

*In the Matter of*

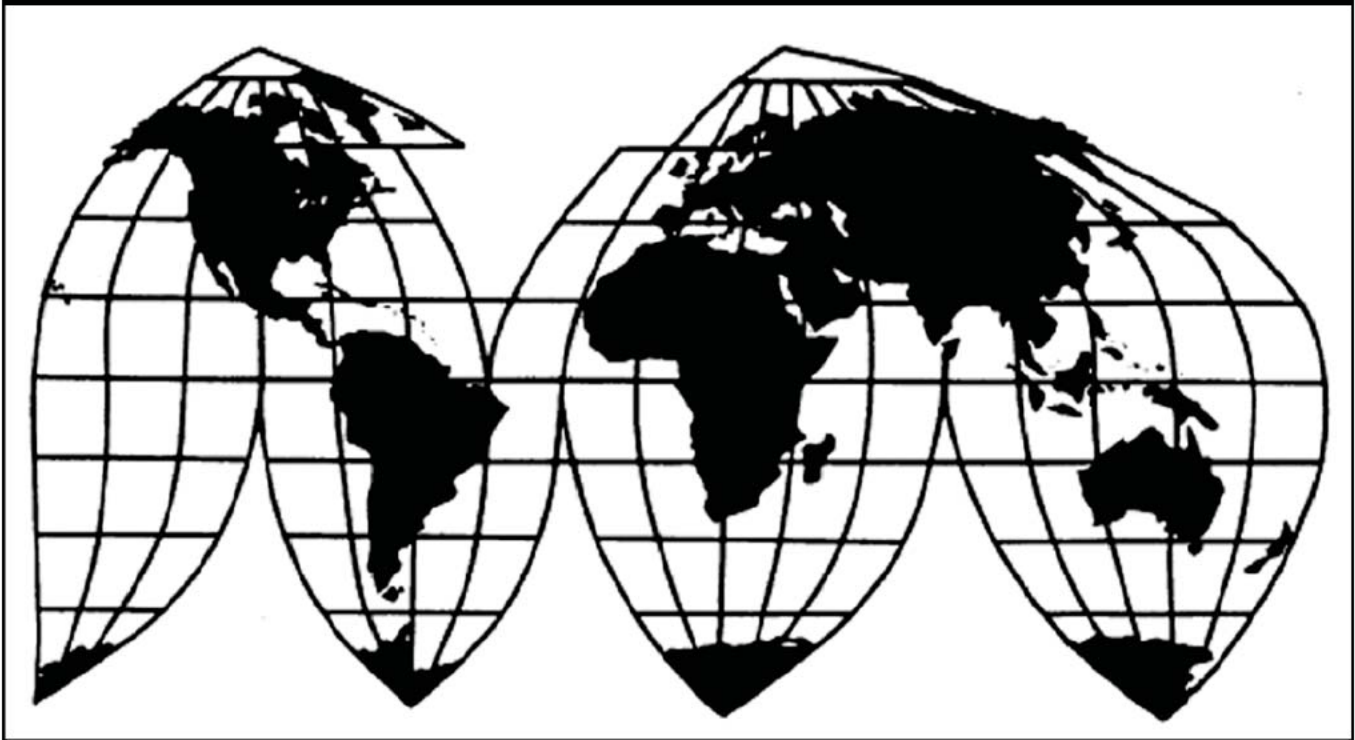
**CERTAIN ELECTRONIC PAPER TOWEL  
DISPENSING DEVICES AND COMPONENTS  
THEREOF**

Investigation No. 337-TA-718

**Publication 4359**

**November 2012**

**U.S. International Trade Commission**



Washington, DC 20436

# **U.S. International Trade Commission**

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# U.S. International Trade Commission

Washington, DC 20436  
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*In the Matter of*

## **CERTAIN ELECTRONIC PAPER TOWEL DISPENSING DEVICES AND COMPONENTS THEREOF**

Investigation No. 337-TA-718







**UNITED STATES INTERNATIONAL TRADE COMMISSION**  
**Washington, D.C.**

**In the Matter of**

**CERTAIN ELECTRONIC PAPER  
TOWEL DISPENSING DEVICES AND  
COMPONENTS THEREOF**

**Investigation No. 337-TA-718**

**NOTICE OF COMMISSION ISSUANCE OF A GENERAL EXCLUSION ORDER AND  
CEASE AND DESIST ORDERS; TERMINATION OF INVESTIGATION**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has issued a general exclusion order and cease and desist orders in the above-captioned investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 ("section 337"), and has terminated the investigation.

**FOR FURTHER INFORMATION CONTACT:** James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.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:** This investigation was instituted on May 21, 2010, based upon a complaint filed on behalf of Georgia-Pacific Consumer Products LP of Atlanta, Georgia ("Georgia-Pacific") on April 19, 2010, and supplemented on May 10, 2010. *75 Fed. Reg.* 28652 (May 21, 2010). The complaint alleged violations of Section 337 of the Tariff Act of 1930 (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 electronic paper towel dispensing devices and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 6,871,815 ("the '815 patent"); 7,017,856 ("the '856 patent"); 7,182,289 ("the '289 patent"); and 7,387,274 ("the '274 patent"). The complainant named as respondents Kruger Products LP of Mississauga, Canada; KTG USA LP of Memphis, Tennessee ("KTG USA"); StefcO Industries, Inc. of Haines City, Florida ("Stefco"); Cellynne Corporation of Haines City, Florida ("Cellynne"); Draco Hygienic Products Inc. of Ontario, California; NetPak Electronic Plastic and Cosmetic, Inc., d/b/a/ Open for Business of Chicago, Illinois ("NetPak Chicago"); NetPak

Elektronik Plastik ve Kozmetik Sanayi, Ve Ticaret Ltd of Izmir, Turkey (“NetPak Turkey”); Paradigm Marketing Consortium, Inc. of Syosset, New York; United Sourcing Network Corp. of Syosset, New York; New Choice (H.K.) Ltd. of Shatin, Hong Kong; and Vida International Inc. of Taipei, Taiwan.

On August 16, 2010, the Commission issued notice of its determination not to review an ID amending the complaint and notice of investigation: (1) to correct the corporate name of NetPak Chicago; (2) to redefine “Kruger” to “Kruger Products and/or KTG USA”; (3) to indicate that Georgia-Pacific no longer alleges that NetPak Turkey is the source of Stefcos and Cellynne's accused product; (4) to add new respondents Jet Power International Limited; Winco Industries Co.; DWL Industries Co.; Ko-Am Corporation Inc. d/b/a Janitor's World; Natyry, S.A. De C.V.; Franklin Financial Management, Inc. d/b/a Update International; and Alliance in Manufacturing LLC.


Two respondents, Stefcos and Cellynne, did not respond to the complaint and notice of investigation, and a third respondent, NetPak Turkey, did not participate in discovery. On October 12, 2010, the ALJ issued an order to show cause why Stefcos and Cellynne should not be found in default, and on November 2, 2010, issued an order to show cause why NetPak Turkey should not be found in default. On December 30, 2010, the ALJ issued an ID (Order No. 28) finding Stefcos, Cellynne, and NetPak Turkey in default. On January 16, 2011, the Commission determined not to review this order. The other respondents to the investigation were terminated by consent order.

On July 12, 2011, the ALJ issued an ID, Order No. 36, finding substantial, reliable, and probative evidence that the Stefcos, Cellynne, and Netpak Turkey violated section 337 based on the importation, sale for importation, and/or sale after importation into the United States of electronic paper towel dispensing devices that infringe the asserted patent claims. The ALJ issued a recommended determination with the ID. The ALJ recommended that the Commission issue a general exclusion order and cease and desist orders, finding that such orders would not be contrary to the public interest, and recommended that the bond for importation during the presidential review period be set at 100 percent of the entered value of the infringing products for respondents and no bond be set for nonrespondents. On August 19, 2011, the Commission issued notice of its determination not to review the ID, and solicited submissions on remedy, the public interest, and bonding. *76 Fed. Reg.* 53154 (Aug. 25, 2011). Georgia-Pacific and the Commission investigative attorney filed submissions and reply submissions with respect thereto.

After reviewing the relevant portions of the record, the Commission has determined to issue a general exclusion order with respect to claims 4-7 of the '815 patent, claims 8-22 of the '856 patent, claims 1-3 of the '289 patent, and claims 4-22 of the '274 patent, and cease and desist orders against Stefcos and Cellynne with respect to the same claims. In this connection, the Commission has determined to set a bond of 100 percent of entered value during the period of Presidential review. The investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

  
James R. Holbein  
Secretary to the Commission

Issued: December 1, 2011



**UNITED STATES INTERNATIONAL TRADE COMMISSION**  
**Washington, DC**

**In the Matter of**

**CERTAIN ELECTRONIC PAPER TOWEL  
DISPENSING DEVICES AND  
COMPONENTS THEREOF**

**Investigation No. 337-TA-718**

**GENERAL EXCLUSION ORDER**

The Commission has determined that there is a violation of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), in the unlawful importation and sale of certain electronic paper towel dispensing devices and components thereof that infringe claims 4-7 of U.S. Patent No. 6,871,815 (the '815 patent"), claims 8-22 of U.S. Patent No. 7,017,856 (the '856 patent"), claims 1-3 of U.S. Patent No. 7,182,289 (the '289 patent"), and claims 4-22 of U.S. Patent No. 7,387,274 (the '274 patent").

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determinations on the issues of remedy, the public interest, and bonding. The Commission has determined that a general exclusion from entry for consumption is necessary, and accordingly, the Commission has determined to issue a general exclusion order prohibiting the unlicensed importation of infringing electronic paper towel dispensing devices and components thereof.

The Commission has also determined that the public interest factors enumerated in 19 U.S.C. § 1337(d) do not preclude the issuance of the general exclusion order, and that the bond during the Presidential review period shall be in the amount of 100 percent of the entered value of the articles in question.


Accordingly, the Commission hereby **ORDERS** that:

1. Electronic paper towel dispensing devices and components thereof covered by one or more of claims 4-7 of the '815 patent, claims 8-22 of the '856 patent, claims 1-3 of the '289 patent, and claims 4-22 of the '274 patent are excluded from entry into the United States for consumption, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, for the remaining terms of the patents, except under license of the patent owner or as provided by law.
2. Notwithstanding paragraph 1 of this Order, the aforesaid electronic paper towel dispensing devices and components thereof are entitled to entry into the United States for consumption, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption under bond in the amount of 100 percent of the entered value of the products, pursuant to subsection (j) of Section 337 (19 U.S.C. § 1337(j)) and the Presidential memorandum for the United States Trade Representative of July 21, 2005 (70 Fed. Reg. 43,251), from the day after this Order is received by the United States Trade Representative until such time as the United States Trade Representative notifies the Commission that this Order is approved or disapproved but, in any event, not later than sixty days after the date of receipt of this Order.
3. At the discretion of U.S. Customs and Border Protection ("CBP") and pursuant to procedures that it establishes, persons seeking to import electronic paper towel dispensing devices and components thereof that are potentially subject to this Order may be required to certify that they are familiar with the terms of this

Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the products being imported are not excluded from entry under paragraph 1 of this Order. At its discretion, CBP may require persons who have provided the certification described in this paragraph to furnish such records or analyses as are necessary to substantiate the certification.

4. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to electronic paper towel dispensing devices and components thereof imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.
5. The Commission may modify this Order in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).
6. The Commission Secretary shall serve copies of this Order upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and U.S. Customs and Border Protection.
7. Notice of this Order shall be published in the *Federal Register*.

By order of the Commission.

  
James R. Holbein  
Secretary to the Commission

Issued: December 1, 2011





**UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, DC**

**In the Matter of**

**CERTAIN ELECTRONIC PAPER TOWEL  
DISPENSING DEVICES AND  
COMPONENTS THEREOF**

**Investigation No. 337-TA-718**

**CEASE AND DESIST ORDER**

**IT IS HEREBY ORDERED THAT** Cellynne Corporation, of Haines City, Florida (“Cellynne Corp.”), cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, transferring (except for exportation), and soliciting U.S. agents or distributors for electronic paper towel dispensing devices and components thereof that infringe one or more of claims 4-7 of U.S. Patent No. 6,871,815 (the ‘815 patent”), claims 8-22 of U.S. Patent No. 7,017,856 (the ‘856 patent”), claims 1-3 of U.S. Patent No. 7,182,289 (the ‘289 patent”), and claims 4-22 of U.S. Patent No. 7,387,274 (the ‘274 patent”) in violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

**I.  
Definitions**

As used in this order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Georgia-Pacific Consumer Products LP of Atlanta, Georgia.

**III.  
Conduct Prohibited**

The following conduct of Cellynne Corp. in the United States is prohibited by this order. For the remaining term of the relevant one or more of the '815, '856, '289, and '274 patents, Cellynne Corp. shall not:

- (A) import or sell for importation into the United States covered products;
- (B) market, distribute, sell, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

**IV.  
Conduct Permitted**

Notwithstanding any other provision of this order, specific conduct otherwise prohibited by the terms of this order shall be permitted if, in a written instrument, the owner of the relevant one or more of the '815, '856, '289, and '274 patents licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States as described in section 337(*l*) of the Tariff Act of 1930 (19 U.S.C. § 1337(*l*)).

**V.  
Reporting**

Within thirty (30) days of the last day of the reporting period, Cellynne Corp. shall report to the Commission (a) the quantity in units and the value in dollars of covered products that they

have (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

For purposes of this requirement, the reporting periods shall commence on June 1 of each year and shall end on the subsequent May 31. The first report required under this section shall cover the period from the date of issuance of this order through May 31, 2012. This reporting requirement shall continue in force until such time as Cellynne Corp. have truthfully reported, in two consecutive timely filed reports, that they have no inventory of covered products in the United States.

Respondents filing written submissions must file the original document and two copies with the Office of the Secretary. Any Respondent desiring to submit a document to the Commission in confidence must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainant's counsel.<sup>1</sup> Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

## **VI. Record-Keeping and Inspection**

- (A) For the purpose of securing compliance with relating to the sale or distribution in the United States of covered products, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of

covered products made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three years from the close of the fiscal year to which they pertain.

- (B) For the purposes of determining or securing compliance with this order and for no other purpose, subject to any privilege recognized by the federal courts of the United States, and upon reasonable written notice by the Commission or its staff, authorized representatives of the Commission shall be permitted (i) access to Cellyne Corp.'s principal offices during office hours, and (ii) the right to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents, in detail and in summary form, that must be retained under subparagraph VI(A) of this order, in the presence of counsel or other representatives if Cellyne Corp. so chooses.

**VII.**  
**Service of Cease and Desist order**

Cellyne Corp. is ordered and directed to:

- (A) Serve, within fifteen days after the effective date of this order, a copy of this order upon each of their respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;
- (B) Serve, within fifteen days after the succession of any persons referred to in subparagraph VII(A) of this order, a copy of the order upon each successor; and

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<sup>1</sup> Complainant must file a letter with the Secretary identifying the attorney to receive reports and bond information associated with this order. The designated attorney must be on the protective

- (C) Maintain such records as will show the name, title, and address of each person upon whom the order has been served, as described in subparagraphs VII( A) and VII(B) of this order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the latest expiration date of the '815, '856, '289, and '274 patents.

### **VIII. Confidentiality**

Any request for confidential treatment of information obtained by the Commission pursuant to section VI of this order should be made in accordance with section 201.6 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 201.6). For all reports for which confidential treatment is sought, Cellynne Corp. must provide a public version of such report with confidential information redacted.

### **IX. Enforcement**

Violation of this order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.75), including an action for civil penalties under section 337(f) of the Tariff Act of 1930 (19 U.S.C. § 1337(f)), as well as any other action that the Commission deems appropriate. In determining whether Cellynne Corp. is in violation of this order, the Commission may infer facts adverse to Cellynne Corp. if they fail to provide adequate or timely information.

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order entered in the investigation.

**X.**  
**Modification**

The Commission may amend this order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

**XI.**  
**Bonding**

The conduct prohibited by section III of this order may be continued during the sixty-day period in which this order is under review by the United States Trade Representative, as delegated by the President (70 *Fed. Reg.* 43,251 (Jul. 21, 2005)), subject to Cellynne Corp.'s posting of a bond in the amount of 100 percent of the entered value of the covered products. This bond provision does not apply to conduct that is otherwise permitted by section IV of this order. Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the exclusion order issued by the Commission, and are not subject to this bond provision.


The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. (*See* 19 C.F.R. § 210.68). The bond and any accompanying documentation are to be provided to and approved by the Commission prior to the commencement of conduct that is otherwise prohibited by section III of this order. Upon the Secretary's acceptance of the bond, (a) the Secretary will serve an acceptance letter on all

parties, and (b) Cellynne Corp. must serve a copy of the bond and any accompanying documentation on Complainant's counsel.<sup>2</sup>

The bond is to be forfeited in the event that the United States Trade Representative approves this order (or does not disapprove it within the review period), unless (i) the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Cellynne Corp. on appeal, or (ii) Cellynne Corp. exports or destroys the products subject to this bond and provide certification to that effect that is satisfactory to the Commission.

The bond is to be released in the event the United States Trade Representative disapproves this order and no subsequent order is issued by the Commission and approved (or not disapproved) by the United States Trade Representative, upon service on Cellynne Corp. of an order issued by the Commission based upon application therefore made by Cellynne Corp. to the Commission.

By Order of the Commission.

  
James R. Holbein  
Secretary to the Commission

Issued: December 1, 2011

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<sup>2</sup> See note 1 above.





**UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, DC**

**In the Matter of**

**CERTAIN ELECTRONIC PAPER TOWEL  
DISPENSING DEVICES AND  
COMPONENTS THEREOF**

**Investigation No. 337-TA-718**

**CEASE AND DESIST ORDER**

**IT IS HEREBY ORDERED THAT** Stefco Industries, Inc., of Haines City, Florida (“Stefco Industries”), cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, transferring (except for exportation), and soliciting U.S. agents or distributors for electronic paper towel dispensing devices and components thereof that infringe one or more of claims 4-7 of U.S. Patent No. 6,871,815 (the ‘815 patent”), claims 8-22 of U.S. Patent No. 7,017,856 (the ‘856 patent”), claims 1-3 of U.S. Patent No. 7,182,289 (the ‘289 patent”), and claims 4-22 of U.S. Patent No. 7,387,274 (the ‘274 patent”) in violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

**I.  
Definitions**

As used in this order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Georgia-Pacific Consumer Products LP of Atlanta, Georgia.

- (C) “Respondent” shall mean StefcO Industries, Inc., of Haines City, Florida
- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than StefcO Industries or its majority-owned or controlled subsidiaries, successors, or assigns.
- (E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.
- (F) The terms “import” and “importation” refer to importation for entry for consumption under the customs laws of the United States.
- (G) The term “covered products” shall mean electronic paper towel dispensing devices and components thereof that infringe one or more of claims 4-7 of the ’815 patent, claims 8-22 of the ’856 patent, claims 1-3 of the ’289 patent, and claims 4-22 of the ’274 patent.

## **II. Applicability**

The provisions of this Cease and Desist order shall apply to StefcO Industries and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by section III, *infra*, for, with, or otherwise on behalf of StefcO Industries.

**III.  
Conduct Prohibited**

The following conduct of StefcO Industries in the United States is prohibited by this order. For the remaining term of the relevant one or more of the '815, '856, '289, and '274 patents, StefcO Industries shall not:

- (A) import or sell for importation into the United States covered products;
- (B) market, distribute, sell, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

**IV.  
Conduct Permitted**

Notwithstanding any other provision of this order, specific conduct otherwise prohibited by the terms of this order shall be permitted if, in a written instrument, the owner of the relevant one or more of the '815, '856, '289, and '274 patents licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States as described in section 337(I) of the Tariff Act of 1930 (19 U.S.C. § 1337(I)).

**V.  
Reporting**

Within thirty (30) days of the last day of the reporting period, StefcO Industries shall report to the Commission (a) the quantity in units and the value in dollars of covered products

that they have (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

For purposes of this requirement, the reporting periods shall commence on June 1 of each year and shall end on the subsequent May 31. The first report required under this section shall cover the period from the date of issuance of this order through May 31, 2012. This reporting requirement shall continue in force until such time as StefcO Industries have truthfully reported, in two consecutive timely filed reports, that they have no inventory of covered products in the United States.

Respondents filing written submissions must file the original document and two copies with the Office of the Secretary. Any Respondent desiring to submit a document to the Commission in confidence must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainant's counsel.<sup>1</sup> Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

## **VI. Record-Keeping and Inspection**

- (A) For the purpose of securing compliance with relating to the sale or distribution in the United States of covered products, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of

covered products made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three years from the close of the fiscal year to which they pertain.

- (B) For the purposes of determining or securing compliance with this order and for no other purpose, subject to any privilege recognized by the federal courts of the United States, and upon reasonable written notice by the Commission or its staff, authorized representatives of the Commission shall be permitted (i) access to Stefcu Industries' principal offices during office hours, and (ii) the right to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents, in detail and in summary form, that must be retained under subparagraph VI(A) of this order, in the presence of counsel or other representatives if Stefcu Industries so chooses.

**VII.**  
**Service of Cease and Desist order**

Stefcu Industries is ordered and directed to:

- (A) Serve, within fifteen days after the effective date of this order, a copy of this order upon each of their respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;
- (B) Serve, within fifteen days after the succession of any persons referred to in subparagraph VII(A) of this order, a copy of the order upon each successor; and

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<sup>1</sup> Complainant must file a letter with the Secretary identifying the attorney to receive reports and bond information associated with this order. The designated attorney must be on the protective

- (C) Maintain such records as will show the name, title, and address of each person upon whom the order has been served, as described in subparagraphs VII( A) and VII(B) of this order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the latest expiration date of the '815, '856, '289, and '274 patents.

### **VIII. Confidentiality**

Any request for confidential treatment of information obtained by the Commission pursuant to section VI of this order should be made in accordance with section 201.6 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 201.6). For all reports for which confidential treatment is sought, StefcO Industries must provide a public version of such report with confidential information redacted.

### **IX. Enforcement**

Violation of this order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.75), including an action for civil penalties under section 337(f) of the Tariff Act of 1930 (19 U.S.C. § 1337(f)), as well as any other action that the Commission deems appropriate. In determining whether StefcO Industries is in violation of this order, the Commission may infer facts adverse to StefcO Industries if they fail to provide adequate or timely information.

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order entered in the investigation.

**X.**  
**Modification**

The Commission may amend this order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

**XI.**  
**Bonding**

The conduct prohibited by section III of this order may be continued during the sixty-day period in which this order is under review by the United States Trade Representative, as delegated by the President (70 *Fed. Reg.* 43,251 (Jul. 21, 2005)), subject to StefcO Industries' posting of a bond in the amount of 100 percent of the entered value of the covered products. This bond provision does not apply to conduct that is otherwise permitted by section IV of this order. Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the exclusion order issued by the Commission, and are not subject to this bond provision.

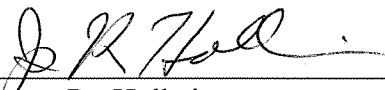
The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. (*See* 19 C.F.R. § 210.68). The bond and any accompanying documentation are to be provided to and approved by the Commission prior to the commencement of conduct that is otherwise prohibited by section III of this order. Upon the Secretary's acceptance of the bond, (a) the Secretary will serve an acceptance letter on all

parties, and (b) Stefc Industries must serve a copy of the bond and any accompanying documentation on Complainant's counsel.<sup>2</sup>

The bond is to be forfeited in the event that the United States Trade Representative approves this order (or does not disapprove it within the review period), unless (i) the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Stefc Industries on appeal, or (ii) Stefc Industries exports or destroys the products subject to this bond and provide certification to that effect that is satisfactory to the Commission.

The bond is to be released in the event the United States Trade Representative disapproves this order and no subsequent order is issued by the Commission and approved (or not disapproved) by the United States Trade Representative, upon service on Stefc Industries of an order issued by the Commission based upon application therefore made by Stefc Industries to the Commission.

By Order of the Commission.

  
\_\_\_\_\_  
James R. Holbein  
Secretary to the Commission

Issued: December 1, 2011

<sup>2</sup> See note 1 above.



**PUBLIC CERTIFICATE OF SERVICE**

I, James R. Holbein, hereby certify that the attached **NOTICE** has been served by hand upon, the Commission Investigative Attorney, Lisa A. Murray, Esq. and the following parties as indicated on **December 1, 2011**.



James R. Holbein, Secretary  
U.S. International Trade Commission  
500 E Street, SW, Room 112  
Washington, DC 20436

**On Behalf of Complainant Georgia-Pacific Consumer  
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**On Behalf of Respondents Stefc0 Industries, Inc. and  
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**PUBLIC VERSION**

**UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C.**

**In the Matter of**

**CERTAIN ELECTRIC PAPER TOWEL  
DISPENSING DEVICES AND  
COMPONENTS THEREOF**

**Investigation No. 337-TA-718**

**COMMISSION OPINION ON REMEDY, THE PUBLIC INTEREST, AND BONDING**

In this investigation, the Commission has found a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“section 337”), by certain defaulting respondents with respect to electronic paper towel dispensing devices and components thereof that infringe claims 4-7 of U.S. Patent No. 6,871,815 (“the ’815 patent”), claims 8-22 of U.S. Patent No. 7,017,856 (“the ’856 patent”), claims 1-3 of U.S. Patent No. 7,182,289 (“the ’289 patent”), and claims 4-22 of U.S. Patent No. 7,387,274 (“the ’274 patent”). The Commission has determined to issue a general exclusion order with respect to claims 4-7 of the ’815 patent, claims 8-22 of the ’856 patent, claims 1-3 of the ’289 patent, and claims 4-22 of the ’274 patent, and cease and desist orders against StefcO Industries, Inc. of Haines City, Florida (“Stefco”) and Cellynne Corporation of Haines City, Florida (“Cellynne”). The Commission has also determined that consideration of the public interest factors does not preclude issuance of these remedial orders and that the bond to permit importation of the subject articles during the Presidential review period should be set at 100 percent of entered value. This opinion sets forth the reasons for the Commission’s determinations.

