Patent 4,161,650 and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Patton Electronics Co., 7622 Rickenbacker Drive, Gaithersburg, MD 20879–4773.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint shall also be served:

RAD Data Communications, Ltd., 12 Hanechoshet Street, Tel Aviv, 69710, Israel

RAD Data Communications, Inc., 900 Corporate Drive, Mahwah, New Jersey 07430

(c) John M. Whealan, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401P, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Final Rules of Practice and Procedure, 19 C.F.R. §§ 210.13. Pursuant to 19 C.F.R. sections 201.16(d) and 210.13(a) of the Commission's Final Rules of Practice and Procedure, such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: April 26, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–10819 Filed 4–30–96; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 94–65]

East Towne Save Rite Pharmacy; Suspension of Registration

On May 26, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to East Towne Save Rite Pharmacy, (Respondent) of Bremerton, Washington, notifying it of an opportunity to show cause as to why DEA should not revoke its DEA Certificate of Registration, BE1740770, as a retail pharmacy, and deny any pending application for modification of registration or change of address. The general reason stated for the proposed action was that the Respondent's owner had been convicted of a felony related to controlled substances warranting consideration under 21 U.S.C. 824(a)(2), and that the Respondent's continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 824(a)(4) and 823(f).

On May 31, 1994, the Respondent, through counsel, filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Seattle, Washington, on July 26 through July 27, 1995, before Administrative Law Judge Paul A. Tenney. At the hearing, both parties called witnesses to testify and introduced documentary evidence, and after the hearing, counsel for both sides submitted proposed findings of fact, conclusions of law and argument. On October 20, 1995, Judge Tenney issued his Findings of Fact, Conclusions of Law, and Recommended Ruling, recommending that the Respondent's DEA Certificate of Registration be suspended for a period of six months. After the six-month suspension, should be Respondent apply for a modification of its DEA registration to change the address of the pharmacy, then Judge Tenney recommended that the modification be granted. On November 7, 1995, the Respondent filed exceptions to Judge Tenney's opinion, and on November 9, 1995, the Government filed a response to the Respondent's exceptions. On November 28, 1995, Judge Tenney transmitted the record of these proceedings and the parties' exceptions to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Findings of Fact, Conclusions of Law, and Recommend Ruling of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that on September 12, 1991, the Respondent was issued DEA Certificate of Registration BE1740770, as a retail pharmacy located on Wheaton Way in Bremerton, Washington. On March 2, 1991, Mr. Patrick Swanson, (Owner) owner and pharmacist for the Respondent pharmacy, was arrested for possession of a controlled substance, methylphenidate. The prescription bottle containing the substance was discovered during an investigatory stop of the Owner's vehicle. The Owner was convicted of possession of a controlled substance on June 24, 1992, and was sentenced to two days of confinement and to the performance of 204 hours of community service. He was also placed on a program of community supervision for a period of one year.

In September of 1991, upon notification of the Owner's arrest, investigators from the Washington State Board of Pharmacy (Pharmacy Board) conducted an audit at the Respondent pharmacy for Schedule II controlled substances, specifically dexedrine and methylphenidate. They discovered that there was a 37.2% combined shortage for those two controlled substances, as well as missing DEA 222 order forms for Schedule I and II controlled substances. The Owner had stated to the investigators that his pharmacy had been burglarized and that he had reported the burglary to the local police. However, the Owner admitted at his hearing before the Pharmacy Board and before Judge Tenney that a portion of the discovered shortage was due to his own diversion of the controlled substances.

On December 9, 1991, the Pharmacy Board issued a Statement of Charges against the Owner. These charges were primarily based upon the Owner's unlawful possession of a controlled substance and the shortage of dexetrine and methylphenidate at the Respondent pharmacy. On March 24, 1992, the Pharmacy Board imposed an Order of

Continuance and Imposing Summary Restrictions, prohibiting the Owner from using legend drugs and controlled substances unless legitimately prescribed, requiring the Owner's physician to report to the Pharmacy Board all prescriptions issued to the Owner, requiring the Owner to submit to drug urine testing twice a week, and requiring the Owner to undergo an evaluation by a Board-approved psychiatrist with experience in substance abuse.

