

In the Matter of

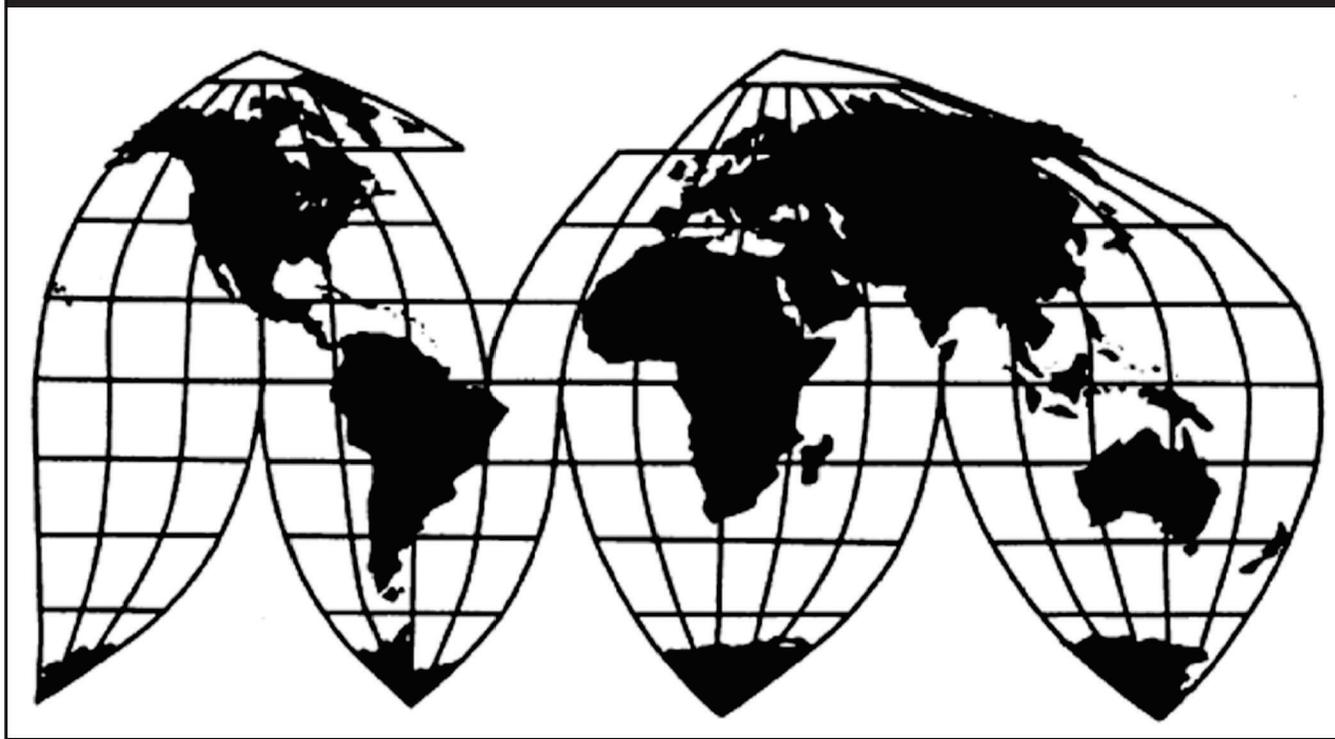
**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1028

Publication 4959

September 2019

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

COMMISSIONERS

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U.S. International Trade Commission

Washington, DC 20436
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In the Matter of

CERTAIN MOBILE DEVICE HOLDERS AND COMPONENTS THEREOF

Investigation No. 337-TA-1028



UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN MOBILE DEVICE HOLDERS
AND COMPONENTS THEREOF

Investigation No. 337-TA-1028

**NOTICE OF THE COMMISSION'S DETERMINATION TO AFFIRM A DOMESTIC
INDUSTRY FINDING UNDER MODIFIED REASONING; ISSUANCE OF A GENERAL
EXCLUSION ORDER; ISSUANCE OF SIXTEEN CEASE AND DESIST ORDERS;
TERMINATION OF THE INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm under modified reasoning the ALJ's finding on the economic prong of the domestic industry. The Commission has also determined to issue a general exclusion order directed against infringing mobile device holders and components thereof, and has issued sixteen cease and desist orders against various defaulting respondents. The investigation is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Amanda Pitcher Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone (202) 205-2737. 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 <https://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 November 14, 2016, based on a complaint and supplements, filed on behalf of Nite Ize, Inc. of Boulder, Colorado ("Nite Ize"). 81 FR 79519-20 (Nov. 14, 2016). The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain mobile

device holders and components thereof by reason of infringement of certain claims of U.S. Patent No. 8,602,376 (“the ’376 patent”), U.S. Patent No. 8,870,146 (“the ’146 patent”), U.S. Patent No. D734,746 (“the ’746 patent”), and U.S. Patent No. D719,959 (“the ’959 patent”). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The Commission’s notice of investigation named the following respondents: REXS, LLC (“REXS LLC”) of Lewes, Delaware; Spinido, Inc. of Brighton, Colorado; Guangzhou Kuaguoyi E-commerce Co., Ltd. d/b/a Kagu Culture (“Kagu Culture”) of Baiyum, China; Sunpauto Co., Ltd. (“Sunpauto”) of Kowloon, Hong Kong; Shenzhen Topworld Technology Co. d/b/a IdeaPro (“IdeaPro”) of Hong Kong, Hong Kong; Ninghuaxian Wangfulong Chaojishichang Youxian Gongsi, Ltd., d/b/a EasybuyUS of Shanghai, China; Chang Lee d/b/a Frentaly of Duluth, Georgia; Trendbox USA LLC d/b/a Trendbox (“Trendbox”) of Scottsdale, Arizona; Tenswall d/b/a Shenzhen Tenswall International Trading Co. (“Tenswall”) of La Puente, California; Luo Jieqiong d/b/a Wekin (“Wekin”) of Chang Sha, China; Pecham d/b/a Baichen Technology Ltd. (“Pecham”) of Wan Chai, Hong Kong; Cyrift d/b/a Guangzhou Sunway E-Commerce LLC of Guangzhou, China; Rymemo d/b/a Global Box, LLC of Dunbar, Pennsylvania; Yuan I d/b/a Bestrix of Hubei, China; Zhongshan Feiyu Hardware Technology Co., Ltd d/b/a YouFo (“YouFo”) of ZhongShan City, China; and Shenzhen Youtai Trade Company Limited, d/b/a NoChoice; Luo, Qiben, d/b/a Lita International Shop of Nanshan; Shenzhen New Dream Technology Co., Ltd., d/b/a Newdreams (“Newdreams”); Shenzhen Gold South Technology Co., Ltd. d/b/a Baidatong; Wang Zhi Gang d/b/a IceFox (“Icefox”); Dang Yuya d/b/a Sminiker; Lin Zhen Mei d/b/a Anson (“Anson”); Wu Xuying d/b/a Novoland (“Novoland”); Shenzhen New Dream Sailing Electronic Technology Co., Ltd. d/b/a MegaDream; Tontek d/b/a Shenzhen Hetongtai Electronics Co., Ltd. (“Tontek”); Scotabc d/b/a ShenChuang Optoelectronics Technology Co., Ltd. (“Scotabc”); Zhiping Zhou d/b/a Runshion (“Runshion”); Huijukon d/b/a Shenzhen Hui Ju Kang Technology Co. Ltd.; Barsone d/b/a Shenzhen Senweite Electronic Commerce Ltd.; Oumeiou d/b/a Shenzhen Oumeiou Technology Co., Ltd. (“Oumeiou”); Grando d/b/a Shenzhen Dashentai Network Technology Co., Ltd.; Shenzhen Yingxue Technology Co., Ltd. (“Shenzhen Yingxue”); Shenzhen Longwang Technology Co., Ltd., d/b/a LWANG (“LWANG”); Hu Peng d/b/a AtomBud; and Wang Guoxiang d/b/a Minse (“Minse”) all of Shenzhen, China. The Office of Unfair Import Investigations (“OUII”) was named as a party to the investigation.

Rymemo d/b/a Global Box, LLC and Chang Lee d/b/a Frentaly were terminated on the basis of a consent order. Commission Notice (March 21, 2017); Commission Notice (May 15, 2017). Barsone d/b/a Shenzhen Senweite Electronic Commerce Ltd., Shenzhen Youtai Trade Company Limited, d/b/a NoChoice, Ninghuaxian Wangfulong Chaojishichang Youxian Gongsi, Ltd., d/b/a EasybuyUS, Shenzhen Gold South Technology Co., Ltd. d/b/a Baidatong, Cyrift d/b/a Guangzhou Sunway E-Commerce LLC, Hu Peng d/b/a AtomBud, Grando d/b/a Shenzhen Dashentai Network Technology Co., Ltd., Huijukon d/b/a Shenzhen Hui Ju Kang Technology Co. Ltd., Luo, Qiben, d/b/a Lita International Shop, Shenzhen New Dream Sailing Electronic Technology Co., Ltd. d/b/a MegaDream, Spinido Inc., Dang Yuya d/b/a Sminiker, and Yuan I d/b/a Bestrix were terminated because service could not be effected. Commission Notice (June 13, 2017). The remaining respondents were previously found in default (collectively, “the Defaulting Respondents”). Commission Notice (May 26, 2017). In addition, the ’746 and ’959 patents were previously terminated from the investigation. Commission Notice (July 28, 2017).

On May 18, 2017, Nite Ize filed a Motion for Summary Determination of Violation by the Defaulting Respondents and for a Recommended Determination on Remedy and Bonding, Including Issuance of a General Exclusion Order, Limited Exclusion Orders (in the alternative), and Cease and Desist Orders. On June 16, 2017, the ALJ issued an initial determination (“ID”) (Order No. 14) granting in-part Nite Ize’s motion for summary determination. The Commission determined not to review that ID. Commission Notice (July 14, 2017).

On September 12, 2017, the ALJ issued his final initial determination (“FID”) finding a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337. On the same day, the ALJ issued his Recommended Determination on Remedy and Bonding. No petitions for review of the FID were filed.

On November 13, 2017, the Commission determined to review the FID’s findings on the economic prong of domestic industry and requested briefing on remedy, bonding, and the public interest. 82 FR 54413-14 (Nov. 17, 2017). On November 30, 2017, Nite Ize and OUII filed their responses to the Commission’s notice and on December 7, 2017, OUII filed a reply to Nite Ize’s response.

Having examined the record of this investigation, the Commission has determined to affirm, under modified reasoning, the ALJ’s finding with respect to the economic prong of the domestic industry.

The Commission has determined that the appropriate form of relief in this investigation is (a) a general exclusion order directed against products that infringe one or more of claims 1, 11, and 12 of the ’376 patent and claims 1, 11, and 12 of the ’146 patent; and (b) cease and desist orders prohibiting Trendbox, Tenswall, REXS LLC, Minse, IdeaPro, LWANG, Novoland, Oumeiou, Pecham, Runshion, Scotabc, Tontek, Wekin, Anson, Newdreams, and IceFox from importing, selling, offering for sale, marketing, advertising, distributing, offering for sale, transferring (except for exportation), or soliciting U.S. agents or distributors of imported mobile device holders that infringe one or more of claims 1, 11, and 12 of the ’376 patent and claims 1, 11, and 12 of the ’146 patent. The Commission has further determined that the public interest factors enumerated in section 337(d)(1) (19 U.S.C. 1337(d)(1)) and in section 337(g)(1) (19 U.S.C. 1337(g)(1)) do not preclude the issuance of the general exclusion order and cease and desist orders, respectively. Finally, the Commission has determined that the bond for importation during the period of Presidential review shall be in the amount of 100 percent of the entered value of the imported subject articles of the respondents. The investigation is terminated.

The Commission’s orders and opinion were delivered to the President and the United States Trade Representative on the day of their issuance.

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 Part 210 of the Commission’s Rules of Practice and Procedure, 19 C.F.R. Part 210.

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: February 22, 2018



PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served by hand upon the Commission Investigative Attorney, Cortney Hoecherl, Esq., and the following parties as indicated, on 2/22/2018



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

On Behalf of Complainant Nite Ize, Inc.:

James B. Altman, Esq.
FOSTER, MURPHY, ALTMAN & NICKEL, P.C.
1150 18th Street NW, Suite 775
Washington, DC 20036

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Respondents:

REXS LLC
16192 Coastal Highway
Lewes, DE 19958

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Shenzhen New Dream Technology Co., Ltd., d/b/a Newdreams,
Room 307, Haotai building Baomin Second
Road No. 1, Xixiang Street Bao'an,
Shenzhen, China, 518102

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Wang Zhi Gang d/b/a IceFox,
Room 806, Ge Lin Wang Yuan YanNan Road,
Futian District
Shenzhen, China, 518000

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

CERTAIN MOBILE DEVICE HOLDERS AND COMPONENTS THEREOF

Inv. No. 337-TA-1028

Certificate of Service – Page 2

Shenzhen Topworld Technology Co. d/b/a IdeaPro,
Rm 603, 6/F Hang Pont Comm. Bldg. 31
Tonk In St., Cheung Sha Wan Kln, Hong Kong,
Hong Kong

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Lin Zhen Mei d/b/a Anson
502, B Seat, 3 Building, Guandi Garden
Xian N7 area, Jiaan west Rd, Baoan Dist.
Shenzhen, Guangdong, China 518128

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wu Xuying d/b/a Novoland
No 2336 Nanhai Road, Nanshan District
Shenzhen, China, 518054

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Trendbox USA LLC d/b/a Trendbox
16419 North 91st Street, Suite 125
Scottsdale, AZ 85260

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Tontek d/b/a Shenzhen Hetongtai Electronics Co., Ltd.,
B1505, Niulanqian Bldg., Minzhi Street, Longhua New Area,
Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
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Scotabc d/b/a ShenChuang Opto-electronics Technology Co. Ltd.,
Rm. 1203A, Zhanyuan Business Bldg, No. 912 Meilong Rd.,
Longhua town, Longhua Dist. Shenzhen, Guangdong,
China, 068100

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Tenswall d/b/a Shenzhen Tenswall
International Trading Co., Ltd.
14837 Proctor Ave. Ste. A,
La Puente, CA 91746

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Luo Jieqiong d/b/a Wekin
Room 1602. Building 20, Hua Sheng Shi Ji
Xin Cheng Yu Hua Dist. Chang Sha,
China, 410100

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- Via Express Delivery
- Via First Class Mail
- Other: _____

**CERTAIN MOBILE DEVICE HOLDERS AND
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Inv. No. 337-TA-1028

Certificate of Service – Page 3

Pecham d/b/a Baichen Technology Ltd.
Rm 20A, Kiu Fu Comm. Bldg. 300 Lockhart Rd.
Wan Chai, Hong Kong

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wang Guoxiang d/b/a Minse
Rm. 609, Block 2, Xinghu Garden No. 9, Jinbi Rd,
Luohu Dist. Shenzhen, Guangdong,
China 518028

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Zhiping Zhou d/b/a Runshion
31F, Dong C, Jinganghuating, Baoandadao,
Baoanqu Shenzhenshi, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Oumeiou d/b/a Shenzhen Oumeiou Technology Co., Ltd.
F3 Comprehensive Bldg. of Nankeng 2nd Industrial Park,
Bantian Street, Longgang,
Shenzhen, China, 518112

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Shenzhen Longwang Technology Co. Ltd. d/b/a LWANG
B21, 5/F, West of Bldg. 4, Seg Tech Park,
Huaqiang North Rd., Futian Dist., Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

In the Matter of

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

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, sale for importation, or sale within the United States after importation of certain mobile device holders and components thereof that infringe one or more of claims 1, 11, and 12 of United States Patent No. 8,602,376 (“the ’376 patent”) and claims 1, 11, and 12 of United States Patent No. 8,870,146 (“the ’146 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 to prevent circumvention of an exclusion order limited to products of named persons and because there is a pattern of violation of section 337 and it is difficult to identify the source of infringing products. Accordingly, the Commission has determined to issue a general exclusion order prohibiting the unlicensed importation of infringing mobile device holders and components thereof (“covered products”).

The Commission has also determined that the public interest factors enumerated in 19 U.S.C. § 1337(d) do not preclude issuance of the general exclusion order, and that the bond

during the Presidential review period shall be in the amount of one hundred (100) percent of entered value for all covered products in question.

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

1. Mobile device holders and components thereof that infringe one or more of claims 1, 11, and 12 of the '376 patent and claims 1, 11, and 12 of the '146 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 from, or with the permission of, the patent owner or as provided by law.
2. Notwithstanding paragraph 1 of this Order, the aforesaid mobile device holders 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 a bond in the amount of one hundred (100) percent of 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.* 43251), from the day after this Order is received by the United States Trade Representative and 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 (60) 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 it establishes, persons seeking to import mobile device holders 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 mobile device holders and components thereof that are 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 procedures 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 CBP.
7. Notice of this Order shall be published in the *Federal Register*.

By order of the Commission.



Lisa R. Barton
Office of the Secretary

Issued: February 22, 2018

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served by hand upon the Commission Investigative Attorney, Cortney Hoecherl, Esq., and the following parties as indicated, on 2/22/2018



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

On Behalf of Complainant Nite Ize, Inc.:

James B. Altman, Esq.
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Shenzhen, China, 518112

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UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

In the Matter of

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT Lin Zhen Mei d/b/a Anson of 502, B Seat, 3 Building, Guandi Garden Xian N7 area, Jiaan west Rd, Baoan Dist. Shenzhen, Guangdong, China 518128 cease and desist from conducting any of the following activities in the United States, including via the internet: importing, selling, offering for sale, marketing, advertising, distributing, transferring (except for exportation), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of mobile device holders and components thereof that infringe one or more of claims 1, 11, and 12 of United States Patent No. 8,602,376 (“the ’376 patent”) and claims 1, 11, and 12 of United States Patent No. 8,870,146 (“the ’146 patent”) (collectively, the “Asserted Patents”), 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 Nite Ize, Inc. of Boulder, Colorado.
- (C) “Respondent” shall mean Lin Zhen Mei d/b/a Anson.

- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent 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 mobile device holders and components thereof that infringe one or more of claims 1, 11, and 12 of the ’376 patent and claims 1, 11, and 12 of the ’146 patent.

II. Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, 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, Respondent.

III. Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by this Order. For the remaining term of the Asserted Patents, Respondent shall not:

- (A) import, sell for importation, or sell after importation into the United States covered products;
- (B) market, distribute, offer for sale, or otherwise transfer (except for exportation) 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 Asserted 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.

V. Reporting

For purposes of this requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. The first report required under this section shall cover the period from the date of issuance of this order through June 30, 2018. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in U.S. dollars of covered products that Respondent has (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 U.S. dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the

Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1028") in a prominent place on the cover pages and/or the first page. *See Handbook for Electronic Filing Procedures,*

http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.

Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it 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.¹

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 this Order, 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 (3) 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, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in

¹ 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 order entered in the investigation.

Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, 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.

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its 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 (15) 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

(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 date of expiration of the Asserted 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, Respondent 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 Respondent is in violation of this order, the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

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 Respondent's posting of a bond in the amount of one hundred (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) Respondent must serve a copy of the bond and accompanying documentation on Complainant's counsel.²

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 Respondent on appeal, or (ii) Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission.

This 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 Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission:



Lisa R. Barton

Secretary to the Commission

Issued: February 22, 2018

² See Footnote 1.