## **PUBLIC VERSION**

### **I. BACKGROUND**

This investigation was instituted on May 21, 2010, based upon a complaint filed on behalf of Georgia-Pacific Consumer Products LP of Atlanta, Georgia (“Georgia-Pacific”) on April 19, 2010, and supplemented on May 10, 2010. *75 Fed. Reg.* 28652 (May 21, 2010). The complaint alleged violations of Section 337 of the Tariff Act of 1930 (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 electronic paper towel dispensing devices and components thereof by reason of infringement of certain claims of the ’815 patent, the ’856 patent, the ’289 patent, and the ’274 patent. *75 Fed. Reg.* 28651-2 (May 21, 2010). The complainant named as respondents Kruger Products LP of Mississauga, Canada; KTG USA LP of Memphis, Tennessee (“KTG USA”); StefcO; Cellynne; Draco Hygienic Products Inc. of Ontario, California; NetPak Electronic Plastic and Cosmetic, Inc., d/b/a/ Open for Business of Chicago, Illinois (“NetPak Chicago”); NetPak Elektronik Plastik ve Kozmetik Sanayi, Ve Ticaret Ltd of Izmir, Turkey (“NetPak Turkey”); Paradigm Marketing Consortium, Inc. of Syosset, New York; United Sourcing Network Corp. of Syosset, New York; New Choice (H.K.) Ltd. of Shatin, Hong Kong; and Vida International Inc. of Taipei, Taiwan.

On August 16, 2010, the Commission issued notice of its determination not to review an ID amending the complaint and notice of investigation: (1) to correct the corporate name of NetPak Chicago; (2) to redefine “Kruger” to “Kruger Products and/or KTG USA”; (3) to indicate that Georgia-Pacific no longer alleges that NetPak Turkey is the source of StefcO’s and Cellynne’s accused product; (4) to add new respondents Jet Power International Limited; Winco Industries Co.; DWL Industries Co.; Ko-Am Corporation Inc. d/b/a Janitor’s World; Natyry,

## PUBLIC VERSION

S.A. De C.V.; Franklin Financial Management, Inc. d/b/a Update International; and Alliance in Manufacturing LLC.

Two respondents, StefcO and Cellynne, did not respond to the complaint and notice of investigation, and a third respondent, NetPak Turkey, did not participate in discovery.<sup>1</sup> On October 12, 2010, the administrative law judge (“ALJ”) (Judge Gildea) issued an order to show cause why StefcO and Cellynne should not be found in default, and on November 2, 2010, issued an order to show cause why NetPak Turkey should not be found in default. On December 30, 2010, the ALJ issued an ID (Order No. 28) finding StefcO, Cellynne, and NetPak Turkey in default. On January 16, 2011, the Commission determined not to review this order.

On July 12, 2011, the ALJ issued an ID, Order No. 36, finding substantial, reliable, and probative evidence that StefcO, Cellynne, and Netpak Turkey (hereinafter, “the Defaulting Respondents”) violated section 337 based on the importation, sale for importation, and/or sale after importation into the United States of electronic paper towel dispensing devices that infringe the asserted patent claims. *See* ID at 14-48. The ALJ issued a recommended determination (“RD”) with the ID. The ALJ recommended that the Commission issue a general exclusion

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<sup>1</sup> All other respondents were terminated from the investigation by consent order. Specifically, on August 20, 2010, the Commission issued notice of its determination not to review an ID (Order No. 9), terminating the investigation as to NetPak Electronic Plastic and Cosmetic, Inc., d/b/a/ Open for Business of Chicago, Illinois (“Net Pak Chicago”), based on a consent order. On November 4, 2010, the Commission issued notice of its determination not to review an ID (Order No. 19) terminating the investigation as to Ko-Am Corporation Inc. d/b/a Janitor’s World based on a consent order. On November 24, 2010, the Commission issued notice of its determination not to review an ID (Order No. 20) terminating the investigation as to Paradigm Marketing Consortium and United Sourcing Network Corp. based on a consent order. Also on November 24, 2010, the Commission issued notice of its determination not to review an ID (Order No. 21) terminating the investigation as to as to Alliance in Manufacturing LLC based on a consent order. On December 16, 2010, the Commission issued notice of its determination not to review an ID (Order No. 25) terminating the investigation as to Draco Hygienic Products, Inc., Vida International Inc., New Choice (HK) Ltd., Kruger Products LP, and KTG USA LP based on a consent order. On February 1, 2010, the Commission issued notice of its determination not to review IDs (Order Nos. 26 and 27) terminating the investigation as to Franklin Financial Management, Inc. d/b/a Update International and Natyry, S.A. De C.V. based on consent orders. On March 9, 2011, the Commission issued notice of its determination not to review an ID (Order No. 32) terminating the investigation as to Winco Industries Co. and DWL International Trading Inc. based on a consent order. On August 8, 2011, the Commission issued notice of its determination not to review an ID (Order No. 37) terminating the investigation as to Jet Power International, Ltd. based on a consent order.

## PUBLIC VERSION

order and cease and desist orders, finding that such orders would not be contrary to the public interest, *see* RD at 1-10, and recommended that the bond for importation during the Presidential review period be set at 100 percent of the entered value of the infringing products for respondents and no bond for nonrespondents. RD at 11-13. No party petitioned for review of the ID. On August 19, 2011, the Commission issued notice of its determination not to review the ID, and soliciting submissions on remedy, the public interest, and bonding. 76 *Fed. Reg.* 53154 (Aug. 25, 2011). Georgia-Pacific and the Commission investigative attorney (“the IA”) filed submissions and reply submissions with respect thereto.

## II. DISCUSSION

### A. Relevant Law of Remedy and the Public Interest

The Commission is authorized to issue a limited exclusion order excluding the goods of the person(s) found in violation, or, if certain criteria are met, the Commission may issue a general exclusion order excluding all infringing goods regardless of the source. Just as the statute authorizes the Commission to issue a general exclusion order after finding respondents in violation (19 U.S.C. § 1337(d)(2)), the statute authorizes the Commission to issue a general exclusion order in a default case where there is substantial, reliable, and probative evidence of violation. 19 U.S.C. § 1337(g)(2).<sup>2</sup> If a respondent has appeared to contest the allegation of a

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<sup>2</sup> 19 U.S.C. §1337(g)(2) provides:

In addition to the authority of the Commission to issue a general exclusion from entry of articles when a respondent appears to contest an investigation concerning a violation of the provisions of this section, a general exclusion from entry of articles, regardless of the source or importer of the articles, may be issued if--

- (A) no person appears to contest an investigation concerning a violation of the provisions of this section,
- (B) such a violation is established by substantial, reliable, and probative evidence, and
- (C) the requirements of subsection (d)(2) of this section are met.

19 U.S.C. § 1337(g)(2).

## PUBLIC VERSION

violation, but subsequently defaults and a violation is proven by substantial, reliable, and probative evidence, the general exclusion order is issued under section 337(d)(2). *See Certain Sildenafil or Any Pharmaceutically Acceptable Salt Thereof, Such as Sildenafil Citrate, and Products Containing Same*, Inv. 337-TA-489, Comm'n Op. on Remedy, the Public Interest, and Bonding at 4 (July 26, 2004). Because the Commission has already determined not to review the ALJ's finding of substantial, reliable, and probative evidence of violation, the question of remedy for a general exclusion order focuses on whether the requirements of section 337(d)(2) are met.

The requirements to issue a general exclusion order in this investigation are found in section 337(d)(2), which provides:

The authority of the Commission to issue an exclusion from entry of articles shall be limited to persons determined by the Commission to be violating this section unless the Commission determines that—

- (A) a general exclusion from entry of articles is necessary to prevent circumvention of an exclusion order limited to products of named persons; or
- (B) there is a pattern of violation of this section and it is difficult to identify the source of infringing products.

19 U.S.C. § 1337(d)(2). As emphasized by the U.S. Court of Appeals for the Federal Circuit, a party must meet the “heightened requirements of Section 337(d)(2)(A) or (d)(2)(B)” before the ITC has authority to issue a general exclusion order against products of nonrespondents.

*Kyocera Wireless Corp. v. Int'l Trade Commission*, 545 F.3d 1340, 1358 (Fed. Cir. 2008).

The Commission may also issue a cease and desist order directed to any person violating section 337, *i.e.*, to cease and desist from engaging in the unfair methods or acts involved. 19 U.S.C. §1337(f)(1). The Commission has issued such orders to persons or corporations that have a “commercially significant” domestic inventory of subject articles that have already been

## PUBLIC VERSION

imported, in order to prevent distribution of violating articles. *See, e.g., Certain Integrated Repeaters, Switches, Transceivers, and Products Containing Same*, Inv. No. 337-TA-435, Comm'n Op. on Remedy, the Public Interest, and Bonding at 27 (Aug. 16, 2002).

Finally, the statute requires the Commission to consider the effect of issuance of its remedial orders on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers. 19 U.S.C. §1337(d)(1) and (f)(1). The public interest analysis does not concern whether there is a public interest in issuing a remedial order, but whether issuance of such an order will adversely affect the public interest. *Certain Agricultural Vehicles and Components Thereof*, Inv. No. 337-TA-487, USITC Pub. 3735, Comm'n Op. at 17 (Dec. 2004).

### **B. Remedy**

#### **1. General Exclusion Order**

##### **a. The ALJ's Recommended Determination**

The ALJ addressed the statutory requirements under sections 337(d)(2)(A) and (B) and found appropriate grounds for issuing a general exclusion order. RD at 2-10. With respect to section 337(d)(2)(A), the ALJ found a likelihood of circumvention of a limited exclusion order. RD at 4. The ALJ found that those companies already in the market of paper towel dispensers could adapt dispensers to practice the asserted patents without any difficulty or expense and that those wishing to newly enter the market would find low entry barriers. *Id.* The ALJ further noted a large number of potential entrants, an opportunity to profit from both dispenser and towel sales, well-established distribution channels, heavy U.S. consumption, and demand for dispensers with static electricity grounding capabilities. RD at 5. The ALJ observed that the



## PUBLIC VERSION

respondents could circumvent a limited exclusion order by selling the molds for making dispensers, [[

]] RD at 5 (citing Button Decl. ¶45).<sup>3</sup>

With respect to section 337(d)(2)(B), the ALJ found a pattern of violation and that there was difficulty in identifying the source of infringing products. RD at 7-9. Further, the ALJ, citing the business conditions set forth above and the evidence presented by the complainant, found a pattern of violation by respondents and nonrespondents. *Id.* Based on this evidence, the ALJ concluded that it is difficult to identify the source of infringing products. *Id.* at 9-10.

Based on these findings, the ALJ recommended the entry of a general exclusion order directed to the asserted patent claims. *Id.* at 10.

### **b. Submissions of the Parties**

As noted above, most respondents were terminated from this investigation on the basis of consent orders. The remaining respondents in this investigation were found to be in default, and did not file any submissions regarding remedy, bonding, and the public interest. Complainant Georgia-Pacific has requested a general exclusion order and the IA agrees with the ALJ's recommendation that the Commission should issue a general exclusion order in this investigation. *See* Complainant Georgia-Pacific Consumer Products, LP's Written Submission on the Issues of Remedy, the Public Interest, and Bonding ("Georgia-Pacific Submission"); Response of the Office of Unfair Import Investigations to the Commission's Request for

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<sup>3</sup> The ALJ noted that a large number of respondents entered into consent orders and that NetPak Turkey wished to enter into a consent agreement but was "stymied" by the Complainant. RD at 6. In this connection, the ALJ stated that this "cuts somewhat against a finding that there is a tendency or intent among Respondents or others in this industry to circumvent, rather than comply with, a limited exclusion order (or the issued consent orders)." RD at 6. The ALJ found, however, that when weighed against the other evidence, [[

]] other industry descriptions set forth in the Button Declaration, that the evidence supports a finding that a general exclusion order is necessary to prevent circumvention of a limited exclusion order. RD at 6-7.

## PUBLIC VERSION

Submissions on the Issues of Remedy, the Public Interest, and Bonding (“IA Submission”).

Citing the relevant findings of the ALJ, Georgia-Pacific and the IA both submit that there is a pattern of violation with respect to the technology covered by the patent claims at issue, that it is difficult to identify the source of the infringing products, and that a general exclusion order is necessary to prevent circumvention. Georgia-Pacific Submission at 6-29; IA Submission at 14-21.

### *Georgia-Pacific’s Submission*

Georgia-Pacific argues that there is likelihood of circumvention of a limited exclusion order, that there is pattern of violation, and that there is difficulty in identifying the source of electric towel dispensers. Georgia-Pacific Submission at 6. Georgia-Pacific argues that these findings support the entry of a general exclusion order. *Id.*

Georgia-Pacific notes that the ALJ found that the business “conditions are ripe for circumvention of a limited exclusion order.” *Id.* at 10 (citing RD at 4). Specifically, Georgia-Pacific points to the ALJ’s finding that there is a low cost and ease of manufacturing dispensers, an attractive, highly profitable, and growing U.S. market; a double opportunity to profit (dispenser and paper towel sales); well-established distribution channels; heavy U.S. consumption; and demand for dispensers with static electricity grounding capabilities. *Id.* at 10-11. Georgia-Pacific further states that there is low expense for a foreign entity to build or retool a facility to produce the patented article. Georgia-Pacific Reply Submission at 1.

Georgia-Pacific noted that the ALJ found that the undisputed record evidence demonstrates an established demand in the US for electronic paper towel dispensers that infringe the asserted patents. Georgia-Pacific Submission at 11. Georgia-Pacific explains that there is a demand for electronic “touchless” paper towel dispensers, and a demand for electronic paper

**PUBLIC VERSION**

towel dispensers that effectively and conveniently dissipate static electricity. *Id.* (citing RD at 5; Button Decl. ¶ 19).

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Georgia-Pacific noted the availability of U.S. marketing and distribution networks to foreign manufacturers. *Id.* at 12 (citing, *inter alia*, RD at 5; Button Decl. ¶¶ 40-41, 82, 85, 88-89, 96, 112, 115, 117 & 142-84). Georgia-Pacific stated that there are thousands of available distributors and internet retailers. *Id.*

Georgia-Pacific argues that any manufacturers in Asia that already manufacture automated electronic dispensers could easily convert their current manufacturing lines to add an infringing static dissipation mechanism. *Id.* at 15 (citing RD at 4). Georgia-Pacific cites the ALJ's finding that a limited exclusion order would be circumvented should the named respondents in this investigation choose to sell their molds and diagrams for making dispensers to companies that are not named as respondents. *Id.* at 15-16 (citing RD at 5). [[

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As to further basis for issuance of an exclusion order, Georgia-Pacific argues that there is unauthorized importation of infringing articles by identified respondent-manufacturers and retailers. Georgia-Pacific Submission at 8 (citing RD at 8); *see also* Georgia-Pacific Reply

## PUBLIC VERSION

Submission at 2. Georgia-Pacific states that violators exist and operate at multiple levels of the distribution chain. Georgia-Pacific Submission at 6 (citing Button Decl. ¶¶ 9 & 92).

Georgia-Pacific also argues that there is unauthorized importation of infringing articles by nonrespondent manufacturers and retailers. *Id.* at 7.<sup>4</sup> Georgia-Pacific states that there are a number of infringing nonrespondent entities which manufacture or import towel dispensers, such as Shenzhen Nan Long Yuan, Yu Wei, Supernalway, and Hygolet. *Id.* at 7-8. Georgia-Pacific further states that all of these companies offer dispensers that appear identical to the “Category 1” dispensers that the ALJ found infringe the asserted patents. *Id.* at 8 (citing ID at 17-48; Button Decl. ¶¶ 106-109, 139-142 & 184; *see also* ¶¶ 141-183). Georgia-Pacific contends that the manufacturing source of the Yu Wei and Shenzhen Nan Long Yuan dispensers, and certain dispensers available on eBay, remains unknown. *Id.* at 8 (citing RD at 8-10; Button Decl. ¶¶ 122, 130; Ex. 173 (GPITC-0204374-440)).

Moreover, Georgia-Pacific states that it has identified seventeen additional entities that likely infringe the asserted patents based on the appearance of the dispensers they manufacture and/or distribute. *Id.* at 8 (citing RD at 9; Button Decl. ¶¶ 106-109, 114-115, 139-142 & 141-184; February 9, 2010, Declaration of Gary N. Petersen (“Petersen Decl.”) ¶¶ 3-5; Ex. 231 (BUTTON-00741-43); Ex. 220 (BUTTON-00609-23) at BUTTON-00614-15 & 18-23; Ex. 224 (BUTTON-00651-653); Ex. 232 (BUTTON-00748-0749); Ex. 221 (BUTTON-00628-00632); Ex. 223 (BUTTON-00643-00650); Ex. 225 (BUTTON-00665-00669); Ex. 234 (BUTTON-00766-00767); Ex. 142 (GPITC-0140573-0140575); Ex. 228 (BUTTON-00694-96); Ex. 225

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<sup>4</sup> Georgia-Pacific further cites *Spray Pumps* for the proposition that a “widespread pattern of unauthorized use” may be evidenced by unauthorized importation by numerous foreign manufacturers, pendency of foreign infringement suits based on corresponding foreign patents, and other evidence demonstrating a history of unauthorized use. *Id.* at 7 (citing *Certain Airless Spray Pumps and Components Thereof*, Inv. 337-TA-90, Comm’n Op. at 18-19 (1981); *Inkjet Ink Supplies and Components Thereof*, Inv. No. 337-TA-691, RD at 30 (2010)).

## PUBLIC VERSION

(BUTTON-00655-59); Ex. 233 (BUTTON-00757-00758); Ex. 230 (BUTTON-00716-725) at BUTTON-00724-00725). Georgia-Pacific states that many of the seventeen additional entities identified by Georgia-Pacific after it filed its Complaint have existing distribution channels into the United States. *Id.* (citing RD at 9; Petersen Decl. ¶ 3; Button Decl. ¶¶ 114-115; *see also* Button Decl. ¶¶ 145-184; Ex. 231 (BUTTON-00741-43); Ex. 220 (BUTTON-00609-23) at BUTTON-00614-15 & 18-23; Ex. 224 (BUTTON-00651-653); Ex. 232 (BUTTON-00748-0749); Ex. 221 (BUTTON-00628-00632); Ex. 223 (BUTTON-00643-00650); Ex. 225 (BUTTON-00665-00669); Ex. 234 (BUTTON-00766-00767); Ex. 142 (GPITC-0140573-0140575); Ex. 228 (BUTTON-00694-96); Ex. 225 (BUTTON-00655-59); Ex. 233 (BUTTON-00757-00758); Ex. 230 (BUTTON-00716-725) at BUTTON-00724-00725)). Georgia-Pacific argues that even if such entities are not already shipping infringing dispensers into the United States, it is only a matter of time until they do so. *Id.* at 9 (citing Button Decl. ¶¶ 114-115).

In further allegations of a pattern of violation, Georgia-Pacific states that it has filed lawsuits in Europe against two European entities, that could enter the U.S. market. *Id.* at 9 (citing Button Decl. ¶¶ 104-105). Specifically, Georgia-Pacific explains that it has sued for the infringement of EP 1231823 B2, a foreign counterpart of the asserted patents by those entities' paper towel dispensers (Ex. 167 (GPITC-0202860-993) (translation at Ex. 166 (GPITC-0202840-59)); Ex. 164 (GPITC-0202807- 22) (translation at Ex. 165 (GPITC-0202823- 39))). Georgia-Pacific points to one suit that it has against Handelsagentur Plock GmbH of Germany for selling and distributing "a paper towel dispenser comprising a grounding mechanism for discharging any static electrical charges accumulating in the paper towel dispenser to a local ground through a grounding surface." *Id.* and n. 3 (citing Ex. 167 (GPITC-0202860-993) (translation at Ex. 166 (GPITC-0202840-59))). Similarly, Georgia-Pacific points to another suit it

## PUBLIC VERSION

has against Funny Hygiene AG in Switzerland, because its “sensor-towel dispenser ‘FUNNY-MAGIC’ (Item number: AG-753)” allegedly infringes Georgia-Pacific’s EP 1231823 B2 patent (Ex. 164 (GPITC-0202807-22 (translation at Ex. 165 (GPITC-0202823-39))). *Id.*

Georgia-Pacific next contends that there is difficulty in identifying the source of infringing products. *Id.* at 17. Georgia-Pacific argues that (i) visual inspection of paper towel dispensers in advertisements or in ordinary use does not reveal whether they infringe the asserted patents; (ii) the infringing dispensers themselves, as well as their packaging, often do not identify the manufacturer or distributor of the dispensers; (iii) the distributors of the infringing dispensers will not disclose the source of the dispensers; (iv) customs forms for imported dispensers may not list the manufacturer of the dispensers; (v) internet distribution, a prevalent mode of sale, lends itself to anonymity; (vi) even when a source of potentially infringing paper towel dispensers is identified, it is difficult for Georgia-Pacific to obtain a dispenser from manufacturers or foreign trading companies to confirm infringement; and (vii) there are a number of foreign sources of infringing dispensers. *Id.* at 19-28.

### *The IA’s Submission*

The IA agrees with the ALJ’s finding that conditions are ripe for circumvention of a limited exclusion order. IA Submission at 14 (citing RD at 4; 19 U.S.C. § 1337(d)(2)(A)). The IA observes that the undisputed evidence analyzed in the ALJ’s RD demonstrates that there is an established demand for the patented product in the U.S. market. *Id.* (citing RD at 5). Second, the IA submits that the evidence indicates that potential foreign manufacturers would benefit from broad marketing and distribution networks that already exist in the United States. *Id.* at 15. Finally, the IA submits that it is simple and inexpensive for a foreign entrepreneur to build or

## PUBLIC VERSION

retool a facility capable of producing the patented article. *Id.* at 16 (citing Button Decl. ¶¶ 75-81 & exhibits cited therein).

The IA also agrees with the ALJ's determination that "there is a pattern of violation" of Section 337. *Id.* at 17 (citing RD at 7). First, the IA states that evidence regarding accused products manufactured or sold by the fifteen respondents who entered into consent orders may be used as evidence of a "widespread pattern of unauthorized use" without breaching the Commission's policy against making a violation determination with regard to a settling respondent. *Id.* at 18 (citing RD at 8 n.10 (citing *Certain Coaxial Cable Connectors and Components Thereof and Products Containing Same*, Inv. No. 337-TA-650, Comm'n Op. at 59 (Apr. 14, 2010)); *Certain Plastic Molding Machines with Control Systems Having Programmable Operating Interfaces Incorporating General Purpose Computers, and Components Thereof II*, Inv. No. 337-TA-462, Comm'n Op. at 19-22 (Apr. 2, 2003)).

With respect to nonrespondents Yu Wei Products Co. Ltd., Shenzhen Nan Long Yuan Paper Products Co., Ltd., Supernalway Enterprises Co. Ltd., and Hygolet, the IA states that all four of these companies offer dispensers that appear identical to accused products such as the Stefco 94000 and NetPak Turkey Carplex dispensers. *Id.* at 18 (citing Button Decl. ¶¶ 123, 127, 131, 135). The IA submits that there is evidence of twenty-one additional nonrespondents that may infringe the asserted patents: Asian Tissue Products HK Co., Ltd.; Shenzhen Fortune Import & Export Co, Ltd.; Fanda Hygiene Co., Ltd.; Goldyes Cleantech & Hotel Ware Industry Co.; Gold Yes International (H.K.) Co., Ltd.; Huaguan Sanitary Wares Factory; Xiamen Win Dragon Corp.; Ningbo Power (Joro) Sanitary Electrical Appliance Co., Ltd.; Liaoning MEC Group Co., Ltd.; Shenzhen AOLQ Electronic Co., Ltd.; Cleanic Cleaning Equipment Ltd.; SunnyCare, Agio Group; S.R.S. Foreign Trade Co.; Kimvery Import & Export Co., Ltd.; Deniz International Trade

## PUBLIC VERSION

Co., Ltd.; Ideal (H.K.) Houseware Co., Ltd.; Ideal (Jinan) Machine Co., Ltd.; Shenzhen City has Sanitary Wares Co., Ltd.; Viking Kagit; Chengdu Minjiang International Trading Co., Ltd.; and Shandong Deli Trade Development Co., Ltd. *Id.* and n. 10 (citing Button Decl. ¶¶ 112-114, 139-41, 145-84 & exhibits cited therein.)

Finally, the IA notes that Georgia-Pacific has accused two European entities of infringing a similar European patent: Handelsagentur Plock GmbH (“Plock”) of Schwaig/Oberding, Germany and Funny Hygiene AG of Zurich, Switzerland. *Id.* at 19 (Compl.’s Stmt. Material Facts ¶¶ 110-11 (undisputed)).