On May 18, 1992, the Owner underwent an evaluation by Dr. Maurice Lustgarten, a Pharmacy Board-approved psychiatrist. Dr. Lustgarten wrote a report for the Pharmacy Board, noting that ''[a]fter spending two hours in historical review and evaluation of [the Owner], I have determined that he is sincerely motivated to discontinue all drug usage.'' Further, Dr. Lustgarten concluded that ''I'm satisfied that under the present circumstances and the apparent honesty of [the Owner], he is succeeding in his battle with drugs and that he can put this behind him and have a successful career in pharmacy.''

On March 18, 1993, the Pharmacy Board issued its Final Order, suspending the Owner's pharmacist license for five years, but staying the suspension on the condition that he comply with certain terms of probation. Specifically, the Order required, among other things, that the Owner (1) abstain from alcohol and the non-therapeutic use of legend drugs and controlled substances; (2) report any prescriptions for controlled substances issued to him for therapeutic purposes; (3) participate in an approved chemical dependence treatment plan for a minimum of three years; (4) submit to random drug testing twice a week; (5) attend three AA or other support group meetings per week, and submit to the Pharmacy Board signed attendance records each month; and (6) ensure that all required reports be submitted to the Pharmacy Board in a timely manner.

However, in response to a second Statement of Charges and a hearing held on November 18, 1993, the Pharmacy Board issued a second Final Order dated January 19, 1994, finding that the Owner had violated certain terms of his probation. Specifically, the Owner had informed the Pharmacy board that (1) he was taking prescriptions for several legend drugs, but he failed to submit reports from physicians verifying those prescriptions; (2) he had taken Toradol, a legend drug, that had been prescribed for his wife: (3) he had submitted quarterly reports of his compliance with the conditions of his probation late, for the subject reports were due on the first day of April and July 1993, but had been submitted on August 16, 1993; (4) he had untimely submitted the signed attendance records for his support group meeting; (5) he had failed to timely name a responsible pharmacist to operate the Respondent pharmacy while his pharmacist license was suspended; and (6) he had allowed an unlicensed person, his assistant, to take charge of the pharmacy. As a result, the Pharmacy board ordered the Owner to be placed on another five-year probationary period beginning from the date of the order, January 19, 1994. The probationary conditions were many of the same conditions found in the first final order, plus the Owner was to undergo another substance abuse evaluation. Dr. Lustgarten reevaluated the Owner on March 18, 1994, and in his report he concluded that the Owner was benefiting from his counselling sessions with Dr. Wolborsky, and that he was satisfied that the Owner was complying with the Pharmacy Board's ''expectations in performance of his profession.''

On April 6, 1994, the Owner was arrested for Driving Under the Influence, and he admitted to having three alcoholic drinks with friends, as well as to having taken prescription Soma tablets. The Owner consented to a breathalyzer test, which showed his blood alcohol content to be 0.05, well below the presumptive level of intoxication in the State of Washington, which is 0.10 or higher. However, as noted by Judge Tenney, in Washington, ''a person can be guilty of driving under the influence if the person drives while under the combined influence of or affected by intoxicating liquor and any drug. Wash. Rev. Code 46.61.502 (1994).'' The Owner was not prosecuted on this charge, however, but entered into a deferred prosecution agreement in which he was to attend a one year program for alcohol education.

On May 9, 1995, the Pharmacy board filed a third Statement of Charges against the Owner, alleging that (1) he had failed to timely submit signed attendance records of his support group meetings for the months of July and August 1994; (2) he had failed to attend the required amount of AA meetings during the second week in August 1994; and (3) that he had failed to submit to urinalysis testing on April 29 and May 13, 1994. The Owner answered these allegations, admitting that he had submitted the July attendance record late, and that he had missed the AA meetings during the second week in August 1994, because he was on vacation with his family. Upon returning from vacation, the Owner notified Mr. Bob Johnson, his compliance officer with the Washington Recovery Assistance Program for Pharmacy, of his failure to attend the meetings, and how, after considerable effort, he was unable to locate any such meetings at this vacation site. Subsequently, the Owner's regular AA group gave him a toll free number to call, should this problem arise in the future. However, during the vacation week, the Owner had submitted to his bi-weekly urine testing, having arranged the testing in advance with a local hospital. Finally, the Owner claimed that the sole reason for missing the urine testing on the dates in April and May of 1994, was that the testing center he routinely utilized was either closed or there was no male observer available. This Statement of Charges was awaiting disposition by the Pharmacy board as of the time of Judge Tenney's decision and the closing of the record.