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served by hand upon the Commission Investigative Attorney, Cortney Hoecherl, Esq., and the following parties as indicated, on 2/22/2018



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

On Behalf of Complainant Nite Ize, Inc.:

James B. Altman, Esq.
FOSTER, MURPHY, ALTMAN & NICKEL, P.C.
1150 18th Street NW, Suite 775
Washington, DC 20036

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Respondents:

REXS LLC
16192 Coastal Highway
Lewes, DE 19958

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Shenzhen New Dream Technology Co., Ltd., d/b/a Newdreams,
Room 307, Haotai building Baomin Second
Road No. 1, Xixiang Street Bao'an,
Shenzhen, China, 518102

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wang Zhi Gang d/b/a IceFox,
Room 806, Ge Lin Wang Yuan YanNan Road,
Futian District
Shenzhen, China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

CERTAIN MOBILE DEVICE HOLDERS AND COMPONENTS THEREOF

Inv. No. 337-TA-1028

Certificate of Service – Page 2

Shenzhen Topworld Technology Co. d/b/a IdeaPro,
Rm 603, 6/F Hang Pont Comm. Bldg. 31
Tonk In St., Cheung Sha Wan Kln, Hong Kong,
Hong Kong

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Lin Zhen Mei d/b/a Anson
502, B Seat, 3 Building, Guandi Garden
Xian N7 area, Jiaan west Rd, Baoan Dist.
Shenzhen, Guangdong, China 518128

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wu Xuying d/b/a Novoland
No 2336 Nanhai Road, Nanshan District
Shenzhen, China, 518054

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Trendbox USA LLC d/b/a Trendbox
16419 North 91st Street, Suite 125
Scottsdale, AZ 85260

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Tontek d/b/a Shenzhen Hetongtai Electronics Co., Ltd.,
B1505, Niulanqian Bldg., Minzhi Street, Longhua New Area,
Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Scotabc d/b/a ShenChuang Opto-electronics Technology Co. Ltd.,
Rm. 1203A, Zhanyuan Business Bldg, No. 912 Meilong Rd.,
Longhua town, Longhua Dist. Shenzhen, Guangdong,
China, 068100

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Tenswall d/b/a Shenzhen Tenswall
International Trading Co., Ltd.
14837 Proctor Ave. Ste. A,
La Puente, CA 91746

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Luo Jieqiong d/b/a Wekin
Room 1602, Building 20, Hua Sheng Shi Ji
Xin Cheng Yu Hua Dist. Chang Sha,
China, 410100

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

Certificate of Service – Page 3

Pecham d/b/a Baichen Technology Ltd.
Rm 20A, Kiu Fu Comm. Bldg. 300 Lockhart Rd.
Wan Chai, Hong Kong

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wang Guoxiang d/b/a Minse
Rm. 609, Block 2, Xinghu Garden No. 9, Jinbi Rd.
Luohu Dist. Shenzhen, Guangdong,
China 518028

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Zhiping Zhou d/b/a Runshion
31F, Dong C, Jinganghuating, Baoandadao,
Baoanqu Shenzhenshi, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Oumeiou d/b/a Shenzhen Oumeiou Technology Co., Ltd.
F3 Comprehensive Bldg. of Nankeng 2nd Industrial Park,
Bantian Street, Longgang,
Shenzhen, China, 518112

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Shenzhen Longwang Technology Co. Ltd. d/b/a LWANG
B21, 5/F, West of Bldg. 4, Seg Tech Park,
Huaqiang North Rd., Futian Dist., Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

In the Matter of

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT Luo Jieqiong d/b/a Wekin of Room 1602, Building 20, Hua Sheng Shi Ji Xin Cheng Yu Hua Dist. Chang Sha, China 410100 cease and desist from conducting any of the following activities in the United States, including via the internet: importing, selling, offering for sale, marketing, advertising, distributing, transferring (except for exportation), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of mobile device holders and components thereof that infringe one or more of claims 1, 11, and 12 of United States Patent No. 8,602,376 (“the ’376 patent”) and claims 1, 11, and 12 of United States Patent No. 8,870,146 (“the ’146 patent”) (collectively, the “Asserted Patents”), 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 Nite Ize, Inc. of Boulder, Colorado.
- (C) “Respondent” shall mean Luo Jieqiong d/b/a Wekin.

- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent 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 mobile device holders and components thereof that infringe one or more of claims 1, 11, and 12 of the ’376 patent and claims 1, 11, and 12 of the ’146 patent.

II. Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, 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, Respondent.

III. Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by this Order. For the remaining term of the Asserted Patents, Respondent shall not:

- (A) import, sell for importation, or sell after importation into the United States covered products;
- (B) market, distribute, offer for sale, or otherwise transfer (except for exportation) 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 Asserted 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.

V. Reporting

For purposes of this requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. The first report required under this section shall cover the period from the date of issuance of this order through June 30, 2018. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in U.S. dollars of covered products that Respondent has (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 U.S. dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the

Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1028") in a prominent place on the cover pages and/or the first page. *See Handbook for Electronic Filing Procedures,*

http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.

Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it 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.¹

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 this Order, 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 (3) 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, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in

¹ 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 order entered in the investigation.

Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, 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.

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its 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 (15) 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

(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 date of expiration of the Asserted 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, Respondent 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 Respondent is in violation of this order, the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

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 Respondent's posting of a bond in the amount of one hundred (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) Respondent must serve a copy of the bond and accompanying documentation on Complainant's counsel.²

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 Respondent on appeal, or (ii) Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission.

This 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 Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.



Lisa R. Barton

Secretary to the Commission

Issued: February 22, 2018

² See Footnote 1.

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served by hand upon the Commission Investigative Attorney, Cortney Hoecherl, Esq., and the following parties as indicated, on 2/22/2018



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

On Behalf of Complainant Nite Ize, Inc.:

James B. Altman, Esq.
FOSTER, MURPHY, ALTMAN & NICKEL, P.C.
1150 18th Street NW, Suite 775
Washington, DC 20036

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Respondents:

REXS LLC
16192 Coastal Highway
Lewes, DE 19958

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Shenzhen New Dream Technology Co., Ltd., d/b/a Newdreams,
Room 307, Haotai building Baomin Second
Road No. 1, Xixiang Street Bao'an,
Shenzhen, China, 518102

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Wang Zhi Gang d/b/a IceFox,
Room 806, Ge Lin Wang Yuan YanNan Road,
Futian District
Shenzhen, China, 518000

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

CERTAIN MOBILE DEVICE HOLDERS AND COMPONENTS THEREOF

Inv. No. 337-TA-1028

Certificate of Service – Page 2

Shenzhen Topworld Technology Co. d/b/a IdeaPro,
Rm 603, 6/F Hang Pont Comm. Bldg. 31
Tonk In St., Cheung Sha Wan Kln, Hong Kong,
Hong Kong

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Lin Zhen Mei d/b/a Anson
502, B Seat, 3 Building, Guandi Garden
Xian N7 area, Jiaan west Rd, Baoan Dist.
Shenzhen, Guangdong, China 518128

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wu Xuying d/b/a Novoland
No 2336 Nanhai Road, Nanshan District
Shenzhen, China, 518054

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Trendbox USA LLC d/b/a Trendbox
16419 North 91st Street, Suite 125
Scottsdale, AZ 85260

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Tontek d/b/a Shenzhen Hetongtai Electronics Co., Ltd.,
B1505, Niulanqian Bldg., Minzhi Street, Longhua New Area,
Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Scotabc d/b/a ShenChuang Opto-electronics Technology Co. Ltd.,
Rm. 1203A, Zhanyuan Business Bldg, No. 912 Meilong Rd.,
Longhua town, Longhua Dist. Shenzhen, Guangdong,
China, 068100

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Tenswall d/b/a Shenzhen Tenswall
International Trading Co., Ltd.
14837 Proctor Ave. Ste. A,
La Puente, CA 91746

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Luo Jieqiong d/b/a Wekin
Room 1602, Building 20, Hua Sheng Shi Ji
Xin Cheng Yu Hua Dist. Chang Sha,
China, 410100

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

Certificate of Service – Page 3

Pecham d/b/a Baichen Technology Ltd.
Rm 20A, Kiu Fu Comm. Bldg. 300 Lockhart Rd.
Wan Chai, Hong Kong

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wang Guoxiang d/b/a Minse
Rm. 609, Block 2, Xinghu Garden No. 9, Jinbi Rd,
Luohu Dist. Shenzhen, Guangdong,
China 518028

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Zhiping Zhou d/b/a Runshion
31F, Dong C, Jinganghuating, Baoandadao,
Baoanqu Shenzhenshi, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Oumeiou d/b/a Shenzhen Oumeiou Technology Co., Ltd.
F3 Comprehensive Bldg. of Nankeng 2nd Industrial Park,
Bantian Street, Longgang,
Shenzhen, China, 518112

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Shenzhen Longwang Technology Co. Ltd. d/b/a LWANG
B21, 5/F, West of Bldg. 4, Seg Tech Park,
Huaqiang North Rd., Futian Dist., Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

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

In the Matter of

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT Oumeiou d/b/a Shenzhen Oumeiou Technology Co., Ltd of F3 Comprehensive Bldg. of Nankeng 2nd Industrial Park, Bantian Street, Longgang, Shenzhen, China 518112 cease and desist from conducting any of the following activities in the United States, including via the internet: importing, selling, offering for sale, marketing, advertising, distributing, transferring (except for exportation), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of mobile device holders and components thereof that infringe one or more of claims 1, 11, and 12 of United States Patent No. 8,602,376 (“the ’376 patent”) and claims 1, 11, and 12 of United States Patent No. 8,870,146 (“the ’146 patent”) (collectively, the “Asserted Patents”), 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 Nite Ize, Inc. of Boulder, Colorado.
- (C) “Respondent” shall mean Oumeiou d/b/a Shenzhen Oumeiou Technology Co., Ltd.

- (D) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent 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 mobile device holders and components thereof that infringe one or more of claims 1, 11, and 12 of the '376 patent and claims 1, 11, and 12 of the '146 patent.

II. Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, 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, Respondent.

III. Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by this Order.

For the remaining term of the Asserted Patents, Respondent shall not:

- (A) import, sell for importation, or sell after importation into the United States covered products;
- (B) market, distribute, offer for sale, or otherwise transfer (except for exportation) 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 Asserted 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.

V. Reporting

For purposes of this requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. The first report required under this section shall cover the period from the date of issuance of this order through June 30, 2018. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in U.S. dollars of covered products that Respondent has (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 U.S. dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the

Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1028") in a prominent place on the cover pages and/or the first page. *See Handbook for Electronic Filing Procedures,*

http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.

Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it 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.¹

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 this Order, 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 (3) 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, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in

¹ 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 order entered in the investigation.

Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, 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.

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its 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 (15) 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

(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 date of expiration of the Asserted 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, Respondent 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 Respondent is in violation of this order, the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

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 Respondent's posting of a bond in the amount of one hundred (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) Respondent must serve a copy of the bond and accompanying documentation on Complainant's counsel.²

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 Respondent on appeal, or (ii) Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission.

This 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 Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.



Lisa R. Barton

Secretary to the Commission

Issued: February 22, 2018

² See Footnote 1.

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served by hand upon the Commission Investigative Attorney, Cortney Hoecherl, Esq., and the following parties as indicated, on 2/22/2018



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

On Behalf of Complainant Nite Ize, Inc.:

James B. Altman, Esq.
FOSTER, MURPHY, ALTMAN & NICKEL, P.C.
1150 18th Street NW, Suite 775
Washington, DC 20036

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Respondents:

REXS LLC
16192 Coastal Highway
Lewes, DE 19958

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Shenzhen New Dream Technology Co., Ltd., d/b/a Newdreams,
Room 307, Haotai building Baomin Second
Road No. 1, Xixiang Street Bao'an,
Shenzhen, China, 518102

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wang Zhi Gang d/b/a IceFox,
Room 806, Ge Lin Wang Yuan YanNan Road,
Futian District
Shenzhen, China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

CERTAIN MOBILE DEVICE HOLDERS AND COMPONENTS THEREOF

Inv. No. 337-TA-1028

Certificate of Service – Page 2

Shenzhen Topworld Technology Co. d/b/a IdeaPro,
Rm 603, 6/F Hang Pont Comm. Bldg. 31
Tonk In St., Cheung Sha Wan Kln, Hong Kong,
Hong Kong

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Lin Zhen Mei d/b/a Anson
502, B Seat, 3 Building, Guandi Garden
Xian N7 area, Jiaan west Rd, Baoan Dist.
Shenzhen, Guangdong, China 518128

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wu Xuying d/b/a Novoland
No 2336 Nanhai Road, Nanshan District
Shenzhen, China, 518054

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Trendbox USA LLC d/b/a Trendbox
16419 North 91st Street, Suite 125
Scottsdale, AZ 85260

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Tontek d/b/a Shenzhen Hetongtai Electronics Co., Ltd.,
B1505, Niulanqian Bldg., Minzhi Street, Longhua New Area,
Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Scotabc d/b/a ShenChuang Opto-electronics Technology Co. Ltd.,
Rm. 1203A, Zhanyuan Business Bldg, No. 912 Meilong Rd.,
Longhua town, Longhua Dist. Shenzhen, Guangdong,
China, 068100

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Tenswall d/b/a Shenzhen Tenswall
International Trading Co., Ltd.
14837 Proctor Ave. Ste. A,
La Puente, CA 91746

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Luo Jieqiong d/b/a Wekin
Room 1602, Building 20, Hua Sheng Shi Ji
Xin Cheng Yu Hua Dist. Chang Sha,
China, 410100

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

Certificate of Service – Page 3

Pecham d/b/a Baichen Technology Ltd.
Rm 20A, Kiu Fu Comm. Bldg. 300 Lockhart Rd.
Wan Chai, Hong Kong

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wang Guoxiang d/b/a Minse
Rm. 609, Block 2, Xinghu Garden No. 9, Jinbi Rd,
Luohu Dist. Shenzhen, Guangdong,
China 518028

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Zhiping Zhou d/b/a Runshion
31F, Dong C, Jinganghuating, Baoandadao,
Baoanqu Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Oumeiou d/b/a Shenzhen Oumeiou Technology Co., Ltd.
F3 Comprehensive Bldg. of Nankeng 2nd Industrial Park,
Bantian Street, Longgang,
Shenzhen, China, 518112

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Shenzhen Longwang Technology Co. Ltd. d/b/a LWANG
B21, 5/F, West of Bldg. 4, Seg Tech Park,
Huaqiang North Rd., Futian Dist., Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

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

In the Matter of

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT Pecham d/b/a Baichen Technology Ltd. of Rm 20A, Kiu Fu Comm. Bldg. 300 Lockhart Rd. Wan Chai, Hong Kong cease and desist from conducting any of the following activities in the United States, including via the internet: importing, selling, offering for sale, marketing, advertising, distributing, transferring (except for exportation), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of mobile device holders and components thereof that infringe one or more of claims 1, 11, and 12 of United States Patent No. 8,602,376 (“the ’376 patent”) and claims 1, 11, and 12 of United States Patent No. 8,870,146 (“the ’146 patent”) (collectively, the “Asserted Patents”), 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 Nite Ize, Inc. of Boulder, Colorado.
- (C) “Respondent” shall mean Pecham d/b/a Baichen Technology Ltd.

- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent 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 mobile device holders and components thereof that infringe one or more of claims 1, 11, and 12 of the ’376 patent and claims 1, 11, and 12 of the ’146 patent.

II. Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, 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, Respondent.

III. Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by this Order.

For the remaining term of the Asserted Patents, Respondent shall not:

- (A) import, sell for importation, or sell after importation into the United States covered products;
- (B) market, distribute, offer for sale, or otherwise transfer (except for exportation) 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 Asserted 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.

V. Reporting

For purposes of this requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. The first report required under this section shall cover the period from the date of issuance of this order through June 30, 2018. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in U.S. dollars of covered products that Respondent has (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 U.S. dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the

Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1028") in a prominent place on the cover pages and/or the first page. *See Handbook for Electronic Filing Procedures,*

http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.

Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it 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.¹

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 this Order, 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 (3) 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, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in

¹ 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 order entered in the investigation.

Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, 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.

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its 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 (15) 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

(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 date of expiration of the Asserted 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, Respondent 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 Respondent is in violation of this order, the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

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 Respondent's posting of a bond in the amount of one hundred (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) Respondent must serve a copy of the bond and accompanying documentation on Complainant's counsel.²

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 Respondent on appeal, or (ii) Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission.

This 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 Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.



Lisa R. Barton

Secretary to the Commission

Issued: February 22, 2018

² See Footnote 1.

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served by hand upon the Commission Investigative Attorney, Cortney Hoecherl, Esq., and the following parties as indicated, on 2/22/2018



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

On Behalf of Complainant Nite Ize, Inc.:

James B. Altman, Esq.
FOSTER, MURPHY, ALTMAN & NICKEL, P.C.
1150 18th Street NW, Suite 775
Washington, DC 20036

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Respondents:

REXS LLC
16192 Coastal Highway
Lewes, DE 19958

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Shenzhen New Dream Technology Co., Ltd., d/b/a Newdreams,
Room 307, Haotai building Baomin Second
Road No. 1, Xixiang Street Bao'an,
Shenzhen, China, 518102

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Wang Zhi Gang d/b/a IceFox,
Room 806, Ge Lin Wang Yuan YanNan Road,
Futian District
Shenzhen, China, 518000

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

CERTAIN MOBILE DEVICE HOLDERS AND COMPONENTS THEREOF

Inv. No. 337-TA-1028

Certificate of Service – Page 2

Shenzhen Topworld Technology Co. d/b/a IdeaPro,
Rm 603, 6/F Hang Pont Comm. Bldg. 31
Tonk In St., Cheung Sha Wan Kln, Hong Kong,
Hong Kong

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Lin Zhen Mei d/b/a Anson
502, B Seat, 3 Building, Guandi Garden
Xian N7 area, Jiaan west Rd, Baoan Dist.
Shenzhen, Guangdong, China 518128

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wu Xuying d/b/a Novoland
No 2336 Nanhai Road, Nanshan District
Shenzhen, China, 518054

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Trendbox USA LLC d/b/a Trendbox
16419 North 91st Street, Suite 125
Scottsdale, AZ 85260

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Tontek d/b/a Shenzhen Hetongtai Electronics Co., Ltd.,
B1505, Niulanqian Bldg., Minzhi Street, Longhua New Area,
Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Scotabc d/b/a ShenChuang Opto-electronics Technology Co. Ltd.,
Rm. 1203A, Zhanyuan Business Bldg, No. 912 Meilong Rd.,
Longhua town, Longhua Dist. Shenzhen, Guangdong,
China, 068100

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Tenswall d/b/a Shenzhen Tenswall
International Trading Co., Ltd.
14837 Proctor Ave. Ste. A,
La Puente, CA 91746

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Luo Jieqiong d/b/a Wekin
Room 1602, Building 20, Hua Sheng Shi Ji
Xin Cheng Yu Hua Dist. Chang Sha,
China, 410100

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

Certificate of Service – Page 3

Pecham d/b/a Baichen Technology Ltd.
Rm 20A, Kiu Fu Comm. Bldg. 300 Lockhart Rd.
Wan Chai, Hong Kong

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wang Guoxiang d/b/a Minse
Rm. 609, Block 2, Xinghu Garden No. 9, Jinbi Rd,
Luohu Dist. Shenzhen, Guangdong,
China 518028

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Zhiping Zhou d/b/a Runshion
31F, Dong C, Jinganghuating, Baoandadao,
Baoanqu Shenzhenshi, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Oumeiou d/b/a Shenzhen Oumeiou Technology Co., Ltd.
F3 Comprehensive Bldg. of Nankeng 2nd Industrial Park,
Bantian Street, Longgang,
Shenzhen, China, 518112

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Shenzhen Longwang Technology Co. Ltd. d/b/a LWANG
B21, 5/F, West of Bldg. 4, Seg Tech Park,
Huaqiang North Rd., Futian Dist., Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

In the Matter of

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT REXS, LLC of 16192 Coastal Highway, Lewes, Delaware 19958 cease and desist from conducting any of the following activities in the United States, including via the internet: importing, selling, offering for sale, marketing, advertising, distributing, transferring (except for exportation), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of mobile device holders and components thereof that infringe one or more of claims 1, 11, and 12 of United States Patent No. 8,602,376 (“the ’376 patent”) and claims 1, 11, and 12 of United States Patent No. 8,870,146 (“the ’146 patent”) (collectively, the “Asserted Patents”), 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 Nite Ize, Inc. of Boulder, Colorado.
- (C) “Respondent” shall mean REXS, LLC.

- (D) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent 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 mobile device holders and components thereof that infringe one or more of claims 1, 11, and 12 of the '376 patent and claims 1, 11, and 12 of the '146 patent.

II. Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, 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, Respondent.

III. Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by this Order. For the remaining term of the Asserted Patents, Respondent shall not:

- (A) import, sell for importation, or sell after importation into the United States covered products;
- (B) market, distribute, offer for sale, or otherwise transfer (except for exportation) 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 Asserted 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.

V. Reporting

For purposes of this requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. The first report required under this section shall cover the period from the date of issuance of this order through June 30, 2018. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in U.S. dollars of covered products that Respondent has (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 U.S. dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the

Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1028") in a prominent place on the cover pages and/or the first page. *See Handbook for Electronic Filing Procedures,*

http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.

Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it 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.¹

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 this Order, 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 (3) 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, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in

¹ 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 order entered in the investigation.

Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, 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.

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its 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 (15) 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

(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 date of expiration of the Asserted 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, Respondent 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 Respondent is in violation of this order, the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

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 Respondent's posting of a bond in the amount of one hundred (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) Respondent must serve a copy of the bond and accompanying documentation on Complainant's counsel.²

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 Respondent on appeal, or (ii) Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission.

This 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 Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.



Lisa R. Barton

Secretary to the Commission

Issued: February 22, 2018

² See Footnote 1.

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served by hand upon the Commission Investigative Attorney, Cortney Hoecherl, Esq., and the following parties as indicated, on 2/22/2018



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

On Behalf of Complainant Nite Ize, Inc.:

James B. Altman, Esq.
FOSTER, MURPHY, ALTMAN & NICKEL, P.C.
1150 18th Street NW, Suite 775
Washington, DC 20036

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Respondents:

REXS LLC
16192 Coastal Highway
Lewes, DE 19958

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Shenzhen New Dream Technology Co., Ltd., d/b/a Newdreams,
Room 307, Haotai building Baomin Second
Road No. 1, Xixiang Street Bao'an,
Shenzhen, China, 518102

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wang Zhi Gang d/b/a IceFox,
Room 806, Ge Lin Wang Yuan YanNan Road,
Futian District
Shenzhen, China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

CERTAIN MOBILE DEVICE HOLDERS AND COMPONENTS THEREOF

Inv. No. 337-TA-1028

Certificate of Service – Page 2

Shenzhen Topworld Technology Co. d/b/a IdeaPro,
Rm 603, 6/F Hang Pont Comm. Bldg. 31
Tonk In St., Cheung Sha Wan Kln, Hong Kong,
Hong Kong

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Lin Zhen Mei d/b/a Anson
502, B Seat, 3 Building, Guandi Garden
Xian N7 area, Jiaan west Rd, Baoan Dist.
Shenzhen, Guangdong, China 518128

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wu Xuying d/b/a Novoland
No 2336 Nanhai Road, Nanshan District
Shenzhen, China, 518054

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Trendbox USA LLC d/b/a Trendbox
16419 North 91st Street, Suite 125
Scottsdale, AZ 85260

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Tontek d/b/a Shenzhen Hetongtai Electronics Co., Ltd.,
B1505, Niulanqian Bldg., Minzhi Street, Longhua New Area,
Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Scotabc d/b/a ShenChuang Opto-electronics Technology Co. Ltd.,
Rm. 1203A, Zhanyuan Business Bldg, No. 912 Meilong Rd.,
Longhua town, Longhua Dist. Shenzhen, Guangdong,
China, 068100

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Tenswall d/b/a Shenzhen Tenswall
International Trading Co., Ltd.
14837 Proctor Ave. Ste. A,
La Puente, CA 91746

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Luo Jieqiong d/b/a Wekin
Room 1602, Building 20, Hua Sheng Shi Ji
Xin Cheng Yu Hua Dist. Chang Sha,
China, 410100

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

Certificate of Service – Page 3

Pecham d/b/a Baichen Technology Ltd.
Rm 20A, Kiu Fu Comm. Bldg. 300 Lockhart Rd.
Wan Chai, Hong Kong

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wang Guoxiang d/b/a Minse
Rm. 609, Block 2, Xinghu Garden No. 9, Jinbi Rd,
Luohu Dist. Shenzhen, Guangdong,
China 518028

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Zhiping Zhou d/b/a Runshion
31F, Dong C, Jinganghuating, Baoandadao,
Baoanqu Shenzhenshi, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Oumeiou d/b/a Shenzhen Oumeiou Technology Co., Ltd.
F3 Comprehensive Bldg. of Nankeng 2nd Industrial Park,
Bantian Street, Longgang,
Shenzhen, China, 518112

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Shenzhen Longwang Technology Co. Ltd. d/b/a LWANG
B21, 5/F, West of Bldg. 4, Seg Tech Park,
Huaqiang North Rd., Futian Dist., Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

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

In the Matter of

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT Scotabc d/b/a ShenChuang Optoelectronics Technology Co., Ltd. of Rm. 1203A, Zhanyuan Business Bldg, No. 912 Meilong Rd., Longhua town, Longhua Dist. Shenzhen, Guangdong, China, 068100 cease and desist from conducting any of the following activities in the United States, including via the internet: importing, selling, offering for sale, marketing, advertising, distributing, transferring (except for exportation), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of mobile device holders and components thereof that infringe one or more of claims 1, 11, and 12 of United States Patent No. 8,602,376 (“the ’376 patent”) and claims 1, 11, and 12 of United States Patent No. 8,870,146 (“the ’146 patent”) (collectively, the “Asserted Patents”), 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 Nite Ize, Inc. of Boulder, Colorado.
- (C) “Respondent” shall mean Scotabc d/b/a ShenChuang Optoelectronics Technology Co., Ltd.

- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent 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 mobile device holders and components thereof that infringe one or more of claims 1, 11, and 12 of the ’376 patent and claims 1, 11, and 12 of the ’146 patent.

II. Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, 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, Respondent.

III. Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by this Order.

For the remaining term of the Asserted Patents, Respondent shall not:

- (A) import, sell for importation, or sell after importation into the United States covered products;
- (B) market, distribute, offer for sale, or otherwise transfer (except for exportation) 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 Asserted 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.

V. Reporting

For purposes of this requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. The first report required under this section shall cover the period from the date of issuance of this order through June 30, 2018. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in U.S. dollars of covered products that Respondent has (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 U.S. dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the

Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1028") in a prominent place on the cover pages and/or the first page. *See Handbook for Electronic Filing Procedures,*

http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.

Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it 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.¹

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 this Order, 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 (3) 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, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in

¹ 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 order entered in the investigation.

Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, 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.

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its 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 (15) 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

(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 date of expiration of the Asserted 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, Respondent 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 Respondent is in violation of this order, the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

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 Respondent's posting of a bond in the amount of one hundred (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) Respondent must serve a copy of the bond and accompanying documentation on Complainant's counsel.²

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 Respondent on appeal, or (ii) Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission.

This 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 Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.



Lisa R. Barton

Secretary to the Commission

Issued: February 22, 2018

² See Footnote 1.

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served by hand upon the Commission Investigative Attorney, Cortney Hoecherl, Esq., and the following parties as indicated, on 2/22/2018



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

On Behalf of Complainant Nite Ize, Inc.:

James B. Altman, Esq.
FOSTER, MURPHY, ALTMAN & NICKEL, P.C.
1150 18th Street NW, Suite 775
Washington, DC 20036

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Respondents:

REXS LLC
16192 Coastal Highway
Lewes, DE 19958

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Shenzhen New Dream Technology Co., Ltd., d/b/a Newdreams,
Room 307, Haotai building Baomin Second
Road No. 1, Xixiang Street Bao'an,
Shenzhen, China, 518102

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Wang Zhi Gang d/b/a IceFox,
Room 806, Ge Lin Wang Yuan YanNan Road,
Futian District
Shenzhen, China, 518000

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

CERTAIN MOBILE DEVICE HOLDERS AND COMPONENTS THEREOF

Inv. No. 337-TA-1028

Certificate of Service – Page 2

Shenzhen Topworld Technology Co. d/b/a IdeaPro,
Rm 603, 6/F Hang Pont Comm. Bldg. 31
Tonk In St., Cheung Sha Wan Kln, Hong Kong,
Hong Kong

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Lin Zhen Mei d/b/a Anson
502, B Seat, 3 Building, Guandi Garden
Xian N7 area, Jiaan west Rd, Baoan Dist.
Shenzhen, Guangdong, China 518128

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wu Xuying d/b/a Novoland
No 2336 Nanhai Road, Nanshan District
Shenzhen, China, 518054

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Trendbox USA LLC d/b/a Trendbox
16419 North 91st Street, Suite 125
Scottsdale, AZ 85260

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Tontek d/b/a Shenzhen Hetongtai Electronics Co., Ltd.,
B1505, Niulanqian Bldg., Minzhi Street, Longhua New Area,
Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Scotabc d/b/a ShenChuang Opto-electronics Technology Co. Ltd.,
Rm. 1203A, Zhanyuan Business Bldg, No. 912 Meilong Rd.,
Longhua town, Longhua Dist. Shenzhen, Guangdong,
China, 068100

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Tenswall d/b/a Shenzhen Tenswall
International Trading Co., Ltd.
14837 Proctor Ave. Ste. A,
La Puente, CA 91746

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Luo Jieqiong d/b/a Wekin
Room 1602, Building 20, Hua Sheng Shi Ji
Xin Cheng Yu Hua Dist. Chang Sha,
China, 410100

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

Certificate of Service – Page 3

Pecham d/b/a Baichen Technology Ltd.
Rm 20A, Kiu Fu Comm. Bldg. 300 Lockhart Rd.
Wan Chai, Hong Kong

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wang Guoxiang d/b/a Minse
Rm. 609, Block 2, Xinghu Garden No. 9, Jinbi Rd,
Luohu Dist. Shenzhen, Guangdong,
China 518028

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Zhiping Zhou d/b/a Runshion
31F, Dong C, Jinganghuating, Baoandadao,
Baoanqu Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Oumeiou d/b/a Shenzhen Oumeiou Technology Co., Ltd.
F3 Comprehensive Bldg. of Nankeng 2nd Industrial Park,
Bantian Street, Longgang,
Shenzhen, China, 518112

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Shenzhen Longwang Technology Co. Ltd. d/b/a LWANG
B21, 5/F, West of Bldg. 4, Seg Tech Park,
Huaqiang North Rd., Futian Dist., Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

In the Matter of

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT Shenzhen Longwang Technology Co., Ltd., d/b/a LWANG of B21, 5/F, West of Bldg. 4, Seg Tech Park, Huaqiang North Rd., Futian Dist., Shenzhen, Guangdong, China 518000 cease and desist from conducting any of the following activities in the United States, including via the internet: importing, selling, offering for sale, marketing, advertising, distributing, transferring (except for exportation), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of mobile device holders and components thereof that infringe one or more of claims 1, 11, and 12 of United States Patent No. 8,602,376 (“the ’376 patent”) and claims 1, 11, and 12 of United States Patent No. 8,870,146 (“the ’146 patent”) (collectively, the “Asserted Patents”), 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 Nite Ize, Inc. of Boulder, Colorado.
- (C) “Respondent” shall mean Shenzhen Longwang Technology Co., Ltd., d/b/a LWANG.

- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent 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 mobile device holders and components thereof that infringe one or more of claims 1, 11, and 12 of the ’376 patent and claims 1, 11, and 12 of the ’146 patent.

II. Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, 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, Respondent.

III. Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by this Order.

For the remaining term of the Asserted Patents, Respondent shall not:

- (A) import, sell for importation, or sell after importation into the United States covered products;
- (B) market, distribute, offer for sale, or otherwise transfer (except for exportation) 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 Asserted 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.

V. Reporting

For purposes of this requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. The first report required under this section shall cover the period from the date of issuance of this order through June 30, 2018. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in U.S. dollars of covered products that Respondent has (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 U.S. dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the

Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1028") in a prominent place on the cover pages and/or the first page. *See Handbook for Electronic Filing Procedures,*

http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.

Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it 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.¹

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 this Order, 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 (3) 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, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in

¹ 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 order entered in the investigation.

Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, 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.

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its 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 (15) 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

(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 date of expiration of the Asserted 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, Respondent 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 Respondent is in violation of this order, the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

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 Respondent's posting of a bond in the amount of one hundred (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) Respondent must serve a copy of the bond and accompanying documentation on Complainant's counsel.²

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 Respondent on appeal, or (ii) Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission.

This 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 Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: February 22, 2018.

² See Footnote 1.

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served by hand upon the Commission Investigative Attorney, Cortney Hoecherl, Esq., and the following parties as indicated, on 2/22/2018



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

On Behalf of Complainant Nite Ize, Inc.:

James B. Altman, Esq.
FOSTER, MURPHY, ALTMAN & NICKEL, P.C.
1150 18th Street NW, Suite 775
Washington, DC 20036

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Respondents:

REXS LLC
16192 Coastal Highway
Lewes, DE 19958

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Shenzhen New Dream Technology Co., Ltd., d/b/a Newdreams,
Room 307, Haotai building Baomin Second
Road No. 1, Xixiang Street Bao'an,
Shenzhen, China, 518102

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Wang Zhi Gang d/b/a IceFox,
Room 806, Ge Lin Wang Yuan YanNan Road,
Futian District
Shenzhen, China, 518000

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

CERTAIN MOBILE DEVICE HOLDERS AND COMPONENTS THEREOF

Inv. No. 337-TA-1028

Certificate of Service – Page 2

Shenzhen Topworld Technology Co. d/b/a IdeaPro,
Rm 603, 6/F Hang Pont Comm. Bldg. 31
Tonk In St., Cheung Sha Wan Kln, Hong Kong,
Hong Kong

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Lin Zhen Mei d/b/a Anson
502, B Seat, 3 Building, Guandi Garden
Xian N7 area, Jiaan west Rd, Baoan Dist.
Shenzhen, Guangdong, China 518128

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Wu Xuying d/b/a Novoland
No 2336 Nanhai Road, Nanshan District
Shenzhen, China, 518054

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Trendbox USA LLC d/b/a Trendbox
16419 North 91st Street, Suite 125
Scottsdale, AZ 85260

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Tontek d/b/a Shenzhen Hetongtai Electronics Co., Ltd.,
B1505, Niulanqian Bldg., Minzhi Street, Longhua New Area,
Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Scotabc d/b/a ShenChuang Opto-electronics Technology Co. Ltd.,
Rm. 1203A, Zhanyuan Business Bldg, No. 912 Meilong Rd.,
Longhua town, Longhua Dist. Shenzhen, Guangdong,
China, 068100

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Tenswall d/b/a Shenzhen Tenswall
International Trading Co., Ltd.
14837 Proctor Ave. Ste. A,
La Puente, CA 91746

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Luo Jieqiong d/b/a Wekin
Room 1602, Building 20, Hua Sheng Shi Ji
Xin Cheng Yu Hua Dist. Chang Sha,
China. 410100

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

Certificate of Service – Page 3

Pecham d/b/a Baichen Technology Ltd.
Rm 20A, Kiu Fu Comm. Bldg. 300 Lockhart Rd.
Wan Chai, Hong Kong

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wang Guoxiang d/b/a Minse
Rm. 609, Block 2, Xinghu Garden No. 9, Jinbi Rd,
Luohu Dist. Shenzhen, Guangdong,
China 518028

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Zhiping Zhou d/b/a Runshion
31F, Dong C, Jinganghuating, Baoandadao,
Baoanqu Shenzhenshi, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Oumeiou d/b/a Shenzhen Oumeiou Technology Co., Ltd.
F3 Comprehensive Bldg. of Nankeng 2nd Industrial Park,
Bantian Street, Longgang,
Shenzhen, China, 518112

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Shenzhen Longwang Technology Co. Ltd. d/b/a LWANG
B21, 5/F, West of Bldg. 4, Seg Tech Park,
Huaqiang North Rd., Futian Dist., Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

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

In the Matter of

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT Shenzhen Topworld Technology Co. d/b/a IdeaPro of Rm 603, 6/F Hang Pont Comm. Bldg. 31 Tonk In St., Cheung Sha Wan Kin, Hong Kong cease and desist from conducting any of the following activities in the United States, including via the internet: importing, selling, offering for sale, marketing, advertising, distributing, transferring (except for exportation), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of mobile device holders and components thereof that infringe one or more of claims 1, 11, and 12 of United States Patent No. 8,602,376 (“the ’376 patent”) and claims 1, 11, and 12 of United States Patent No. 8,870,146 (“the ’146 patent”) (collectively, the “Asserted Patents”), 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 Nite Ize, Inc. of Boulder, Colorado.
- (C) “Respondent” shall mean Shenzhen Topworld Technology Co. d/b/a IdeaPro.

- (D) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent 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 mobile device holders and components thereof that infringe one or more of claims 1, 11, and 12 of the '376 patent and claims 1, 11, and 12 of the '146 patent.

II. Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, 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, Respondent.

III. Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by this Order. For the remaining term of the Asserted Patents, Respondent shall not:

- (A) import, sell for importation, or sell after importation into the United States covered products;
- (B) market, distribute, offer for sale, or otherwise transfer (except for exportation) 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 Asserted 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.

V. Reporting

For purposes of this requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. The first report required under this section shall cover the period from the date of issuance of this order through June 30, 2018. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in U.S. dollars of covered products that Respondent has (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 U.S. dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the

Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1028") in a prominent place on the cover pages and/or the first page. *See Handbook for Electronic Filing Procedures,*

http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.

Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it 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.¹

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 this Order, 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 (3) 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, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in

¹ 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 order entered in the investigation.

Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, 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.

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its 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 (15) 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

(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 date of expiration of the Asserted 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, Respondent 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 Respondent is in violation of this order, the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

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 Respondent's posting of a bond in the amount of one hundred (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) Respondent must serve a copy of the bond and accompanying documentation on Complainant's counsel.²

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 Respondent on appeal, or (ii) Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission.

This 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 Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.



Lisa R. Barton

Secretary to the Commission

Issued: February 22, 2018

² See Footnote 1.

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served by hand upon the Commission Investigative Attorney, Cortney Hoecherl, Esq., and the following parties as indicated, on 2/22/2018



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

On Behalf of Complainant Nite Ize, Inc.:

James B. Altman, Esq.
FOSTER, MURPHY, ALTMAN & NICKEL, P.C.
1150 18th Street NW, Suite 775
Washington, DC 20036

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Respondents:

REXS LLC
16192 Coastal Highway
Lewes, DE 19958

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Shenzhen New Dream Technology Co., Ltd., d/b/a Newdreams,
Room 307, Haotai building Baomin Second
Road No. 1, Xixiang Street Bao'an,
Shenzhen, China, 518102

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wang Zhi Gang d/b/a IceFox,
Room 806, Ge Lin Wang Yuan YanNan Road,
Futian District
Shenzhen, China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

CERTAIN MOBILE DEVICE HOLDERS AND COMPONENTS THEREOF

Inv. No. 337-TA-1028

Certificate of Service – Page 2

Shenzhen Topworld Technology Co. d/b/a IdeaPro,
Rm 603, 6/F Hang Pont Comm. Bldg. 31
Tonk In St., Cheung Sha Wan Kln, Hong Kong,
Hong Kong

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Lin Zhen Mei d/b/a Anson
502, B Seat, 3 Building, Guandi Garden
Xian N7 area, Jiaan west Rd, Baoan Dist.
Shenzhen, Guangdong, China 518128

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wu Xuying d/b/a Novoland
No 2336 Nanhai Road, Nanshan District
Shenzhen, China, 518054

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Trendbox USA LLC d/b/a Trendbox
16419 North 91st Street, Suite 125
Scottsdale, AZ 85260

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Tontek d/b/a Shenzhen Hetongtai Electronics Co., Ltd.,
B1505, Niulanqian Bldg., Minzhi Street, Longhua New Area,
Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Scotabc d/b/a ShenChuang Opto-electronics Technology Co. Ltd.,
Rm. 1203A, Zhanyuan Business Bldg, No. 912 Meilong Rd.,
Longhua town, Longhua Dist. Shenzhen, Guangdong,
China, 068100

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Tenswall d/b/a Shenzhen Tenswall
International Trading Co., Ltd.
14837 Proctor Ave. Ste. A,
La Puente, CA 91746

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Luo Jieqiong d/b/a Wekin
Room 1602, Building 20, Hua Sheng Shi Ji
Xin Cheng Yu Hua Dist. Chang Sha,
China, 410100

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

Certificate of Service – Page 3

Pecham d/b/a Baichen Technology Ltd.
Rm 20A, Kiu Fu Comm. Bldg. 300 Lockhart Rd.
Wan Chai, Hong Kong

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wang Guoxiang d/b/a Minse
Rm. 609, Block 2, Xinghu Garden No. 9, Jinbi Rd,
Luohu Dist. Shenzhen, Guangdong,
China 518028

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Zhiping Zhou d/b/a Runshion
31F, Dong C, Jinganghuating, Baoandadao,
Baoanqu Shenzhenshi, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Oumeiou d/b/a Shenzhen Oumeiou Technology Co., Ltd.
F3 Comprehensive Bldg. of Nankeng 2nd Industrial Park,
Bantian Street, Longgang,
Shenzhen, China, 518112

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Shenzhen Longwang Technology Co. Ltd. d/b/a LWANG
B21, 5/F, West of Bldg. 4, Seg Tech Park,
Huaqiang North Rd., Futian Dist., Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

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

In the Matter of

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT Shenzhen New Dream Technology Co., Ltd., d/b/a Newdreams of Room 307, Haotai building Baomin Second Road No.1, Xixiang Street Bao'an, Shenzhen, China, 518102 cease and desist from conducting any of the following activities in the United States, including via the internet: importing, selling, offering for sale, marketing, advertising, distributing, transferring (except for exportation), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of mobile device holders and components thereof that infringe one or more of claims 1, 11, and 12 of United States Patent No. 8,602,376 (“the ’376 patent”) and claims 1, 11, and 12 of United States Patent No. 8,870,146 (“the ’146 patent”) (collectively, the “Asserted Patents”), 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 Nite Ize, Inc. of Boulder, Colorado.
- (C) “Respondent” shall mean Shenzhen New Dream Technology Co., Ltd., d/b/a Newdreams.

