337 Suit

By Nick Malinowski

Law360, New York (August 27, 2010) -- A federal appeals court on Friday partially overturned a U.S. International Trade Commission decision to bar several Chinese companies from importing certain electrical components found to infringe patents held by Pass & Seymour Inc.

In a split decision, a three-judge panel of the U.S. Court of Appeals for the Federal Circuit determined that the ITC erred in finding that certain ground fault circuit interrupters made by General Protecht Group Inc., Shanghai ELE Manufacturing Corp., and Wenzhou Trimone Science and Technology Electric Co. Ltd. infringed U.S. Patent Numbers 7,283,340 and 5,594,398.

While Trimone and GPG are now off the hook, the panel left untouched the ITC's findings that ELE had also infringed U.S. Patent Number 7,164,564 and that the other respondents implicated by the exclusion order — two importers and five American distributors — remain banned for their collective infringement of four of six patents asserted by P&S.

GPG, ELE, Trimone and P&S each appealed parts of the ITC decision.

GFCI receptacles are the electrical outlets found commonly in bathrooms and kitchens that are designed to protect people from potentially fatal electrical shocks by tripping when the device detects a ground fault.

The appeals court found that the ITC administrative law judge, whose preliminary determination was affirmed in large part by the commission, improperly conflated certain details that differentiated the allegedly infringing GFCIs from those described by P&S.

While the '340 patent describes a technology that will alert the installer of the sockets if they are miswired, the allegedly infringing products, rather than generating any signal when the connection is bad, simply do not work, the Federal Circuit said.

Regarding the '398 patent, the allegedly infringing products use a magnet to secure a connection, while the P&S technology describes a "substantially different" latching mechanism that uses several parts, it noted.

Circuit Judge Pauline Newman disagreed with her colleagues, however, stating that they had erred in law and in procedure in overturning the ITC's findings, which she said had presented a full understanding of the technology with "rigorous discussion of the evidence and extensive analysis."

"This court now finds its own facts, applies theories that were not raised by any party, uses incorrect standards of review, and creates its own electrical technology contrary to the uniform and unchallenged expert testimony," Judge Newman said.

"In reversing the commission, the court does not discuss the substantial evidence supporting the commission's findings ... the court bypasses the standards of [Administrative Procedure Act] review, and makes new finding and rulings on new theories, some of which were not presented and not argued by any party, and which are conspicuously incorrect," she added.

P&S also appealed the ITC ruling, arguing that all six of its patents should have been considered infringed. The appeals court shot that argument down, however.

Trimone had previously been cleared to import a newer version of its GFCIs, but this ruling will allow it to bring in the older models implicated by the exclusion order as well, Trimone attorney Lei Mei of Mei & Mark LLP said Friday.

Representatives for the other parties did not immediately respond to requests for comment Friday.

Justices Pauline Newman, Timothy Dyk and Sharon Prost sat on the panel for the Federal Circuit.

GPG is represented by William Long of Sutherland Asbill & Brennan LLP. Trimone is represented by Lei Mei of Mei & Mark LLP. ELE is represented by Tony Chen of the Caywin Law Group.

P&S is represented by Mark Abate of Goodwin Procter LLP.

The case is General Protecht Group Inc. et al. v. U.S. International Trade Commission, case numbers 2009-1378, 2009-1387 and 2009-1434, in the U.S. Court of Appeals for the Federal Circuit.

--Additional reporting by Abigail Rubenstein