The Respondent's DEA Certificate of Registration was for a location on Wheaton Way in Bremerton, Washington. However, following the retirement of the Owner's father, the Owner moved his pharmacy from the Wheaton Way address to an address on Bertha Avenue in Bremerton, Washington. Prior to the move, the Owner sought permission from the Pharmacy Board, and he received an application packet from the Pharmacy Board which had included an application for a DEA registration for the new address. The Owner filed an application with the Pharmacy Board, and after a hearing was held on the matter, the Pharmacy Board granted the Owner permission to relocate the pharmacy. On April 14, 1994, the Owner sent a letter to the DEA office in Seattle, Washington, notifying the DEA of his intent to move the pharmacy and to rename it. However, the Owner failed to obtain the DEA's approval prior to relocating the Respondent pharmacy, as required. Accordingly, in April of 1994, DEA diversion investigators entered the Bertha Avenue location and seized the controlled substance located at that unregistered site. Since that time, the Owner has remained unauthorized to handle controlled substances at the Bertha Avenue location.

The Owner testified that he thought he had followed all appropriate procedures to relocate his pharmacy, and that he believed that a new DEA registration for the Bertha Avenue address would follow the pharmacy upon notification of the move to the DEA. The Owner testified that he had understood that it did not matter whether the notification letter preceded or followed the actual relocation, and

that he had relied upon information he had receive after he had placed a phone call to the Seattle DEA office during the winter of 1994. However, noting that the Owner may have misunderstood the modification regulations that were conveyed to him, Judge Tenney found that the diversion investigators at the DEA Seattle Office were all aware that modification requests must be submitted in writing to the DEA before any relocation. Once the modification was approved, then the pharmacy would have been issued a new DEA registration number at the new address. Only after receiving the new DEA registration number would the pharmacy's pharmacists be authorized to handle controlled substances at the new location. However, Judge Tenney also found that the Owner had ''made a good faith attempt to comply with the regulations of the agencies governing the relocation of pharmacies. * * * He did not make this more surreptitiously, or without consideration of the regulations governing such changes.''

The Owner also testified that he had sought help for his substance abuse problem in May of 1989 with Dr. Barry Wolborsky, a licensed clinical psychologist who specializes in chemical dependency. Since that time, the Owner has been seeing Dr. Wolborsky twice a month. Although the Owner admits that when he first began his treatment he was unable to stop abusing controlled substances, he also testified that he has not abused controlled substances since January 30, 1991. Also, although Dr. Wolborsky has suggested that the Owner abstain from drinking alcohol, the Owner testified that he had remained a social drinker until his arrest for driving while intoxicated in April of 1994. Since that date, however, the Owner testified that he has abstained from drinking alcohol.

Dr. Wolborsky testified before Judge Tenney, concerning his treatment of the owner. He concluded that he believed that the Owner's prognosis for continued recovery was excellent.

Under 21 U.S.C. 824(a)(2), the Deputy administrator may suspend or revoke a DEA registration and deny any pending modifications to the registration based upon a finding that the registrant has been convicted of a felony relating to controlled substances. Here, the Owner of the Respondent and its pharmacist was convicted of the felony of possession of a controlled substance in June of 1992.

Additionally, pursuant to 21 U.S.C. 824(a)(4), the deputy administrator may revoke or suspend a DEA Certificate of Registration and deny any pending application for such registration, if he determines that granting the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the ''public interest:''

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in assessing the ''public interest'' and in determining whether a registration should be revoked or an application for registration denied. See *Henry J. Schwarz, Jr., M.C.*, Docket No. 88–42, 54 FR 16422 (1989).