- (D) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent 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 mobile device holders and components thereof that infringe one or more of claims 1, 11, and 12 of the '376 patent and claims 1, 11, and 12 of the '146 patent.

II. Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, 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, Respondent.

III. Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by this Order.

For the remaining term of the Asserted Patents, Respondent shall not:

- (A) import, sell for importation, or sell after importation into the United States covered products;
- (B) market, distribute, offer for sale, or otherwise transfer (except for exportation) 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 Asserted 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.

V. Reporting

For purposes of this requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. The first report required under this section shall cover the period from the date of issuance of this order through June 30, 2018. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in U.S. dollars of covered products that Respondent has (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 U.S. dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the

Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1028") in a prominent place on the cover pages and/or the first page. *See Handbook for Electronic Filing Procedures,*

http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.

Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it 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.¹

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 this Order, 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 (3) 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, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in

¹ 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 order entered in the investigation.

Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, 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.

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its 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 (15) 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

(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 date of expiration of the Asserted 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, Respondent 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 Respondent is in violation of this order, the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

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 Respondent's posting of a bond in the amount of one hundred (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) Respondent must serve a copy of the bond and accompanying documentation on Complainant's counsel.²

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 Respondent on appeal, or (ii) Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission.

This 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 Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: February 22, 2018

² See Footnote 1.

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served by hand upon the Commission Investigative Attorney, Cortney Hoecherl, Esq., and the following parties as indicated, on 2/22/2018



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

On Behalf of Complainant Nite Ize, Inc.:

James B. Altman, Esq.
FOSTER, MURPHY, ALTMAN & NICKEL, P.C.
1150 18th Street NW, Suite 775
Washington, DC 20036

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Respondents:

REXS LLC
16192 Coastal Highway
Lewes, DE 19958

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Shenzhen New Dream Technology Co., Ltd., d/b/a Newdreams,
Room 307, Haotai building Baomin Second
Road No. 1, Xixiang Street Bao'an,
Shenzhen, China, 518102

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Wang Zhi Gang d/b/a IceFox,
Room 806, Ge Lin Wang Yuan YanNan Road,
Futian District
Shenzhen, China, 518000

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

CERTAIN MOBILE DEVICE HOLDERS AND COMPONENTS THEREOF

Inv. No. 337-TA-1028

Certificate of Service – Page 2

Shenzhen Topworld Technology Co. d/b/a IdeaPro,
Rm 603, 6/F Hang Pont Comm. Bldg. 31
Tonk In St., Cheung Sha Wan Kln, Hong Kong,
Hong Kong

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Lin Zhen Mei d/b/a Anson
502, B Seat, 3 Building, Guandi Garden
Xian N7 area, Jiaan west Rd, Baoan Dist.
Shenzhen, Guangdong, China 518128

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wu Xuying d/b/a Novoland
No 2336 Nanhai Road, Nanshan District
Shenzhen, China, 518054

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Trendbox USA LLC d/b/a Trendbox
16419 North 91st Street, Suite 125
Scottsdale, AZ 85260

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Tontek d/b/a Shenzhen Hetongtai Electronics Co., Ltd.,
B1505, Niulanqian Bldg., Minzhi Street, Longhua New Area,
Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Scotabc d/b/a ShenChuang Opto-electronics Technology Co. Ltd.,
Rm. 1203A, Zhanyuan Business Bldg, No. 912 Meilong Rd.,
Longhua town, Longhua Dist. Shenzhen, Guangdong,
China, 068100

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Tenswall d/b/a Shenzhen Tenswall
International Trading Co., Ltd.
14837 Proctor Ave. Ste. A,
La Puente, CA 91746

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Luo Jieqiong d/b/a Wekin
Room 1602, Building 20, Hua Sheng Shi Ji
Xin Cheng Yu Hua Dist. Chang Sha,
China, 410100

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

Certificate of Service – Page 3

Pecham d/b/a Baichen Technology Ltd.
Rm 20A, Kiu Fu Comm. Bldg. 300 Lockhart Rd.
Wan Chai, Hong Kong

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wang Guoxiang d/b/a Minse
Rm. 609, Block 2, Xinghu Garden No. 9, Jinbi Rd,
Luohu Dist. Shenzhen, Guangdong,
China 518028

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Zhiping Zhou d/b/a Runshion
31F, Dong C, Jinganghuating, Baoandadao,
Baoanqu Shenzhenshi, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Oumeiou d/b/a Shenzhen Oumeiou Technology Co., Ltd.
F3 Comprehensive Bldg. of Nankeng 2nd Industrial Park,
Bantian Street, Longgang,
Shenzhen, China, 518112

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Shenzhen Longwang Technology Co. Ltd. d/b/a LWANG
B21, 5/F, West of Bldg. 4, Seg Tech Park,
Huaqiang North Rd., Futian Dist., Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

In the Matter of

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT Tenswall d/b/a Shenzhen Tenswall International Trading Co., Ltd. of 14837 Proctor Ave. Ste. A, La Puente, California 91746 cease and desist from conducting any of the following activities in the United States, including via the internet: importing, selling, offering for sale, marketing, advertising, distributing, transferring (except for exportation), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of mobile device holders and components thereof that infringe one or more of claims 1, 11, and 12 of United States Patent No. 8,602,376 (“the ’376 patent”) and claims 1, 11, and 12 of United States Patent No. 8,870,146 (“the ’146 patent”) (collectively, the “Asserted Patents”), 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 Nite Ize, Inc. of Boulder, Colorado.
- (C) “Respondent” shall mean Tenswall d/b/a Shenzhen Tenswall International Trading Co., Ltd.

- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent 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 mobile device holders and components thereof that infringe one or more of claims 1, 11, and 12 of the ’376 patent and claims 1, 11, and 12 of the ’146 patent.

II. Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, 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, Respondent.

III. Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by this Order.

For the remaining term of the Asserted Patents, Respondent shall not:

- (A) import, sell for importation, or sell after importation into the United States covered products;
- (B) market, distribute, offer for sale, or otherwise transfer (except for exportation) 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 Asserted 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.

V. Reporting

For purposes of this requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. The first report required under this section shall cover the period from the date of issuance of this order through June 30, 2018. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in U.S. dollars of covered products that Respondent has (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 U.S. dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the

Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1028") in a prominent place on the cover pages and/or the first page. *See Handbook for Electronic Filing Procedures,*

http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.

Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it 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.¹

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 this Order, 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 (3) 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, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in

¹ 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 order entered in the investigation.

Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, 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.

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its 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 (15) 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

(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 date of expiration of the Asserted 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, Respondent 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 Respondent is in violation of this order, the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

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 Respondent's posting of a bond in the amount of one hundred (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) Respondent must serve a copy of the bond and accompanying documentation on Complainant's counsel.²

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 Respondent on appeal, or (ii) Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission.

This 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 Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.



Lisa R. Barton

Secretary to the Commission

Issued: February 22, 2018

² See Footnote 1.

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served by hand upon the Commission Investigative Attorney, Cortney Hoecherl, Esq., and the following parties as indicated, on 2/22/2018



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

On Behalf of Complainant Nite Ize, Inc.:

James B. Altman, Esq.
FOSTER, MURPHY, ALTMAN & NICKEL, P.C.
1150 18th Street NW, Suite 775
Washington, DC 20036

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Respondents:

REXS LLC
16192 Coastal Highway
Lewes, DE 19958

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Shenzhen New Dream Technology Co., Ltd., d/b/a Newdreams,
Room 307, Haotai building Baomin Second
Road No. 1, Xixiang Street Bao'an,
Shenzhen, China, 518102

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wang Zhi Gang d/b/a IceFox,
Room 806, Ge Lin Wang Yuan YanNan Road,
Futian District
Shenzhen, China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

CERTAIN MOBILE DEVICE HOLDERS AND COMPONENTS THEREOF

Inv. No. 337-TA-1028

Certificate of Service – Page 2

Shenzhen Topworld Technology Co. d/b/a IdeaPro,
Rm 603, 6/F Hang Pont Comm. Bldg. 31
Tonk In St., Cheung Sha Wan Kln, Hong Kong,
Hong Kong

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Lin Zhen Mei d/b/a Anson
502, B Seat, 3 Building, Guandi Garden
Xian N7 area, Jiaan west Rd, Baoan Dist.
Shenzhen, Guangdong, China 518128

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wu Xuying d/b/a Novoland
No 2336 Nanhai Road, Nanshan District
Shenzhen, China, 518054

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Trendbox USA LLC d/b/a Trendbox
16419 North 91st Street, Suite 125
Scottsdale, AZ 85260

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Tontek d/b/a Shenzhen Hetongtai Electronics Co., Ltd.,
B1505, Niulanqian Bldg., Minzhi Street, Longhua New Area,
Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Scotabc d/b/a ShenChuang Opto-electronics Technology Co. Ltd.,
Rm. 1203A, Zhanyuan Business Bldg, No. 912 Meilong Rd.,
Longhua town, Longhua Dist. Shenzhen, Guangdong,
China, 068100

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Tenswall d/b/a Shenzhen Tenswall
International Trading Co., Ltd.
14837 Proctor Ave. Ste. A,
La Puente, CA 91746

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Luo Jieqiong d/b/a Wekin
Room 1602, Building 20, Hua Sheng Shi Ji
Xin Cheng Yu Hua Dist. Chang Sha,
China, 410100

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

Certificate of Service – Page 3

Pecham d/b/a Baichen Technology Ltd.
Rm 20A, Kiu Fu Comm. Bldg. 300 Lockhart Rd.
Wan Chai, Hong Kong

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wang Guoxiang d/b/a Minse
Rm. 609, Block 2, Xinghu Garden No. 9, Jinbi Rd,
Luohu Dist. Shenzhen, Guangdong,
China 518028

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Zhiping Zhou d/b/a Runshion
31F, Dong C, Jinganghuating, Baoandadao,
Baoanqu Shenzhenshi, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Oumeiou d/b/a Shenzhen Oumeiou Technology Co., Ltd.
F3 Comprehensive Bldg. of Nankeng 2nd Industrial Park,
Bantian Street, Longgang,
Shenzhen, China, 518112

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Shenzhen Longwang Technology Co. Ltd. d/b/a LWANG
B21, 5/F, West of Bldg. 4, Seg Tech Park,
Huaqiang North Rd., Futian Dist., Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

In the Matter of

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT Tontek d/b/a Shenzhen Hetongtai Electronics Co., Ltd. of B1505, Niulanqian Bldg., Minzhi Street, Longhua New Area Shenzhen, Guangdong, China 518000 cease and desist from conducting any of the following activities in the United States, including via the internet: importing, selling, offering for sale, marketing, advertising, distributing, transferring (except for exportation), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of mobile device holders and components thereof that infringe one or more of claims 1, 11, and 12 of United States Patent No. 8,602,376 (“the ’376 patent”) and claims 1, 11, and 12 of United States Patent No. 8,870,146 (“the ’146 patent”) (collectively, the “Asserted Patents”), 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 Nite Ize, Inc. of Boulder, Colorado.
- (C) “Respondent” shall mean Tontek d/b/a Shenzhen Hetongtai Electronics Co., Ltd.

- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent 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 mobile device holders and components thereof that infringe one or more of claims 1, 11, and 12 of the ’376 patent and claims 1, 11, and 12 of the ’146 patent.

II. Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, 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, Respondent.

III. Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by this Order.

For the remaining term of the Asserted Patents, Respondent shall not:

- (A) import, sell for importation, or sell after importation into the United States covered products;
- (B) market, distribute, offer for sale, or otherwise transfer (except for exportation) 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 Asserted 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.

V. Reporting

For purposes of this requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. The first report required under this section shall cover the period from the date of issuance of this order through June 30, 2018. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in U.S. dollars of covered products that Respondent has (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 U.S. dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the

Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1028") in a prominent place on the cover pages and/or the first page. *See Handbook for Electronic Filing Procedures,*

http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.

Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it 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.¹

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 this Order, 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 (3) 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, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in

¹ 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 order entered in the investigation.

Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses; 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.

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its 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 (15) 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

(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 date of expiration of the Asserted 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, Respondent 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 Respondent is in violation of this order, the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

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 Respondent's posting of a bond in the amount of one hundred (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) Respondent must serve a copy of the bond and accompanying documentation on Complainant's counsel.²

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 Respondent on appeal, or (ii) Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission.

This 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 Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.



Lisa R. Barton

Secretary to the Commission

Issued: February 22, 2018

² See Footnote 1.

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served by hand upon the Commission Investigative Attorney, Cortney Hoecherl, Esq., and the following parties as indicated, on 2/22/2018



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

On Behalf of Complainant Nite Ize, Inc.:

James B. Altman, Esq.
FOSTER, MURPHY, ALTMAN & NICKEL, P.C.
1150 18th Street NW, Suite 775
Washington, DC 20036

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Respondents:

REXS LLC
16192 Coastal Highway
Lewes, DE 19958

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Shenzhen New Dream Technology Co., Ltd., d/b/a Newdreams,
Room 307, Haotai building Baomin Second
Road No. 1, Xixiang Street Bao'an,
Shenzhen, China, 518102

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Wang Zhi Gang d/b/a IceFox,
Room 806, Ge Lin Wang Yuan YanNan Road,
Futian District
Shenzhen, China, 518000

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

Certificate of Service – Page 2

Shenzhen Topworld Technology Co. d/b/a IdeaPro,
Rm 603, 6/F Hang Pont Comm. Bldg. 31
Tonk In St., Cheung Sha Wan Kln, Hong Kong,
Hong Kong

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Lin Zhen Mei d/b/a Anson
502, B Seat, 3 Building, Guandi Garden
Xian N7 area, Jiaan west Rd, Baoan Dist.
Shenzhen, Guangdong, China 518128

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Wu Xuying d/b/a Novoland
No 2336 Nanhai Road, Nanshan District
Shenzhen, China, 518054

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Trendbox USA LLC d/b/a Trendbox
16419 North 91st Street, Suite 125
Scottsdale, AZ 85260

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Tontek d/b/a Shenzhen Hetongtai Electronics Co., Ltd.,
B1505, Niulanqian Bldg., Minzhi Street, Longhua New Area,
Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Scotabc d/b/a ShenChuang Opto-electronics Technology Co. Ltd.,
Rm. 1203A, Zhanyuan Business Bldg, No. 912 Meilong Rd.,
Longhua town, Longhua Dist. Shenzhen, Guangdong,
China, 068100

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Tenswall d/b/a Shenzhen Tenswall
International Trading Co., Ltd.
14837 Proctor Ave. Ste. A,
La Puente, CA 91746

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Luo Jieqiong d/b/a Wekin
Room 1602, Building 20, Hua Sheng Shi Ji
Xin Cheng Yu Hua Dist. Chang Sha,
China, 410100

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

Certificate of Service – Page 3

Pecham d/b/a Baichen Technology Ltd.
Rm 20A, Kiu Fu Comm. Bldg. 300 Lockhart Rd.
Wan Chai, Hong Kong

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wang Guoxiang d/b/a Minse
Rm. 609, Block 2, Xinghu Garden No. 9, Jinbi Rd,
Luohu Dist. Shenzhen, Guangdong,
China 518028

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Zhiping Zhou d/b/a Runshion
31F, Dong C, Jinganghuating, Baoandadao,
Baoanqu Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Oumeiou d/b/a Shenzhen Oumeiou Technology Co., Ltd.
F3 Comprehensive Bldg. of Nankeng 2nd Industrial Park,
Bantian Street, Longgang,
Shenzhen, China, 518112

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Shenzhen Longwang Technology Co. Ltd. d/b/a LWANG
B21, 5/F, West of Bldg. 4, Seg Tech Park,
Huaqiang North Rd., Futian Dist., Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

In the Matter of

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT Trendbox USA LLC d/b/a Trendbox of 16419 North 91st Street, Suite 125, Scottsdale, Arizona 852600 cease and desist from conducting any of the following activities in the United States, including via the internet: importing, selling, offering for sale, marketing, advertising, distributing, transferring (except for exportation), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of mobile device holders and components thereof that infringe one or more of claims 1, 11, and 12 of United States Patent No. 8,602,376 (“the ’376 patent”) and claims 1, 11, and 12 of United States Patent No. 8,870,146 (“the ’146 patent”) (collectively, the “Asserted Patents”), 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 Nite Ize, Inc. of Boulder, Colorado.
- (C) “Respondent” shall mean Trendbox USA LLC d/b/a Trendbox.

- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent 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 mobile device holders and components thereof that infringe one or more of claims 1, 11, and 12 of the ’376 patent and claims 1, 11, and 12 of the ’146 patent.

II. Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, 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, Respondent.

III. Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by this Order.

For the remaining term of the Asserted Patents, Respondent shall not:

- (A) import, sell for importation, or sell after importation into the United States covered products;
- (B) market, distribute, offer for sale, or otherwise transfer (except for exportation) 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 Asserted 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.

V. Reporting

For purposes of this requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. The first report required under this section shall cover the period from the date of issuance of this order through June 30, 2018. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in U.S. dollars of covered products that Respondent has (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 U.S. dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the

Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1028") in a prominent place on the cover pages and/or the first page. *See Handbook for Electronic Filing Procedures,*

http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.

Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it 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.¹

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 this Order, 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 (3) 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, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in

¹ 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 order entered in the investigation.

Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, 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.

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its 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 (15) 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

(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 date of expiration of the Asserted 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, Respondent 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 Respondent is in violation of this order, the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

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 Respondent's posting of a bond in the amount of one hundred (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) Respondent must serve a copy of the bond and accompanying documentation on Complainant's counsel.²

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 Respondent on appeal, or (ii) Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission.

This 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 Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.



Lisa R. Barton
Office of the Secretary

Issued: February 22, 2018

² See Footnote 1.