The IA agrees that according to the undisputed evidence, it is rarely possible to determine the source of an infringing paper towel dispenser from either the product or its packaging, and that suppliers are generally unable or unwilling to disclose their sources to end users. *Id.* at 20 (citing Button Decl. ¶¶ 46, 51-52 & exhibits cited therein). [[

]] The IA states that one cannot identify the original source of an entry from its packaging, its customs documentation, or by asking the importer of record. IA Reply Submission at 2. In this connection, the IA states that it would be difficult for Customs and Border Protection to correctly enforce an exclusion order limited to products of certain manufacturers or distributors, as it is difficult to determine the source or sources of any given shipment of electronic paper towel dispensers. *Id.* at 3 (citing Georgia-Pacific Submission at 20-26 & exhibits cited therein).

The IA further submits that the complex distribution chain typical of the dispenser industry also tends to obscure the origin of a shipment of dispensers. IA Submission at 20 (citing



## PUBLIC VERSION

RD at 9-10). Moreover, the IA states that internet distribution, in particular, lends itself to anonymity. *Id.* (citing Button Decl. ¶ 43).

### c. Analysis

Section 337 sets forth the statutory requirements for the grant of a general exclusion order. 19 U.S.C. § 1337(d)(2). A party must meet the “heightened requirements of Section 337(d)(2)(A) or (d)(2)(B)” before the ITC has authority to issue a general exclusion order against products of nonrespondents. *Kyocera Wireless Corp. v. Int’l Trade Commission*, 545 F.3d 1340, 1358 (Fed. Cir. 2008). The Commission may issue a general exclusion order in this case if there is a likelihood of circumvention of a limited exclusion order under 19 U.S.C. § 1337(d)(2)(A), or if there is (i) a pattern of violation and (ii) difficulty in identifying the source of the products under 19 U.S.C. § 1337(d)(2)(B).

We agree with the ALJ, Georgia-Pacific, and the IA that the factual requirements for the issuance of a general exclusion order under both section 337(d)(2)(A) and (B) have been met. With respect to a likelihood of circumvention, Georgia-Pacific has demonstrated the interchangeability of manufacturers in a large distribution system, in which molds for manufacturing infringing products may be resold and/or noninfringing molds may be retooled at low cost to make the infringing products. Button Decl. ¶¶ 75-81; Ex. 37 at 63-69. [[

]] Further, there is a low cost of manufacturing dispensers, the product is not difficult to manufacture, and there are well-established distribution channels. Button Decl. at ¶¶ 40-41, 82, 85, 88-89, 96, 112, 115, 117 & 142-84). Indeed, there are abundant distributors and internet retailers who can sell these manufactured articles. *Id.*

## PUBLIC VERSION

With respect to the “pattern of violation,” Georgia-Pacific has shown infringement by the Defaulting Respondents, identified four nonrespondents that also may infringe the asserted patents, and identified 21 other nonrespondents that may infringe and could enter the market. *See* Button Decl. ¶¶ 112-114, 123, 127, 131, 135, 139-41, 145-84 & exhibits cited therein. Georgia-Pacific has also met its burden to establish that it is difficult to identify the source of infringing products. As noted by the IA, the products are often sold unlabeled. Button Decl. ¶ 48 & exhibits cited therein. Further, the manufacturing source of the Yu Wei and Shenzhen Nan Long Yuan dispensers, and certain dispensers available on eBay, remains unknown. *See* Button Decl. at ¶¶ 122, 130; Ex. 173 (GPITC-0204374-440).

Based on the foregoing, we agree with the ALJ that the statutory requirements for a general exclusion order have been satisfied under Sections 337(d)(2)(A) and (B). *See* 19 U.S.C. §§ 1337(d)(2)(A) and (B). Thus, the Commission determines that issuance of a general exclusion order would be appropriate.

### **2. Cease and Desist Orders**

#### **a. The ALJ’s Recommended Determination**

The ALJ recommended that the Commission issue cease and desist orders against the domestic defaulting Respondents StefcO Industries, Inc. and Cellynne Corporation. RD at 11 (citing *Certain Agricultural Tractors Under 50 Power Take-Off Horsepower*, Inv. No. 337-TA-380, Comm’n Op. at 44, n.124 (March 12, 1997)).

#### **b. Comments of Georgia-Pacific and the IA**

Georgia-Pacific submits that there is undisputed evidence that related entities StefcO and Cellynne currently maintain a significant inventory of infringing dispensers in the United States. Georgia-Pacific Submission at 33. [[

## PUBLIC VERSION

]]

Georgia-Pacific asserts that import records indicate that Supernalway and a related entity, Asian Tissue Products Co. Ltd. (H.K.), exported over 28,000 plastic dispensers to Stefc0 and Cellynne. *Id.* (citing Am. Compl. at Ex. 14; Ex. 177 (GPITC-0206877-0207085); Ex. 39 (JETPOWER-000006-09) at JETPOWER-000008; Button Decl. at ¶¶ 130-131; Ex. 174 (GPITC-0204401-500); Ex. 179 (GPITC-0207126); *see* Ex. 57 (Vida Dep.) at 174:21-175:1)).

The IA submits that entry of cease and desist orders against Stefc0 and Cellynne are appropriate because the Commission may presume that domestic respondents Stefc0 and Cellynne maintain commercially significant inventories of subject articles. IA Submission at 21-22.

### **c. Analysis**

The evidence cited by Georgia-Pacific indicates that Stefc0 and Cellynne maintain significant domestic inventories of infringing products. In this connection, we agree that issuance of cease and desist orders would be appropriate.

### **C. Public Interest Considerations**

The Commission may issue remedial orders if the requirements for the remedial orders are met - - in this case, a general exclusion order and cease and desist orders - - and if issuance of the orders would not have an adverse effect on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers. 19 U.S.C. §§1337(d)(1) and (f)(1).

## PUBLIC VERSION

### **1. The ALJ's Recommended Determination**

Public interest was beyond the scope of the ALJ's RD, as with most investigations. *See* Commission Rule 210.50, 19 C.F.R. § 210.50 (public interest is the unique province of the Commission unless the Commission asks the ALJ to take evidence on this topic). In this connection, the Commission solicited submissions from the public on remedy, the public interest, and bonding in the notice of its determination not to review the ALJ's finding of violation. *76 Fed. Reg.* 53154 (Aug. 25, 2011). Georgia-Pacific and the IA filed submissions and reply submissions with respect thereto.

### **2. Comments of Georgia-Pacific and the IA**

Georgia-Pacific and the IA both contend that entry of a general exclusion order and cease and desist orders would not adversely affect the public interest. *See* Georgia-Pacific Submission at 29-30; IA Submission at 22-23; Georgia-Pacific Reply Submission at 2. Specifically, Georgia-Pacific directed its analysis to the public interest factors as they relate to a general exclusion order. Georgia-Pacific Submission at 29-30. The IA addressed the public interest factors as they relate to both a general exclusion order and to cease and desist orders. IA Submission at 22-23. Georgia-Pacific agreed with the IA's analysis. Georgia-Pacific Reply Submission at 2.

#### *Georgia-Pacific's Submission*

Georgia-Pacific states that there is an abundance of non-infringing paper towel dispensers and distributors who offer non-infringing alternatives to the accused paper towel dispensers, including several offered by the respondents themselves. Georgia-Pacific Submission at 31 (citing Ex. 32 (Draco Dep.) at 130-131; Ex. 57 (Vida Dep.) at 48:25-49:4 & 69:3-10; Ex. 46 (Update Dep.) at 19:9-20:7; Exs. 25-28 (AIM-ITC\_0000010-17); Ex. 43 (KPLP003-18) at

## PUBLIC VERSION

KPLP016; Ex. 41 (Kruger Dep.) at 16:2-17:8, 17:19-18:5, 18:22-20:11, 25:20- 25, 68:17-70:25, 74:1-75:5, 101:18-102:17 & 224:16-22; Ex. 45 (NATURY-ITC-0000001-09) at NATURY-ITC-0000001-02; Ex. 44 (Natory Dep.) at 20:23-22:3, 25:12-27:18 & 36:25-37:24)). Georgia-Pacific adds that, to the extent that nonrespondent dispensers are excluded from entry into the United States, a similar redesign of the dispensers would likely place them outside the scope of the general exclusion order (provided that an infringing grounding mechanism is not reattached after entry into the United States). *Id.* Georgia-Pacific also argues that the low quality of many of the infringing products could negatively impact health and welfare. Georgia-Pacific Submission at 31-32.

### *The IA's Submission*

The IA states that she is unaware of any public interest concerns that would preclude issuance of a general exclusion order and cease and desist orders. IA Submission at 23.

### **3. Analysis**

We agree with Georgia-Pacific and the IA that a general exclusion order and cease and desist orders would not harm the public interest. There is no evidence that domestic demand for towel dispensers cannot be met by Georgia-Pacific or by the sale of non-infringing dispensers from respondents and nonrespondents. The record does not support a finding that issuance of a general exclusion order and cease and desist orders are precluded by consideration of the public interest factors set out in section 337(d)(1) and (f)(1).

### **D. BOND DURING PERIOD OF PRESIDENTIAL REVIEW**

During the 60-day period of Presidential review, imported articles otherwise subject to a remedial order are entitled to conditional entry under bond, pursuant to section 337(j)(3). The

## PUBLIC VERSION

amount of the bond is specified by the Commission and must be an amount “sufficient to protect the complainant from any injury.” 19 U.S.C. § 1337(j)(3); 19 C.F.R. § 210.50.

The Commission often considers the differential in sales price between the patented product made by the domestic industry and the lower price of the infringing imported product. *Certain Microsphere Adhesives, Processes for Making Same, and Products Containing Same, Including Self-Stick Repositionable Notes*, Inv. No. 337-TA-336, Comm’n Op. at 24 (1995). Where reliable price comparison is impossible, the Commission has set the bond at a reasonable royalty. *Certain Digital Televisions and Certain Products Containing Same and Methods of Using Same*, Inv. No. 337-TA-617, Comm’n Op. at 18-19 (Apr. 23, 2009).<sup>5</sup> Where there is neither information on the price of the subject merchandise nor information which would allow one to determine a reasonable royalty, the Commission has set the bond at 100% of the entered value of the imported infringing products. *Certain Energy Drink Products*, Inv. No. 337-TA-678, Comm’n Op. on Remedy, the Public Interest, and Bonding (Sept. 8, 2001).

### 1. **The ALJ’s Recommended Determination**

Because Georgia-Pacific leases its dispensers, it argued to the ALJ that a price-differential for the sale of dispensers cannot be calculated. RD at 12. The ALJ recommended that the bond for the Accused Products of defaulting respondents should be set at 100 percent. RD at 12-13. However, the ALJ did not recommend imposition of a bond against any nonrespondents, in the event a general exclusion order issues. *Id.* at 13. The ALJ reasoned that many nonrespondents lease their dispensers as well, and found that Georgia-Pacific has not set forth any information to show that a price differential would not be calculable with respect to

---

<sup>5</sup> This is especially appropriate where the technology is expensive, where the asserted patent claim is directed to a component of an expensive product, or where there is information on royalties from previous license agreements in the absence of information on price of the subject merchandise. *See id.*

## PUBLIC VERSION

such nonrespondents. *Id.* (citing SMF No. 158, which discusses that many entities in the industry *do* lease their dispensers; *Coaxial Cable* at 63.)

### 2. Georgia-Pacific and the IA's Submissions

Georgia-Pacific and the IA both argue that a reasonable royalty rate cannot be calculated, and contend that a bond of 100% of entered value is appropriate. Moreover, counter to the RD, they contend that this bond would be appropriate for all covered products, regardless of whether they come from respondents or nonrespondents.

Georgia-Pacific states that the respondents and nonrespondents sell rather than lease their products. Georgia-Pacific Submission at 34 (citing Ex. 39 (JETPOWER-000006-09) at JETPOWER-000006-08; Ex. 59 (VID0003-11) at VID0003; Ex. 22 (AIM Dep.) at 90-96, 113; Ex. 23 (AIM-ITC 0000001); Ex. 29 (AIM-ITC 0000082); Ex. 31 (AIM-ITC 0000111); Ex. 32 (Draco Dep.) at 166-67; Ex. 53 (Update Dep.) at 79; Ex. 75 (PDGM-0000010); Ex. 44 (Natory Dep.) at 41:1-21 (purchase of Yu Wei dispensers); Ex. 181 (GPITC-0207216-20); Ex. 182 (GPITC-0207221-22); Button Decl. at ¶¶ 137-138 (purchase of eBay dispensers)). Georgia-Pacific further agrees with the IA that record evidence establishes that a significant number of nonrespondents import infringing towel dispensers at unknown sales prices. Georgia-Pacific Reply Submission at 2. In this connection, Georgia-Pacific argues that a price comparison between the price of the patented domestic industry product and the infringing products is unworkable. Georgia-Pacific Submission at 35 (citing *Certain Neodymium-Iron-Boron Magnets, Magnet Alloys, and Articles Containing the Same*, Inv. No. 337-TA-372, Comm'n Op. on Remedy, the Public Interest and Bonding at 15 (1997)); *see also* Georgia-Pacific Reply Submission at 3 (citing *Certain Foam Footwear*, Inv. No. 337-TA567 (Remand), Comm'n Op. at 9 (2001)). [[

## PUBLIC VERSION

]] In this connection, Georgia-Pacific argues that there can be no reasonable royalty rate. *Id.*

The IA states that there is insufficient record evidence for the Commission to calculate a bond amount based on a reasonable price differential for either the defaulting respondents or for nonrespondents subject to the general exclusion order. IA Submission at 25. The IA submits that there are no royalty rates available and there is only limited evidence of the prices charged by the defaulting respondents. *Id.* at 24 (citing RD at 12). The IA argues that any effort to compare prices is complicated by the fact that some manufacturers, including Georgia-Pacific, lease their dispensers to encourage paper towel sales, while others, apparently including the defaulting respondents, sell the dispensers outright. *Id.* at 24-25 (citing RD at 12; Compl. ¶¶ 128; 219 (describing Georgia-Pacific's purchases of Stefc0 and NetPak dispensers in the United States)). The IA further states that a significant number of nonrespondents import infringing paper towel dispensers at unknown sales prices. *Id.* at 25(citing RD at 8-9; Button Decl. ¶¶ 112-35, 139-41, 145-84 & exhibits cited therein).

The IA notes that Georgia-Pacific has not directly addressed the ALJ's recommendation that the bond be set at zero for nonrespondents, but has argued that the bond be set at 100% for respondents and nonrespondents alike. IA Reply Submission at 5. The IA argues that a bond of 100% for respondents and nonrespondents is necessary to protect Georgia-Pacific during the period of Presidential review. *Id.*

### 3. Analysis and Recommendation

It is not possible to make a price comparison because Georgia-Pacific leases its dispensers while most respondents and nonrespondents sell their dispensers. Ex. 39 (JETPOWER-000006-09) at JETPOWER-000006-08; Ex. 59 (VID0003-11) at VID0003; Ex. 22



## PUBLIC VERSION

(AIM Dep.) at 90-96, 113; Ex. 23 (AIM-ITC 0000001); Ex. 29 (AIM-ITC 0000082); Ex. 31 (AIM-ITC 0000111); Ex. 32 (Draco Dep.) at 166-67; Ex. 53 (Update Dep.) at 79; Ex. 75 (PDGM-0000010); Ex. 44 (Natory Dep.) at 41:1-21 (purchase of Yu Wei dispensers); Ex. 181 (GPITC-0207216-20); Ex. 182 (GPITC-0207221-22); Button Decl. at ¶¶ 137-138 (purchase of eBay dispensers). Because it is not possible to ascertain a reliable price of subject imports, we examine whether there is information in the record which would allow the Commission to ascertain a reasonable royalty. The respondents in this investigation who did not default were terminated by consent order. Therefore, there are no settlement agreements to establish a reasonable royalty rate. In the absence of reliable information on price or a reasonable royalty, especially through no fault of the complainant, the Commission has set the bond at 100% of entered value. *See, e.g., Certain Energy Drink Products*, Inv. No. 337-TA-678.

Accordingly, the Commission determines to set the bond at 100 percent of the entered value of any covered electronic paper towel dispensing devices and components thereof for importations covered by the general exclusion order and cease and desist orders to prevent any harm to Georgia-Pacific during the period of Presidential review.

### III. CONCLUSION

For the reasons set forth in this opinion, the Commission has determined to issue a general exclusion order with respect to claims 4-7 of the '815 patent, claims 8-22 of the '856 patent", claims 1-3 of the '289 patent, and claims 4-22 of the '274 patent, and cease and desist orders against Stefc0 and Cellynne with respect to the same claims. The Commission has also determined that issuance of the remedial orders is not precluded by consideration of the public interest factors and that the amount of bond to permit entry during the Presidential review period should be set at 100% of the entered value of the subject articles.

**PUBLIC VERSION**

By order of the Commission.

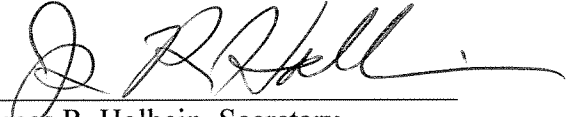
A handwritten signature in black ink, appearing to read "J. R. Holbein", is written over a horizontal line.

James R. Holbein  
Secretary to the Commission

Issued:

**PUBLIC CERTIFICATE OF SERVICE**

I, James R. Holbein, hereby certify that the attached **NOTICE** has been served by hand upon, the Commission Investigative Attorney, Lisa A. Murray, Esq. and the following parties as indicated on **January 20, 2012**.



James R. Holbein, Secretary  
U.S. International Trade Commission  
500 E Street, SW, Room 112  
Washington, DC 20436

**On Behalf of Complainant Georgia-Pacific Consumer  
Products LP:**

Scott J. Pivnick, Esq.  
**ALSTON & BIRD LLP**  
950 F Street, NW  
Washington, DC 20004

- Via Hand Delivery
- Via Overnight Delivery
- Via First Class Mail
- Other: \_\_\_\_\_



**UNITED STATES INTERNATIONAL TRADE COMMISSION**  
**Washington, D.C.**

**In the Matter of**

**CERTAIN ELECTRONIC PAPER  
TOWEL DISPENSING DEVICES AND  
COMPONENTS THEREOF**

**Investigation No. 337-TA-718**

**NOTICE OF COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL  
DETERMINATION GRANTING COMPLAINANT'S MOTION FOR SUMMARY  
DETERMINATION OF VIOLATION OF SECTION 337  
BY DEFAULTING RESPONDENTS**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 36) of the presiding administrative law judge ("ALJ") granting complainant's motion for summary determination of violation of Section 337 by defaulting respondents in Inv. No. 337-TA-718, *Certain Electronic Paper Towel Dispensing Devices and Components Thereof*.

**FOR FURTHER INFORMATION CONTACT:** Jia Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-4737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.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 May 21, 2010, based on a complaint filed by Georgia-Pacific Consumer Products LP ("Georgia-Pacific") of Atlanta, Georgia. 75 *Fed. Reg.* 28651 (May 21, 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 electronic paper towel dispensing devices and components thereof by reason of infringement of various claims of United States Patent Nos. 6,871,815; 7,017,856; 7,182,289; and 7,387,274. The complaint, as amended, named as respondents Kruger Products

LP of Mississauga, Ontario, Canada; KTG USA LP of Memphis, Tennessee; StefcO Industries, Inc. and Cellynne Corporation (collectively, "Stefco"), both of Haines City, Florida; Draco Hygienic Products Inc. of Ontario, California; NetPak Electronic Plastic and Cosmetic, Inc. of Chicago, Illinois; NetPak Elektronik Plastik ve Kozmetik Sanayi, Ve Ticaret Ltd. of Izmir, Turkey ("NetPak"); Paradigm Marketing Consortium, Inc. and United Sourcing Network Corp., both of Syosset, New York; New Choice (H.K.) Ltd. of Shatin, Hong Kong; Vida International Inc. of Taipei, Taiwan; Jet Power International Limited, of Guangdong, China; WINCO Industries Co. and DWL International Trading Inc., both of Lodi, New Jersey; Franklin Financial Management, Inc. d/b/a Update International of Los Angeles, California; Alliance in Manufacturing LLC of St. Louis, Missouri; Ko-Am Corporation Inc. d/b/a Janitor's World of Dallas, Texas; and Natory S.A. de C.V. of Veracruz, Mexico. Except for StefcO and NetPak, all other respondents have been terminated based on consent orders.

On December 30, 2010, the ALJ issued an initial determination finding StefcO and NetPak in default. On February 9, 2011, Georgia-Pacific filed a motion pursuant to Commission Rule 210.18 (19 C.F.R. § 210.18) for a summary determination of violation of Section 337 by StefcO and NetPak. Georgia-Pacific requested that the ALJ recommend issuance of a general exclusion order and a cease and desist order against the defaulting respondents. On February 22, 2011, the Commission investigative attorney filed a response supporting the motion.

On July 12, 2011, the ALJ issued the subject ID granting Georgia-Pacific's motion for summary determination and his recommended determination on the issues of remedy and bonding. No petitions for review were filed.

Having examined the record of this investigation, including the ALJ's final ID, the Commission has determined not to review the ID.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) 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 *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders 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 or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 *Fed. Reg.* 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.

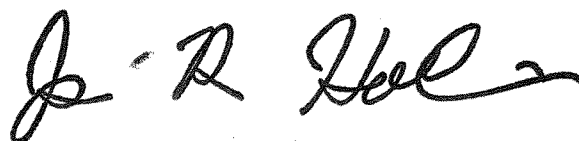
**WRITTEN SUBMISSIONS:** Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding.

Complainant and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the dates that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on Tuesday, September 6, 2011. Reply submissions must be filed no later than the close of business on Tuesday, September 13, 2011. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in sections 210.42-46 and 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42-46 and 210.50).

By order of the Commission.



James R. Holbein  
Secretary to the Commission

Issued: August 19, 2011

**PUBLIC CERTIFICATE OF SERVICE**

I, James R. Holbein, hereby certify that the attached **NOTICE** has been served by hand upon, the Commission Investigative Attorney, Lisa A. Murray, Esq. and the following parties as indicated on **August 19, 2011**.



James R. Holbein, Secretary  
U.S. International Trade Commission  
500 E Street, SW, Room 112  
Washington, DC 20436

**On Behalf of Complainant Georgia-Pacific Consumer  
Products LP:**

Paul F. Brinkman, Esq.  
**ALLSTON & BIRD LLP**  
950 F Street, NW  
Washington, DC 20004

- ( ) Via Hand Delivery
- ( ) Via Overnight Delivery
- (  ) Via First Class Mail
- ( ) Other: \_\_\_\_\_



**PUBLIC VERSION**

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

**Washington, D.C.**

**In the Matter of**

**CERTAIN ELECTRONIC PAPER TOWEL  
DISPENSING DEVICES AND COMPONENTS  
THEREOF**

**Inv. No. 337-TA-718**

**ORDER NO. 36: INITIAL DETERMINATION GRANTING COMPLAINANT'S  
MOTION FOR SUMMARY DETERMINATION OF VIOLATION  
OF SECTION 337 BY DEFAULTING RESPONDENTS; AND  
  
RECOMMENDED DETERMINATION ON THE ISSUES OF  
REMEDY AND BOND WITH RESPECT TO DEFAULTING  
RESPONDENTS**

(July 12, 2011)

**Table of Contents**

INITIAL DETERMINATION GRANTING MOTION FOR SUMMARY DETERMINATION OF VIOLATION OF SECTION 337 BY DEFAULTING RESPONDENTS ..... - 1 -

I. THE PARTIES..... - 5 -

    A. Complainant ..... - 5 -

    B. The Stefco Respondents ..... - 5 -

    C. NetPak ..... - 5 -

II. THE ASSERTED PATENTS..... - 6 -

III. Importation..... - 14 -

IV. Infringement..... - 16 -

    A. The ‘815 Patent. .... - 17 -

        1. The Stefco Dispenser ..... - 17 -

        2. The NetPak Dispensers..... - 20 -

    B. The ‘856 Patent. .... - 21 -

        1. The Stefco Dispenser ..... - 21 -

        2. The NetPak Dispensers..... - 28 -

    C. The ‘289 Patent. .... - 33 -

        1. The Stefco Dispenser ..... - 33 -

        2. The NetPak Dispensers..... - 35 -

    D. The ‘274 Patent. .... - 37 -

        1. The Stefco Dispenser ..... - 37 -

        2. The NetPak Dispensers..... - 43 -

V. Validity..... - 48 -

VI. Domestic Industry ..... - 48 -

    A. Economic Prong. .... - 49 -

    B. Technical Prong..... - 50 -

        1. ‘815 Patent, Claim 4. .... - 50 -

        2. ‘856 Patent, Claim 15. .... - 51 -

        3. ‘289 Patent, Claim 1. .... - 51 -

        4. ‘274 Patent, Claim 4. .... - 52 -

VII. Conclusion ..... - 53 -

RECOMMENDED DETERMINATION ON REMEDY AND BOND WITH RESPECT TO DEFAULTING RESPONDENTS STEFCO AND NETPAK..... - 1 -

I. REMEDY AND BONDING..... - 1 -

    A. *Applicable Law*..... - 1 -

        1. General Exclusion Order. .... - 1 -

        2. Limited Exclusion Order. .... - 2 -

    B. *Remedy with Respect to the ‘815, ‘856, ‘289, and ‘274 Patents* ..... - 2 -

        1. Circumvention of a Limited Exclusion Order ..... - 3 -

        2. Pattern of Violation; Difficulty Identifying Source of Infringing Products..... - 7 -

II. Cease and Desist Order ..... - 10 -

III. Bond During Presidential Review Period ..... - 11 -

IV. Conclusion ..... - 13 -

**PUBLIC VERSION**

**INITIAL DETERMINATION GRANTING MOTION FOR SUMMARY  
DETERMINATION OF VIOLATION OF SECTION 337 BY DEFAULTING  
RESPONDENTS**

On February 9, 2011, Complainant Georgia-Pacific Consumer Products LP moved for summary determination with respect to its assertions that defaulting<sup>1</sup> Respondents Stefc Industries, Inc. and Cellynne Corporation (collectively, “Stefco”) and defaulting Respondent NetPak Elektronik Plastik ve Kozmetik Sanayi Ve Ticaret Ltd. (“NetPak”) have violated certain claims of U.S. Patent No. 6,871,815 (the “‘815 patent”), U.S. Patent No. 7,017,856 (the “‘856 patent”), U.S. Patent No. 7,182,289 (the “‘289 patent”), and U.S. Patent No. 7,387,274 (the “‘274 patent”). (Motion Docket No. 718-028.)