In this case, factors one, three, four, and five of Section 823 are relevant in determining whether the Respondent's registration would be inconsistent with the public interest. As to factor one, ''recommendation of the appropriate State licensing board, * * *'' the Pharmacy Board has not expressly made a recommendation in this case. However, the Pharmacy Board has taken adverse action against the Owner's pharmacist license, by placing him on a five-year probationary period and by requiring him to comply with comprehensive probation conditions. Also, Judge Tenney noted that the Owner had engaged in a pattern of violations of the Pharmacy Board's conditions of probation, to include untimely submission of required reports, violation of the prohibition on the use of alcohol, and failure to undergo required urine testing. Therefore, the Deputy Administrator agrees with Judge Tenney's finding that ''the Board is properly concerned with his pattern of non-compliance to its conditions of probation. However, the Board has concluded that [the Owner] should be placed on probation for an extended period of time as opposed to suspension of his license.''

As to factor three, the Respondent's ''conviction record under Federal or State laws relating to * * * controlled substances,'' and factor four, ''[c]compliance with applicable State, Federal, or local laws relating to controlled substances,'' it is uncontroverted that in June of 1992, the Owner was convicted of illegal possession of a controlled substance. The Owner has also violated state law and DEA regulations regarding the handling of controlled substances, evidenced by the audit results which revealed a 37.2% shortage of Schedule II controlled substances, some of which the Owner admitted he had diverted for his personal use.

Further, the Owner also violated DEA regulations when he relocated the Respondent pharmacy without first receiving the required DEA approval. Judge Tenney noted that ''While I have found that the incompliance was inadvertent, it nonetheless is consistent with [the Owner's] pattern of non-compliance with state and DEA regulations.''

As to factor five, ''[s]uch other conduct which may threaten the public health and safety,'' the Owner has admitted that he had abused controlled substances for many years, and that it was not until January of 1991 that he was able to control his substance-abuse problem. However, the Deputy Administrator agrees with Judge Tenney's conclusion, that the record supports the Owner's assertion of abstinence, for all ''of his urinalysis results for the past three years have been negative.''

Further, the Deputy Administrator agrees with Judge Tenney's finding that the Owner's ''conviction relating to controlled substances, the shortage of controlled substances discovered during the audit of the Respondent pharmacy, [the Owner's] arrest for Driving Under the Influence in April 1994, and the violations of the terms of his probation justify the Government's proposed revocation of Responsent's DEA registration. * * * The Government has also proven violations of DEA regulations, dealing with relocating the Respondent pharmacy without DEA approval and the submission of all relevant DEA 222 forms.''

However, the Owner has also presented considerable evidence of rehabilitation. The record demonstrated the inadvertent nature of his administrative errors during his probation, such as the untimely submission of reports and his failure to provide the required paperwork to the DEA prior to the relocation of the Respondent pharmacy. Further, Dr. Lustgarten has concluded that the Owner was honest and sincere in his desire to end his substance abuse, and Dr. Wolborsky testified that the Owner's prognosis for continued recovery was excellent. The Owner has provided over

three years of negative urinalysis test results, demonstrating his successful efforts of recovery since 1992. He also continues to attend three AA meetings a week and counseling sessions with Dr. Wolborsky.

In light of the above, the Deputy Administrator agrees with Judge Tenney's conclusion that ''[u]nder these circumstances, revocation would be too harsh a sanction. * * * While it is true that [the Owner] has violated some of the Board's probationary conditions, these violations were relatively minor and do not outweigh in balance his continuing recovery from his addiction.''

