

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN INDUSTRIAL AUTOMATION
SYSTEMS AND COMPONENTS THEREOF
INCLUDING CONTROL SYSTEMS,
CONTROLLERS, VISUALIZATION
HARDWARE, MOTION CONTROL
SYSTEMS, NETWORKING EQUIPMENT,
SAFETY DEVICES, AND POWER
SUPPLIES**

Inv. No. 337-TA-1074

**ORDER NO. 31: DENYING RESPONDENT RADWELL INTERNATIONAL, INC.'S
MOTION FOR TERMINATION OF FRAUD OR
MISREPRESENTATION CLAIM, OR, IN THE ALTERNATIVE,
SUMMARY DETERMINATION OF NO FRAUD OR
MISREPRESENTATION**

(June 27, 2018)

I. BACKGROUND

On October 16, 2017, the Commission instituted this investigation based on a complaint by Rockwell Automation, Inc. (“Rockwell”) for alleged violations of section 337 “based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain industrial automation systems and components thereof including control systems, controllers, visualization hardware, motion and motor control systems, networking equipment, safety devices, and power supplies” under subsection (a)(1)(B) and (C) of section 337 by reason of infringement of various copyrights and trademarks, and under subsection (a)(1)(A) of section 337 “by reason of unfair methods of competition[] and unfair acts, the threat or effect of which is to destroy or substantially injure an industry in the

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United States.” 83 F.R. 48113-48114 (Oct. 16, 2017). Among other respondents, the complaint names Radwell International, Inc. (“Radwell”).

Among the allegations in its complaint, Rockwell claims that Radwell engaged in misrepresentation and fraud in connection with sales in the United States of Rockwell products purchased abroad. Rockwell alleges that Radwell has purchased Rockwell inventory from Rockwell distributors overseas and sold the products thus acquired as “new” on the internet. Comp. at 55. Rockwell alleges that “Radwell and its agents were purposefully deceiving Rockwell distributors overseas to obtain new Rockwell products.” *Id.*

In April 2015, “after receiving an authorized distributor’s complaint” about Radwell, Rockwell allegedly set up a covert operation to confirm the facts alleged in the complaint. *Id.* As set forth in the complaint, on April 10, 2015, a buyer in Memphis, Tennessee, “secretly acting on behalf of Rockwell,” ordered a “uniquely configured, new Allen-Bradley® PowerFlex 70 from Radwell’s website.” *Id.* Two weeks later, the complaint alleges, “a company called Rochester Controls (Wuxi Branch) ordered a new Allen-Bradley® PowerFlex 70 – with precisely the same unique configuration – from Rockwell’s Chinese distributor Witjoint.” *Id.* Rockwell alleges that on April 29, 2015, “Witjoint placed an order with Rockwell for that uniquely configured Allen-Bradley® PowerFlex 70.” *Id.* at 56.

When Rockwell received the order from Witjoint for equipment matching the unique configuration of the item ordered by the buyer in Memphis, Rockwell inquired of Witjoint “what the purpose was” for the order from Rochester Controls. *Id.* at 57. Witjoint allegedly responded that Rochester Controls had “represented that it was for an industrial furnace project in China – a project that if true would have qualified Rochester Controls for a deep discount on the price,” Rockwell alleges. During this same time frame, Rockwell alleges further, “Radwell told the

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Memphis buyer that there was a shipping delay caused by ‘the factory.’” *Id.* Rockwell asserts that it was able to track “the exact Allen-Bradley® PowerFlex 70 serial number – 37462739 – that was the subject” of the Rochester Controls order, from Rockwell’s warehouse in Illinois to its receipt by the Memphis buyer. *Id.* Rockwell alleges that the Memphis buyer thereafter “received the product with a packing slip proving that the item came from Radwell.” *Id.* at 58.

Rockwell’s complaint asserts that there are several misrepresentations involved in the scenario described above, including that Rochester Controls was a fictitious company whose address in China was an empty apartment (No. 5-3-804, Chang Jiang Bei Lu, Wuxi, Jiangsu, China), and that the product, purportedly ordered for an industrial furnace project in China was delivered to Radwell’s customer in Memphis. *Id.* at 58-59.

Rockwell asserts that but for Radwell’s “misrepresentations and fraud,” Rockwell would have enforced its policies and agreement with its distributors, and the transaction described above would not have happened. Rockwell asserts that there were other “fake” transactions involving the allegedly fictitious Rochester concern, which “has ordered over a million dollars in ‘new’ Rockwell products from Witjoint over a two year period.” *Id.* at 59. Rockwell alleges that, by obtaining Rockwell products overseas at deep discounts and then importing and selling them in the United States, Radwell is able to sell the products in the U.S. for much less than the price charged by Rockwell’s authorized distributors, resulting in “massive harm” “through price erosion, revenue loss and other indicia of economic harm.” *Id.* at 59-60.