Complainant argues that the undisputed facts show that (i) Stefc’s 92004 Electronic Roll Towel Dispenser (the “Stefco Dispenser”) and NetPak’s Carpex Touchless Paper Towel Dispenser and Paradigm Emerald Dispenser (the “NetPak Dispensers”) (collectively, the “Accused Products”) were sold for importation, imported, or sold after importation into the United States; (ii) the Stefc and NetPak Dispensers infringe one or more of claims 4-7 of the ‘815 patent, claims 8-22 of the ‘856 patent, claims 1-3 of the ‘289 patent, and claims 4-22 of the ‘274 patent, each of which is valid and enforceable; (iii) there is a domestic industry relating to the articles protected by these patents; and (iv) a general exclusion order is necessary because there a motivation for manufacturers and distributors to circumvent a limited exclusion order and because there is a pattern of violation of Section 337 coupled with a difficulty identifying the source of infringing products. (Mot. Mem. at 20, 22, 46-47.)

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<sup>1</sup> (See Order No. 28 (unreviewed).)

## PUBLIC VERSION

On February 22, 2011, the Commission Investigative Staff (“Staff”) filed a response supporting Complainant’s motion. Staff argues that summary determination is warranted because there are no disputed material facts. (Staff Resp. at 2.) According to Staff, Complainant “has made the necessary showing that: (1) a domestic industry exists as to the patents at issue; (2) the patents at issue are presumed valid and there is no reason to challenge their validity; (3) the defaulting Respondents have imported into the United States, sold for importation, or sold within the United States after importation the accused products; and (4) the accused products infringe the asserted claims of the patents at issue.” (*Id.*) Staff agrees that a general exclusion order should issue with respect to the asserted patent claims. (*Id.*) However, Staff disputes all of Complainant’s assertions to the extent Complainant suggests that any of the other Respondents in this Investigation acknowledged infringement by entering into consent orders. (*Id.* at 17-18.) Staff points out that consent orders are an alternative to a finding on violation and therefore it is inappropriate and misleading for Complainant to allege that fourteen Respondents admitted to infringement just because they entered into consent orders. (*Id.*)

Based on the motion papers and related responses, the Administrative Law Judge finds as follows.

The Commission Rules permit a party to “move with any necessary supporting affidavits for a summary determination in his favor upon all or any part of the issues to be determined in the investigation.” 19 C.F.R. § 210.18(a). Summary determination “shall be rendered if pleadings and any depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a summary determination as a matter of law.” 19 C.F.R. § 210.18(b). Summary determination

## PUBLIC VERSION

under Commission Rule 210.18 is analogous to summary judgment under Federal Rule of Civil Procedure 56. *See Certain Asian-Style Kamaboko Fish Cakes*, Inv. No. 337-TA-378, Order No. 15 at 3 (U.S.I.T.C., May 21, 1996) (unreviewed initial determination).

The moving party bears the initial burden of establishing that there is an absence of a genuine issue of material fact and that it is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). When such an initial showing is established, the burden shifts to the opposing party, who “must set forth specific facts showing that there is a genuine issue for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). To avoid summary judgment, the non-moving party must produce evidence of sufficient caliber to support judgment in its favor. *See Anderson*, 477 U.S. at 252. If the responding party fails to make such a showing, the moving party is then entitled to judgment as a matter of law. *See Celotex*, 477 U.S. at 325. Here, while Staff is permitted to set forth specific facts showing there is a genuine issue for trial, StefcO and NetPak, for their part, have waived the right to contest the allegations at issue in the Investigation. 19 C.F.R. § 210.16(b)(3). However, there is an additional consideration with respect to the evidentiary standard needed to support summary determination here.

Complainant has not chosen to apply to the Commission for immediate relief against StefcO and NetPak in the form of a limited exclusion order pursuant to Commission Rule 210.16(c)(1), but instead is requesting that the Administrative Law Judge recommend a general exclusion order.<sup>2</sup> *See* Commission Rule 210.16(c)(2); 19 U.S.C. § 1337(g)(2). For a limited exclusion order, “the Commission shall presume the facts alleged in the complaint to be true[.]”<sup>3</sup>

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<sup>2</sup> Only in the event that the Commission does not find a general exclusion order is warranted does Complainant request a limited exclusion order. (Mot. Mem. at 135, n.38.) Staff agrees that at a minimum, a limited exclusion order should issue against StefcO and NetPak. (Staff Resp. at 18.)

<sup>3</sup> 19 U.S.C. § 1337(g)(1); Commission Rule 210.16(c)(1).

PUBLIC VERSION

but there is no equivalent presumption when general exclusion orders are sought, because such orders “are directed to goods from all sources, including future and unknown current importers.”

*Certain Plastic Molding Machines With Control Systems Having Programmable Operator Interfaces Incorporating General Purpose Computers, and Components Thereof*, Inv. No.

337-TA-462, Comm’n Op. at 6 (U.S.I.T.C., April 2, 2003) (“*Molding Machines*”). For the

Commission to issue a general exclusion order in an investigation, regardless of whether there are appearing or defaulting respondents,<sup>4</sup> a complainant must establish a Section 337 violation “by substantial, reliable, and probative evidence. . . .” 19 U.S.C. § 1337(g)(2)(B); 5 U.S.C. § 556;

*Certain Sildenafil or Any Pharmaceutically Acceptable Salt Thereof, Such as Sildenafil Citrate, and Products Containing Same*, Inv. No. 337-TA-489, Comm’n Op. on Remedy, the Public

Interest, and Bonding at 4<sup>5</sup> (U.S.I.T.C., February 6, 2004) (“*Sildenafil*”); *Certain Foam Masking Tape*, Inv. No. 337-TA-528, Order No. 41 at 19-20 (U.S.I.T.C., June 21, 2005). Thus, for the

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<sup>4</sup> There is some question whether Section 337(g)(2) should apply instead of Section 337(d)(2) with respect to Stefc0 and NetPak. (*Compare* Mot. Mem. at 41-43 with Staff Resp. at 11-12.) Stefc0 and NetPak appeared in the Investigation before being found in default—essentially for failure to participate in the Investigation. Although Complainant argues that Section 337(g)(2) should not apply (Mot. Mem. at 42), the Commission did apply Section 337(g)(2) in an investigation where respondents had made an appearance because they did not participate in the investigation. See *Certain Sucralose, Sweeteners Containing Sucralose, and Related Intermediate Compounds Thereof*, Inv. No. 337-TA-604, Comm’n Op. at 99-100 (U.S.I.T.C., April 28, 2009) (“*Certain Sucralose*”). However, the Administrative Law Judge need not reach a determination as to which of the two sections applies because they both use the same standards.

<sup>5</sup> According to the Commission:

We find that the issuance of a general exclusion order in the circumstances of this case is not governed by section 337(g)(2), since the provision expressly requires that no respondent appear to contest the investigation and it is clear that respondents Ezee and Biovea did. That no discovery may have been taken from those two respondents prior to action on their termination from the investigation does not change the fact of their appearance to contest the investigation. Section 337(g)(2) therefore cannot apply, and the proper legal framework is section 337(d)(2). However, the non-applicability of section 337(g)(2) does not affect the standard for finding a violation of section 337. This is because the adjudicative provisions of the Administrative Procedure Act, which apply to section 337 investigations, provide that a sanction or order may not be issued unless supported by “reliable, probative, and substantial evidence.” 5 U.S.C. § 556. Thus, a violation of section 337 may not be found unless supported by “reliable, probative, and substantial evidence.” We see no difference between this standard and the “substantial, reliable, and probative evidence” standard of section 337(g)(2).

## PUBLIC VERSION

remedy it seeks, Complainant must show “by substantial, reliable, and probative evidence” that Stefc0 and NetPak have violated Section 337 with respect to the ‘815, ‘856, ‘289, and ‘274 patents.

### I. THE PARTIES.

#### A. Complainant

Georgia-Pacific Consumer Products LP is a limited partnership formed pursuant to the laws of Delaware with its principal place of business in Atlanta, Georgia. (Second Amended Complaint at 3.) Complainant manufactures and distributes tissue, pulp, and paper, as well as related products, such as paper towel dispensers. (*Id.* at 2-3.)

#### B. The Stefc0 Respondents

Respondent Stefc0 Industries, Inc. is a Florida corporation with its principal place of business in Haines City, Florida. (Second Amended Complaint at 5.) Respondent Cellynne Corporation is a Florida corporation, with its principal place of business in Haines City, Florida. (*Id.*) Stefc0 Industries, Inc. and Cellynne Corporation “are in the business of importing and selling within the United States pulp, tissue and paper towel products for in-home and commercial use, including imported electronic paper towel dispensing devices.” (*Id.*) Stefc0 Industries, Inc. advertises itself as a “Cellynne Holdings Company.” (Complaint, Ex. 14 at 16.)

#### C. NetPak.

Respondent NetPak Elektronik Plastik ve Kozmetik Sanayi Ve Ticaret Ltd. is a corporation formed pursuant to the laws of Turkey, with its principal place of business in İzmir, Turkey. (Second Amended Complaint at 6.) NetPak is in the business of selling for importation, importing,

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*Sildenafil*, at 4.



and selling within the United States hygienic products for in-home and commercial use, including imported electronic paper towel dispensing devices. (*Id.*)

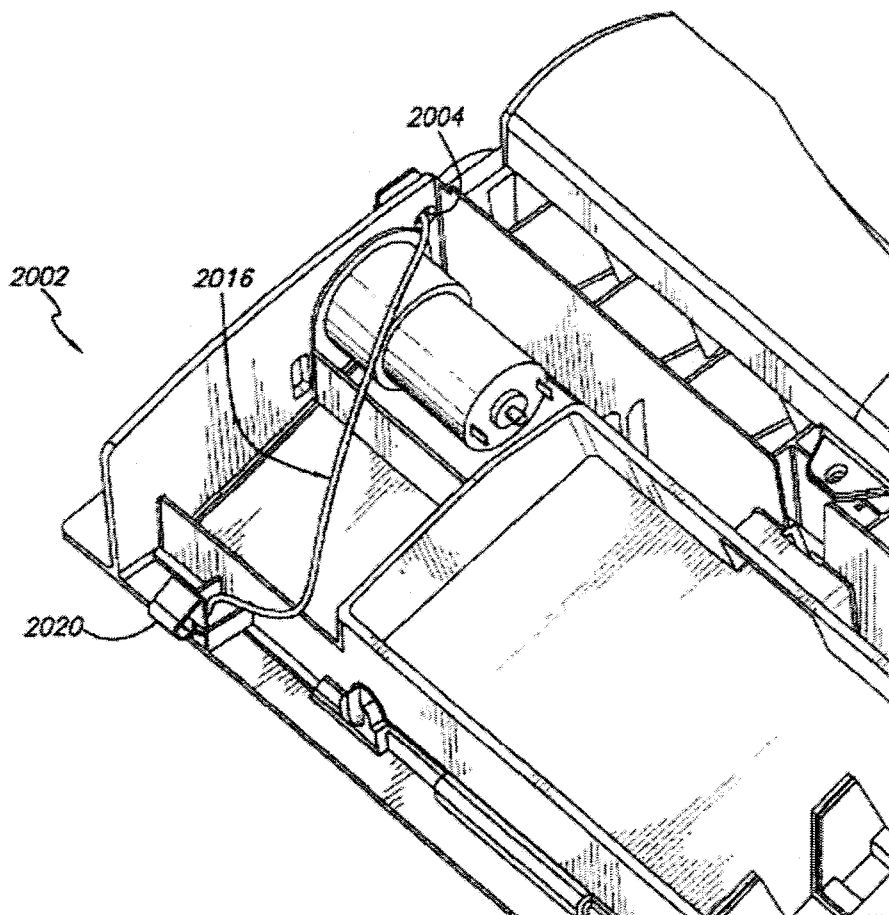
## II. THE ASSERTED PATENTS.

### U.S. Patent No. 6,871,815.

This Investigation concerns the '815 patent, titled "Static Build Up Control in Electronic Dispensing Systems," which resulted from a continuation-in-part application claiming priority to U.S. Patent Application No. 09/780,733. (Complaint, Ex. 1 at GPITC-0000002.) The '815 patent was filed on September 27, 2001, and issued on March 29, 2005. The '815 patent names John R. Moody and Joshua M. Broehl as the inventors, and was assigned to Georgia-Pacific Corporation and later to Complainant. (*Id.*; Complaint, Ex. 6.)

The '815 patent discloses paper dispensers that incorporate ways to dissipate static charges to a local ground. (Complaint, Ex. 1 at Abstract.) The specification teaches that a high conductivity grounding wire may be used to connect internal dispenser components that are subject to accumulating static electric charge "to an electrical mechanical contact on the outside of the dispenser." (*Id.* at 14:54-60.)

FIG. 12



(*Id.* at Fig. 12.) For example, Figure 12 shows grounding wire **2016** connected to spring grounding clip **2020**. (*Id.* at 15:22-58.) Static electric charge picked up by the nib rollers passes through the grounding wire **2016** to the wall contact (spring grounding clip **2020**). (*Id.*)

Complainant is asserting four claims from the '815 patent against Stefc0 and NetPak, one of which is independent:

4. A paper dispenser comprising:
  - a support adapted to hold a roll of a paper;
  - a motor driven feed mechanism adapted to receive and dispense paper from the roll;
  - at least one battery electrically coupled to the motor driven feed mechanism;
  - a surface contact spring adapted to directly contact a mounting surface external to the dispenser when the dispenser is affixed to the mounting surface; and

## PUBLIC VERSION

at least one low impedance wire having a first end electrically coupled to the spring and a second end coupled to a surface integral to the dispenser.

5. The dispenser of claim 4, wherein the feed mechanism includes a nib roller and the second end of the at least one low impedance wire is coupled to the nib roller.

6. The dispenser of claim 5, wherein the dispenser further comprises a spring contact coupling the second end of the at least one low impedance wire to the nib roller.

7. The dispenser of claim 5, wherein the nib roller includes a shaft and the spring contact couples the second end of the at least one low impedance wire to the shaft.

(*Id.* at 17:10-18:14.)

### **U.S. Patent No. 7,017,856.**

The '856 patent is titled "Static Build-Up Control in Dispensing System," and resulted from a continuation of U.S. Patent Application No. 09/966,124 (issued as the '815 patent), which was a continuation-in-part application claiming priority to U.S. Patent Application No. 09/780,733. (Complaint, Ex. 2 at GPITC-0000037.) The '856 patent was filed on March 23, 2004, and issued on March 28, 2006. (*Id.*) The '856 patent names John R. Moody and Joshua M. Broehl as the inventors, and was assigned to Georgia-Pacific Corporation and later to Complainant. (*Id.*; Complaint, Ex. 6.)

The '856 patent concerns a method of grounding a dispenser. (Complaint, Ex. 2 at Abstract.) Static electric charge that has accumulated on internal elements of the dispenser is discharged through a low impedance path connected to a surface contact spring and then to the external mounting surface. (*Id.*)

Complainant is asserting 15 claims of the '856 patent against Stefc0 and NetPak, two of which are independent:

8. A dispenser for dispensing flexible sheet material comprising:  
a chassis including a mounting member adapted to affix the chassis to a support surface;

## PUBLIC VERSION

- a feed mechanism affixed to the chassis, the feed mechanism including at least one roller and being adapted to advance sheet material from a roll of sheet material across the roller;
  - an electronic controller affixed to the chassis and adapted to control dispensation of the sheet material; and
  - a conductive path extending from the roller toward the mounting member, wherein the conductive path is adapted to contact the support surface when the chassis is affixed thereto and to discharge static electricity accumulated on the at least one roller to the support surface.
9. The dispenser of claim 8, wherein the roller includes a roller shaft and the conductive path includes a conductive contact adapted to contact the roller shaft.
10. The dispenser of claim 9, wherein the conductive contact is spring biased against the roller shaft.
11. The dispenser of claim 10, wherein the conductive contact comprises a compression spring.
12. The dispenser of claim 8, wherein the support surface comprises a wall.
13. The dispenser of claim 12, where I the wall is formed from a high impedance material.
14. The dispenser of claim 8, wherein the chassis is formed from a plastic material.
15. A paper dispenser comprising: a support adapted to hold a roll of a paper;
- a motor driven feed mechanism adapted to receive and dispense paper from the roll;
  - a surface contact spring adapted to directly contact a mounting surface external to the dispenser when the dispenser is affixed to the mounting surface; and
  - at least one low impedance wire having a first end electrically coupled to the surface contact spring and a second end coupled to an element internal to the dispenser.
16. The dispenser of claim 15, wherein the feed mechanism includes a nib roller and the second end of the at least one low impedance wire is coupled to the nib roller.
17. The dispenser of claim 16, wherein the dispenser further comprises a spring contact coupling the second end of the at least one low impedance wire to the nib roller.
18. The dispenser of claim 17, wherein the nib roller includes a shaft and the spring contact couples the second end of the at least one low impedance wire to the shaft.
19. The dispenser of claim 15, wherein the mounting surface comprises a wall.

PUBLIC VERSION

20. The dispenser of claim 19, where I the wall is formed from a high impedance material.

21. The dispenser of claim 15, wherein the dispenser comprises a chassis, the chassis being affixed to the mounting surface.

22. The dispenser of claim 21, wherein the chassis is formed from a plastic material.

(*Id.* at 16:64-18:27.)

**U.S. Patent No. 7,182,289.**

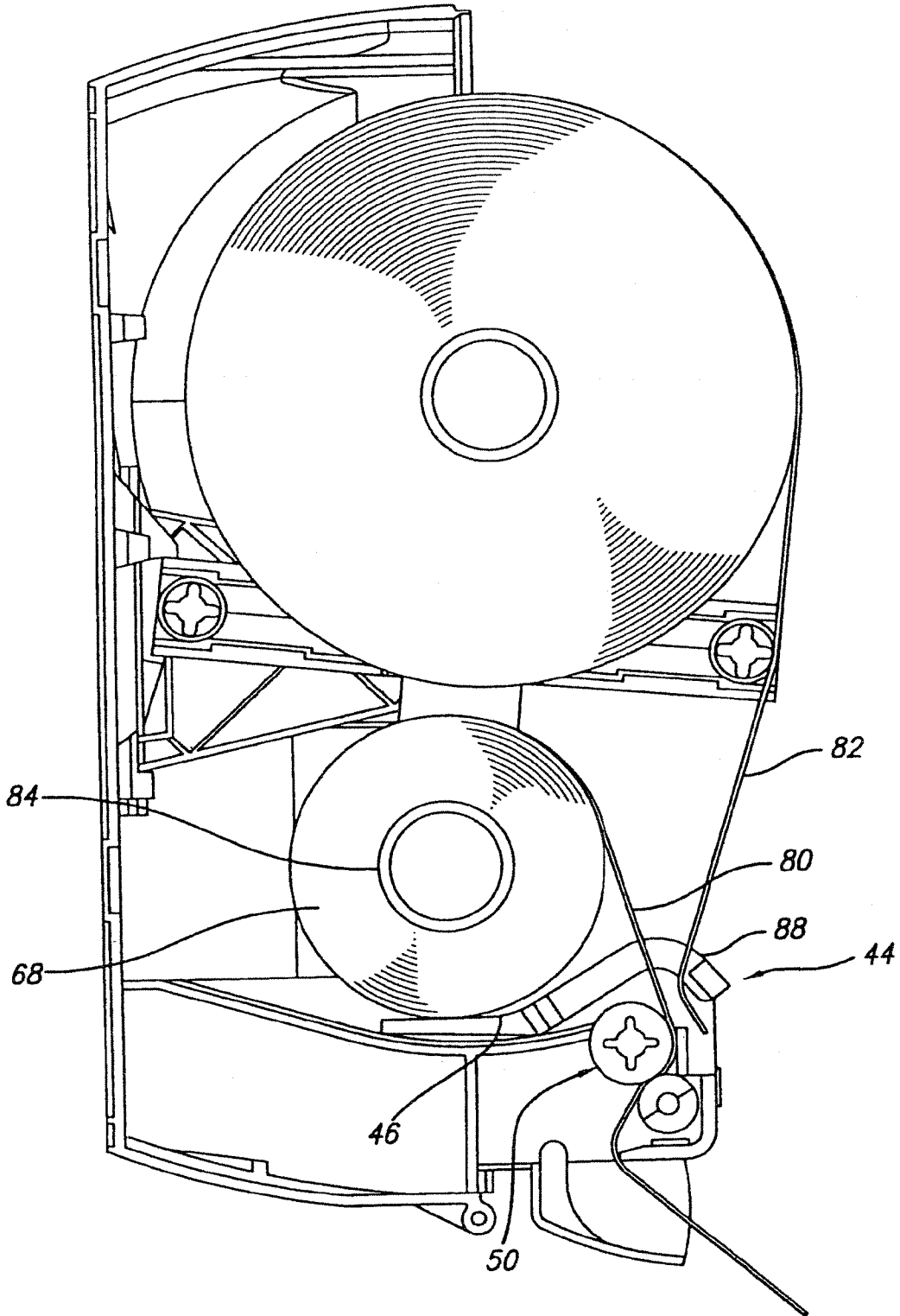
The '289 patent is also titled "Static Build-Up Control in Dispensing System," and resulted from a division of U.S. Patent Application No. 09/966,124 (issued as the '815 patent), which was a continuation-in-part application claiming priority to U.S. Patent Application No. 09/780,733.

(Complaint, Ex. 3 at GPITC-0000072.) The '289 patent was filed on February 3, 2005, and issued on February 27, 2007. (*Id.*) The '289 patent also names John R. Moody and Joshua M. Broehl as the inventors, and was assigned to Georgia-Pacific Corporation and later to Complainant. (*Id.*; Complaint, Ex. 6.)

The '289 patent discloses a paper dispensing apparatus that feeds continuously from one roll of paper to another, has a proximity sensor, and is able to dissipate static charges to a local ground such as a high impedance wall surface on which the dispenser has been mounted.

(Complaint, Ex. 3 at Abstract.)

FIG. 6A



PUBLIC VERSION

(*Id.* at Fig. 6A.)

Complainant is asserting three claims against Stefc0 and NetPak, one of which is independent:

1. A dispenser for dispensing flexible sheet material comprising:
  - an ungrounded chassis;
  - a feed mechanism fixed to the chassis, the feed mechanism including at least one roller and being adapted to advance sheet material from a roll of sheet material across the roller;
  - an electronic controller device affixed to the chassis proximate to the roller and not directly connected to any earth ground, the controller device being adapted to control dispensation of the sheet material; and
  - a low impedance conductive path extending from the roller to a mounting member of the chassis, the mounting member being adapted to affix the chassis to a support surface, said support surface being formed of a high impedance material that is only indirectly connected to said earth ground to thereby provide a high impedance around connection, wherein the mounting member provides an electrical mechanical contact between the dispenser and the support surface whereby any static electricity charge built-up on the at least one roller as a result of dispensing sheet material is dispersed through the low impedance conductive path onto the high impedance support surface and through the high impedance support surface to the earth ground.
2. The dispenser of claim 1, wherein the roller includes a roller shaft rotatably mounted to the chassis, and wherein the conductive path include a compression spring in contact with the roller shaft.
3. The dispenser of claim 2, wherein the compression spring is biased against the roller shaft.

(*Id.* at 16:39-17:3.)

**U.S. Patent No. 7,387,274.**

The '274 patent is also titled "Static Build-Up Control in Dispensing System," and resulted from a continuation of U.S. Patent Application No. 10/807,988 (issued as the '856 patent), which was a continuation of U.S. Patent Application No. 09/966,124 (issued as the '815 patent), which was a continuation-in-part application claiming priority to U.S. Patent Application No. 09/780,733. (Complaint, Ex. 4 at GPITC-0000107.) The '274 patent was filed on January 6, 2006, and issued

## PUBLIC VERSION

on June 17, 2008. (*Id.*) The '274 patent also names John R. Moody and Joshua M. Broehl as the inventors, and was assigned to Georgia-Pacific Consumer Operations LLC and later to Complainant. (*Id.*; Complaint, Ex. 6.)