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served by hand upon the Commission Investigative Attorney, Cortney Hoecherl, Esq., and the following parties as indicated, on 2/22/2018



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

On Behalf of Complainant Nite Ize, Inc.:

James B. Altman, Esq.
FOSTER, MURPHY, ALTMAN & NICKEL, P.C.
1150 18th Street NW, Suite 775
Washington, DC 20036

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Respondents:

REXS LLC
16192 Coastal Highway
Lewes, DE 19958

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Shenzhen New Dream Technology Co., Ltd., d/b/a Newdreams,
Room 307, Haotai building Baomin Second
Road No. 1, Xixiang Street Bao'an,
Shenzhen, China, 518102

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wang Zhi Gang d/b/a IceFox,
Room 806, Ge Lin Wang Yuan YanNan Road,
Futian District
Shenzhen, China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

Certificate of Service – Page 2

Shenzhen Topworld Technology Co. d/b/a IdeaPro,
Rm 603, 6/F Hang Pont Comm. Bldg. 31
Tonk In St., Cheung Sha Wan Kln, Hong Kong,
Hong Kong

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Lin Zhen Mei d/b/a Anson
502, B Seat, 3 Building, Guandi Garden
Xian N7 area, Jiaan west Rd, Baoan Dist.
Shenzhen, Guangdong, China 518128

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Wu Xuying d/b/a Novoland
No 2336 Nanhai Road, Nanshan District
Shenzhen, China, 518054

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Trendbox USA LLC d/b/a Trendbox
16419 North 91st Street, Suite 125
Scottsdale, AZ 85260

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Tontek d/b/a Shenzhen Hetongtai Electronics Co., Ltd.,
B1505, Niulanqian Bldg., Minzhi Street, Longhua New Area,
Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Scotabc d/b/a ShenChuang Opto-electronics Technology Co. Ltd.,
Rm. 1203A, Zhanyuan Business Bldg, No. 912 Meilong Rd.,
Longhua town, Longhua Dist. Shenzhen, Guangdong,
China, 068100

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Tenswall d/b/a Shenzhen Tenswall
International Trading Co., Ltd.
14837 Proctor Ave. Ste. A,
La Puente, CA 91746

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Luo Jieqiong d/b/a Wekin
Room 1602, Building 20, Hua Sheng Shi Ji
Xin Cheng Yu Hua Dist. Chang Sha,
China, 410100

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

Certificate of Service – Page 3

Pecham d/b/a Baichen Technology Ltd.
Rm 20A, Kiu Fu Comm. Bldg. 300 Lockhart Rd.
Wan Chai, Hong Kong

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wang Guoxiang d/b/a Minse
Rm. 609, Block 2, Xinghu Garden No. 9, Jinbi Rd,
Luohu Dist. Shenzhen, Guangdong,
China 518028

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Zhiping Zhou d/b/a Runshion
31F, Dong C, Jinganghuating, Baoandadao,
Baoanqu Shenzhenshi, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Oumeiou d/b/a Shenzhen Oumeiou Technology Co., Ltd.
F3 Comprehensive Bldg. of Nankeng 2nd Industrial Park,
Bantian Street, Longgang,
Shenzhen, China, 518112

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Shenzhen Longwang Technology Co. Ltd. d/b/a LWANG
B21, 5/F, West of Bldg. 4, Seg Tech Park,
Huaqiang North Rd., Futian Dist., Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

In the Matter of

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT Wang Zhi Gang d/b/a IceFox of Room 806, Ge Lin Wang Yuan YanNan Road, Futian District, Shenzhen, China 518000 cease and desist from conducting any of the following activities in the United States, including via the internet: importing, selling, offering for sale, marketing, advertising, distributing, transferring (except for exportation), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of mobile device holders and components thereof that infringe one or more of claims 1, 11, and 12 of United States Patent No. 8,602,376 (“the ’376 patent”) and claims 1, 11, and 12 of United States Patent No. 8,870,146 (“the ’146 patent”) (collectively, the “Asserted Patents”), 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 Nite Ize, Inc. of Boulder, Colorado.
- (C) “Respondent” shall mean Wang Zhi Gang d/b/a IceFox.

- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent 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 mobile device holders and components thereof that infringe one or more of claims 1, 11, and 12 of the ’376 patent and claims 1, 11, and 12 of the ’146 patent.

II. Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, 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, Respondent.

III. Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by this Order.

For the remaining term of the Asserted Patents, Respondent shall not:

- (A) import, sell for importation, or sell after importation into the United States covered products;
- (B) market, distribute, offer for sale, or otherwise transfer (except for exportation) 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 Asserted 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.

V. Reporting

For purposes of this requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. The first report required under this section shall cover the period from the date of issuance of this order through June 30, 2018. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in U.S. dollars of covered products that Respondent has (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 U.S. dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the

Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1028") in a prominent place on the cover pages and/or the first page. *See Handbook for Electronic Filing Procedures,*

http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.

Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it 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.¹

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 this Order, 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 (3) 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, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in

¹ 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 order entered in the investigation.

Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses; 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.

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its 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 (15) 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

(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 date of expiration of the Asserted 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, Respondent 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 Respondent is in violation of this order, the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

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 Respondent's posting of a bond in the amount of one hundred (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) Respondent must serve a copy of the bond and accompanying documentation on Complainant's counsel.²

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 Respondent on appeal, or (ii) Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission.

This 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 Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.



Lisa R. Barton

Secretary to the Commission

Issued: February 22, 2018

² See Footnote 1.

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served by hand upon the Commission Investigative Attorney, Cortney Hoecherl, Esq., and the following parties as indicated, on 2/22/2018



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

On Behalf of Complainant Nite Ize, Inc.:

James B. Altman, Esq.
FOSTER, MURPHY, ALTMAN & NICKEL, P.C.
1150 18th Street NW, Suite 775
Washington, DC 20036

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Respondents:

REXS LLC
16192 Coastal Highway
Lewes, DE 19958

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Shenzhen New Dream Technology Co., Ltd., d/b/a Newdreams,
Room 307, Haotai building Baomin Second
Road No. 1, Xixiang Street Bao'an,
Shenzhen, China, 518102

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wang Zhi Gang d/b/a IceFox,
Room 806, Ge Lin Wang Yuan YanNan Road,
Futian District
Shenzhen, China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

CERTAIN MOBILE DEVICE HOLDERS AND COMPONENTS THEREOF

Inv. No. 337-TA-1028

Certificate of Service – Page 2

Shenzhen Topworld Technology Co. d/b/a IdeaPro,
Rm 603, 6/F Hang Pont Comm. Bldg. 31
Tonk In St., Cheung Sha Wan Kln, Hong Kong,
Hong Kong

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Lin Zhen Mei d/b/a Anson
502, B Seat, 3 Building, Guandi Garden
Xian N7 area, Jiaan west Rd, Baoan Dist.
Shenzhen, Guangdong, China 518128

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wu Xuying d/b/a Novoland
No 2336 Nanhai Road, Nanshan District
Shenzhen, China, 518054

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Trendbox USA LLC d/b/a Trendbox
16419 North 91st Street, Suite 125
Scottsdale, AZ 85260

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Tontek d/b/a Shenzhen Hetongtai Electronics Co., Ltd.,
B1505, Niulanqian Bldg., Minzhi Street, Longhua New Area,
Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Scotabc d/b/a ShenChuang Opto-electronics Technology Co. Ltd.,
Rm. 1203A, Zhanyuan Business Bldg, No. 912 Meilong Rd.,
Longhua town, Longhua Dist. Shenzhen, Guangdong,
China, 068100

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Tenswall d/b/a Shenzhen Tenswall
International Trading Co., Ltd.
14837 Proctor Ave. Ste. A,
La Puente, CA 91746

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Luo Jieqiong d/b/a Wekin
Room 1602, Building 20, Hua Sheng Shi Ji
Xin Cheng Yu Hua Dist. Chang Sha,
China, 410100

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

Certificate of Service – Page 3

Pecham d/b/a Baichen Technology Ltd.
Rm 20A, Kiu Fu Comm. Bldg. 300 Lockhart Rd.
Wan Chai, Hong Kong

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wang Guoxiang d/b/a Minse
Rm. 609, Block 2, Xinghu Garden No. 9, Jinbi Rd,
Luohu Dist. Shenzhen, Guangdong,
China 518028

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Zhiping Zhou d/b/a Runshion
31F, Dong C, Jinganghuating, Baoandadao,
Baoanqu Shenzhenshi, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Oumeiou d/b/a Shenzhen Oumeiou Technology Co., Ltd.
F3 Comprehensive Bldg. of Nankeng 2nd Industrial Park,
Bantian Street, Longgang,
Shenzhen, China, 518112

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Shenzhen Longwang Technology Co. Ltd. d/b/a LWANG
B21, 5/F, West of Bldg. 4, Seg Tech Park,
Huaqiang North Rd., Futian Dist., Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

In the Matter of

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT Wang Guoxiang d/b/a Minse of Rm. 609, Block 2, Xinghu Garden No. 9, Jinbi Rd, Luohu Dist. Shenzhen, Guangdong, China 518028 cease and desist from conducting any of the following activities in the United States, including via the internet: importing, selling, offering for sale, marketing, advertising, distributing, transferring (except for exportation), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of mobile device holders and components thereof that infringe one or more of claims 1, 11, and 12 of United States Patent No. 8,602,376 (“the ’376 patent”) and claims 1, 11, and 12 of United States Patent No. 8,870,146 (“the ’146 patent”) (collectively, the “Asserted Patents”), 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 Nite Ize, Inc. of Boulder, Colorado.
- (C) “Respondent” shall mean Wang Guoxiang d/b/a Minse.

- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent 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 mobile device holders and components thereof that infringe one or more of claims 1, 11, and 12 of the ’376 patent and claims 1, 11, and 12 of the ’146 patent.

II. Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, 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, Respondent.

III. Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by this Order.

For the remaining term of the Asserted Patents, Respondent shall not:

- (A) import, sell for importation, or sell after importation into the United States covered products;
- (B) market, distribute, offer for sale, or otherwise transfer (except for exportation) 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 Asserted 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.

V. Reporting

For purposes of this requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. The first report required under this section shall cover the period from the date of issuance of this order through June 30, 2018. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in U.S. dollars of covered products that Respondent has (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 U.S. dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the

Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1028") in a prominent place on the cover pages and/or the first page. *See Handbook for Electronic Filing Procedures,*

http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.

Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it 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.¹

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 this Order, 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 (3) 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, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in

¹ 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 order entered in the investigation.

Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, 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.

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its 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 (15) 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

(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 date of expiration of the Asserted 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, Respondent 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 Respondent is in violation of this order, the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

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 Respondent's posting of a bond in the amount of one hundred (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) Respondent must serve a copy of the bond and accompanying documentation on Complainant's counsel.²

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 Respondent on appeal, or (ii) Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission.

This 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 Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: February 22, 2018

² See Footnote 1.

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served by hand upon the Commission Investigative Attorney, Cortney Hoecherl, Esq., and the following parties as indicated, on 2/22/2018



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

On Behalf of Complainant Nite Ize, Inc.:

James B. Altman, Esq.
FOSTER, MURPHY, ALTMAN & NICKEL, P.C.
1150 18th Street NW, Suite 775
Washington, DC 20036

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Respondents:

REXS LLC
16192 Coastal Highway
Lewes, DE 19958

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Shenzhen New Dream Technology Co., Ltd., d/b/a Newdreams,
Room 307, Haotai building Baomin Second
Road No. 1, Xixiang Street Bao'an,
Shenzhen, China, 518102

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wang Zhi Gang d/b/a IceFox,
Room 806, Ge Lin Wang Yuan YanNan Road,
Futian District
Shenzhen, China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

CERTAIN MOBILE DEVICE HOLDERS AND COMPONENTS THEREOF

Inv. No. 337-TA-1028

Certificate of Service – Page 2

Shenzhen Topworld Technology Co. d/b/a IdeaPro,
Rm 603, 6/F Hang Pont Comm. Bldg. 31
Tonk In St., Cheung Sha Wan Kln, Hong Kong,
Hong Kong

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Lin Zhen Mei d/b/a Anson
502, B Seat, 3 Building, Guandi Garden
Xian N7 area, Jiaan west Rd, Baoan Dist.
Shenzhen, Guangdong, China 518128

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wu Xuying d/b/a Novoland
No 2336 Nanhai Road, Nanshan District
Shenzhen, China, 518054

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Trendbox USA LLC d/b/a Trendbox
16419 North 91st Street, Suite 125
Scottsdale, AZ 85260

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Tontek d/b/a Shenzhen Hetongtai Electronics Co., Ltd.,
B1505, Niulanqian Bldg., Minzhi Street, Longhua New Area,
Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Scotabc d/b/a ShenChuang Opto-electronics Technology Co. Ltd.,
Rm. 1203A, Zhanyuan Business Bldg, No. 912 Meilong Rd.,
Longhua town, Longhua Dist. Shenzhen, Guangdong,
China, 068100

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Tenswall d/b/a Shenzhen Tenswall
International Trading Co., Ltd.
14837 Proctor Ave. Ste. A,
La Puente, CA 91746

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Luo Jieqiong d/b/a Wekin
Room 1602, Building 20, Hua Sheng Shi Ji
Xin Cheng Yu Hua Dist. Chang Sha,
China, 410100

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

Certificate of Service – Page 3

Pecham d/b/a Baichen Technology Ltd.
Rm 20A, Kiu Fu Comm. Bldg. 300 Lockhart Rd.
Wan Chai, Hong Kong

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wang Guoxiang d/b/a Minse
Rm. 609, Block 2, Xinghu Garden No. 9, Jinbi Rd,
Luohu Dist. Shenzhen, Guangdong,
China 518028

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Zhiping Zhou d/b/a Runshion
31F, Dong C, Jinganghuating, Baoandadao,
Baoanqu Shenzhenshi, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Oumeiou d/b/a Shenzhen Oumeiou Technology Co., Ltd.
F3 Comprehensive Bldg. of Nankeng 2nd Industrial Park,
Bantian Street, Longgang,
Shenzhen, China, 518112

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Shenzhen Longwang Technology Co. Ltd. d/b/a LWANG
B21, 5/F, West of Bldg. 4, Seg Tech Park,
Huaqiang North Rd., Futian Dist., Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

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

In the Matter of

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT Wu Xuying d/b/a Novoland of No. 2336 Nanhai Road, Nanshan District, Shenzhen, China 518054 cease and desist from conducting any of the following activities in the United States, including via the internet: importing, selling, offering for sale, marketing, advertising, distributing, transferring (except for exportation), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of mobile device holders and components thereof that infringe one or more of claims 1, 11, and 12 of United States Patent No. 8,602,376 (“the ’376 patent”) and claims 1, 11, and 12 of United States Patent No. 8,870,146 (“the ’146 patent”) (collectively, the “Asserted Patents”), 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 Nite Ize, Inc. of Boulder, Colorado.
- (C) “Respondent” shall mean Wu Xuying d/b/a Novoland.

- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent 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 mobile device holders and components thereof that infringe one or more of claims 1, 11, and 12 of the ’376 patent and claims 1, 11, and 12 of the ’146 patent.

II. Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, 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, Respondent.

III. Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by this Order.

For the remaining term of the Asserted Patents, Respondent shall not:

- (A) import, sell for importation, or sell after importation into the United States covered products;
- (B) market, distribute, offer for sale, or otherwise transfer (except for exportation) 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 Asserted 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.

V. Reporting

For purposes of this requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. The first report required under this section shall cover the period from the date of issuance of this order through June 30, 2018. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in U.S. dollars of covered products that Respondent has (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 U.S. dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the

Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1028") in a prominent place on the cover pages and/or the first page. See Handbook for Electronic Filing Procedures,

http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.

Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it 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.¹

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 this Order, 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 (3) 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, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in

¹ 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 order entered in the investigation.

Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, 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.

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its 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 (15) 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

(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 date of expiration of the Asserted 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, Respondent 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 Respondent is in violation of this order, the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

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 Respondent's posting of a bond in the amount of one hundred (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) Respondent must serve a copy of the bond and accompanying documentation on Complainant's counsel.²

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 Respondent on appeal, or (ii) Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission.

This 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 Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: February 22, 2018

² See Footnote 1.

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served by hand upon the Commission Investigative Attorney, Cortney Hoecherl, Esq., and the following parties as indicated, on 2/22/2018



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

On Behalf of Complainant Nite Ize, Inc.:

James B. Altman, Esq.
FOSTER, MURPHY, ALTMAN & NICKEL, P.C.
1150 18th Street NW, Suite 775
Washington, DC 20036

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Respondents:

REXS LLC
16192 Coastal Highway
Lewes, DE 19958

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Shenzhen New Dream Technology Co., Ltd., d/b/a Newdreams,
Room 307, Haotai building Baomin Second
Road No. 1, Xixiang Street Bao'an,
Shenzhen, China, 518102

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wang Zhi Gang d/b/a IceFox,
Room 806, Ge Lin Wang Yuan YanNan Road,
Futian District
Shenzhen, China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

CERTAIN MOBILE DEVICE HOLDERS AND COMPONENTS THEREOF

Inv. No. 337-TA-1028

Certificate of Service – Page 2

Shenzhen Topworld Technology Co. d/b/a IdeaPro,
Rm 603, 6/F Hang Pont Comm. Bldg. 31
Tonk In St., Cheung Sha Wan Kln, Hong Kong,
Hong Kong

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Lin Zhen Mei d/b/a Anson
502, B Seat, 3 Building, Guandi Garden
Xian N7 area, Jiaan west Rd, Baoan Dist.
Shenzhen, Guangdong, China 518128

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wu Xuying d/b/a Novoland
No 2336 Nanhai Road, Nanshan District
Shenzhen, China, 518054

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Trendbox USA LLC d/b/a Trendbox
16419 North 91st Street, Suite 125
Scottsdale, AZ 85260

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Tontek d/b/a Shenzhen Hetongtai Electronics Co., Ltd.,
B1505, Niulanqian Bldg., Minzhi Street, Longhua New Area,
Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Scotabc d/b/a ShenChuang Opto-electronics Technology Co. Ltd.,
Rm. 1203A, Zhanyuan Business Bldg, No. 912 Meilong Rd.,
Longhua town, Longhua Dist. Shenzhen, Guangdong,
China, 068100

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Tenswall d/b/a Shenzhen Tenswall
International Trading Co., Ltd.
14837 Proctor Ave. Ste. A,
La Puente, CA 91746

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Luo Jieqiong d/b/a Wekin
Room 1602, Building 20, Hua Sheng Shi Ji
Xin Cheng Yu Hua Dist. Chang Sha,
China, 410100

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

Certificate of Service – Page 3

Pecham d/b/a Baichen Technology Ltd.
Rm 20A, Kiu Fu Comm. Bldg. 300 Lockhart Rd.
Wan Chai, Hong Kong

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wang Guoxiang d/b/a Minse
Rm. 609, Block 2, Xinghu Garden No. 9, Jinbi Rd,
Luohu Dist. Shenzhen, Guangdong,
China 518028

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Zhiping Zhou d/b/a Runshion
31F, Dong C, Jinganghuating, Baoandadao,
Baoanqu Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Oumeiou d/b/a Shenzhen Oumeiou Technology Co., Ltd.
F3 Comprehensive Bldg. of Nankeng 2nd Industrial Park,
Bantian Street, Longgang,
Shenzhen, China, 518112

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Shenzhen Longwang Technology Co. Ltd. d/b/a LWANG
B21, 5/F, West of Bldg. 4, Seg Tech Park,
Huaqiang North Rd., Futian Dist., Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

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

In the Matter of

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT Zhiping Zhou d/b/a Runshion of 31F, Dong C, Jinganghuating, Baoandadao, Baoanqu Shenzhenshi, Guangdong, China 518000 cease and desist from conducting any of the following activities in the United States, including via the internet: importing, selling, offering for sale, marketing, advertising, distributing, transferring (except for exportation), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of mobile device holders and components thereof that infringe one or more of claims 1, 11, and 12 of United States Patent No. 8,602,376 (“the ’376 patent”) and claims 1, 11, and 12 of United States Patent No. 8,870,146 (“the ’146 patent”) (collectively, the “Asserted Patents”), 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 Nite Ize, Inc. of Boulder, Colorado.
- (C) “Respondent” shall mean Zhiping Zhou d/b/a Runshion.

- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent 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 mobile device holders and components thereof that infringe one or more of claims 1, 11, and 12 of the ’376 patent and claims 1, 11, and 12 of the ’146 patent.

II. Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, 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, Respondent.

III. Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by this Order. For the remaining term of the Asserted Patents, Respondent shall not:

- (A) import, sell for importation, or sell after importation into the United States covered products;
- (B) market, distribute, offer for sale, or otherwise transfer (except for exportation) 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 Asserted 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.

V. Reporting

For purposes of this requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. The first report required under this section shall cover the period from the date of issuance of this order through June 30, 2018. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in U.S. dollars of covered products that Respondent has (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 U.S. dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the

Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1028") in a prominent place on the cover pages and/or the first page. *See Handbook for Electronic Filing Procedures,*

http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.

Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it 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.¹

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 this Order, 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 (3) 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, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in

¹ 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 order entered in the investigation.

Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, 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.

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its 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 (15) 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

(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 date of expiration of the Asserted 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, Respondent 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 Respondent is in violation of this order, the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

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 Respondent's posting of a bond in the amount of one hundred (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) Respondent must serve a copy of the bond and accompanying documentation on Complainant's counsel.²

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 Respondent on appeal, or (ii) Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission.

This 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 Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: February 22, 2018

² See Footnote 1.