On May 25, 2018, Radwell filed a motion for termination of fraud or misrepresentation claim, or, in the alternative, summary determination of no fraud or misrepresentation pursuant to 19 C.F.R. §§ 210.21 and 210.18. Motion Docket No. 1074-025 (the “motion”). In the motion, Radwell asserts that Rockwell has not shown that “the elements of fraud have been met” and that

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dismissal therefore is required under Commission Rule 210.21(a) (termination for good cause) or 210.18(a) (summary determination). Motion at 1-2. Radwell alleges a “complete failure of proof as to the necessary elements of any fraud claim.” Motion Mem. at 1. Radwell notes that various elements of fraud must, in general, be pled with a degree of specificity not required for other causes of action.

Radwell asserts that the evidence of a specific incident set forth by Rockwell in its complaint is insufficient because Rockwell has “no evidence linking Radwell to Rochester,” the allegedly fake company in China that ordered the PowerFlex 70. Radwell says there is no “evidence of communications between Radwell and Rochester Controls Wuxi Branch or Witjoint.” *Id.* at 13. Radwell asserts further that Rockwell has failed to contend that it has suffered actual economic loss by reason of Radwell’s alleged unfair acts. *Id.* Radwell says Rockwell does not show the requisite facts with respect to Radwell’s alleged receipt of discounts intended by Rockwell for other customers.

Staff opposes the motion. Staff says Radwell did not seek in its contention interrogatories the disclosures it now tasks Rockwell with failing to make. “Radwell prejudiced itself by failing to seek relevant discovery” from Rockwell, Staff asserts. Staff Response at 3-4. Staff points to the specific details of the transaction involving Rochester Controls and says this transaction is sufficient to support a finding of loss caused by misrepresentation and/or fraud.

II. DISCUSSION

Federal Rule of Civil Procedure 9(b) requires particularity when pleading fraud or mistake, while allowing malice, intent, knowledge, and other conditions of a person’s mind to be alleged generally. *Ashcroft v. Iqbal*, 556 U.S. 662, 686–87 (2009). “Where a complaint includes allegations of fraud, Federal Rule of Civil Procedure 9(b) requires an account of the “time,

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place, and specific content of the false representations as well as the identities of the parties to the misrepresentations.” *In re Verisign, Inc., Derivative Litig.*, 531 F. Supp. 2d 1173, 1187 (N.D. Cal. 2007) (quoting *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir.2007)). Under Rule 9(b), “allegations of fraud must be specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged so that they can defend against the charge and not just deny that they have done anything wrong.” *Id.* (quoting *Bly–Magee v. California*, 236 F.3d 1014, 1019 (9th Cir.2001)).¹

In this instance, Rockwell has pleaded at least one instance of alleged fraud in which the circumstances are specific and clear, including facts concerning the particular shipment, the customer, the time of purchase, and the dollar amount involved. *See Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir. 1997), *cert denied*, 516 U.S. 810 (1995) (Overall, the complaint “identifies the circumstances of the alleged fraud so that defendants can prepare an adequate answer.”) (quoting *Warshaw v. Xoma Corp.*, 74 F.3d 955, 960 (9th Cir. 1994)). If Rockwell cannot prove any additional facts at hearing, there still will be an adequate factual basis to permit a fact finder to infer that fraud has been committed.

Rockwell claimed in its responses to Radwell’s interrogatories that “Radwell has induced its vendors to misrepresent to Rockwell and its Authorized Distributors the true purpose, customer and destination for the products that it induces its vendors to purchase on its behalf”

¹ Radwell seeks dismissal under Commission Rule 210.21(a). The Commission has held that an ALJ may dismiss an insufficient complaint, as under Rule 12(b)(6), Fed. R. Civ. P. *Certain Carbon and Alloy Steel Products*, Inv. No. 337-TA-1002, Comm’n Op., at 8 (Mar. 27, 2017) (“[W]e agree [] that the Commission determination to institute an investigation does not preclude an ALJ from terminating a claim for failure to state a viable cause of action.”). Radwell also has moved under Commission Rule 210.18(a), which is analogous to a motion for summary judgment under Rule 56, Fed. R. Civ. P. *Certain Carbon and Alloy Steel Products*, Inv. No. 337-TA-1002, Initial Determination, 2017 WL 5167413 at *11, *not reviewed* by Commission Notice, 2017 WL 6434923 (Nov. 1, 2017).

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