The '274 patent discloses a method of grounding a dispenser. (Complaint, Ex. 4 at Abstract.) Static electric charge that has accumulated on internal elements of the dispenser is discharged through a low impedance path connected to a surface contact spring and then to the external mounting surface. (*Id.*)

Complainant is asserting 19 claims against Stefc0 and NetPak, two of which are independent:

4. A paper dispenser comprising:
  - a support adapted to hold a roll of a paper;
  - a motor driven feed mechanism adapted to receive and dispense paper from the roll;
  - a surface contact adapted to directly contact a mounting surface external to the dispenser when the dispenser is affixed to the mounting surface; and
  - at least one low impedance conductor having a first end electrically coupled to surface contact and a second end coupled to an element internal to the dispenser.
5. The dispenser of claim 4, wherein the feed mechanism includes a nib roller and the second end of the at least one low impedance conductor is coupled to the nib roller.
6. The dispenser of claim 5, wherein the dispenser further comprises a spring-contact coupling the second end of the at least one low impedance conductor to the nib roller.
7. The dispenser of claim 6, wherein the nib roller includes a shaft and the spring contact couples the second end of the at least one low impedance conductor to the shaft.
8. The dispenser of claim 4, wherein the mounting surface comprises at least a portion of a wall.
9. The dispenser of claim 8, wherein the wall is formed from a high impedance material.
10. The dispenser of claim 4, wherein the dispenser comprises a chassis, the chassis being affixed to the mounting surface.



## PUBLIC VERSION

11. The dispenser of claim 10, wherein the chassis comprises a plastic material.
12. A dispenser for dispensing flexible sheet material comprising:
  - a chassis including a mounting member adapted to affix the chassis to a support surface;
  - a feed mechanism affixed to the chassis, the feed mechanism including at least one roller and being adapted to advance sheet material from a roll of sheet material across the roller; and
  - a conductive path comprising a conductor, the conductive path being disposed between the roller and the mounting member, wherein the conductive path is adapted to contact the support surface when the chassis is affixed thereto and to discharge static electricity accumulated on the at least one roller to the support surface.
13. The dispenser of claim 12, wherein the roller includes a roller shaft and the conductive path includes a conductive contact adapted to contact the roller shaft.
14. The dispenser of claim 13, wherein the conductive contact is spring biased against the roller shaft.
15. The dispenser of claim 13, wherein the conductive contact comprises a compression spring.
16. The dispenser of claim 12, wherein the mounting surface comprises at least a portion of a wall.
17. The dispenser of claim 16, wherein the wall is formed from a high impedance material.
18. The dispenser of claim 12, wherein the dispenser comprises a chassis, the chassis being affixed to the mounting surface.
19. The dispenser of claim 18, wherein the chassis comprises a plastic material.
20. The dispenser of claim 12, wherein the support surface comprises a at least a portion of a wall.
21. The dispenser of claim 20, wherein the wall is formed from a high impedance material.
22. The dispenser of claim 12, wherein the chassis comprises a plastic material.

(*Id.* at 17:7-18:34.)

### III. IMPORTATION.

Section 337 declares to be unlawful “[t]he importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or

PUBLIC VERSION

consignee, of articles” that infringe a valid and enforceable United States patent if an industry relating to the articles protected by the patent exists or is in the process of being established in the United States. *See* 19 U.S.C. §§ 1337(a)(1)(B)(i) and (a)(2). Pursuant to Section 337, the Commission shall investigate alleged violations of the Section and hear and decide actions involving those alleged violations.

Complainant argues that StefcO and NetPak have directly or indirectly imported the Accused Products. (Mot. Mem. at 82.) Staff agrees, although Staff submits different reasoning and relies on the allegations in the Complaint. (Staff Resp. at 14-15.)

The undisputed evidence shows that Complainant purchased a StefcO Dispenser in the United States. (Complaint, Ex. 39 at ¶4 (Peterson Decl.); Ex. 42.) The dispenser bears the label “Made in China.” (*Id.*, Ex. 42.) Staff argues that there is circumstantial evidence to show the StefcO Dispensers were imported based on (i) ImportGenius records showing Supernalway Enterprises Co., Ltd.’s (“Supernalway”) shipments of plastic dispensers to Respondent Cellyne Corporation and (ii) {

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The undisputed evidence further shows that Complainant purchased a NetPak Carpex Dispenser in the United States. (Complaint, Ex. 39 at ¶6, Ex. C (Peterson Decl.); *id.*, Ex. 44.) The dispenser package bears the label “Made in Turkey” and states that it was imported and distributed by NetPak Electronic Plastic and Cosmetic, Inc. (*Id.*, Ex. 44.) ImportGenius records show that NetPak shipped touchless towel dispensers directly to consignee NetPak Electronic Plastic and Cosmetic, Inc. in the United States. (*Id.*, Ex. 14 at 12. *See also id.*, Exs. 54-55.) Furthermore,

## PUBLIC VERSION

NetPak's Answer to the Complaint and Notice of Investigation admits the allegations contained in paragraphs 251 and 252 of the Complaint which relate to Complainant's domestic purchase of the imported NetPak Dispenser. (NetPak Answer at 2.) NetPak's answer also provides a stated value of imported articles pursuant to Commission Rule 210.13(b), essentially an admission of importation. (*Id.* at 6. *See also* Answer of [former] Respondents Paradigm Marketing Consortium, Inc. and United Sourcing Network Corp. to the Complaint and Notice of Investigation at 43 (providing information re imports of the Emerald dispensers manufactured by NetPak); Mot., Exs. 71, 75.)

With respect to the asserted patents, the Administrative Law Judge concludes that the importation or sale requirement of Section 337 establishing subject matter jurisdiction as to the Accused Products has been met. Accordingly, the Administrative Law Judge finds that Complainant has shown by substantial, reliable, and probative evidence that StefcO and NetPak sell for importation, import, or sell after importation into the United States, articles that are accused in this Investigation.

#### **IV. INFRINGEMENT.**

"Determination of infringement is a two-step process which consists of determining the scope of the asserted claim (claim construction) and then comparing the accused product . . . to the claim as construed." *Certain Sucralose*, at 36 (citing *Litton Sys., Inc. v. Honeywell, Inc.*, 140 F.3d 1449, 1454 (Fed. Cir. 1998) ("*Litton*"). An accused device literally infringes a patent claim if it contains each limitation recited in the claim exactly. *Litton*, 140 F.3d at 1454. Claim construction for the asserted patents is not at issue in this Investigation. (*See* Order No. 24.)

## PUBLIC VERSION

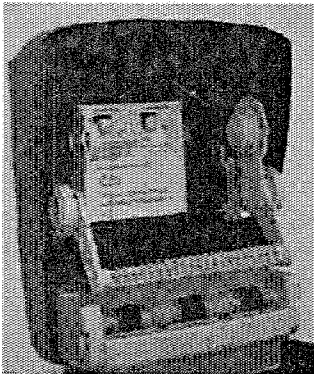
Complainant must show by a preponderance of the evidence that the StefcO and NetPak Dispensers infringe each and every limitation of claims 4-7 of the '815 patent, 8-22 of the '856 patent, 1-3 of the '289 patent and 4-22 of the '274 patent. *SmithKline Diagnostics, Inc. v. Helena Labs. Corp.*, 859 F.2d 878, 889 (Fed. Cir. 1988); *Cross Medical Products, Inc. v. Medtronic Sofamor Danek*, 424 F.3d 1293, 1310 (Fed. Cir. 2005).

### A. The '815 Patent.

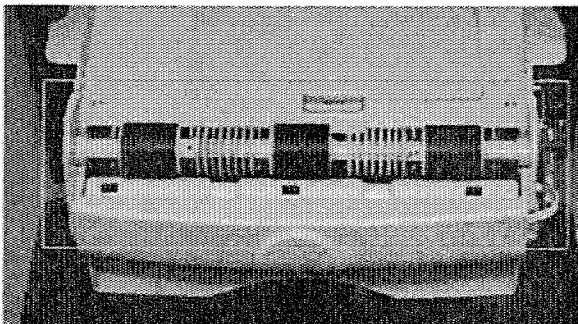
It is undisputed that there is substantial, reliable, and probative evidence to show that the StefcO and NetPak Dispensers infringe asserted claims 4-7 of the '815 patent. (Mot. Mem. at 47; Staff Resp. at 17, 19; SMF No. 294 (undisputed).)

#### 1. The StefcO Dispenser.

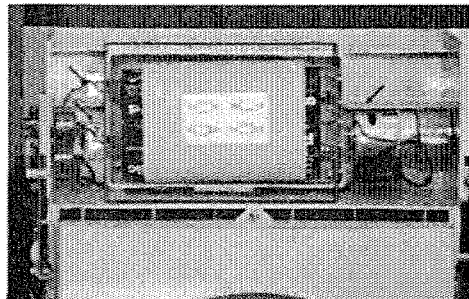
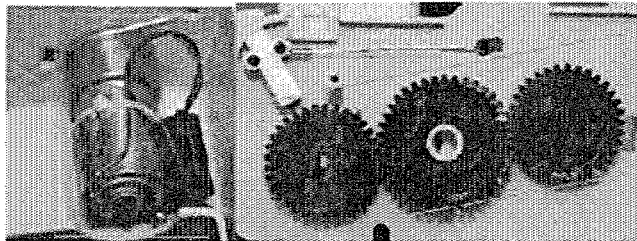
The undisputed evidence shows that the StefcO Dispenser is a paper dispenser comprising:



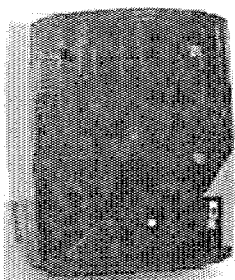
a support adapted to hold a roll of a paper;



a motor driven feed mechanism adapted to receive and dispense paper from the roll;

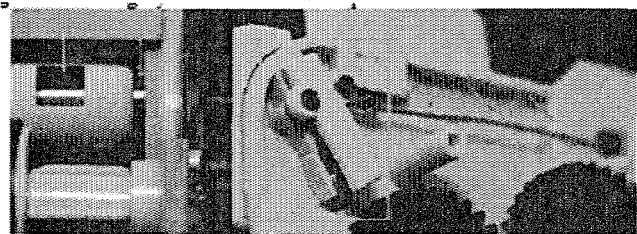


Category 1 – Stefc0 92004 Dispenser

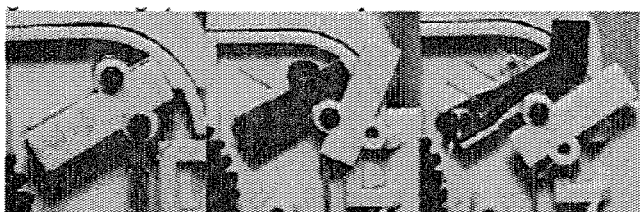


at least one battery electrically coupled to the motor driven feed mechanism;

a surface contact spring adapted to directly contact a mounting surface external to the dispenser when the dispenser is affixed to the mounting surface; and



at least one low impedance wire having a first end electrically coupled to the spring and a second end coupled to a surface integral to the dispenser.



**PUBLIC VERSION**

(Mot. Mem. at 49-63. *See also* Am. Compl., Exs. 23, 42; SMF Nos. 196-202 (undisputed), 204-205 (undisputed), 207-208 (undisputed), 211-212 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 19, 31, 55-72; Staff Resp. at 20-21.) Therefore the Administrative Law Judge concludes, based on the undisputed substantial, reliable, and probative evidence, that the Stefc Dispenser meets all the limitations of claim 4 of the '815 patent.

The undisputed evidence further shows that the Stefc Dispenser has a feed mechanism that includes a nib roller and the second end of the at least one low impedance wire is coupled to the nib roller. (Steffes Decl. at ¶¶11, 19, 31, 73-75; SMF Nos. 260-263 (undisputed), 294 (undisputed); Am. Compl., Exs. 23, 42; Mot. Mem. at 76; Staff Resp. at 20-21.) The Administrative Law Judge therefore concludes, based on the substantial, reliable, and probative evidence, that the Stefc Dispenser meets all the limitations of claim 5 of the '815 patent.

The undisputed substantial, reliable, and probative evidence also shows that the Stefc Dispenser further comprises a spring contact coupling the second end of the at least one low impedance wire to the nib roller such that the limitations of claim 6 of the '815 patent are met. (Steffes Decl. at ¶¶11, 19, 31, 76-77; SMF Nos. 264-65 (undisputed), 274-75 (undisputed), 294 (undisputed); Am. Compl., Exs. 23, 42; Mot. Mem. at 77-79; Staff Resp. at 20-21.)

In addition, the undisputed substantial, reliable, and probative evidence shows that the Stefc Dispenser has a nib roller that “includes a shaft and the spring contact couples the second end of the at least one low impedance wire to the shaft” such that the limitations of claim 7 of the '815 patent are met. (Steffes Decl. at ¶¶11, 19, 31, 78-80; SMF Nos. 264-65 (undisputed), 268 (undisputed), 274-76 (undisputed), 294 (undisputed); Am. Compl., Exs. 23, 42; Mot. Mem. at 77-79; Staff Resp. at 20-21.)

## PUBLIC VERSION

The Administrative Law Judge concludes that the StefcO Dispenser infringes asserted claims 4-7 of the '815 patent.

### 2. The NetPak Dispensers.

The undisputed evidence shows that each of the NetPak Dispensers is a paper dispenser comprising: a support adapted to hold a roll of a paper; a motor driven feed mechanism adapted to receive and dispense paper from the roll; at least one battery electrically coupled to the motor driven feed mechanism; a surface contact spring adapted to directly contact a mounting surface external to the dispenser when the dispenser is affixed to the mounting surface; and at least one low impedance wire having a first end electrically coupled to the spring and a second end coupled to a surface integral to the dispenser. (Steffes Decl. at ¶¶11, 20-21, 31, 55-72; Am. Compl., Exs. 31, 35, 44-45; Staff Resp. at 20-21; SMF Nos. 199-202 (undisputed), 204-205 (undisputed), 207-208 (undisputed), 212 (undisputed), 294 (undisputed).) Therefore the Administrative Law Judge concludes, based on the undisputed substantial, reliable, and probative evidence, that each of the NetPak Dispensers meet all the limitations of claim 4 of the '815 patent.

The undisputed evidence further shows that each of the NetPak Dispensers has a feed mechanism that includes a nib roller and the second end of the at least one low impedance wire is coupled to the nib roller. (Steffes Decl. at ¶¶11, 20-21, 31, 73-75; Am. Compl., Exs. 31, 35, 44-45; Mot. Mem. at 76; Staff Resp. at 20-21; SMF Nos. 260-263 (undisputed), 294 (undisputed).) The Administrative Law Judge therefore concludes, based on the substantial, reliable, and probative evidence, that each of the NetPak Dispensers meets all the limitations of claim 5 of the '815 patent.

The undisputed substantial, reliable, and probative evidence also shows that each of the NetPak Dispensers further comprises a spring contact coupling the second end of the at least one

## PUBLIC VERSION

low impedance wire to the nib roller such that the limitations of claim 6 of the '815 patent are met. (Steffes Decl. at ¶¶11, 20-21, 31, 76-77; Am. Compl., Exs. 31, 35, 44-45; Mot. Mem. at 77-79; Staff Resp. at 20-21; SMF Nos. 265-266 (undisputed), 274-275 (undisputed), 294 (undisputed).)

In addition, the undisputed substantial, reliable, and probative evidence shows that each of the NetPak Dispensers has a nib roller that “includes a shaft and the spring contact couples the second end of the at least one low impedance wire to the shaft” such that the limitations of claim 7 of the '815 patent are met. (Steffes Decl. at ¶¶11, 20-21, 31, 78-80; Am. Compl., Exs. 31, 35, 44-45; Staff Resp. at 20-21; Mot. Mem. at 77-79; SMF Nos. 265 (undisputed), 274-276 (undisputed), 294 (undisputed).)

The Administrative Law Judge concludes that the NetPak Carplex and Emerald Dispensers infringe asserted claims 4-7 of the '815 patent.

### **B. The '856 Patent.**

It is undisputed that there is substantial, reliable, and probative evidence to show that the StefcO and NetPak Dispensers infringe asserted claims 8-22 of the '856 patent. (Mot. Mem. at 46-47; Staff Resp. at 20-21; SMF No. 294 (undisputed).)

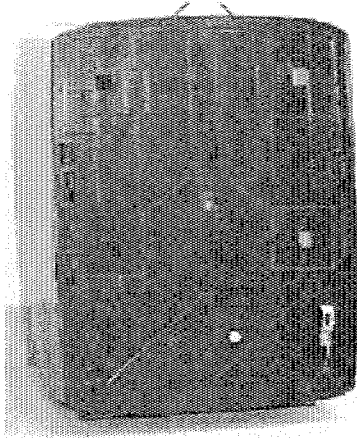
#### 1. The StefcO Dispenser.

The undisputed evidence shows that the StefcO Dispenser is a dispenser for dispensing flexible sheet material comprising:

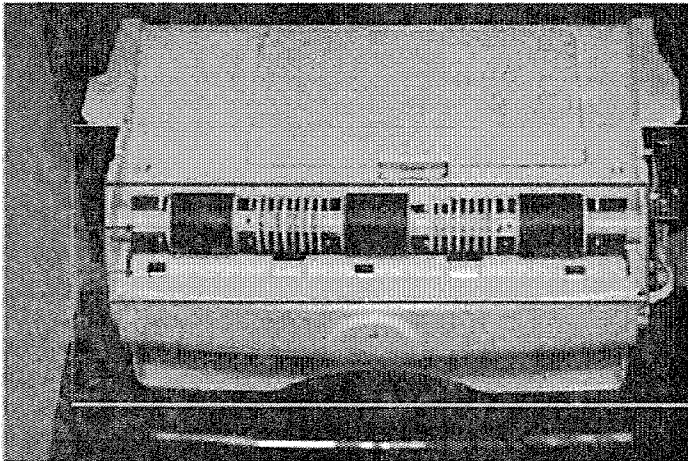


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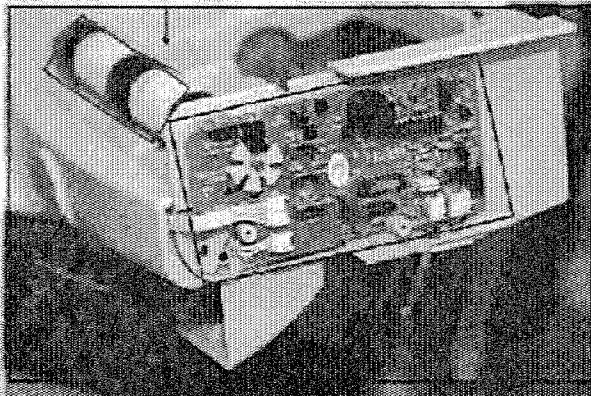
Stefco 92004 Dispenser



a chassis including a mounting member adapted to affix the chassis to a support surface;

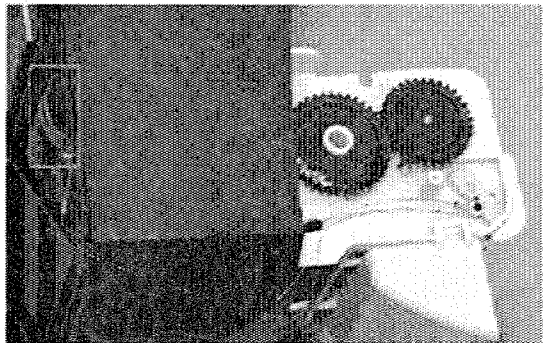


a feed mechanism affixed to the chassis, the feed mechanism including at least one roller and being adapted to advance sheet material from a roll of sheet material across the roller;

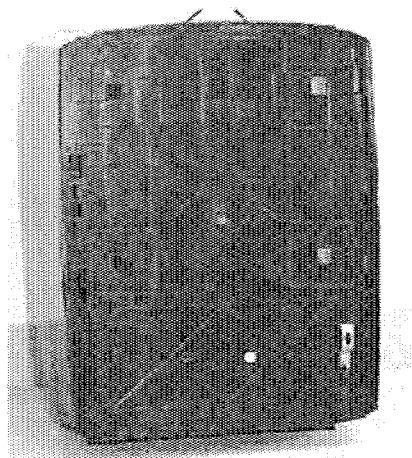


an electronic controller affixed to the chassis and adapted to control dispensation of the sheet material;

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and a conductive path extending from the roller toward the mounting member, wherein the conductive path is adapted to contact the support surface when the chassis is affixed thereto and to discharge static electricity accumulated on the at least one roller to the support surface.



(Mot. Mem. at 65-73, 74; Steffes Decl. at ¶¶11, 19, 34, 81, 82-94; SMF Nos. 213 (undisputed), 216-221 (undisputed), 225-235 (undisputed), 242-248 (undisputed), 256 (undisputed), 294 (undisputed); Am. Compl., Exs. 24, 42; Staff Resp. at 20-21.) Therefore the Administrative Law Judge concludes, based on the undisputed substantial, reliable, and probative evidence, that the Steffes Dispenser meets all the limitations of claim 8 of the '856 patent.

The undisputed evidence further shows that the Steffes Dispenser has a roller that includes a roller shaft and the conductive path includes a conductive contact adapted to contact the roller shaft. (Mot. Mem. at 77-79; Steffes Decl. at ¶¶11, 19, 34, 81, 95-97; SMF Nos. 264-265 (undisputed), 270 (undisputed), 274-276 (undisputed), 294 (undisputed); Am. Compl., Exs. 24, 42; Staff Resp. at 20-21.) Therefore the Administrative Law Judge concludes, based on the undisputed

## PUBLIC VERSION

substantial, reliable, and probative evidence, that the Stefcó Dispenser meets all the limitations of claim 9 of the '856 patent.

The Administrative Law Judge further finds that the undisputed substantial, reliable, and probative evidence shows that the Stefcó Dispenser further has a conductive contact that is spring biased against the roller shaft such that the limitations of claim 10 of the '856 patent are met. (Mot. Mem. at 77-79; Steffes Decl. at ¶¶11, 19, 34, 81, 98-99; SMF Nos. 264-265 (undisputed), 270 (undisputed), 274-276 (undisputed), 294 (undisputed); Am. Compl., Exs. 24, 42; Staff Resp. at 20-21.)

In addition, the undisputed substantial, reliable, and probative evidence shows that the Stefcó Dispenser has a conductive contact that comprises a compression spring such that the limitations of claim 11 of the '856 patent are met. (Mot. Mem. at 77-79; Steffes Decl. at ¶¶11, 19, 34, 81, 100-101; SMF Nos. 264-265 (undisputed), 271 (undisputed), 274-276 (undisputed), 294 (undisputed); Am. Compl., Exs. 24, 42; Staff Resp. at 20-21.)

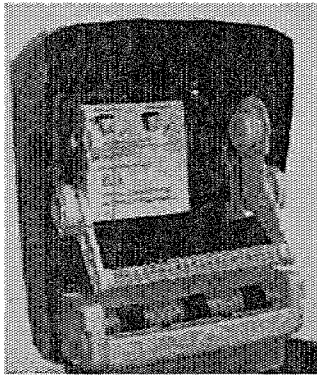
The undisputed substantial, reliable, and probative evidence also shows that the Stefcó Dispenser has a support surface that comprises a wall such that the limitations of claim 12 of the '856 patent are met. (Mot. Mem. at 79; Steffes Decl. at ¶¶11, 19, 81, 102-103; SMF Nos. 278 (undisputed), 281-82 (undisputed), 294 (undisputed); Am. Compl., Ex. 24; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence also shows that the Stefcó Dispenser has a wall formed from a high impedance material such that the limitations of claim 13 of the '856 patent are met. (Mot. Mem. at 79-80; Steffes Decl. at ¶¶11, 19, 34, 81, 104-05; SMF Nos. 283-85 (undisputed), 294 (undisputed); Am. Compl., Exs. 24, 42; Staff Resp. at 20-21.)

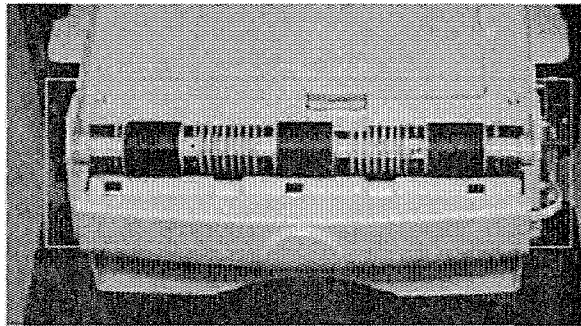
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Furthermore, the undisputed substantial, reliable, and probative evidence shows that the Stefcu Dispenser has a chassis formed from a plastic material such that the limitations of claim 14 of the '856 patent are met. (Mot. Mem. at 80-81; Steffes Decl. at ¶¶11, 19, 34, 81, 106-107; SMF Nos. 291 (undisputed), 293-294 (undisputed); Am. Compl., Exs. 24, 42; Staff Resp. at 20-21.)