Therefore, the Deputy Administrator adopts Judge Tenney's recommendation and orders the Respondent's DEA Certificate of Registration, BE1740770, suspended for a period of six months. However, the Deputy Administrator also takes note of the Respondent's exception to the start date of this suspension, for the Owner has been without authorization to handle controlled substances at the Bertha Avenue location since his relocation in 1994. Such lack of authorization resulted in a *de factor* suspension dating from April of 1994. Given the totality of the circumstances in this case, the Deputy Administrator has determined that the suspension of the Respondent's registration should be given an effective date of October 20, 1995, the date Judge Tenney issued his opinion with which the Deputy Administrator totally concurs. Therefore, on or after April 20, 1996, the Respondent may apply for a modification of its DEA registration to change the address of the pharmacy, and if the Owner's circumstances remain consistent with the facts in this record, the modification may be given favorable consideration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823, and 28 CFR 0.100(b) and 0.104, hereby orders that the DEA Certificate of Registration, BE1740770, belonging to East Towne Save Rite Pharmacy, be, and it hereby is, suspended for a period of six months, which period to have commenced on October 20, 1995, and to conclude on April 20, 1996. Furthermore, given the Respondent's interest in being authorized to apply for a modification of its DEA Certificate of Registration as soon as possible, the Deputy Administrator concludes that it is in the Respondent's interest, as well as in the public's interest, for this order to be effective upon publication in the Federal Register, and it is so ordered.

Dated: April 24, 1996.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 96–10760 Filed 4–30–96; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL LABOR RELATIONS BOARD

National Labor Relations Board Advisory Committee on Agency Procedure

AGENCY: National Labor Relations Board.

ACTION: Notice of meetings.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2 (1972), and 29 C.F.R. Sec. 102.136 (1993), the National Labor Relations Board has established a National Labor Relations Board Advisory Committee on Agency Procedure, the purpose of which is to provide input and advice to the Board and General Counsel on changes in Agency procedures that will expedite case processing and improve Agency service to the public. A notice of the establishment of the Advisory Committee was published in the Federal Register on May 13, 1994 (59 FR 25128).

As indicated in that notice, the Committee consists of two Panels which will meet separately, one composed of Union-side representatives and the other of Management-side representatives. Pursuant to Section 10(a) of FACA, the Agency hereby announces that the next meetings of the Advisory Committee Panels will be held on June 18 (Union-side) and June 20, 1996 (Management-side).

Time and Place: The meeting of the Union-side Panel of the Advisory Committee will be held at 10:00 a.m. on Tuesday, June 18, 1996, at the National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C., in the Board Hearing Room, Rm 11000. The meeting of the Management-side Panel of the Advisory Committee will be held at 10:00 a.m. on Thursday, June 20, 1996, at the same location.

Agenda: The agenda at the meetings of both Advisory Committee Panels will be:

(1) The March 14 request by Congressman John E. Porter, Chairman of the House Appropriations Committee on Labor, Health and Human Services, Education and Related Agencies that the NLRB consider reducing its caseload by raising the jurisdictional thresholds to account for inflation since 1959.

(2) Changes in Board Procedures, Streamlining and Status of 1996 and 1997 Budgets—update and discussion.

(3) Proposal to consolidate all Federal Administrative Law Judges into a single agency.

Public Participation: The meetings will be open to the public. As indicated in the Agency's prior notice, within 30 days of adjournment of the later of the Advisory Committee Panel meetings, any member of the public may present written comments to the Committee on matters considered during the meetings. Written comments should be submitted to the Committee's Management Officer and Designated Federal Official, Miguel A. Gonzalez, Executive Assistant to the Chairman, National Labor Relations Board, 1099 14th Street, N.W., Suite 11104, Washington, D.C. 20570–0001; telephone: (202)273–2864.

FOR FURTHER INFORMATION CONTACT: Advisory Committee Management Officer and Designated Federal Official, Miguel A. Gonzalez, Executive Assistant to the Chairman, National Labor Relations Board, 1099 14th Street, N.W., Suite 11104, Washington, D.C. 20570–0001; telephone: (202)273–2864.

Dated, April 25, 1996.

By direction of the Board:

John J. Toner,

Acting Executive Secretary.

[FR Doc. 96–10766 Filed 4–30–96; 8:45 am]

BILLING CODE 7545–01–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical System; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Civil and Mechanical Systems (#1205).

Date and Time: May 24, 1996, 8:30 am to 5:00 pm.

Place: Rooms 530 and 580, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: John B. Scalzi, Program Director Division of Civil and Mechanical Systems, Room 545, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1360.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate ARI Equipment and Instrumentation Program proposals as part of the selection process for awards.