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served by hand upon the Commission Investigative Attorney, Cortney Hoecherl, Esq., and the following parties as indicated, on 2/22/2018



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

On Behalf of Complainant Nite Ize, Inc.:

James B. Altman, Esq.
FOSTER, MURPHY, ALTMAN & NICKEL, P.C.
1150 18th Street NW, Suite 775
Washington, DC 20036

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Respondents:

REXS LLC
16192 Coastal Highway
Lewes, DE 19958

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Shenzhen New Dream Technology Co., Ltd., d/b/a Newdreams,
Room 307, Haotai building Baomin Second
Road No. 1, Xixiang Street Bao'an,
Shenzhen, China, 518102

- Via Hand Delivery
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Wang Zhi Gang d/b/a IceFox,
Room 806, Ge Lin Wang Yuan YanNan Road,
Futian District
Shenzhen, China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

CERTAIN MOBILE DEVICE HOLDERS AND COMPONENTS THEREOF

Inv. No. 337-TA-1028

Certificate of Service – Page 2

Shenzhen Topworld Technology Co. d/b/a IdeaPro,
Rm 603, 6/F Hang Pont Comm. Bldg. 31
Tonk In St., Cheung Sha Wan Kln, Hong Kong,
Hong Kong

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Lin Zhen Mei d/b/a Anson
502, B Seat, 3 Building, Guandi Garden
Xian N7 area, Jiaan west Rd, Baoan Dist.
Shenzhen, Guangdong, China 518128

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wu Xuying d/b/a Novoland
No 2336 Nanhai Road, Nanshan District
Shenzhen, China, 518054

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Trendbox USA LLC d/b/a Trendbox
16419 North 91st Street, Suite 125
Scottsdale, AZ 85260

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Tontek d/b/a Shenzhen Hetongtai Electronics Co., Ltd.,
B1505, Niulanqian Bldg., Minzhi Street, Longhua New Area,
Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Scotabc d/b/a ShenChuang Opto-electronics Technology Co. Ltd.,
Rm. 1203A, Zhanyuan Business Bldg, No. 912 Meilong Rd.,
Longhua town, Longhua Dist. Shenzhen, Guangdong,
China, 068100

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Tenswall d/b/a Shenzhen Tenswall
International Trading Co., Ltd.
14837 Proctor Ave. Ste. A,
La Puente, CA 91746

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Luo Jieqiong d/b/a Wekin
Room 1602, Building 20, Hua Sheng Shi Ji
Xin Cheng Yu Hua Dist. Chang Sha,
China, 410100

- Via Hand Delivery
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- Other: _____

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

Certificate of Service – Page 3

Pecham d/b/a Baichen Technology Ltd.
Rm 20A, Kiu Fu Comm. Bldg. 300 Lockhart Rd.
Wan Chai, Hong Kong

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wang Guoxiang d/b/a Minse
Rm. 609, Block 2, Xinghu Garden No. 9, Jinbi Rd,
Luohu Dist. Shenzhen, Guangdong,
China 518028

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Zhiping Zhou d/b/a Runshion
31F, Dong C, Jinganghuating, Baoandadao,
Baoanqu Shenzhenshi, Guangdong,
China, 518000

- Via Hand Delivery
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- Via First Class Mail
- Other: _____

Oumeiou d/b/a Shenzhen Oumeiou Technology Co., Ltd.
F3 Comprehensive Bldg. of Nankeng 2nd Industrial Park,
Bantian Street, Longgang,
Shenzhen, China, 518112

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Shenzhen Longwang Technology Co. Ltd. d/b/a LWANG
B21, 5/F, West of Bldg. 4, Seg Tech Park,
Huaqiang North Rd., Futian Dist., Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN MOBILE DEVICE HOLDERS
AND COMPONENTS THEREOF**

Investigation No. 337-TA-1028

COMMISSION OPINION

I. INTRODUCTION

On September 12, 2017, the presiding administrative law judge (“ALJ”) issued his final initial determination (“FID”) finding a violation of section 337 and his recommended determination on remedy and bonding (“RD”) in this investigation. The FID finds that certain defaulting respondents infringe claims 1, 11, and 12 of U.S. Patent No. 8,602,376 (“the ’376 patent”) and claims 1, 11, and 12 of U.S. Patent No. 8,870,146 (“the ’146 patent”). On November 13, 2017, the Commission determined to review the FID’s findings on the economic prong of domestic industry and requested briefing on remedy, bonding, and the public interest. 82 Fed. Reg. 54413-14 (Nov. 17, 2017).

For the reasons set forth below, the Commission affirms the FID’s finding that a domestic industry exists based on modified reasoning, and issues a general exclusion order (“GEO”) and cease and desist orders (“CDO”) to sixteen of the twenty defaulting respondents. The Commission finds that the public interest does not preclude the issuance of remedial orders, and sets the bond during the period of Presidential review at 100 percent of the entered value of the imported goods. The Commission adopts the FID’s and the RD’s findings that are consistent with this opinion.

II. PROCEDURAL HISTORY

The Commission instituted this investigation on November 14, 2016, based on a complaint and supplements, filed on behalf of Nite Ize, Inc. of Boulder, Colorado (“Nite Ize”). 81 Fed. Reg. 79519-20 (Nov. 14, 2016). The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain mobile device holders and components thereof by reason of infringement of certain claims of the ’146 patent, the ’376 patent, U.S. Patent No. D734,746 (“the ’746 patent”), and U.S. Patent No. D719,959 (“the ’959 patent”) (collectively, “the asserted patents”). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The Commission’s notice of investigation named the following respondents: REXS LLC of Lewes, Delaware; Spinido, Inc. of Brighton, Colorado; Guangzhou Kuaguoyi E-commerce Co., Ltd. d/b/a Kagu Culture of Baiyum, China; Sunpauto Co., Ltd. of Kowloon, Hong Kong; Shenzhen Topworld Technology Co. d/b/a IdeaPro of Hong Kong, Hong Kong; Ninghuaxian Wangfulong Chaojishichang Youxian Gongsi, Ltd., d/b/a EasybuyUS of Shanghai, China; Chang Lee d/b/a Frentaly of Duluth, Georgia; Trendbox USA LLC d/b/a Trendbox of Scottsdale, Arizona; Tenswall d/b/a Shenzhen Tenswall International Trading Co. of La Puente, California; Luo Jieqiong d/b/a Wekin of Chang Sha, China; Pecham d/b/a Baichen Technology Ltd. of Wan Chai, Hong Kong; Cyrift d/b/a Guangzhou Sunway Ecommerce LLC of Guangzhou, China; Rymemo d/b/a Global Box, LLC of Dunbar, Pennsylvania; Yuan I d/b/a Bestrix of Hubei, China; Zhongshan Feiyu Hardware Technology Co., Ltd d/b/a YouFo of ZhongShan City, China; and Shenzhen Youtai Trade Company Limited, d/b/a NoChoice; Luo, Qiben, d/b/a Lita International Shop of Nanshan; Shenzhen New Dream Technology Co., Ltd., d/b/a Newdreams;

Shenzhen Gold South Technology Co., Ltd. d/b/a Baidatong; Wang Zhi Gang d/b/a IceFox; Dang Yuya d/b/a Sminiker; Lin Zhen Mei d/b/a Anson; Wu Xuying d/b/a Novoland; Shenzhen New Dream Sailing Electronic Technology Co., Ltd. d/b/a MegaDream; Tontek d/b/a Shenzhen Hetongtai Electronics Co., Ltd.; Scotabc d/b/a ShenChuang Optoelectronics Technology Co., Ltd.; Zhiping Zhou d/b/a Runshion; Huijukon d/b/a Shenzhen Hui Ju Kang Technology Co. Ltd.; Barsone d/b/a Shenzhen Senweite Electronic Commerce Ltd.; Oumeiou d/b/a Shenzhen Oumeiou Technology Co., Ltd.; Grando d/b/a Shenzhen Dashentai Network Technology Co., Ltd.; Shenzhen Yingxue Technology Co., Ltd.; Shenzhen Longwang Technology Co., Ltd., d/b/a LWANG; Hu Peng d/b/a AtomBud; and Wang Guoxiang d/b/a Minse all of Shenzhen, China. The Office of Unfair Import Investigations (“OUII”) was named as a party to the investigation.

During the investigation, all of the respondents were terminated by motion or default.

The disposition of each respondent is shown in the following chart:

Respondent	Status	Docket Entry
Global Box, LLC	Terminated on the basis of a consent order	Order No. 8 (Feb. 28, 2017) unreviewed (March 21, 2017)
Chang Lee d/b/a Frentaly	Terminated on the basis of a consent order	Order No. 10 (April 13, 2017) unreviewed (May 15, 2017)
Tenswall d/b/a Shenzhen Tenswall International Trading Co., Ltd (“Tenswall”)	In default	Order No. 11 (May 1, 2017) unreviewed (May 26, 2017)
Trendbox USA LLC d/b/a Trendbox (“Trendbox”)	In default	Order No. 11 (May 1, 2017) unreviewed (May 26, 2017)
Sunpauto Co., Ltd. (“Sunpauto”)	In default	Order No. 11 (May 1, 2017) unreviewed (May 26, 2017)

Respondent	Status	Docket Entry
Shenzhen Topworld Technology Co., Ltd. d/b/a IdeaPro ("IdeaPro")	In default	Order No. 11 (May 1, 2017) unreviewed (May 26, 2017)
Guangzhou Kuaguoyi E-commerce Co., Ltd. d/b/a Kagu Culture ("Kagu Culture")	In default	Order No. 11 (May 1, 2017) unreviewed (May 26, 2017)
Shenzhen New Dream Technology Co., d/b/a Newdreams ("Newdreams")	In default	Order No. 11 (May 1, 2017) unreviewed (May 26, 2017)
Lin Zhen Mei d/b/a Anson ("Anson")	In default	Order No. 11 (May 1, 2017) unreviewed (May 26, 2017)
Zhongshan Feiyu Hardware Technology Co., Ltd. d/b/a YouFo ("YouFo")	In default	Order No. 11 (May 1, 2017) unreviewed (May 26, 2017)
Oumeiou d/b/a Shenzhen Oumeiou Technology Co., Ltd ("Oumeiou")	In default	Order No. 11 (May 1, 2017) unreviewed (May 26, 2017)
Shenzhen Yingxue Technology Co. Ltd. ("Shenzhen Yingxue")	In default	Order No. 11 (May 1, 2017) unreviewed (May 26, 2017)
Wang Guoxiang d/b/a Minse ("Minse")	In default	Order No. 11 (May 1, 2017) unreviewed (May 26, 2017)
Wu Xuying, an individual, d/b/a Novoland ("Novoland")	In default	Order No. 11 (May 1, 2017) unreviewed (May 26, 2017)
Wang Zhi Gang, an individual, d/b/a IceFox and Shenzhen IceFox High Tec Group ("IceFox")	In default	Order No. 11 (May 1, 2017) unreviewed (May 26, 2017)

Respondent	Status	Docket Entry
Scotabc d/b/a ShenChuang Opto-electronics Technology Co., Ltd ("Scotabc")	In default	Order No. 11 (May 1, 2017) unreviewed (May 26, 2017)
Zhiping Zhou d/b/a Runshion ("Runshion")	In default	Order No. 11 (May 1, 2017) unreviewed (May 26, 2017)
Pecham d/b/a Baichen Technology Ltd. ("Pecham")	In default	Order No. 11 (May 1, 2017) unreviewed (May 26, 2017)
Shenzhen Longwang Technology Co., Ltd. d/b/a LWANG ("LWANG")	In default	Order No. 11 (May 1, 2017) unreviewed (May 26, 2017)
Tontek d/b/a Shenzhen Hetongtai Electronics., Ltd. ("Tontek")	In default	Order No. 11 (May 1, 2017) unreviewed (May 26, 2017)
Luo Jieqiong d/b/a Wekin ("Wekin")	In default	Order No. 11 (May 1, 2017) unreviewed (May 26, 2017)
REXS LLC ("REXS LLC")	In default	Order No. 11 (May 1, 2017) unreviewed (May 26, 2017)
Barsons d/b/a Shenzhen Senweite Electronic Commerce Ltd.	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017) unreviewed (June 13, 2017)
Shenzhen Youtai Trade Company Limited, d/b/a NoChoice	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017) unreviewed (June 13, 2017)
Ninghuaxian Wangfulong Chaojishichang Youxian Gongsi, Ltd., d/b/a EasybuyUS	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017) unreviewed (June 13, 2017)
Shenzhen Gold South Technology Co., Ltd. d/b/a Baidatong	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017) unreviewed (June 13, 2017)

Respondent	Status	Docket Entry
Cyrift d/b/a Guangzhou Sunway E-Commerce LLC	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017) unreviewed (June 13, 2017)
Hu Peng d/b/a AtomBud	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017) unreviewed (June 13, 2017)
Grando d/b/a Shenzhen Dashentai Network Technology Co., Ltd.	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017) unreviewed (June 13, 2017)
Huijukon d/b/a Shenzhen Hui Ju Kang Technology Co. Ltd.	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017) unreviewed (June 13, 2017)
Luo, Qiben, d/b/a Lita International Shop	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017) unreviewed (June 13, 2017)
Shenzhen New Dream Sailing Electronic Technology Co., Ltd. d/b/a MegaDream	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017) unreviewed (June 13, 2017)
Spinido Inc.	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017) unreviewed (June 13, 2017)
Dang Yuya d/b/a Sminiker	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017) unreviewed (June 13, 2017)
Yuan I d/b/a Bestrix	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017) unreviewed (June 13, 2017)

See FID at 2-6. The respondents identified as in default herein are collectively referred to as the “Defaulting Respondents” and their corresponding products are collectively referred to as the “Accused Products.” See *id.* at 12-14.

On May 18, 2017, Nite Ize filed a Motion for Summary Determination of Violation by the Defaulting Respondents and for a Recommended Determination on Remedy and Bonding, Including Issuance of a General Exclusion Order, Limited Exclusion Orders, and Cease and Desist Orders. On June 16, 2017, the ALJ issued Order No. 14 granting in-part Nite Ize's motion for summary determination. The ALJ concluded that all of the Accused Products have been imported into the United States. The ALJ found that Nite Ize is the sole assignee and owner of all of the asserted patents.

The ALJ, however, found that some genuine issues of material fact existed and precluded summary determination on certain issues. Specifically, the ALJ also found genuine issues of material fact existed as to (1) whether IceFox, Newdreams, Anson, IdeaPro, Oumeiou, YouFo, and Minse import, sell for importation, or sell after importation the Accused Products associated with each respondent; (2) whether Kagu Culture, Newdreams, Trendbox, and Shenzhen Yingxue infringe the asserted claims of the '376 and '146 patents; (3) whether the Accused Products of the Defaulting Respondents, other than REXS LLC, infringe the claims of the '959 and '746 patents; and (4) whether the domestic industry requirement is satisfied for each of the asserted patents. *See* Order No. 14. The ALJ's findings are summarized below:

Summary Determination Holdings					
<i>Respondent</i>	Accused Products imported, sold for importation, or sold after importation	Infringement of the '376 Patent	Infringement of the '146 Patent	Infringement of the '959 Patent	Infringement of the '746 Patent
Anson		X	X		
IceFox		X	X		
IdeaPro		X	X		
Kagu Culture	X				
LWANG	X	X	X		

Summary Determination Holdings					
<i>Respondent</i>	Accused Products imported, sold for importation, or sold after importation	Infringement of the '376 Patent	Infringement of the '146 Patent	Infringement of the '959 Patent	Infringement of the '746 Patent
Minse		X	X		
Newdreams					
Novoland	X	X	X		
Oumeiou		X	X		
Pecham	X	X	X		
REXS LLC	X	X	X	X	X
Runshion	X	X	X		
Scotabc	X	X	X		
Shenzhen Yingxue	X				
Sunpauto	X	X	X		
Tenswall	X	X	X		
Tontek	X	X	X		
Trendbox	X				
Wekin	X	X	X		
YouFo		X	X		

The Commission determined not to review the ID. Commission Notice (July 14, 2017).

Thereafter, Nite Ize moved to withdraw the '746 and '959 patents from the investigation.

The ALJ granted the motion in Order No. 16 and the Commission did not review that ID.

Commission Notice (July 28, 2017).

The ALJ held an evidentiary hearing on July 19, 2017. On September 12, 2017, the ALJ issued his FID in this investigation finding a violation of section 337 by all of the Defaulting Respondents except Shenzhen Yingxue. Specifically, the FID finds that respondents Kagu Culture, New Dreams, and Trendbox infringe claims 1, 11, and 12 of the '376 patent and '146

patents.¹ *See* FID at 80. The FID also finds that the Accused Product of respondent Shenzhen Yingxue does not infringe the '376 and '146 patents. *Id.* Finally, the FID concludes that the domestic industry requirement is satisfied for the '376 and '146 patents. *Id.* On the same day, the ALJ issued his RD. No petitions for review of the FID were filed.

On November 13, 2017, the Commission determined to review the FID's findings on the economic prong of domestic industry and requested briefing on remedy, bonding, and the public interest. 82 Fed. Reg. 54413-14 (Nov. 17, 2017). The Commission's notice of review included two questions on remedy. On November 30, 2017, Nite Ize and OUII filed their responses² to the Commission's notice and on December 7, 2017, OUII filed a reply to Nite Ize's response.³ OUII's reply generally states that it agrees with Nite Ize's position, but asserts that the Accused Products are imported under different HTSUS numbers than those supplied by Nite Ize. OUII Reply Br. at 3.

Nite Ize requests a GEO, or in the alternative, a limited exclusion order barring entry of the infringing products of the Defaulting Respondents, and CDOs directed to the Defaulting Respondents. Nite Ize Br. at 7. Nite Ize is no longer pursuing CDOs against defaulting foreign

¹ As noted above, the ALJ had previously found that the other Defaulting Respondents, with the exception of Shenzhen Yingxue, infringe the '376 and '146 patents. *See* Order No. 14.

² Complainant Nite Ize's Writing Submission on Remedy, the Public Interest, and Bonding ("Nite Ize Br."); Response of the Office of Unfair Import Investigations to the Commission's Request for Written Submission Regarding Remedy, Bonding, and the Public Interest ("OUII Br.").

³ Reply of the Office of Unfair Import Investigations to the Commission's Request for Written Submission Regarding Remedy, Bonding, and the Public Interest.

respondents YouFo, Kagu Culture, Shenzhen Yingxue,⁴ and Sunpauto. Nite Ize Br. at 9 n.3. As noted above, the Commission did not review the FID's finding that Shenzhen Yingxue did not infringe the '376 and '146 patents.

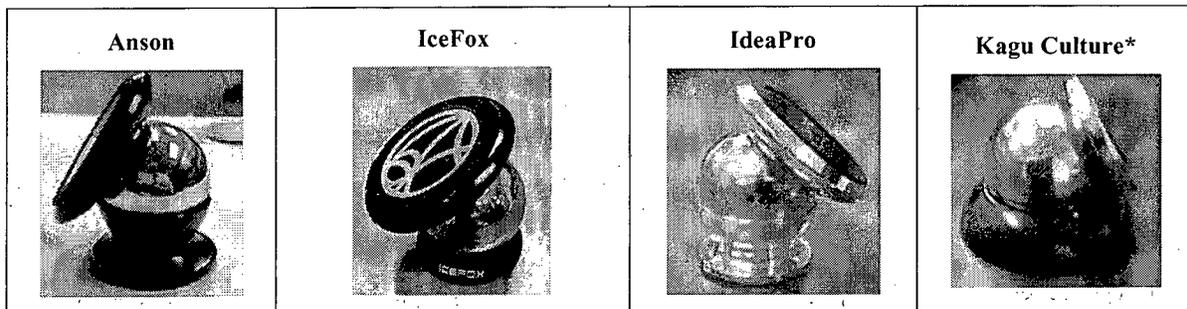
III. PRODUCTS AT ISSUE

A. Domestic Industry Products

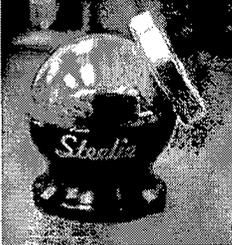
The domestic industry products are a subset of the family of products Nite Ize refers to as the "Steelie® Ecosystem." The Steelie® Ecosystem (hereinafter, Steelie®) products are ball-and-socket based mobile device holders, wherein the ball attaches to or is placed upon a fixed point (e.g., a desk surface) and the socket attaches to the mobile device (e.g., smartphone, tablet). FID at 11-12. The socket and the ball are made of magnetic materials where the attraction between the socket and ball holds the mobile device in a particular position for hands-free viewing. *Id.*

B. Accused Products

The Accused Products are ball-and-socket based mobile device holders, held together by magnetic attraction. The table below, reproduced from the FID, displays an exemplary photograph of each Accused Product.



⁴ The ALJ found that Shenzhen Yingxue did not infringe the Asserted Patents. FID at 33-35. The Commission did not review this finding, and therefore did not find Shenzhen Yingxue in violation of section 337. 82 Fed. Reg. 54413-14 (Nov. 17, 2017).