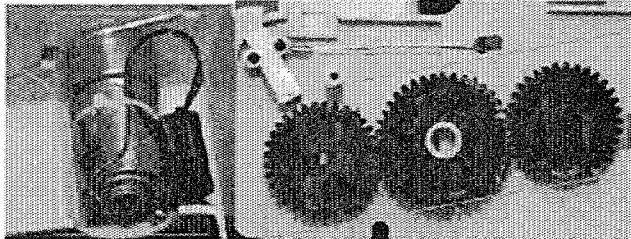
The Administrative Law Judge further finds that the Stefcu Dispenser is a paper dispenser comprising:



a support adapted to hold a roll of a paper;

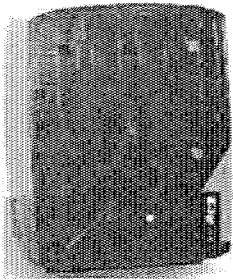


a motor driven feed mechanism adapted to receive and dispense paper from the roll;

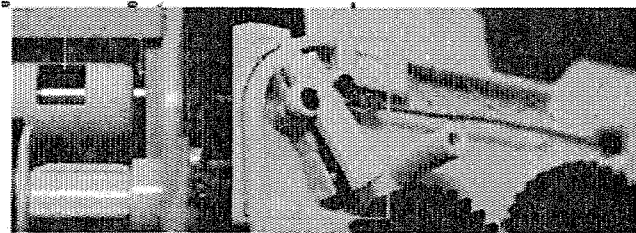


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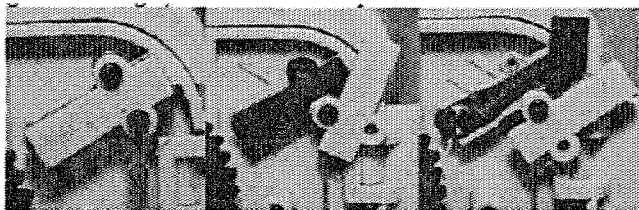
Category 1 – Stecco 92004 Dispenser



a surface contact spring adapted to directly contact a mounting surface external to the dispenser when the dispenser is affixed to the mounting surface; and



at least one low impedance wire having a first end electrically coupled to the surface contact spring and a second end coupled to an element internal to the dispenser.



(Mot. Mem. at 50-61, 63; Steffes Decl. at ¶¶11, 19, 34, 81, 108-116; SMF Nos. 197 (undisputed), 199-202 (undisputed), 204-205 (undisputed), 207-208 (undisputed), 212 (undisputed), 294 (undisputed); Am. Compl., Exs. 24, 42; Staff Resp. at 20-21.) Therefore the Administrative Law Judge concludes, based on the undisputed substantial, reliable, and probative evidence, that the Stecco Dispenser meets all the limitations of independent claim 15 of the '856 patent.

The undisputed substantial, reliable, and probative evidence also shows that the Stecco Dispenser has a feed mechanism that includes a nib roller and the second end of the at least one low impedance wire is coupled to the nib roller such that the limitations of claim 16 of the '856 patent are met. (Mot. Mem. at 76-77; Steffes Decl. at ¶¶11, 19, 34, 81, 117-119; SMF Nos. 257-263 (undisputed), 294 (undisputed); Am. Compl., Exs. 24, 42; Staff Resp. at 20-21.)

## PUBLIC VERSION

The undisputed substantial, reliable, and probative evidence further shows that the Stefco Dispenser comprises a spring contact coupling the second end of the at least one low impedance wire to the nib roller such that the limitations of claim 17 of the '856 patent are met. (Mot. Mem. at 77-79; Steffes Decl. at ¶¶11, 19, 34, 81, 120-21; SMF Nos. 264-66 (undisputed), 274-76 (undisputed), 294 (undisputed); Am. Compl., Exs. 24, 42; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence further shows that the Stefco Dispenser has a nib roller that includes a shaft and the spring contact couples the second end of the at least one low impedance wire to the shaft such that the limitations of claim 18 of the '856 patent are met. (Mot. Mem. at 77-79; Steffes Decl. at ¶¶11, 19, 34, 81, 122-24; SMF Nos. 264-66 (undisputed), 274-76 (undisputed), 294 (undisputed); Am. Compl., Exs. 24, 42; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence further shows that the Stefco Dispenser has a mounting surface that comprises a wall such that the limitations of claim 19 of the '856 patent are met. (Mot. Mem. at 79; Steffes Decl. at ¶¶11, 19, 34, 81, 125-26; SMF Nos. 277 (undisputed), 281-82 (undisputed), 294 (undisputed); Am. Compl., Exs. 24, 42; Staff Resp. at 20-21.)

The Administrative Law Judge further finds that the undisputed substantial, reliable, and probative evidence shows that the Stefco Dispenser has a wall formed from a high impedance material such that the limitations of claim 20 of the '856 patent are met. (Mot. Mem. at 79-80; Steffes Decl. at ¶¶11, 19, 34, 81, 127-28; SMF Nos. 283-85 (undisputed), 294 (undisputed); Am. Compl., Exs. 24, 42; Staff Resp. at 20-21.)

## PUBLIC VERSION

The undisputed substantial, reliable, and probative evidence shows that the Stefcó Dispenser comprises a chassis, the chassis being affixed to the mounting surface, such that the limitations of claim 21 of the '856 patent are met. (Mot. Mem. at 80; Steffes Decl. at ¶¶11, 19, 34, 81, 129-30; SMF Nos. 286-89 (undisputed), 294 (undisputed); Am. Compl., Exs. 24, 42; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence shows that the Stefcó Dispenser has a chassis that is formed from a plastic material such that the limitations of claim 22 of the '856 patent are met. (Mot. Mem. at 80-81; Steffes Decl. at ¶¶11, 19, 34, 81, 131-32; SMF Nos. 290-94 (undisputed); Am. Compl., Exs. 24, 42; Staff Resp. at 20-21.)

The Administrative Law Judge concludes that the Stefcó Dispenser infringes claims 8-22 of the '856 patent.

### 2. The NetPak Dispensers.

The undisputed evidence shows that each of the NetPak Dispensers is a dispenser for dispensing flexible sheet material comprising: a chassis including a mounting member adapted to affix the chassis to a support surface; a feed mechanism affixed to the chassis, the feed mechanism including at least one roller and being adapted to advance sheet material from a roll of sheet material across the roller; an electronic controller affixed to the chassis and adapted to control dispensation of the sheet material; and a conductive path extending from the roller toward the mounting member, wherein the conductive path is adapted to contact the support surface when the chassis is affixed thereto and to discharge static electricity accumulated on the at least one roller to the support surface. (Mot. Mem. at 65-73, 74; Steffes Decl. at ¶¶11, 20, 34, 81, 82-94; SMF Nos. 213 (undisputed), 216-221 (undisputed), 225-235 (undisputed), 242-248 (undisputed), 256

**PUBLIC VERSION**

(undisputed), 294 (undisputed); Am. Compl., Exs. 32, 36, 44-45; Staff Resp. at 20-21.) Therefore the Administrative Law Judge concludes, based on the undisputed substantial, reliable, and probative evidence, that each of the NetPak Dispensers meets all the limitations of claim 8 of the '856 patent.

The undisputed evidence further shows that each of the NetPak Dispensers has a roller that includes a roller shaft and the conductive path includes a conductive contact adapted to contact the roller shaft. (Mot. Mem. at 77-79; Steffes Decl. at ¶¶11, 20, 34, 81, 95-97; SMF Nos. 264-265 (undisputed), 270 (undisputed), 274-276 (undisputed), 294 (undisputed); Am. Compl., Exs. 32, 36, 44-45; Staff Resp. at 20-21.) Therefore the Administrative Law Judge concludes, based on the undisputed substantial, reliable, and probative evidence, that each of the NetPak Dispensers meets all the limitations of claim 9 of the '856 patent.

The Administrative Law Judge further finds that the undisputed substantial, reliable, and probative evidence shows that each of the NetPak Dispensers further has a conductive contact that is spring biased against the roller shaft such that the limitations of claim 10 of the '856 patent are met. (Mot. Mem. at 77-79; Steffes Decl. at ¶¶11, 20, 34, 81, 98-99; SMF Nos. 264-265 (undisputed), 270 (undisputed), 274-276 (undisputed), 294 (undisputed); Am. Compl., Exs. 32, 36, 44-45; Staff Resp. at 20-21.)

In addition, the undisputed substantial, reliable, and probative evidence shows that each of the NetPak Dispensers has a conductive contact that comprises a compression spring such that the limitations of claim 11 of the '856 patent are met. (Mot. Mem. at 77-79; Steffes Decl. at ¶¶11, 20, 34, 81, 100-101; SMF Nos. 264-265 (undisputed), 271 (undisputed), 274-276 (undisputed), 294 (undisputed); Am. Compl., Exs. 32, 36, 44-45; Staff Resp. at 20-21.)



## PUBLIC VERSION

The undisputed substantial, reliable, and probative evidence also shows that each of the NetPak Dispensers has a support surface that comprises a wall such that the limitations of claim 12 of the '856 patent are met. (Mot. Mem. at 79; Steffes Decl. at ¶¶11, 20, 34, 81, 102-103; SMF Nos. 278 (undisputed), 281-82 (undisputed), 294 (undisputed); Am. Compl., Exs. 32, 36, 44-45; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence also shows each of the NetPak Dispensers has a wall formed from a high impedance material such that the limitations of claim 13 of the '856 patent are met. (Mot. Mem. at 79-80; Steffes Decl. at ¶¶11, 20, 34, 81, 104-05; SMF Nos. 283-85 (undisputed), 294 (undisputed); Am. Compl., Exs. 32, 36, 44-45; Staff Resp. at 20-21.)

Furthermore, the undisputed substantial, reliable, and probative evidence shows that each of the NetPak Dispensers has a chassis formed from a plastic material such that the limitations of claim 14 of the '856 patent are met. (Mot. Mem. at 80-81; Steffes Decl. at ¶¶11, 20, 34, 81, 106-107; SMF Nos. 291 (undisputed), 293-294 (undisputed); Am. Compl., Exs. 32, 36, 44-45; Staff Resp. at 20-21.)

The Administrative Law Judge further finds that each of the NetPak Dispensers is a paper dispenser comprising: a support adapted to hold a roll of a paper; a motor driven feed mechanism adapted to receive and dispense paper from the roll; a surface contact spring adapted to directly contact a mounting surface external to the dispenser when the dispenser is affixed to the mounting surface; and at least one low impedance wire having a first end electrically coupled to the surface contact spring and a second end coupled to an element internal to the dispenser. (Mot. Mem. at 50-61, 63; Steffes Decl. at ¶¶11, 20, 34, 81, 108-116; SMF Nos. 197 (undisputed), 199-202

## PUBLIC VERSION

(undisputed), 204-205 (undisputed), 207-208 (undisputed), 212 (undisputed), 294 (undisputed); Am. Compl., Exs. 32, 36, 44-45; Staff Resp. at 20-21.) Therefore the Administrative Law Judge concludes, based on the undisputed substantial, reliable, and probative evidence, that each of the NetPak Dispensers meets all the limitations of claim 15 of the '856 patent.

The undisputed substantial, reliable, and probative evidence also shows that each of the NetPak Dispensers has a feed mechanism that includes a nib roller and the second end of the at least one low impedance wire is coupled to the nib roller such that the limitations of claim 16 of the '856 patent are met. (Mot. Mem. at 76-77; Steffes Decl. at ¶¶11, 20, 34, 81, 117-119; SMF Nos. 257-263 (undisputed), 294 (undisputed); Am. Compl., Exs. 32, 36, 44-45; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence further shows that each of the NetPak Dispensers comprises a spring contact coupling the second end of the at least one low impedance wire to the nib roller such that the limitations of claim 17 of the '856 patent are met. (Mot. Mem. at 77-79; Steffes Decl. at ¶¶11, 20, 34, 81, 120-21; SMF Nos. 264-66 (undisputed), 274-76 (undisputed), 294 (undisputed); Am. Compl., Exs. 32, 36, 44-45; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence further shows that each of the NetPak Dispensers has a nib roller that includes a shaft and the spring contact couples the second end of the at least one low impedance wire to the shaft such that the limitations of claim 18 of the '856 patent are met. (Mot. Mem. at 77-79; Steffes Decl. at ¶¶11, 20, 34, 81, 122-24; SMF Nos. 264-66 (undisputed), 274-76 (undisputed), 294 (undisputed); Am. Compl., Exs. 32, 36, 44-45; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence further shows that each of the NetPak Dispensers has a mounting surface that comprises a wall such that the limitations of claim

## PUBLIC VERSION

19 of the '856 patent are met. (Mot. Mem. at 79; Steffes Decl. at ¶¶11, 20, 34, 81, 125-26; SMF Nos. 277 (undisputed), 281-82 (undisputed), 294 (undisputed); Am. Compl., Exs. 32, 36, 44-45; Staff Resp. at 20-21.)

The Administrative Law Judge further finds that the undisputed substantial, reliable, and probative evidence shows that each of the NetPak Dispensers has a wall formed from a high impedance material such that the limitations of claim 20 of the '856 patent are met. (Mot. Mem. at 79-80; Steffes Decl. at ¶¶11, 20, 34, 81, 127-28; SMF Nos. 283-85 (undisputed), 294 (undisputed); Am. Compl., Exs. 32, 36, 44-45; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence shows that each of the NetPak Dispensers comprises a chassis, the chassis being affixed to the mounting surface, such that the limitations of claim 21 of the '856 patent are met. (Mot. Mem. at 80; Steffes Decl. at ¶¶11, 20, 34, 81, 129-30; SMF Nos. 286-89 (undisputed), 294 (undisputed); Am. Compl., Exs. 32, 36, 44-45; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence shows that each of the NetPak Dispensers has a chassis that is formed from a plastic material such that the limitations of claim 22 of the '856 patent are met. (Mot. Mem. at 80-81; Steffes Decl. at ¶¶11, 20, 34, 81, 131-32; SMF Nos. 290-94 (undisputed); Am. Compl., Exs. 32, 36, 44-45; Staff Resp. at 20-21.)

The Administrative Law Judge concludes that the NetPak Carplex and Emerald Dispensers infringe claims 8-22 of the '856 patent.

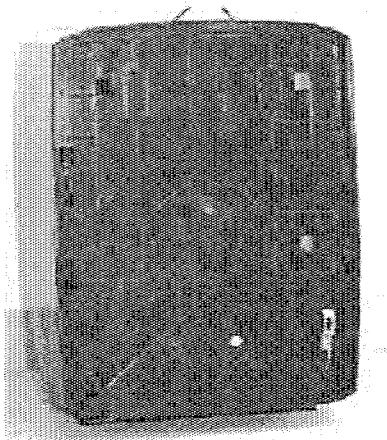
**C. The '289 Patent.**

It is undisputed that there is substantial, reliable, and probative evidence to show that the StefcO and NetPak Dispensers infringe asserted claims 1-3 of the '289 patent. (Mot. Mem. at 47; Staff Resp. at 17, 19; SMF No. 294 (undisputed).)

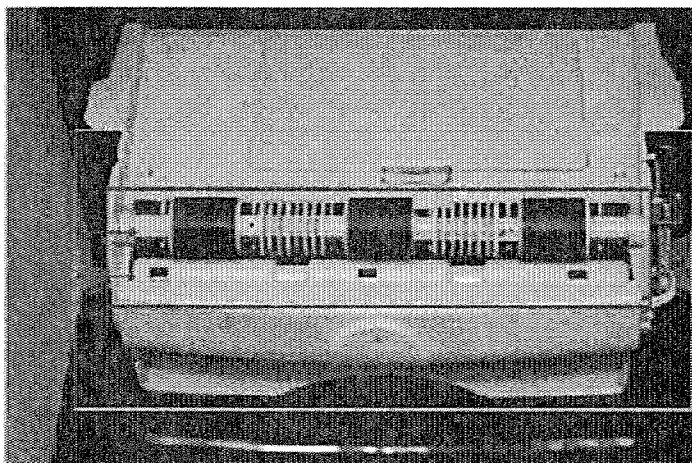
1. The StefcO Dispenser.

The undisputed evidence shows that the StefcO Dispenser is a dispenser for dispensing flexible sheet material comprising:

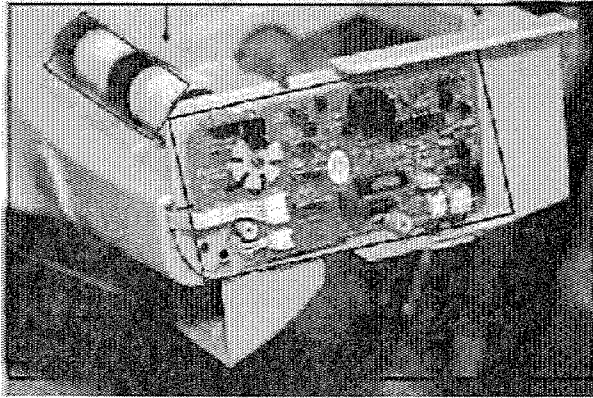
**Stefco 92004 Dispenser**



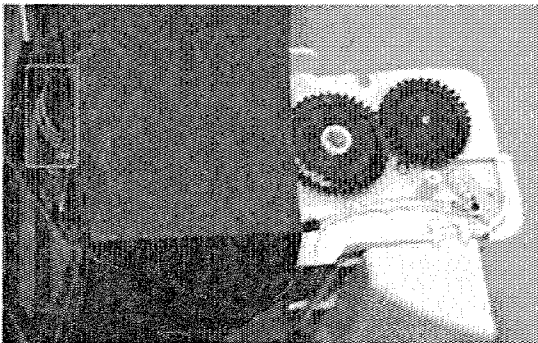
an ungrounded chassis;



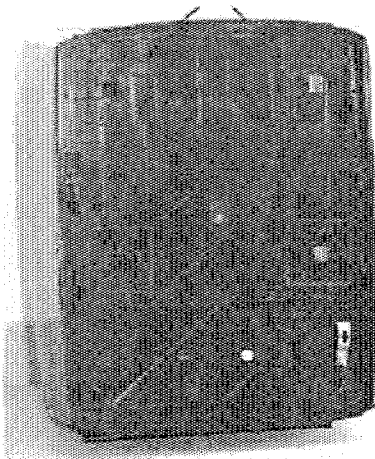
a feed mechanism fixed to the chassis, the feed mechanism including at least one roller and being adapted to advance sheet material from a roll of sheet material across the roller;



an electronic controller device affixed to the chassis proximate to the roller and not directly connected to any earth ground, the controller device being adapted to control dispensation of the sheet material; and



a low impedance conductive path extending from the roller to a mounting member of the chassis, the mounting member being adapted to affix the chassis to a support surface, said support surface being formed of a high impedance material that is only indirectly connected to said earth ground to thereby provide a high impedance around connection, wherein the mounting member provides an electrical mechanical contact between the dispenser and the support surface whereby any static electricity charge built-up on the at least one roller as a result of dispensing sheet material is dispersed through the low impedance conductive path onto the high impedance support surface and through the high impedance support surface to the earth ground.



(Mot. Mem. at 63-75. *See also* Am. Compl., Exs. 25, 42; SMF Nos. 214-256 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 19, 37, 133, 134-145; Staff Resp. at 20-21.) Therefore the Administrative Law Judge concludes, based on the undisputed substantial, reliable, and probative evidence, that the StefcO Dispenser meets all the limitations of claim 1 of the '289 patent.

## PUBLIC VERSION

The Administrative Law Judge further finds that the undisputed substantial, reliable, and probative evidence shows that the StefcO Dispenser further has a roller that includes a roller shaft rotatably mounted to the chassis, and wherein the conductive path include a compression spring in contact with the roller shaft such that the limitations of claim 2 of the '289 patent are met. (Mot. Mem. at 77-79. *See also* Am. Compl., Exs. 25, 42; SMF Nos. 264-65 (undisputed), 272-76 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 19, 37, 133, 146-48; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence further shows that the StefcO Dispenser further has a compression spring biased against the roller shaft such that the limitations of claim 3 of the '289 patent are met. (Mot. Mem. at 77-79. *See also* Am. Compl., Exs. 25, 42; SMF Nos. 264-65 (undisputed), 272-76 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 19, 37, 133, 149-50; Staff Resp. at 20-21.)

The Administrative Law Judge concludes that the StefcO Dispenser infringes claims 1-3 of the '289 patent.

### 2. The NetPak Dispensers.

The undisputed evidence shows that each of the NetPak Dispensers is a dispenser for dispensing flexible sheet material comprising: an ungrounded chassis; a feed mechanism fixed to the chassis, the feed mechanism including at least one roller and being adapted to advance sheet material from a roll of sheet material across the roller; an electronic controller device affixed to the chassis proximate to the roller and not directly connected to any earth ground, the controller device being adapted to control dispensation of the sheet material; and a low impedance conductive path extending from the roller to a mounting member of the chassis, the mounting member being adapted to affix the chassis to a support surface, said support surface being formed of a high

## PUBLIC VERSION

impedance material that is only indirectly connected to said earth ground to thereby provide a high impedance around connection, wherein the mounting member provides an electrical mechanical contact between the dispenser and the support surface whereby any static electricity charge built-up on the at least one roller as a result of dispensing sheet material is dispersed through the low impedance conductive path onto the high impedance support surface and through the high impedance support surface to the earth ground. (Mot. Mem. at 63-75. *See also* Am. Compl., Exs. 33, 37, 44-45; SMF Nos. 214-256 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 20, 37, 133, 134-145; Staff Resp. at 20-21.) Therefore the Administrative Law Judge concludes, based on the undisputed substantial, reliable, and probative evidence, that each of the NetPak Dispensers meets all the limitations of claim 1 of the '289 patent.

The Administrative Law Judge further finds that the undisputed substantial, reliable, and probative evidence shows that each of the NetPak Dispensers further has a roller that includes a roller shaft rotatably mounted to the chassis, and wherein the conductive path include a compression spring in contact with the roller shaft such that the limitations of claim 2 of the '289 patent are met. (Mot. Mem. at 77-79. *See also* Am. Compl., Exs. 33, 37, 44-45; SMF Nos. 264-65 (undisputed), 272-76 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 20, 37, 133, 146-48; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence further shows that each of the NetPak Dispensers further has a compression spring biased against the roller shaft such that the limitations of claim 3 of the '289 patent are met. (Mot. Mem. at 77-79. *See also* Am. Compl., Exs. 33, 37, 44-45; SMF Nos. 264-65 (undisputed), 272-76 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 20, 37, 133, 149-50; Staff Resp. at 20-21.)

## PUBLIC VERSION

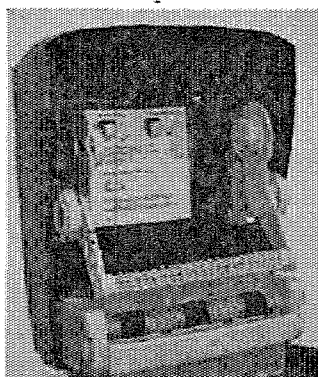
The Administrative Law Judge concludes that the NetPak Carpex and Emerald Dispensers infringe claims 1-3 of the '289 patent.

### **D. The '274 Patent.**

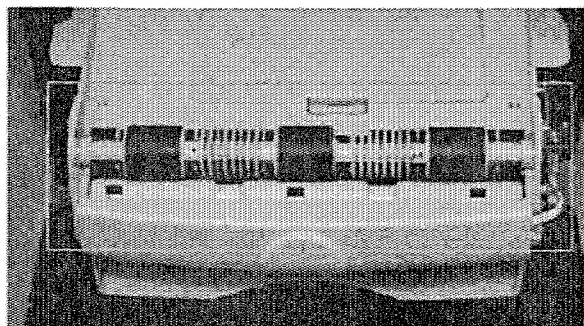
It is undisputed that there is substantial, reliable, and probative evidence to show that the StefcO and NetPak Dispensers infringe asserted claims 4-22 of the '274 patent. (Mot. Mem. at 47; Staff Resp. at 17, 19; SMF No. 294 (undisputed).)

#### 1. The StefcO Dispenser.

The undisputed evidence shows that the StefcO Dispenser is a paper dispenser comprising:

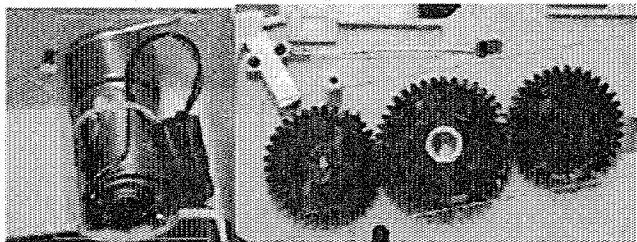


a support adapted to hold a roll of a paper;

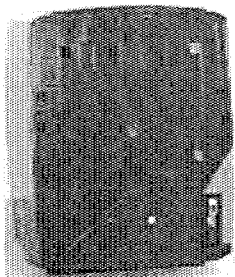


a motor driven feed mechanism adapted to receive and dispense paper from the roll;

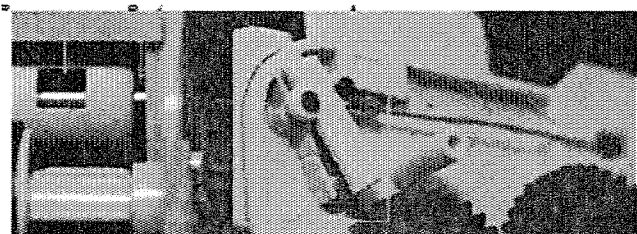




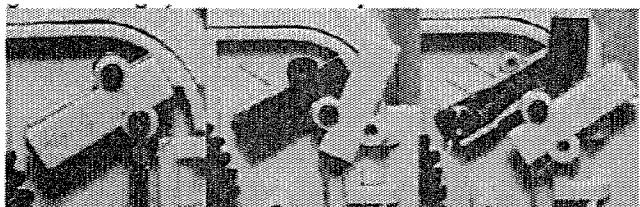
Category 1 – Stefc0 92004 Dispenser



a surface contact adapted to directly contact a mounting surface external to the dispenser when the dispenser is affixed to the mounting surface; and



at least one low impedance conductor having a first end electrically coupled to surface contact and a second end coupled to an element internal to the dispenser.



(Mot. Mem. at 50-63. *See also* Am. Compl., Exs. 26, 42; SMF Nos. 198-212 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 19, 40, 151, 154-163; Staff Resp. at 20-21.) Therefore the Administrative Law Judge concludes, based on the undisputed substantial, reliable, and probative evidence, that the Stefc0 Dispenser meets all the limitations of claim 4 of the '274 patent.

The Administrative Law Judge further finds that the undisputed substantial, reliable, and probative evidence shows that the Stefc0 Dispenser has a feed mechanism that includes a nib roller

**PUBLIC VERSION**

and the second end of the at least one low impedance conductor is coupled to the nib roller such that the limitations of claim 5 of the '274 patent are met. (Mot. Mem. at 76-77. *See also* Am. Compl., Exs. 26, 42; SMF Nos. 257-63 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 19, 40, 151, 164-66; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence further shows that the Stefcó Dispenser comprises a spring-contact coupling the second end of the at least one low impedance conductor to the nib roller such that the limitations of claim 6 of the '274 patent are met. (Mot. Mem. at 77-79. *See also* Am. Compl., Exs. 26, 42; SMF Nos. 264-276 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 19, 40, 151, 167-168; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence further shows that the Stefcó Dispenser has a nib roller that includes a shaft and the spring contact couples the second end of the at least one low impedance conductor to the shaft such that the limitations of claim 7 of the '274 patent are met. (Mot. Mem. at 77-79. *See also* Am. Compl., Exs. 26, 42; SMF Nos. 264-276 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 19, 40, 151, 169-171; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence further shows that the Stefcó Dispenser has a mounting surface that comprises at least a portion of a wall such that the limitations of claim 8 of the '274 patent are met. (Mot. Mem. at 79. *See also* Am. Compl., Exs. 26, 42; SMF Nos. 279-282 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 19, 40, 151, 172-73; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence further shows that the Stefcó Dispenser has a wall formed from a high impedance material such that the limitations of claim 9 of the '274 patent are met. (Mot. Mem. at 79-80. *See also* Am. Compl., Exs. 26, 42; SMF Nos.

## PUBLIC VERSION

283-84 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 19, 40, 151, 174-75; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence further shows that the Stefcó Dispenser comprises a chassis, the chassis being affixed to the mounting surface such that the limitations of claim 10 of the '274 patent are met. (Mot. Mem. at 80. *See also* Am. Compl., Exs. 26, 42; SMF Nos. 286-89 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 19, 40, 151, 176-77; Staff Resp. at 20-21.)

In addition, the undisputed substantial, reliable, and probative evidence shows that the Stefcó Dispenser has a chassis that comprises a plastic material such that the limitations of claim 11 of the '274 patent are met. (Mot. Mem. at 80-81. *See also* Am. Compl., Exs. 26, 42; SMF Nos. 293 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 19, 40, 151, 178-79; Staff Resp. at 20-21.)

The undisputed evidence further shows that the Stefcó Dispenser is a dispenser for dispensing flexible sheet material comprising: a chassis including a mounting member adapted to affix the chassis to a support surface; a feed mechanism affixed to the chassis, the feed mechanism including at least one roller and being adapted to advance sheet material from a roll of sheet material across the roller; and a conductive path comprising a conductor, the conductive path being disposed between the roller and the mounting member, wherein the conductive path is adapted to contact the support surface when the chassis is affixed thereto and to discharge static electricity accumulated on the at least one roller to the support surface. (Mot. Mem. at 65-75. *See also* Am. Compl., Exs. 26, 42; SMF Nos. 215-56 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 19, 40, 151, 180-86; Staff Resp. at 20-21.) Therefore the Administrative Law Judge finds that the

## PUBLIC VERSION

substantial, reliable, and probative evidence shows that the Stefcó Dispenser meets all the limitations of independent claim 12 of the '274 patent.

The undisputed substantial, reliable, and probative evidence further shows that the Stefcó Dispenser has a roller that includes a roller shaft and the conductive path includes a conductive contact adapted to contact the roller shaft such that the limitations of claim 13 of the '274 patent are met. (Mot. Mem. at 77-79. *See also* Am. Compl., Exs. 26, 42; SMF Nos. 264-76 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 19, 40, 151, 187-89; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence further shows that the Stefcó Dispenser has a conductive contact that is spring biased against the roller shaft such that the limitations of claim 14 of the '274 patent are met. (Mot. Mem. at 77-79. *See also* Am. Compl., Exs. 26, 42; SMF Nos. 264-76 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 19, 40, 151, 190-91; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence also shows that the Stefcó Dispenser has a conductive contact that comprises a compression spring such that the limitations of claim 15 of the '274 patent are met. (Mot. Mem. at 77-79. *See also* Am. Compl., Exs. 26, 42; SMF Nos. 264-76 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 19, 40, 151, 192-93; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence further shows that the Stefcó Dispenser has a mounting surface that comprises at least a portion of a wall such that the limitations of claim 16 of the '274 patent are met. (Mot. Mem. at 79. *See also* Am. Compl., Exs. 26, 42; SMF Nos. 279-282 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 19, 40, 151, 194-95; Staff Resp. at 20-21.)

## PUBLIC VERSION

The undisputed substantial, reliable, and probative evidence further shows that the Stefcó Dispenser has a wall that is formed from a high impedance material such that the limitations of claim 17 of the '274 patent are met. (Mot. Mem. at 79-80. *See also* Am. Compl., Exs. 26, 42; SMF Nos. 283-84 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 19, 40, 151, 196-97; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence further shows that the Stefcó Dispenser comprises a chassis, the chassis being affixed to the mounting surface such that the limitations of claim 18 of the '274 patent are met. (Mot. Mem. at 80. *See also* Am. Compl., Exs. 26, 42; SMF Nos. 286-89 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 19, 40, 151, 198-99; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence further shows that the Stefcó Dispenser has a chassis that comprises a plastic material such that the limitations of claim 19 of the '274 patent are met. (Mot. Mem. at 80-81. *See also* Am. Compl., Exs. 26, 42; SMF Nos. 290-93 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 19, 40, 151, 200-201; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence further shows that the Stefcó Dispenser has a support surface that “comprises a at least a portion of a wall” such that the limitations of claim 20 of the '274 patent are met. (Mot. Mem. at 79. *See also* Am. Compl., Exs. 26, 42; SMF Nos. 280-82 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 19, 40, 151, 202-203; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence further shows that the Stefcó Dispenser has a wall that is formed from a high impedance material such that the limitations of claim 21 of the '274 patent are met. (Mot. Mem. at 79-80. *See also* Am. Compl., Exs. 26, 42; SMF

## PUBLIC VERSION

Nos. 283-84 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 19, 40, 151, 204-205; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence further shows that the Stefcó Dispenser has a chassis that comprises a plastic material such that the limitations of claim 22 of the '274 patent are met. (Mot. Mem. at 80-81. *See also* Am. Compl., Exs. 26, 42; SMF Nos. 290-93 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 19, 40, 151, 206-207; Staff Resp. at 20-21.)

The Administrative Law Judge concludes that the Stefcó Dispenser infringes claims 4-22 of the '274 patent.

### 2. The NetPak Dispensers.

The undisputed evidence shows that each of the NetPak Dispensers is a paper dispenser comprising: a support adapted to hold a roll of a paper; a motor driven feed mechanism adapted to receive and dispense paper from the roll; a surface contact adapted to directly contact a mounting surface external to the dispenser when the dispenser is affixed to the mounting surface; and at least one low impedance conductor having a first end electrically coupled to surface contact and a second end coupled to an element internal to the dispenser. (Mot. Mem. at 50-63. *See also* Am. Compl., Exs. 34, 38, 44-45; SMF Nos. 198-212 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 20, 40, 151, 154-163; Staff Resp. at 20-21.) Therefore the Administrative Law Judge concludes, based on the undisputed substantial, reliable, and probative evidence, that each of the NetPak Dispensers meets all the limitations of claim 4 of the '274 patent.

The Administrative Law Judge further finds that the undisputed substantial, reliable, and probative evidence shows that each of the NetPak Dispensers has a feed mechanism that includes a nib roller and the second end of the at least one low impedance conductor is coupled to the nib

## PUBLIC VERSION

roller such that the limitations of claim 5 of the '274 patent are met. (Mot. Mem. at 76-77. *See also* Am. Compl., Exs. 34, 38, 44-45; SMF Nos. 257-63 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 20, 40, 151, 164-66; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence further shows that each of the NetPak Dispensers comprises a spring-contact coupling the second end of the at least one low impedance conductor to the nib roller such that the limitations of claim 6 of the '274 patent are met. (Mot. Mem. at 77-79. *See also* Am. Compl., Exs. 34, 38, 44-45; SMF Nos. 264-276 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 20, 40, 151, 167-168; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence further shows that each of the NetPak Dispensers has a nib roller that includes a shaft and the spring contact couples the second end of the at least one low impedance conductor to the shaft such that the limitations of claim 7 of the '274 patent are met. (Mot. Mem. at 77-79. *See also* Am. Compl., Exs. 34, 38, 44-45; SMF Nos. 264-276 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 20, 40, 151, 169-171; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence further shows that each of the NetPak Dispensers has a mounting surface that comprises at least a portion of a wall such that the limitations of claim 8 of the '274 patent are met. (Mot. Mem. at 79. *See also* Am. Compl., Exs. 34, 38, 44-45; SMF Nos. 279-282 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 20, 40, 151, 172-73; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence further shows that each of the NetPak Dispensers has a wall formed from a high impedance material such that the limitations of claim 9 of the '274 patent are met. (Mot. Mem. at 79-80. *See also* Am. Compl., Exs. 34, 38, 44-45;

## PUBLIC VERSION

SMF Nos. 283-84 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 20, 40, 151, 174-75; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence further shows that each of the NetPak Dispensers comprises a chassis, the chassis being affixed to the mounting surface such that the limitations of claim 10 of the '274 patent are met. (Mot. Mem. at 80. *See also* Am. Compl., Exs. 34, 38, 44-45; SMF Nos. 286-89 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 20, 40, 151, 176-77; Staff Resp. at 20-21.)

In addition, the undisputed substantial, reliable, and probative evidence shows that each of the NetPak Dispensers has a chassis that comprises a plastic material such that the limitations of claim 11 of the '274 patent are met. (Mot. Mem. at 80-81. *See also* Am. Compl., Exs. 34, 38, 44-45; SMF Nos. 293 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 20, 40, 151, 178-79; Staff Resp. at 20-21.)

The undisputed evidence further shows that each of the NetPak Dispensers is a dispenser for dispensing flexible sheet material comprising: a chassis including a mounting member adapted to affix the chassis to a support surface; a feed mechanism affixed to the chassis, the feed mechanism including at least one roller and being adapted to advance sheet material from a roll of sheet material across the roller; and a conductive path comprising a conductor, the conductive path being disposed between the roller and the mounting member, wherein the conductive path is adapted to contact the support surface when the chassis is affixed thereto and to discharge static electricity accumulated on the at least one roller to the support surface. (Mot. Mem. at 65-75. *See also* Am. Compl., Exs. 34, 38, 44-45; SMF Nos. 215-56 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 20, 40, 151, 180-86; Staff Resp. at 20-21.) Therefore the Administrative Law Judge



**PUBLIC VERSION**

finds that the substantial, reliable, and probative evidence shows that each of the NetPak Dispensers meets all the limitations of independent claim 12 of the '274 patent.

The undisputed substantial, reliable, and probative evidence further shows that each of the NetPak Dispensers has a roller that includes a roller shaft and the conductive path includes a conductive contact adapted to contact the roller shaft such that the limitations of claim 13 of the '274 patent are met. (Mot. Mem. at 77-79. *See also* Am. Compl., Exs. 34, 38, 44-45; SMF Nos. 264-76 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 20, 40, 151, 187-89; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence further shows that each of the NetPak Dispensers has a conductive contact that is spring biased against the roller shaft such that the limitations of claim 14 of the '274 patent are met. (Mot. Mem. at 77-79. *See also* Am. Compl., Ex. 34, 38, 44-45; SMF Nos. 264-76 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 20, 40, 151, 190-91; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence also shows that each of the NetPak Dispensers has a conductive contact that comprises a compression spring such that the limitations of claim 15 of the '274 patent are met. (Mot. Mem. at 77-79. *See also* Am. Compl., Exs. 34, 38, 44-45; SMF Nos. 264-76 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 20, 40, 151, 192-93; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence further shows that each of the NetPak Dispensers has a mounting surface that comprises at least a portion of a wall such that the limitations of claim 16 of the '274 patent are met. (Mot. Mem. at 79. *See also* Am. Compl., Exs.

**PUBLIC VERSION**

34, 38, 44-45; SMF Nos. 279-282 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 20, 40, 151, 194-95; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence further shows that each of the NetPak Dispensers has a wall that is formed from a high impedance material such that the limitations of claim 17 of the '274 patent are met. (Mot. Mem. at 79-80. *See also* Am. Compl., Exs. 34, 38, 44-45; SMF Nos. 283-84 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 20, 40, 151, 196-97; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence further shows that each of the NetPak Dispensers comprises a chassis, the chassis being affixed to the mounting surface such that the limitations of claim 18 of the '274 patent are met. (Mot. Mem. at 80. *See also* Am. Compl., Exs. 34, 38, 44-45; SMF Nos. 286-89 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 20, 40, 151, 198-99; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence further shows that each of the NetPak Dispensers has a chassis that comprises a plastic material such that the limitations of claim 19 of the '274 patent are met. (Mot. Mem. at 80-81. *See also* Am. Compl., Exs. 34, 38, 44-45; SMF Nos. 290-93 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 20, 40, 151, 200-201; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence further shows that each of the NetPak Dispensers has a support surface that “comprises a at least a portion of a wall” such that the limitations of claim 20 of the '274 patent are met. (Mot. Mem. at 79. *See also* Am. Compl., Exs. 34, 38, 44-45; SMF Nos. 280-82 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 20, 40, 151, 202-203; Staff Resp. at 20-21.)

## PUBLIC VERSION

The undisputed substantial, reliable, and probative evidence further shows that each of the NetPak Dispensers has a wall that is formed from a high impedance material such that the limitations of claim 21 of the '274 patent are met. (Mot. Mem. at 79-80. *See also* Am. Compl., Exs. 34, 38, 44-45; SMF Nos. 283-84 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 20, 40, 151, 204-205; Staff Resp. at 20-21.)

The undisputed substantial, reliable, and probative evidence further shows that each of the NetPak Dispensers has a chassis that comprises a plastic material such that the limitations of claim 22 of the '274 patent are met. (Mot. Mem. at 80-81. *See also* Am. Compl., Exs. 34, 38, 44-45; SMF Nos. 290-93 (undisputed), 294 (undisputed); Steffes Decl. at ¶¶11, 20, 40, 151, 206-207; Staff Resp. at 20-21.)

The Administrative Law Judge concludes that the NetPak Carplex and Emerald Dispensers infringe claims 4-22 of the '274 patent.

### V. VALIDITY

The patents at issue are presumed valid by law. 35 U.S.C. § 282. Moreover, no party has challenged the validity or enforceability of the '815, '856, '289, and '274 patents. Therefore validity and enforceability are not in issue. *Lannom Mfg. Co., Inc. v. U.S. Int'l Trade Comm'n*, 799 F.2d 1572, 1579 (Fed. Cir. 1986).

### VI. DOMESTIC INDUSTRY

Complainant must establish that “an industry in the United States, relating to the articles protected by the patent, copyright, trademark, mask work or design concerned, exists or is in the process of being established.” 19 U.S.C. § 1337(a)(2); *Certain Ammonium Octamolybdate Isomers*, Inv. No. 337-TA-477, Comm'n Op. at 55 (U.S.I.T.C., Jan. 2004) (“*Certain Isomers*”).

## PUBLIC VERSION

The domestic industry requirement consists of both an economic prong (*i.e.*, the activities of, or investment in, a domestic industry) and a technical prong (*i.e.*, whether complainant practices its own patents). *Certain Isomers*, at 55.

### A. Economic Prong.

To satisfy the economic prong, the domestic industry must involve “with respect to the articles protected by the patent . . . concerned[:] (A) significant investment in plant and equipment; (B) significant employment of labor or capital; or (C) substantial investment in its exploitation, including engineering, research and development, or licensing.” 19 U.S.C. § 1337(a)(3) (internal formatting removed).

It is undisputed that Complainant has made significant investments in research and development for the domestic industry products that Complainant asserts practice certain claims of the ‘815, ‘856, ‘289, and ‘274 patents. (Mot. Mem. at 99-101; Am. Compl., Ex. 50 at ¶¶4-16, 18-21; *id.*, Exs. A-D; Staff Resp. at 23-26; SMF No. 49-52 (undisputed); Mot., Ex. 117.) In addition, Complainant’s other investments in at least plant and equipment (domestic industry dispensers “placed” with customers<sup>6</sup> to generate paper towel revenue), testing, quality control, repair, and technical support for the same domestic industry products further support Complainant’s assertions with respect to economic domestic industry. (Mot. Mem. at 99-101; Staff Resp. at 23-26; Geddes Decl. at ¶¶4-19; SMF Nos. 44 (undisputed), 46-47 (undisputed), 52-55 (undisputed), 59-62 (undisputed); Mot., Exs. 11-13, 82, 86, 87, 88, 90, 91, 92, 93, 100, 103-06, 108, 111, 113, 117, 123, 126-28, 135, 184, 192, 269-70; Am. Compl., Ex. 50 at ¶¶17, 22; *id.*, Ex. E.) Therefore, the Administrative Law Judge finds that with respect to the ‘815, ‘856, ‘289,

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<sup>6</sup> (Button Decl. at ¶25.)

## PUBLIC VERSION

and '274 patents, Complainant has satisfied the economic prong of the domestic industry requirement of Section 337 with substantial, reliable, and probative evidence.

### **B. Technical Prong.**

“In order to satisfy the technical prong of the domestic industry requirement, it is sufficient to show that the domestic industry practices any claim of that patent, not necessarily an asserted claim of that patent.” *Certain Isomers, supra*, at 55.

Complainant asserts that its Georgia-Pacific's enMotion®, Water Resistant enMotion®, enMotion® Recessed, Impulse8®, Impulse10®, goRag®, Cormatic®, SofPull® Automated, and Marathon® dispensers (collectively, “Domestic Industry Products”) practice at least claim 4 of the '815 patent, claim 15 of the '856 patent, claim 1 of the '289 patent, and claim 4 of the '274 patent. (Mot. Mem. at 83.) Staff agrees. (Staff Resp. at 22-23.) The Domestic Industry Products “share the same general design and . . . share a similar design with regard to the critical components that satisfy the elements of the [a]sserted [c]laims.” (Steffes Decl. at ¶304.)

#### 1. '815 Patent, Claim 4.

The undisputed evidence shows that each of the Domestic Industry Products is a paper dispenser comprising: a support adapted to hold a roll of a paper; a motor driven feed mechanism adapted to receive and dispense paper from the roll; at least one battery electrically coupled to the motor driven feed mechanism; a surface contact spring adapted to directly contact a mounting surface external to the dispenser when the dispenser is affixed to the mounting surface; and at least one low impedance wire having a first end electrically coupled to the spring and a second end coupled to a surface integral to the dispenser. (Mot. Mem. at 83-91; Staff Resp. at 22-23; SMF Nos. 301 (undisputed), 304-313 (undisputed); Steffes Decl. at ¶¶14, 18, 33, 304-318; Mot., Ex. 3.)

## PUBLIC VERSION

Based on the foregoing, the Administrative Law Judge finds that with respect to claim 4 of the '815 patent, Complainant has presented undisputed substantial, reliable and probative evidence to satisfy the technical domestic industry requirement of Section 337.

### 2. '856 Patent, Claim 15.

The undisputed evidence shows that each of the Domestic Industry Products is a paper dispenser comprising: a support adapted to hold a roll of a paper; a motor driven feed mechanism adapted to receive and dispense paper from the roll; a surface contact spring adapted to directly contact a mounting surface external to the dispenser when the dispenser is affixed to the mounting surface; and at least one low impedance wire having a first end electrically coupled to the surface contact spring and a second end coupled to an element internal to the dispenser. (Mot. Mem. at 83-91; Staff Resp. at 22-23; SMF Nos. 302 (undisputed), 304-313 (undisputed); Steffes Decl. at ¶¶14, 18, 36, 304, 319-330; Mot., Ex. 4.)

Based on the foregoing, the Administrative Law Judge finds that with respect to claim 15 of the '856 patent, Complainant has presented undisputed substantial, reliable and probative evidence to satisfy the technical domestic industry requirement of Section 337.

### 3. '289 Patent, Claim 1.

The undisputed evidence shows that each of the Domestic Industry Products is a dispenser for dispensing flexible sheet material comprising: an ungrounded chassis; a feed mechanism fixed to the chassis, the feed mechanism including at least one roller and being adapted to advance sheet material from a roll of sheet material across the roller; an electronic controller device affixed to the chassis proximate to the roller and not directly connected to any earth ground, the controller device being adapted to control dispensation of the sheet material; and a low impedance conductive path

## PUBLIC VERSION

extending from the roller to a mounting member of the chassis, the mounting member being adapted to affix the chassis to a support surface, said support surface being formed of a high impedance material that is only indirectly connected to said earth ground to thereby provide a high impedance around connection, wherein the mounting member provides an electrical mechanical contact between the dispenser and the support surface whereby any static electricity charge built-up on the at least one roller as a result of dispensing sheet material is dispersed through the low impedance conductive path onto the high impedance support surface and through the high impedance support surface to the earth ground. (Mot. Mem. at 91-98; Staff Resp. at 22-23; SMF Nos. 314-330 (undisputed); Steffes Decl. at ¶¶14, 18, 39, 304, 331-344; Mot., Ex. 2.)

Based on the foregoing, the Administrative Law Judge finds that with respect to claim 1 of the '289 patent, Complainant has presented undisputed substantial, reliable and probative evidence to satisfy the technical domestic industry requirement of Section 337.

#### 4. '274 Patent, Claim 4.

The undisputed evidence shows that each of the Domestic Industry Products is a paper dispenser comprising: a support adapted to hold a roll of a paper; a motor driven feed mechanism adapted to receive and dispense paper from the roll; a surface contact adapted to directly contact a mounting surface external to the dispenser when the dispenser is affixed to the mounting surface; and at least one low impedance conductor having a first end electrically coupled to surface contact and a second end coupled to an element internal to the dispenser. (Mot. Mem. at 83-91; Staff Resp. at 22-23; SMF Nos. 303-313 (undisputed); Steffes Decl. at ¶¶14, 18, 42, 304, 345-358; Mot., Ex. 1.)

## PUBLIC VERSION

Based on the foregoing, the Administrative Law Judge finds that with respect to claim 4 of the '274 patent, Complainant has presented undisputed substantial, reliable and probative evidence to satisfy the technical domestic industry requirement of Section 337.

### **VII. Conclusion**

Based on the foregoing, it is the Initial Determination of the Administrative Law Judge that Complainant's motion (Motion Docket No. 718-028) should be GRANTED with respect to Respondents StefcO Industries, Inc., Cellynne Corporation, and NetPak Elektronik Plastik ve Kozmetik Sanayi Ve Ticaret Ltd. The undisputed substantial, reliable, and probative evidence shows that with respect to said respondents, a violation of Section 337 of the Tariff Act of 1930, as amended, has occurred the importation into the United States, the sale for importation, or the sale within the United States after importation of certain electronic paper towel dispensing devices and components thereof by reason of infringement of one or more of claims 4-7 of U.S. Patent No. 6,871,815, claims 8-22 of U.S. Patent No. 7,017,856, claims 1-3 of U.S. Patent No. 7,182,289, and claims 4-22 of U.S. Patent No. 7,387,274, each of which is valid and enforceable. The undisputed substantial, reliable, and probative evidence further shows that a domestic industry exists that practices U.S. Patent Nos. 6,871,815, 7,017,856, 7,182,289, and 7,387,274.

This Initial Determination is hereby certified to the Commission. Pursuant to 19 C.F.R. § 210.42(h), this Initial Determination shall become the determination of the Commission unless a party files a petition for review of the Initial Determination pursuant to 19 C.F.R. § 210.43(a), or the Commission, pursuant to 19 C.F.R. § 210.44, orders on its own motion a review of the Initial Determination or certain issues herein.