<p>Newdreams</p> 	<p>Novoland</p> 	<p>REXS LLC</p> 	<p>Sunpauto</p> 
<p>Trendbox*</p> 	<p>YouFo</p> 	<p>Pecham</p> 	<p>Runshion</p> 
<p>LWANG</p> 	<p>Minse</p> 	<p>Oumeiou</p> 	<p>Scotabc</p> 
<p>Tontek</p> 	<p>Tenswall</p> 	<p>Wekin</p> 	<p>Shenzhen Yingxue⁵</p> 

Id. at 12-14.

⁵ See *supra* n.4.

C. Domestic Industry

As noted above, the Commission determined to review the FID's analysis and findings with respect to the economic prong of domestic industry. Section 337(a)(2) and (a)(3) provide that:

(2) Subparagraphs (B), (C), (D), and (E) of paragraph (1) apply only if, 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.

(3) For purposes of paragraph (2), an industry in the United States shall be considered to exist if there is in the United States, with respect to the articles protected by the patent, copyright, trademark, mask work, or design 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)(2), (a)(3). The domestic industry requirement consists of a technical prong and an economic prong. *See, e.g., Alloc, Inc. v. Int 'l Trade Comm 'n*, 342 F.3d 1361,1375 (Fed. Cir. 2003). The test for the technical prong is whether the domestic products are covered by the asserted claims. To meet the economic prong of the domestic industry requirement, the complainant must establish that at least one of the criteria listed in subparagraph (a)(3) is satisfied “with respect to the articles protected by the patent.” 19 U.S.C. § 1337(a)(3); *Certain Variable Speed Wind Turbines and Components Thereof*, Inv. No. 337-TA-376, USITC Pub. No. 3003 (Nov. 1996), Comm'n Op. at 21 (Sep. 23, 1996), remanded on other grounds, *Enercon GmbH v. Int 'l Trade Comm 'n*, 113 F.3d 1256 (Fed. Cir. 1997). In addition, § 1337(a)(3)(C) requires that the substantial investment in engineering, research and development or licensing

activities must be in the patent's exploitation. *Interdigital Communications v. Int'l Trade Comm'n*, 707 F.3d 1295,1297-99 (Fed. Cir. 2013).

In Order No. 14, the ALJ determined that genuine issues of material fact precluded summary determination on the technical and economic prongs of domestic industry. FID at 35 (citing Order No. 14 at 53-55). Order No. 14 found that the Nite Ize had not demonstrated which domestic products practice the asserted patents. *Id.* The ALJ explained that he could not “reliably determine the value of the domestic investments with respect to the articles protected by the patent, as compared to other Nite Ize investments.” *Id.* at 35-36. The FID, however, finds that the domestic industry requirement is met as to the '376 and '146 patents.⁶ *Id.* at 36-80. The Commission did not review the FID's findings on the technical prong but did review the FID's findings on the economic prong.

1. Economic Prong

(a) The FID

(i) Investment Amounts

The FID notes that Nite Ize is only pursuing a domestic industry finding through subsection (C) (engineering, research and development). *Id.* at 63. The FID discusses Nite Ize's facilities, equipment, labor, and patent acquisition expenses in detail. *Id.* at 63-75. In analyzing whether Nite Ize's research and development expenses devoted to the Steelie® products supports a domestic industry finding, the FID considered the percentage of Nite Ize's facility, labor, and equipment expenses that relate to research and development of the Steelie® products. *Id.* at 63-75.

⁶ As noted above, Nite Ize withdrew the '746 and '959 patents from the investigation.

The FID, accepting Nite Ize’s arguments, found that [REDACTED] percent of Nite Ize’s total research and development expenses should be allocated to the Steelie® product line. *Id.* at 64-65. This allocation is based on the gross profits generated by the Steelie® product line compared to company-wide gross profits. *Id.* at 64. The FID uses this allocation instead of an alternate allocation of [REDACTED] percent, which is based on the gross revenue received from the Steelie® product line. *Id.* at 64-65 (citing CX-187C at 1).

Applying the [REDACTED] percent allocation, the FID finds Nite Ize’s investments attributable to engineering, research, and development related to the Steelie® product line to be as follows:

Investment	Amount Credited to Domestic Industry
Central facility	\$ [REDACTED]
Computer hardware	\$ [REDACTED]
Computer software	\$ [REDACTED]
Manufacturing equipment	\$ [REDACTED]
Labor	\$ [REDACTED]
<i>*total*</i>	\$ [REDACTED]

Id. at 75.

(ii) Nexus to '146 and '376 Patents

The FID next determines “whether these investments have sufficient connection, or ‘nexus,’ to the claims of the [Infringed] Patents.” *Id.* at 76. The FID notes “the Commission ‘has long recognized that the ‘its’ in the phrase ‘investment in its exploitation’ in subparagraph (C) refers to the asserted patent or other intellectual-property right being asserted. That conclusion is supported by the clear text of the statute.” *Id.* (quoting *Certain Integrated Circuit*

Chips and Products Containing the Same, Inv. No. 337-TA-859, Comm'n Op. at 36 (Aug. 22, 2014) (“*Circuit Chips*”). “‘Exploitation’ is a generally broad term that encompasses activities such as efforts to improve, develop, or otherwise take advantage of the asserted patent.” *Id.*

The FID finds that Nite Ize has demonstrated a sufficient nexus between its research and development activities and claims 1, 11, and 12 of each of the '376 and '146 patents.

Specifically, the FID finds that Nite Ize describes a few of its relevant research efforts as:

- Modifying the manufacturing process of original Pedestal tabletop stand [REDACTED] (CPOST at 53, 57; Hr’g Tr. at 43:24-44:20);
- [REDACTED] (CPOST at 53, 55; Hr’g Tr. at 44:5-20);
- Integrated Steelie® sockets into a line of electronic device case products (CPOST at 54; CX-238C at Q189; Hr’g Tr. at 63:7-64:8);
- Designed a new vent mount vase, referred to as the Steelie Vent Mount, which clips to vent rather than fix to a dashboard, [REDACTED] (CPOST at 54, 58, 65; CX-238C at Q272; Hr’g Tr. at 67:17-19, 73:9-76:5);
- Designed a new socket system for holding a phone, called the Steelie® Freemount (CPOST at 55; CX-238C at Q156; Hr’g Tr. at 64:12-16);
- Redesigned the Steelie® Phone and Tablet Socket components’ front surface [REDACTED] (CPOST at 57, 65; Hr’g Tr. at 45:24-47:10, 39:1-4);
- [REDACTED] (CPOST at 57, 65; Hr’g Tr. at 49:6-14, 50:6-10);
- [REDACTED] (CPOST at 58, 65; Hr’g Tr. at 48:22-50:10, 51:16-52:3, 52:11-14, 39:1-12, 49:21-50:3); and
- Continued adaptation of the ball and the socket to keep up with the technology of phones (CPOST at 59; Hr’g Tr. at 77:6-11).

Id. at 76-77. The FID determines that these research efforts each have a strong link to the structure recited by the asserted and unasserted claims. *Id.* at 77. The FID concludes that these examples and other statements from Nite Ize “support the inference that the research and development efforts in these articles are inextricably linked to the patents themselves.” *Id.* at 77-78 (quoting *Circuit Chips*, 337-TA-859, Comm’n Op. at 39-40 (discussing *Certain Portable Cases*, Inv. No. 337-TA-861 & -867, Order No. 15 (Sept. 10, 2013); and *Certain Foam Footwear*, Inv. No. 337-TA-567, Order No. 34 at 7 (Nov. 7, 2006) (unreviewed)). The FID also finds that Mr. Case’s testimony that it was “‘super key’ for Nite Ize to develop products that practice one or more of the Asserted Patents” persuasive and “commensurate with the links between research effort and patent claim limitation.” *Id.* at 78. Therefore, the FID concludes there is a sufficient nexus. *Id.*

(iii) Substantial Exploitation

The final issue the FID addresses is whether the \$ [REDACTED] domestic investment in research, engineering, and development is “substantial.” *Id.* at 78. The FID quotes *Lelo v. Int’l Trade Comm’n*, 786 F.3d 879, 883 (Fed. Cir. 2015), as follows:

First, the terms “significant” and “substantial” refer to an increase in quantity, or to a benchmark in numbers. The plain meaning of an “investment” is “an expenditure of money for income or profit or to purchase something of intrinsic value.” Webster’s Third New International Dictionary 1190 (1986). An “investment in plant and equipment” therefore is characterized quantitatively, *i.e.*, by the amount of money invested in the plant and equipment. . . . Prior ITC § 337 investigations confirm that a § 337 analysis is quantitatively based.

Id. at 78-79. The FID asserts that the “magnitude of [the] investment,” “cannot be assessed without consideration of the nature and importance of the complainant’s activities to the patented products in the context of the marketplace or industry in question.” *Id.* at 79 (quoting *Certain*

27 (Feb. 17, 2011)). The FID explains that:

The domestic industry articles and Accused Products at issue in this investigation are relatively simple—a spherical surface adapted to serve as a stable base, and a magnetic disc-shaped socket with an adhesive face. It is purely mechanical with a dozen or fewer constituent components. I find that the marketplace for these products does not, and, due to price points, cannot require intense research and development costs. Thus, the benchmark for “substantial” research and development investment is relatively low.

Id. The FID concludes that Nite Ize’s investment meets this benchmark. Specifically, the FID reasons:

Nite Ize’s revenue for all Steelie® products between 2013 and mid-2016 was [REDACTED]. (CX-187C at 1.) Mr. Case testified that the average cost of production for a Steelie Product is roughly [REDACTED] % of sale price. (CX-238C at Q220; see Hr’g Tr. at 119:6-12.) [REDACTED] % of the total Steelie® worldwide revenue is [REDACTED]. In other words Nite Ize has spent [REDACTED] making the Steelie products and [REDACTED] developing them; i.e., development cost is [REDACTED] % of the production cost. I find it is more likely than not that [REDACTED] % is a substantial ratio of research to manufacturing expenditures for this marketplace. I also find that the following unusual factors support this finding: the non-participation of the Defaulting Respondents, the large number of respondents that were never successfully located, and the similarity in appearance between the Accused Products from different respondents.

Id. at 79-80.

(b) Analysis

The Commission determined to review the FID’s finding on the economic prong of domestic industry. In analyzing the domestic industry issue, the FID attributed [REDACTED] percent of Nite Ize’s total engineering and research and development expenses to the Steelie® products. The [REDACTED] percent allocation is based on the share of Nite Ize’s gross profits that is generated by the Steelie® product line. FID at 64-65. On review, the Commission affirms the FID economic prong findings, including the use of the [REDACTED] percent allocation, with modified reasoning.

In analyzing whether Nite Ize’s research and development expenses are sufficiently

substantial to support a domestic industry finding, the FID considered facility, labor, and equipment expenses as they relate to research and development. One component of this inquiry is the attribution of appropriate expenses to the domestic industry products. The FID finds that Nite Ize's profit-based allocation is appropriate to allocate its facilities and equipment expenses relating to research and development because research and development efforts are distinct from revenue generating efforts. *Id.* at 65. The FID credited the argument that Nite Ize invests its resources on researching, or developing new technologies or improvements where it can make the most profit. *Id.* (citing (CX-238C at Q233; see also Hr'g Tr. at 121:10-122:23). Accordingly, the FID found it reasonable to allocate [REDACTED] percent of the Central facility's lease payments and leasehold improvement values as well as equipment used for research and development to the Steelie® products. *Id.* at 65, 73-74.⁷

Section 337(a)(2) and (3) require that domestic investments be related to articles protected by the intellectual property rights involved, and in the case of research and development, those investments must be in exploitation of the IP rights concerned, but these statutory provisions do not expressly address how complainants must present their evidence to meet these statutory requirements. Often, complainants in section 337 investigations claim domestic investments relating to domestic industry articles by using allocation methodologies appropriate to the complainant's circumstances, as supported by the evidence in the record. In the present investigation, Nite Ize presented its domestic industry case using gross profits to allocate its domestic facilities and equipment expenses for research and development in light of

⁷ The FID found that the Steelie® products comprise approximately [REDACTED] percent of Nite Ize's gross revenue. FID at 65.

complainants' business. The Commission affirms the FID's use of gross profits in this instance but with modified reasoning.

The Commission has generally assessed allocation issues based on complainants' presentation of measures such as sales, revenues, costs, or employee time estimates. Here, however, Nite Ize has established that its allocation methodology is appropriate under the specific facts of this investigation. *See* Complainant Post-Hearing Br. at 60-61. To support its claim, Nite Ize estimates the fraction of its overall research and development and engineering investments attributable to its Steelie® products. Nite Ize used two methodologies to allocate these expenditures. For compensation of engineers, Nite Ize estimated its labor investments based on engineering time spent on Steelie® products. *Id.* at 61. For Nite Ize's other investments, such as in plant and equipment, Nite Ize allocated these expenditures based on the percentage of overall profit derived from Steelie® sales. *Id.* Nite Ize demonstrated that it concentrates its resources researching and developing new technology and improvements where it can make the most profit. *Id.* The Commission agrees with the FID that the record here supports allocating facilities and equipment expenses based on gross profits, instead of revenue. The Commission adopts the remainder of the FID's allocation analysis and the FID's calculations in determining Nite Ize's domestic industry investment amounts. FID at 63-75. However, the Commission does not adopt the FID's general categorization as to when profit based allocation versus revenue based allocation may be appropriate. *See id.* at 65.

The Commission adopts and affirms the FID's determination and analysis that Nite Ize's investments have a sufficient "nexus" to the claims of the '376 and '146 patents. *Id.* at 76-78. The Commission also adopts and affirms the FID's determination and analysis concerning substantial exploitation of the patents at issue that is consistent with this opinion, ID at 78-80,

with the exception of the sentence bridging pages 79-80 of the FID, *i.e.*, “I also find that the following unusual factors support this finding: the non-participation of the Defaulting Respondents, the large number of respondents that were never successfully located, and the similarity in appearance between the Accused Products from different respondents.”

IV. Remedy, The Public Interest, and Bonding

Section 337(g)(1) provides conditions and procedures applicable to investigations in which one or more parties are found in default. That provision states as follows:

(1) If—

- (A) a complaint is filed against a person under this section;
- (B) the complaint and a notice of investigation are served on the person;
- (C) the person fails to respond to the complaint and notice or otherwise fails to appear to answer the complaint and notice;
- (D) the person fails to show good cause why the person should not be found in default; and
- (E) the complainant seeks relief limited solely to that person.

19 U.S.C. §1337(g)(1). When these requirements are satisfied, the Commission “shall presume the facts alleged in the complaint to be true and shall, upon request, issue an exclusion from entry or a cease and desist order, or both, limited to that person unless, after considering the effect of such exclusion or order upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the Commission finds that such exclusion or order should not be issued.” *Id.* In addition, section 337 (g)(2) grants the Commission the authority to issue a GEO under default circumstances 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) are met.

19 U.S.C. §1337 (g)(2).

Section 337 (d)(2) grants the authority to issue a GEO if:

(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).

A. GEO

The RD finds that a GEO is both necessary to prevent circumvention of a limited exclusion order and that there is a pattern of violation such that it is difficult to identify the source of the infringing goods. RD at 3-9. For the reasons that follow, the Commission finds that the record supports the issuance of a GEO pursuant to 19 U.S.C. § 1337(d)(2)(A) and (B), forbidding entry into the United states of certain mobile device holders and components thereof that infringe one or more of claims 1, 11, and 12 of the '376 patent and claims 1, 11, and 12 of the '146 patent. The Commission adopts the RD's analysis, and the underlying citations to record evidence therein, to the extent it is consistent with the Commission's opinion herein.

The issuance of a GEO under section 337(g)(2) requires that "no person appears to contest an investigation concerning a violation of the provisions of this section" 19 U.S.C. § 1337(g)(2)(A). Here, two respondents appeared in the investigation and were terminated based on consent orders. The Commission has previously held that section 337(g)(2) does not apply when some respondents appear. *Certain Lighters*, Inv. No. 337-TA-575, Pub. 4112, Comm'n Op. at 4 (Aug. 30, 2007). The appearance of the two respondents therefore precludes the

issuance of a GEO under section 337(g)(2), but a GEO may still issue under section 337(d)(2) when a violation is established based on reliable, probative, and substantial evidence. *See id.* The Commission is authorized to issue a GEO excluding all infringing goods regardless of the source when the conditions of section 337(d)(2) are met. *See* 19 U.S.C. § 1337(d)(2).

The Commission finds that a GEO is warranted under section 337(d)(2)(A) to prevent circumvention. Here, respondents operate under different names, the number of parties attempting to import products infringing the accused patents is constantly changing and growing, importers continually shift their aliases, and there are low barriers to enter the market, while the demand continues to rise. *See, e.g.,* CX-195C at ¶¶ 5.1-5.3, 7.1; Hr'g Tr. at 35:18-19; CX-193C; Complainant Post-Hearing Br. at 90.

The evidence also establishes that a GEO is warranted under section 337(d)(2)(B) because there is a pattern of violation and it is difficult to identify the source of the infringing products. Both the Commission and Nite Ize had difficulty serving some respondents in this investigation. In addition, Nite Ize had difficulty finding the respondents proposed in this investigation and Nite Ize demonstrated that it was difficult to identify each of the numerous parties selling and manufacturing the infringing products. EDIS Doc. Nos. 605601 (Motion to Show Cause), 612074 (Motion to Terminate Non-Served Respondents). The evidence also shows that new companies are likely to enter the market at a high rate and there is evidence of additional instances of unlawful sales of the infringing mobile device holders and components thereof. *See, e.g.,* CX-195C at ¶¶ 6.3, 81-8.4; Hr'g Tr. 103:10-104:13. Moreover, unauthorized sellers attempt to mislead customers into thinking they are purchasing genuine Nite Ize products online and removal of unauthorized products from websites is fruitless as new unauthorized products continue to appear. *See, e.g.,* Hr'g Tr. 33:21-35:22, CX-170 at 5; CX-195C at ¶ 6.3;

CX-174 at 7, 23. Accordingly, the Commission finds that the record supports the issuance of a GEO.

B. CDOs

Section 337(g)(1) authorizes Commission action regarding alleged violations by defaulting respondents and provides remedial authority directed to such defaulters when relief is requested.⁸ 19 U.S.C. § 1337(g)(1). In determining whether to issue a CDO in default cases, under Section 337(g), the Commission determines appropriate relief by examining facts similar to those it examines in any investigation in which a violation is found, including those with participating respondents – namely whether, with respect to imported infringing products, respondents maintain commercially significant inventories in the United States or have significant domestic operations that could undercut the remedy provided by an exclusion order.⁹ However, as the legislative history notes, in investigations in which a default is found, discovery may be difficult, if not impossible, to obtain from the parties, and hence there are limited facts available in the record. In these investigations, the Commission examines the record, including facts alleged in the complaint, which are deemed to be true, as well as any

⁸ For a more detailed explanation of the Commission’s interpretation of the remedial provisions pertaining to defaulting respondents, see *Certain Electric Skin Care Devices, Brushes and Chargers Therefor, and Kits Containing the Same*, Inv. No. 337-TA-959, Comm’n Op. at 21-31 (February 6, 2017).

⁹ See, e.g., *Certain Protective Cases and Components Thereof*, Inv. No. 337-TA-780, Comm’n Op. at 28 (Nov. 19, 2012) (citing *Certain Laser Bar Code Scanners and Scan Engines, Components Thereof, and Products Containing Same*, Inv. No. 337-TA-551, Comm’n Op. at 22 (June 14, 2007)); *Certain Liquid Crystal eWriters and Components Thereof*, Inv. No. 337-TA-1035, Comm’n Op. at 4-8 (Sept. 19, 2017). A complainant seeking a CDO must demonstrate, based on the record, that this remedy is necessary to address the violation found in the investigation so as to not undercut the relief provided by the exclusion order. *Skin Care Devices*, Inv. No. 337-TA-959, Comm’n Op. at 26-27; *Certain Arrowheads with Deploying Blades and Components Thereof*, Inv. No. 337-TA-977, Comm’n Op. at 17 (Apr. 28, 2017) (“*Arrowheads*”) (including Separate Views of Chairman Schmidtlein).

other information the complainant has been able to obtain, and has found it appropriate to draw certain inferences from this evidence in favor of the complainant to provide the necessary relief.