PUBLIC VERSION

RECOMMENDED DETERMINATION ON REMEDY AND BOND WITH RESPECT TO  
DEFAULTING RESPONDENTS STEFCO AND NETPAK

I. REMEDY AND BONDING

A. *Applicable Law.*

The Commission may issue a remedial order excluding the goods of respondents found in violation of Section 337 (a limited exclusion order) or, if certain criteria are met, excluding all infringing goods regardless of the source (a general exclusion order). 19 U.S.C. § 1337(d); *Certain Hydraulic Excavators and Components Thereof*, Inv. No. 337-TA-582, Comm'n Op., at 15 (U.S.I.T.C., February 3, 2009) ("*Certain Excavators*").

1. **General Exclusion Order.**

A general exclusion order applies to persons who were not respondents in the investigation, and even to persons who could not have been respondents, such as persons who decide to import after the investigation is concluded. "Because of its considerable impact on international trade, potentially extending beyond the parties and articles involved in the investigation, more than just the interests of the parties is involved. Therefore, the Commission exercises caution in issuing general exclusion orders and requires that certain conditions be met before one is issued." *Certain Agricultural Tractors Under 50 Power Takeoff Horsepower*, Inv. No. 337-TA-380, Comm'n Op., at 21 (U.S.I.T.C., March 12, 1997) ("*Under 50*"). See also *Kyocera Wireless Corp. v. International Trade Comm'n*, 545 F.3d 1340, 1356 (Fed. Cir. 2008) (heightened burden for general exclusion order). A general exclusion order may issue in situations where—

(A) a general exclusion from entry of articles is necessary to prevent circumvention of an exclusion order limited to products of named persons; or

(B) there is a pattern of violation of this section and it is difficult to identify the

## PUBLIC VERSION

source of infringing products.

19 U.S.C. § 1337(d)(2).

Complainant requests that the Administrative Law Judge recommend a general exclusion order should a violation be found against defaulting Respondents StefcO Industries, Inc. and Cellynne Corporation (collectively, “Stefco”) and defaulting Respondent NetPak Elektronik Plastik ve Kozmetik Sanayi Ve Ticaret Ltd. (“NetPak”).

### **2. Limited Exclusion Order.**

A limited exclusion order instructs the U.S. Customs and Border Protection to exclude from entry all articles that are covered by the patents at issue and that originate from a named respondent in the investigation. *See* 19 U.S.C. § 1337(d). Where there are respondents in default, the Commission shall presume the facts alleged in the complaint to be true if a complainant seeks relief limited solely to defaulters. Commission Rule 210.16(c). Thus, a limited exclusion order against StefcO and NetPak is available if Complainant does not sufficiently adduce evidence to meet the heightened burden for a general exclusion order.

#### **B. Remedy with Respect to the ‘815, ‘856, ‘289, and ‘274 Patents.**

The Administrative Law Judge found above that the undisputed substantial, reliable, and probative evidence shows that a Section 337 violation has occurred with respect to defaulting Respondents StefcO and NetPak by reason of infringement of claims 4-7 of the ‘815 patent, claims 8-22 of the ‘856 patent, claims 1-3 of the ‘289 patent, and claims 4-22 of the ‘274 patent, and that a domestic industry exists that practices said patents. Therefore a remedy in the form of an exclusion order is warranted. Complainant argues that a general exclusion order against StefcO and NetPak should be issued pursuant to both Section 337(d)(2)(A) and (B).

## PUBLIC VERSION

### 1. Circumvention of a Limited Exclusion Order

As an initial matter, it is noted that it appears to be more difficult to make a showing under Section 337(d)(2)(A) than (B). The Commission's focus is on whether there is "correlative intent or likelihood of infringement by Respondents' manufacturers or any other foreign manufacturers[.]" *Certain Self-Cleaning Litter Boxes and Components Thereof*, Inv. No. 337-TA-625, Comm'n Op. at 57 (U.S.I.T.C., April 28, 2009) (finding "insufficient evidence to support the requisite risk of circumvention under subparagraph A to warrant a general exclusion order") ("*Litter Boxes*"); *Certain Coaxial Cable Connectors and Components Thereof and Products Containing Same*, Inv. No. 337-TA-650, Comm'n Op. at 60 (U.S.I.T.C., April 14, 2010) ("*Coaxial Cable*") (finding evidence was insufficient "to infer an intent to circumvent" a limited exclusion order, but granting a general exclusion order under subsection (B)).<sup>7</sup> "The existence of an opportunity to make infringing products is simply not enough to satisfy the requirements of subparagraph A." *Litter Boxes*, at 57. Likewise, an allegation that "manufacturing respondents frequently change names and/or corporate structure" "by itself" is not sufficient to make a showing under subsection (A). *Certain Ground Fault Circuit Interrupters and Products Containing Same*, Inv. No. 337-TA-615, Comm'n Op. at 25-26 (U.S.I.T.C., March 26, 2009) ("*Circuit Interrupters*"); *Certain Semiconductor Chips with Minimized Chip Package Size and Products Containing Same*, Inv. No. 337-TA-605, Comm'n Op. at 67-68 (U.S.I.T.C., June 3, 2009). The Commission, in a gray market goods investigation, did find subsection (A) met when the evidence showed respondents (i) could quickly create new entities/identities and shift operations, (ii) were

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<sup>7</sup> See also *Certain Inkjet Supplies and Components Thereof*, Inv. No. 337-TA-691, Comm'n Op. at 12 (U.S.I.T.C., January 28, 2011) (declining to reach merits with respect to subsection A after finding general exclusion order warranted under subsection B); *Certain Semiconductor Chips Having Synchronous Dynamic Random Access Memory Controllers and Products Containing Same*, Inv. No. 337-TA-661, Comm'n Op. at 11-12 (U.S.I.T.C., August 10, 2010) (finding "no evidence that Respondents have circumvented, or aim to circumvent, an LEO").

**PUBLIC VERSION**

generally willing to avoid the legal consequences of their actions, and (iii) were selling products made by foreign entities not subject to personal jurisdiction and that, at most, stood to lose some shipments of the pertinent product—a small risk compared to their high profit margins. *Certain Cigarettes and Packaging Thereof*, Inv. No. 337-TA-643, Comm’n Op. at 26-27 (U.S.I.T.C., September 21, 2009) (“*Certain Cigarettes*”).

Here, Complainant argues that

a general exclusion order is necessary to prevent circumvention of a limited exclusion order because (i) there is an economic incentive to circumvent a limited exclusion order and few barriers prevent foreign competitors from selling infringing articles in the United States; (ii) manufacturer identity is not significant to customers and may be obscured; (iii) importation and distribution channels obscure the source of infringing paper towel dispensers; and (iv) circumvention would be very difficult to detect after importation.

(Mot. at 2.) Staff agrees. (Staff Resp. at 26-29.<sup>8</sup>)

The evidence shows that conditions are ripe for circumvention of a limited exclusion order.

Those already in the market of paper towel dispensers could adapt dispensers to practice the asserted patents without any difficulty or expense and those wishing to newly enter the market would also find low entry barriers. (Mot. Mem. at 15; SMF Nos. 36-37 (undisputed) {

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<sup>8</sup> While Staff provides a discussion of why it would be simple for foreign manufacturers to circumvent a limited exclusion order based on an evaluation of Complainant’s evidence (SBr. at 27-29), Staff fails to sufficiently touch upon why the circumstances here differ from those investigations in which the Commission found that the opportunity to make infringing products or change names is not enough to meet the requirements of subsection (A). *Circuit Interrupters* at 25-26; *Litter Boxes* at 57.

PUBLIC VERSION

} The

low cost and ease of manufacturing dispensers that practice the asserted patents “results in a large number of potential entrants to the U.S. market,” and furthermore is coupled with an attractive, highly profitable, and growing U.S. market; a double opportunity to profit (dispenser and paper towel sales); well-established distribution channels; heavy U.S. consumption; and demand for dispensers with static electricity grounding capabilities. (Button Decl. at ¶¶14, 17, 19, 76, 96-97, 144; SMF Nos. 88-95 (undisputed), 154-66 (undisputed), 169-80 (undisputed).) Furthermore, a limited exclusion order would be circumvented should the named Respondents in this Investigation choose to sell their molds and diagrams for making dispensers covered by any limited exclusion order to companies that are not named as respondents to this Investigation. (Button Decl. at ¶¶70, 185.)

While the existence of an opportunity to make infringing products has not in itself been a basis for finding a general exclusion order in recent Commission decisions, Complainant points out that in this situation, “[t]he probability that circumvention activity would go undetected is very high.” (*Id.* at ¶186.) This is because it is difficult to determine, based on a visual inspection of the device, (i) whether a wall-mounted electronic paper towel dispenser may infringe the asserted patents and (ii) who was the original manufacturer. (*Id.* at ¶¶27-29, 36, 38, 46-47.) The devices are normally secured to the wall and have a locked outer cover. (*Id.*) In addition, dispensers are not typically branded with a manufacturer’s name. (*Id.*) Complainant presents some evidence that distributors “*may actively be deceptive* about their manufacturing activities.” (*Id.* at ¶45 (emphasis added); SMF No. 153 (undisputed).)

Furthermore, Complainant explains that it is not necessarily possible to detect

PUBLIC VERSION

circumvention by other means. Customs records are not usually detailed enough to show a manufacturer or what type of product is being imported. (Button Decl. at ¶¶56-69; SMF Nos. 133-38 (undisputed), 139, 140-48 (undisputed).) Likewise, Complainant had documented troubles in purchasing single dispensers to determine whether they are infringing. (Button Decl. at ¶¶106-109; Petersen Decl. at ¶¶3-5.) Even where Complainant succeeded in buying some infringing dispensers of foreign manufacture, it was unable to determine their maker. (SMF Nos. 107-108 (undisputed).) {

} Therefore it would be difficult to determine whether StefcO, NetPak, or other named respondents had circumvented limited exclusion orders or consent orders. Because the difficulty of detection and resultant lack of consequences appear to be inherent with this industry, this increases the motivation for, and probability of, circumvention of a limited exclusion order here. Thus the Administrative Law Judge finds that the circumstances here are more analogous to those in *Certain Cigarettes*, than in *Litter Boxes* or *Circuit Interrupters*.

The Administrative Law Judge notes that a large number of named respondents entered into consent orders and redesigned their accused products (*see, e.g.*, SMF No. 168 (undisputed)) and that NetPak wished to enter into a consent order but was stymied by Complainant (*see* Order No. 18 at 2; Order No. 22). This cuts somewhat against a finding that there is a tendency or intent among Respondents or others in this industry to circumvent, rather than comply with, a limited exclusion order (or the issued consent orders). However, when weighed against the other evidence described above, including the branding deceptions described by at least one named Respondent, as well as the other industry descriptions set forth by Dr. Button in his detailed evaluation (*see generally* Button Decl.), the Administrative Law Judge finds on balance that the evidence supports

**PUBLIC VERSION**

a finding that a general exclusion order is necessary to prevent circumvention of a limited exclusion order.

2. Pattern of Violation; Difficulty Identifying Source of Infringing Products.

Complainant further argues that

The existence of a pattern of violation of the patents-in-suit is evidenced by the fact that (i) there are a large number of infringing Respondents who exist at multiple levels of the distribution chain and have been progressively discovered over time; (ii) infringement is not limited to the Respondents; and (iii) business conditions exist that encourage the importation of infringing dispensers into the United States.

Moreover, it is difficult to identify the source of infringing products because (i) visual inspection of paper towel dispensers in advertisements or in ordinary use does not reveal whether they infringe Georgia-Pacific's patents-in-suit; (ii) the infringing dispensers themselves, as well as their packaging often does not identify the manufacturer or distributor of the dispensers; (iii) the distributors of the infringing dispensers will not disclose the source of the dispensers; (iv) customs forms for imported dispensers may not list the manufacturer of the dispensers; (v) internet distribution, a prevalent mode of sale, lends itself to anonymity; (vi) even when a source of potentially infringing paper towel dispensers is identified, it is difficult for Georgia-Pacific to obtain a dispenser from manufacturers or foreign trading companies to confirm infringement; and (vii) there are a number of foreign sources of infringing dispensers.

(Mot. at 2-3.) Staff agrees. (Staff Resp. at 29-33.)

The evidence supports a finding that there is a pattern of violation of the asserted patents, as discussed below. The Section 337 violations by Stefc0 and NetPak described in the above initial determination are probative of a pattern of violation. (See ID Section IV, above.) Furthermore, Complainant submits additional probative and persuasive evidence relating to a widespread pattern of violation of the asserted patents with respect to Respondent Jet Power,<sup>9</sup> the Respondents

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<sup>9</sup> Respondent Jet Power has filed a motion seeking termination on the basis of a consent order stipulation. (Motion Docket No. 718-030.) Therefore, the Administrative Law Judge makes no finding here as to whether Respondent Jet Power has violated Section 337 by infringing the asserted patents, but instead solely evaluates Complainant's submissions relating to Jet Power for purposes of determining remedy.

## PUBLIC VERSION

terminated by consent order,<sup>10</sup> and certain non-respondents, on the basis that they have been selling for importation, importing, or selling after importation, paper towel dispensers alleged to infringe the asserted claims of the asserted patents. (Mot. Mem. at 46-82, 114-115; SMF Nos. 64-79, 112-113, 117-118, 196-300.) Dr. Steffes explained that he evaluated the Winco TD-801 Automatic Paper Towel Dispenser, the Update TD-1216AU Automatic Roll Towel Dispenser, the AIM 1250 Electronic Roll Towel Dispenser, the Ko-Am JW Automatic Roll Towel Dispenser, the Natyry 398 Automatic Roll Towel Dispenser, the Jet Power 398 and 398A Automatic Roll Towel Dispensers, the Vida Dispensers, the Draco Sensorcut and Tear & Go Hands-Free Paper Towel Dispensers, and the Kruger Titan2 Dispenser and concluded that they all meet the limitations of the asserted claims of the asserted patents. (Steffes Decl. (and the exhibits cited therein) at ¶¶11-12, 16-18, 22-26, 29-32, 34-35, 37-38, 40-41, 55-303.) Dr. Steffes also evaluated a number of other paper towel dispensers, including dispensers of foreign manufacture obtained by Georgia-Pacific from Shenzhen Nan Long Yuan Paper Company and two eBay merchants, buckeye445 and 4567elig, as well as the Yu Wei Electronic Paper Towel Dispenser {

} and concluded they all meet the limitations of the asserted claims of the asserted patents.

(Steffes Decl. (and the exhibits cited therein) at ¶¶11, 16, 18, 27-28, 31, 34, 37, 41, 55-207.)

Complainant further identified a number of entities that it believes manufacture, import, or sell foreign-made dispensers in the U.S. that are likely to infringe the asserted patents, although Complainant has been frustrated in its efforts to acquire samples for evaluation. (Mot. Mem. at 29-30.) Taken together, the above evidence establishes a pattern of violation with respect to the asserted patents. This pattern of violation may be explained, in whole or in part, by the business

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<sup>10</sup> These consent order stipulations were for settlement purposes only and do not constitute an admission that an unfair act has been committed. However, an evaluation of the respondents terminated by consent order may be probative of a pattern of violation. See *Coaxial Cable*, at 59.



## PUBLIC VERSION

conditions found to exist by the Administrative Law Judge above in the discussion relating to circumvention of a limited exclusion order, including the ease of market entry, low manufacturing costs, an attractive and growing U.S. market, a double opportunity to profit (dispenser and paper towel sales), well-established distribution channels, heavy U.S. consumption, demand for dispensers with static electricity grounding capabilities, and the difficulty of infringement detection and resultant lack of consequences. (*See* RD Section I.B.1, above.)

The evidence further supports a finding that it is difficult to identify the source of infringing products. First, as noted above, Complainant has been unable to obtain samples of dispensers that are likely to infringe and thus cannot establish a sufficient basis to pursue litigation to find out manufacturer information. (Mot. Mem. at 29-30; Button Decl. at ¶¶106-109; Petersen Decl. at ¶¶3-5.) Second, Complainant has been unable to determine, based on a visual inspection of dispensers displayed at trade shows or in public areas, (i) whether a wall-mounted electronic paper towel dispenser may infringe the asserted patents and (ii) who was the original manufacturer. (Button Decl. at ¶¶27-38, 46-47, 51-52; SMF Nos. 120-123 (undisputed), 125-27 (undisputed).) The devices are normally secured to the wall and have a locked outer cover. (*Id.*) In addition, dispensers or their packaging are not typically branded with a manufacturer's name. (*Id. See also* SMF No. 128-29 (undisputed).) Advertisements of paper towel dispensers, catalogues, and internet websites also show the front of the dispenser, not the back, preventing identification of source and infringing features. (SMF No. 124 (undisputed), 128-131 (undisputed), 134 (undisputed); Button Decl. at ¶¶42-43.) Furthermore, Complainant presents some evidence that distributors are reluctant to identify manufacturing sources and even “*may actively be deceptive* about their manufacturing activities.” (Button Decl. at ¶45 (emphasis added), 48-50, 53; SMF No. 131 (undisputed), 153 (undisputed).) Complainant has also shown that in some instances when it

## PUBLIC VERSION

has been able to identify infringing dispensers, it has been difficult for Complainant to track the manufacturing source due to lack of labeling, misinformation, the distributor's lack of knowledge, company aliases, unclear import records, etc. (SMF No. 132-38 (undisputed), 140-53 (undisputed); Button Decl. at ¶¶54-69, 72-74.)

The Administrative Law Judge concludes that there is a pattern of violation of the asserted patents and that it is difficult to identify the source of infringing products. Because the requirements of subsection (B) are met, the Administrative Law Judge recommends that the Commission issue general exclusion orders to remedy the Section 337 violations that have occurred with the asserted patents.

## II. CEASE AND DESIST ORDER

Section 337 provides that in addition to, or in lieu of, the issuance of an exclusion order, the Commission may issue a cease and desist order as a remedy for violation of Section 337. See 19 U.S.C. § 1337(f)(1). The Commission generally issues a cease and desist order directed to a domestic respondent when there is a "commercially significant" amount of infringing, imported product in the United States that could be sold so as to undercut the remedy provided by an exclusion order. See *Certain Crystalline Cefadroxil Monohydrate*, Inv. No. 337-TA-293, Comm'n Op. on the Issue Under Review, and on Remedy, the Public Interest and Bonding at 37-42, Pub. No. 2391 (U.S.I.T.C., June 1991). Cease and desist orders have been declined when the record contains no evidence concerning infringing inventories in the United States. *Certain Condensers, Parts Thereof and Products Containing Same, Including Air Conditioners for Automobiles*, Inv. No. 337-TA-334, Comm'n Op. at 28 (U.S.I.T.C., Aug. 27, 1997).

Here, Complainant requests cease and desist orders against those domestic Respondents who have defaulted: StefcO Industries, Inc. and Cellynne Corporation. (Mot. Mem. at 133.)

**PUBLIC VERSION**

Complainant points out that the Commission presumes commercially significant inventories in default situations. (*Id.* (citing *Certain Baseband Processor Chips and Chipsets, Transmitter and Receiver (Radio) Chips, Power Control Chips, and Products Containing Same, Including Cellular Telephone Handsets*, Inv. No. 337-TA-543, Comm'n Op., 2007 (June 19, 2007)).) Complainant further speculates that export records, { } suggest that Stefcu Industries, Inc. and Cellynne Corporation have received large quantities of imported plastic dispensers, although it is not possible to confirm whether these infringe the asserted patents. (*Id.*)

Staff supports Complainant's request on the basis that commercially significant inventories are presumed in default situations. (Staff Resp. at 34.)

The Administrative Law Judge recommends that the Commission issue cease and desist orders against domestic defaulting Respondents Stefcu Industries, Inc. and Cellynne Corporation. *Certain Agricultural Tractors Under 50 Power Take-Off Horsepower*, Inv. No. 337-TA-380, Comm'n Op. at 44, n.124 (U.S.I.T.C., March 12, 1997).

**III. BOND DURING PRESIDENTIAL REVIEW PERIOD**

The Administrative Law Judge and the Commission must determine the amount of bond to be required of a respondent, pursuant to Section 337(j)(3), during the 60-day Presidential review period following the issuance of permanent relief, in the event that the Commission determines to issue a remedy. 19 C.F.R. § 210.42(a)(1)(ii). The purpose of the bond is to protect the complainant from any injury. 19 C.F.R. § 210.50(a)(3).

When reliable price information is available, the Commission has often set the bond by eliminating the differential between the domestic product and the imported, infringing product. *See Certain Microsphere Adhesives, Process for Making Same, and Products Containing Same,*

## PUBLIC VERSION

*Including Self-Stick Repositionable Notes*, Inv. No. 337-TA-366, Comm'n Op., at 24 (U.S.I.T.C., December 15, 1995). In circumstances where pricing information is unclear, or where variations in pricing make price comparisons complicated and difficult, the Commission typically has set a 100 percent bond. *Id.*, at 24-25; *Certain Digital Multimeters and Products with Multimeter Functionality*, Inv. No. 337-TA-588, Comm'n Op., at 12-13 (U.S.I.T.C., June 3, 2008) (finding 100 percent bond where each respondent set its price differently, preventing clear differentials between complainant's products and the infringing imports). When a pricing comparison is impossible, it is also appropriate to set the bond based on a reasonable royalty. *Certain Digital Televisions and Certain Products Containing Same and Methods of Using Same*, Inv. No. 337-TA-617, Commission Opinion at 18 (U.S.I.T.C., April 23, 2009).

Complainant argues that a bond of 100 percent should be set because (i) it is not possible to set a bond based upon the difference of sales price between the patented domestic product and the Accused Products, and (ii) there is no applicable royalty rate because Complainant has never licensed the asserted patents. (Mot. Mem. at 134.) With respect to (i), Complainant argues that as it leases most of its patented domestic products, a price comparison is unworkable. (*Id.*) Complainant explains that "[t]he majority of Respondents" sell the Accused Products instead of leasing them. (*Id.*; SMF No. 158 (undisputed).)

According to Staff, the record lacks sufficiently reliable information as to pricing and therefore bond should be set at 100 percent. (Staff Resp. at 34-35.) Staff also points out that the Commission has previously set bonds at 100 percent for defaulting respondents. (*Id.* at 35.)

Based on the submissions of Complainant and Staff, the Administrative Law Judge recommends that the bond for the Accused Products of defaulting Respondents should be set at 100 percent. However, the Administrative Law Judge does not recommend imposition of a bond

## PUBLIC VERSION

against any non-respondents, in the event a general exclusion order issues, because Complainant has not set forth any information to show that a price differential would not be calculable with respect to non-respondents. (*See e.g.*, SMF No. 158, which discusses that many entities in the industry *do* lease their dispensers. *See also Coaxial Cable* at 63.)

### IV. CONCLUSION

In accordance with the discussion of the issues contained herein, it is the RECOMMENDED DETERMINATION of the Administrative Law Judge that in the event the Commission finds a violation of Section 337 with respect to defaulting Respondents StefcO Industries, Inc., Cellynne Corporation, and NetPak Elektronik Plastik ve Kozmetik Sanayi Ve Ticaret Ltd., the Commission should issue a general exclusion order prohibiting the unlicensed importation of electronic paper towel dispensing devices and components thereof that infringe the asserted claims of the '815, '856, '289, and '274 patents.

The Administrative Law Judge further recommends that the Commission issue cease and desist orders against domestic Respondents StefcO Industries, Inc. and Cellynne Corporation.

If the Commission imposes a remedy following a finding of violation, defaulting Respondents StefcO Industries, Inc., Cellynne Corporation, and NetPak Elektronik Plastik ve Kozmetik Sanayi Ve Ticaret Ltd. should be required to post a bond of 100 percent of the entered value of each accused electronic paper towel dispensing device imported during the Presidential review period. Should a general exclusion order issue, the Administrative Law Judge recommends that zero bond be set for the unlicensed importation of any non-respondent electronic paper towel dispensing devices during the Presidential review period.

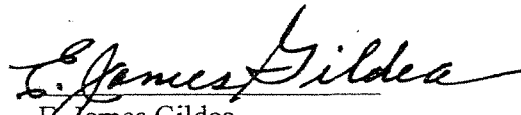
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Any party seeking to have any portion of this document deleted from the public version thereof must submit to this office a copy of this document with red brackets clearly indicating any portion asserted to contain confidential business information. The parties' submissions concerning the public version of this document need not be filed with the Commission Secretary.

**SO ORDERED.**



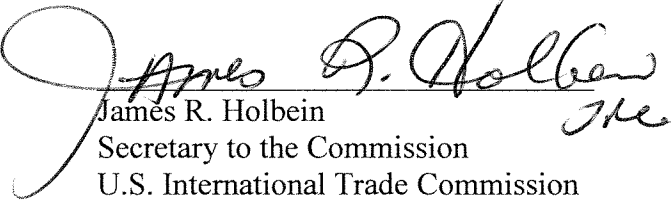
E. James Gildea  
Administrative Law Judge

**IN THE MATTER OF CERTAIN ELECTRONIC  
PAPER TOWEL DISPENSING DEVICES  
AND COMPONENTS THEREOF**

337-TA-718

**PUBLIC CERTIFICATE OF SERVICE**

I, James R. Holbein, hereby certify that the attached **INITIAL DETERMINATION** has been served by hand upon the Commission Investigative Attorney, **Lisa A. Murray, Esq.**, and the following parties as indicated on **JUL 21 2011**

  
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**IN THE MATTER OF CERTAIN ELECTRONIC  
PAPER TOWEL DISPENSING DEVICES  
AND COMPONENTS THEREOF**

**337-TA-718**

**CERTIFICATE OF SERVICE – PAGE TWO**

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