Specifically, in cases where the respondent is located in the United States and is found in default under Section 337(g)(1), the Commission has consistently inferred the presence of commercially significant inventories in the United States based on the facts of record. *See, e.g., Certain Agricultural Tractors, Lawn Tractors, Riding Lawnmowers, And Components Thereof* (“*Agricultural Tractors*”), Inv. No. 337-TA-486, Comm’n Op. at 17-18 (July 14, 2003). Thus, due to the domestic presence and lack of participation, the Commission has historically granted a complainant’s request for relief in the form of a CDO regarding U.S. based activities for domestic respondents found in default.

As for defaulting respondents located outside the United States, the Commission has declined to automatically presume the presence of domestic inventories in the United States that would support the issuance of a CDO. *See id.* at 18-20. Rather, the Commission has examined, for example, whether the complaint alleges facts that support the inference that the defaulting foreign respondent or its agents maintain commercially significant inventories in the United States with respect to the articles found in violation. *Id.* (declining to issue a CDO against foreign defaulting respondents because the complaint allegations did not aver commercially significant inventories nor support such an inference). Similarly, the Commission has examined allegations in the complaint that foreign defaulting respondents maintain commercially significant U.S. inventories and/or are engaging in significant commercial business operations in the United States, supported by available circumstantial evidence of U.S. distribution of infringing products with corresponding supporting documents

relating to those sales by foreign defaulting respondents, demonstrating such significant domestic inventories and/or operations. See *Skin Care Devices*, Inv. No. 337-TA-959, Comm'n Op. at 31; *Arrowheads*, Inv. No. 337-TA-977, Comm'n Op. at 18-20.

For example, in *Skin Care Devices*, the Commission found evidence of short lead times between order placement and delivery and low shipping costs, supporting an inference that products of the foreign respondents were being sold out of U.S. inventory. Inv. No. 337-TA-959, Comm'n Op. at 31-33. By contrast, in *Arrowheads*, the Commission declined to issue a CDO to one of the foreign respondents where the evidence relied upon by complainants merely demonstrated the respondent's online presence but did not demonstrate significant domestic-based inventories and/or operations. Inv. No. 337-TA-977, Comm'n Op. at 21-22. Specifically, the evidence showed that this respondent's infringing articles sold online were shipped directly to U.S. customers from overseas rather than shipped from U.S. inventories. *Id.* The Commission did issue a CDO against another foreign defaulting respondent because the evidence supported a finding that infringing imported articles were shipped domestically by the respondent's U.S. distributor; the Commission therefore presumed the respondent had significant domestic operations and/or inventory. *Id.* at 21.

These decisions recognize that because the foreign respondents have defaulted, it is difficult for complainants to obtain detailed discovery to establish record evidence regarding the foreign respondents' U.S. business operations and agents, including the magnitude, ownership, and distribution channels for U.S. inventories of infringing products, and all reasonable inferences should be granted in favor of the complainant. However, without some support in the record, including factual allegations in the complaint, the Commission has declined such

requested relief against foreign defaulters.¹⁰ We believe this is a sensible and reasonable approach, particularly due to the potential challenges to enforcing a domestic order against a foreign company without any commercially significant inventory or business operations in the United States.¹¹

Nite Ize seeks CDOs against the Defaulting Respondents except for YouFo, Kagu Culture, Shenzhen Yingxue, and Sunpaúto. Nite Ize Br. at 9 n.3. We refer to the respondents for which Nite Ize is seeking a CDO as “the CDO Respondents.” OUII supports issuance of CDOs to these respondents and the RD recommends the issuance of CDOs directed to them.

The Commission asked the parties to brief the following questions with respect to CDOs:

- (1) Please identify with citations to the record any information regarding commercially significant inventory in the United States as to each respondent against whom a cease and desist order is sought. If Complainant also relies on other significant domestic operations that could undercut the remedy provided by an exclusion order, please identify with citations to the record such information as to each respondent against whom a cease and desist order is sought.
- (2) In relation to the infringing products, please identify any information in the record, including allegations in the pleadings, that addresses the existence of any domestic inventory, any domestic operations, or any sales-related activity directed at the United States for each respondent against whom a cease and desist order is sought.

82 Fed. Reg. 54413-14 (Nov. 17, 2017).

¹⁰ See, e.g., *Agricultural Tractors*, Inv. No. 337-TA-486, Comm’n Op. at 19-20; *Arrowheads* at 21-22.

¹¹ See, e.g., *Certain Microsphere Adhesives, Process for Making Same, and Products Containing Same, Including Self-Stick Repositionable Notes*, Inv. No. 337-TA-366, USITC Pub No. 2949 (Jan. 1996) (“*Microsphere Adhesives*”). Comm’n Op. at 22-23 (“Moreover, a cease and desist order is typically an in personam order directed to a party in the United States and enforced by the Commission in U.S. district courts, Thus, unless a party in the United States can be compelled to do some act or to refrain from doing some act by U.S. courts, a cease and desist order is inappropriate.”).

There are 16 CDO Respondents including three domestic respondents and thirteen foreign respondents. We find that the evidence warrants the issuance of a CDO against all sixteen CDO Respondents.¹²

The three defaulting domestic respondents REXS LLC, Tenswall, Trendbox, maintain addresses in the United States. Complaint ¶¶ 3.3, 3.20; CX-174 at 66. Under *Agricultural Tractors*, the Commission infers that the domestic respondents have commercially significant inventory and significant domestic operations. *See Agricultural Tractors* at 18. In addition, these domestic respondents all offer very fast, low or no cost shipping on Amazon, which leads to the inference that they maintain domestic inventories. *See e.g.*, CX-170; CX-168C; CX-171.

As discussed above, the Commission has issued CDOs against foreign respondents where there is evidence of significant inventories or significant business operations in the U.S. *See e.g.*, *Skin Care Devices* at 28; *Arrowheads* at 17-18. The evidence supports a reasonable inference that each of the respondents Minse, IdeaPro, LWANG, Novoland, Oumeiou, Pecham, Runshion, Scotabc, Tontek, Wekin, Anson, Newdreams, and IceFox, have significant domestic inventory or

¹² Chairman Schmidtlein supports issuance of the CDOs in this investigation for the reasons provided in her separate views in *Certain Electric Skin Care Devices, Brushes and Chargers Therefore, and Kits Containing the Same*. *See* Inv. No. 337-TA-959, Comm'n Op., Separate Views of Chairman Schmidtlein (Feb. 13, 2017) (public version). In short, she finds that the mandatory "shall, upon request, issue" language in section 337(g)(1) requires the Commission to issue the requested CDOs against the 16 CDO Respondents. *See id* at 2-5; *see also Certain Arrowheads with Deploying Blades and Components Thereof*, Inv. No. 337-TA-977, Comm'n Op., Dissenting Views of Chairman Schmidtlein (April 28, 2017) (public version). Congress's use of this language indicates that the statute does not confer discretion upon the Commission to deny a requested CDO against a defaulting respondent. *See id*. Further, Chairman Schmidtlein supports issuance of the CDOs even if there must be support in the record. She observes that the record in this case shows that all of the CDO Respondents, at a minimum, maintain contacts with the United States involving the infringing goods. *See, e.g.*, CX-168C; CX-169 through CX-173; CX-188C (Robert Ziemian Declaration). In Chairman Schmidtlein's view, the record in this case provides a sufficient basis to issue the CDOs without having to draw inferences.

significant domestic operations in the United States. Respondents Minse, IdeaPro, LWANG, Novoland, Oumeiou, Pecham, Runshion, Scotabc, Tontek, and Wekin use Amazon.com fulfillment centers in the United States with fast shipping. *See* CX-169 through CX-173 (Advertisements for Accused Products); CX-168C (order receipts with shipping timing). Advertisements from Anson, Newdreams, and IceFox offer overnight delivery, or one business day delivery, strongly indicating the Accused Products are being sold out of inventory in the United States. *Id.* The evidence also shows that there are low or no shipping costs for Minse, IdeaPro, LWANG, Novoland, Oumeiou, Pecham, Runshion, Scotabc, Wekin, Anson, Newdreams, and IceFox. *Id.* Accordingly, the Commission finds that the evidence, including circumstantial evidence in the case of the foreign defaulters, supports issuance of CDOs to the 16 CDO Respondents.

C. Public Interest

Before issuing a remedy directed to a defaulting respondent under section 337(d) or (g), the Commission must consider the effect of the remedy on certain public interest considerations: (1) the public health and welfare; (2) competitive conditions in the U.S. economy; (3) the U.S. production of articles that are like or directly competitive with those which are the subject of the investigation; and (4) U.S. consumers. 19 U.S.C. § 1337(d)(1), (g)(1).

The evidentiary record in this investigation indicates that there are no concerns relating to the section 337 public interest factors that would preclude issuance of the remedial orders. The products at issue are consumer products that provide a convenient, useful, and flexible mobile device holder and components thereof. *Nite Ize Br.* at 51. No evidence in the record indicates that the remedial orders would have an adverse effect on the public health and welfare. *See e.g.*

Certain Toner Cartridges and Components Thereof, Inv. No. 337-TA-918, Comm'n Op. at 13-14 (Aug. 31, 2015).

Moreover, there is no evidence that the requested remedial orders would have any effect on competitive conditions in the U.S. economy, U.S. production, or U.S. consumers. Nite Ize asserts that it "has the capacity to satisfy the demand for excluded mobile device holders with its various Steelie® Products." Nite Ize Br. at 51-52.

Based on the foregoing, the Commission finds that issuance of the requested remedial orders would not be contrary to the public interest.

D. Bonding

Pursuant to section 337(j)(3), the Commission must determine the amount of bond to be set during the 60-day Presidential review period following the issuance of a remedy. The purpose of the bond is to protect the complainant from injury during the Presidential review period. 19 U.S.C. § 1337(j)(3); 19 C.F.R. §§ 210.42(a)(1)(h), 210.50(a)(3). Complainants bear the burden of establishing the need for a bond amount in the first place. *Certain Rubber Antidegradants, Components Thereof, and Prods. Containing Same*, Inv. No. 337-TA-533, Comm'n Op. at 39-40 (July 21, 2006).

Nite Ize seek a 100 percent bond for importation of infringing products during the period of Presidential review under section 337(j)(3) because no reliable price information can be determined due to the Defaulting Respondent's lack of participation in this investigation.

To establish the appropriate bond amount, the Commission typically calculates the difference in pricing between the complainant's products and the respondent's products. See *Microsphere Adhesives* at 24. The Commission finds that there is little or no evidence in the record of this investigation as to pricing of the Defaulting Respondents' products because no

discovery was obtained from the Defaulting Respondents. The Commission has traditionally set a bond of 100 percent of the entered value of the products under these circumstances. *See Oscillating Sprinklers, Sprinkler Components, and Nozzles*, Inv. No. 337-TA-448, Limited Exclusion Order at 4-5 (Mar. 1, 2002) (setting the bond at 100 percent of the entered value of the infringing imported product when the defaulting respondent failed to provide pricing information). Accordingly, the Commission has determined to set a bond of 100 percent of the entered value for the infringing mobile device holders and components thereof during the period of Presidential review because, in light of the default by the Defaulting Respondents, there is no evidence in the record as to the pricing of Defaulting Respondents' products. *See, e.g., Certain Footwear Prods.*, Inv. No. 337-TA-936, Comm'n Op. at 34-35 (July 6, 2016); *Certain Pumping Bras*, 337-TA-988, Comm'n Op. at 13-14 (April 7, 2017).

V. CONCLUSION

For the forgoing reasons, the Commission affirms the FID's finding that a domestic industry exists based on modified reasoning, finds that there is a violation of section 337, and finds the appropriate remedy is a GEO and 16 CDOs.

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: March 22, 2018

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **COMMISSION OPINION** has been served by hand upon the Commission Investigative Attorney, Cortney Hoecherl, Esq., and the following parties as indicated, on 3/22/2018



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

On Behalf of Complainant Nite Ize, Inc.:

James B. Altman, Esq.
FOSTER, MURPHY, ALTMAN & NICKEL, P.C.
1150 18th Street NW, Suite 775
Washington, DC 20036

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Respondents:

REXS LLC
16192 Coastal Highway
Lewes, DE 19958

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Shenzhen New Dream Technology Co., Ltd., d/b/a Newdreams,
Room 307, Haotai building Baomin Second
Road No. 1, Xixiang Street Bao'an,
Shenzhen, China, 518102

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Wang Zhi Gang d/b/a IceFox,
Room 806, Ge-Lin Wang-Yuan-YanNan Road,
Futian District
Shenzhen, China, 518000

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Certificate of Service – Page 2

Shenzhen Topworld Technology Co. d/b/a IdeaPro,
Rm 603, 6/F Hang Pont Comm. Bldg. 31
Tonk In St., Cheung Sha Wan Kln, Hong Kong,
Hong Kong

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Lin Zhen Mei d/b/a Anson
502, B Seat, 3 Building, Guandi Garden
Xian N7 area, Jiaan west Rd, Baoan Dist.
Shenzhen, Guangdong, China 518128

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Wu Xuying d/b/a Novoland
No 2336 Nanhai Road, Nanshan District
Shenzhen, China, 518054

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Trendbox USA LLC d/b/a Trendbox
16419 North 91st Street, Suite 125
Scottsdale, AZ 85260

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Tontek d/b/a Shenzhen Hetongtai Electronics Co., Ltd.,
B1505, Niulanqian Bldg., Minzhi Street, Longhua New Area,
Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Scotabc d/b/a ShenChuang Opto-electronics Technology Co. Ltd.,
Rm. 1203A, Zhanyuan Business Bldg, No. 912 Meilong Rd.,
Longhua town, Longhua Dist. Shenzhen, Guangdong,
China, 068100

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Tenswall d/b/a Shenzhen Tenswall
International Trading Co., Ltd.
14837 Proctor Ave. Ste. A,
La Puente, CA 91746

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Luo Jieqiong d/b/a Wekin
Room 1602, Building 20, Hua Sheng Shi Ji
Xin Cheng Yu Hua Dist. Chang Sha,
China, 410100

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Certificate of Service – Page 3

Pecham d/b/a Baichen Technology Ltd.
Rm 20A, Kiu Fu Comm. Bldg. 300 Lockhart Rd.
Wan Chai, Hong Kong

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Wang Guoxiang d/b/a Minse
Rm. 609, Block 2, Xinghu Garden No. 9, Jinbi Rd,
Luohu Dist. Shenzhen, Guangdong,
China 518028

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Zhiping Zhou d/b/a Runshion
31F, Dong C, Jinganghuating, Baoandadao,
Baoanqu Shenzhenshi, Guangdong,
China, 518000

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Oumeiou d/b/a Shenzhen Oumeiou Technology Co., Ltd.
F3 Comprehensive Bldg. of Nankeng 2nd Industrial Park,
Bantian Street, Longgang,
Shenzhen, China, 518112

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Shenzhen Longwang Technology Co. Ltd. d/b/a LWANG
B21, 5/F, West of Bldg. 4, Seg Tech Park,
Huaqiang North Rd., Futian Dist., Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN MOBILE DEVICE HOLDERS
AND COMPONENTS THEREOF

Investigation No. 337-TA-1028

**NOTICE OF THE COMMISSION'S DETERMINATION TO REVIEW IN-PART A
FINAL INITIAL DETERMINATION FINDING A VIOLATION OF SECTION 337;
REQUEST FOR WRITTEN SUBMISSIONS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in-part the final initial determination ("ID") issued by the presiding administrative law judge ("ALJ") on September 12, 2017, finding a violation of section 337 in the above-captioned investigation. Specifically, the Commission has determined to review the ID's analysis and findings with respect to the economic prong of the domestic industry. The Commission also requests written submissions, under the schedule set forth below, on remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Amanda Pitcher Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone (202) 205-2737. 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 <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://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 November 14, 2016, based on a complaint and supplements, filed on behalf of Nite Ize, Inc. of Boulder, Colorado ("Nite Ize"). 81 FR 79519-20 (Nov. 14, 2016). The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain mobile

device holders and components thereof by reason of infringement of certain claims of U.S. Patent No. 8,602,376 (“the ’376 patent”), U.S. Patent No. 8,870,146 (“the ’146 patent”), U.S. Patent No. D734,746 (“the ’746 patent”), and U.S. Patent No. D719,959 (“the ’959 patent”). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The Commission’s notice of investigation named the following respondents: REXS LLC of Lewes, Delaware; Spinido, Inc. of Brighton, Colorado; Guangzhou Kuaguoyi E-commerce Co., Ltd. d/b/a Kagu Culture (“Kagu Culture”) of Baiyum, China; Sunpauto Co., Ltd. of Kowloon, Hong Kong; Shenzhen Topworld Technology Co. d/b/a IdeaPro (“IdeaPro”) of Hong Kong, Hong Kong; Ninghuaxian Wangfulong Chaojishichang Youxian Gongsi, Ltd., d/b/a EasybuyUS of Shanghai, China; Chang Lee d/b/a Frentaly of Duluth, Georgia; Trendbox USA LLC d/b/a Trendbox (“Trendbox”) of Scottsdale, Arizona; Tenswall d/b/a Shenzhen Tenswall International Trading Co. of La Puente, California; Luo Jieqiong d/b/a Wekin of Chang Sha, China; Pecham d/b/a Baichen Technology Ltd. of Wan Chai, Hong Kong; Cyrift d/b/a Guangzhou Sunway Ecommerce LLC. of Guangzhou, China; Rymemo d/b/a Global Box, LLC of Dunbar, Pennsylvania; Yuan I d/b/a Bestrix of Hubei, China; Zhongshan Feiyu Hardware Technology Co., Ltd d/b/a YouFo (“YouFo”) of ZhongShan City, China; and Shenzhen Youtai Trade Company Limited, d/b/a NoChoice; Luo, Qiben, d/b/a Lita International Shop of Nanshan; Shenzhen New Dream Technology Co., Ltd., d/b/a Newdreams (“Newdreams”); Shenzhen Gold South Technology Co., Ltd. d/b/a Baidatong; Wang Zhi Gang d/b/a IceFox (“Icefox”); Dang Yuya d/b/a Sminiker; Lin Zhen Mei d/b/a Anson (“Anson”); Wu Xuying d/b/a Novoland; Shenzhen New Dream Sailing Electronic Technology Co., Ltd. d/b/a MegaDream; Tontek d/b/a Shenzhen Hetongtai Electronics Co., Ltd.; Scotabc d/b/a ShenChuang Optoelectronics Technology Co., Ltd.; Zhiping Zhou d/b/a Runshion; Huijukon d/b/a Shenzhen Hui Ju Kang Technology Co. Ltd.; Barsone d/b/a Shenzhen Senweite Electronic Commerce Ltd.; Oumeiou d/b/a Shenzhen Oumeiou Technology Co., Ltd. (“Oumeiou”); Grando d/b/a Shenzhen Dashentai Network Technology Co., Ltd.; Shenzhen Yingxue Technology Co., Ltd. (“Shenzhen Yingxue”); Shenzhen Longwang Technology Co., Ltd., d/b/a LWANG; Hu Peng d/b/a AtomBud; Wang Guoxiang d/b/a Minse (“Minse”) all of Shenzhen, China. The Office of Unfair Import Investigations (“OUII”) was named as a party to the investigation.

Global Box, LLC and Chang Lee d/b/a Frentaly were terminated on the basis of a consent order. Commission Notice (March 21, 2017); Commission Notice (May 15, 2017). Barsone d/b/a Shenzhen Senweite Electronic Commerce Ltd., Shenzhen Youtai Trade Company Limited, d/b/a NoChoice, Ninghuaxian Wangfulong Chaojishichang Youxian Gongsi, Ltd., d/b/a EasybuyUS, Shenzhen Gold South Technology Co., Ltd. d/b/a Baidatong, Cyrift d/b/a Guangzhou Sunway E-Commerce LLC, Hu Peng d/b/a AtomBud, Grando d/b/a Shenzhen Dashentai Network Technology Co., Ltd., Huijukon d/b/a Shenzhen Hui Ju Kang Technology Co. Ltd., Luo, Qiben, d/b/a Lita International Shop, Shenzhen New Dream Sailing Electronic Technology Co., Ltd. d/b/a MegaDream, Spinido Inc., Dang Yuya d/b/a Sminiker, and Yuan I d/b/a Bestrix were terminated because service could not be effected. Commission Notice (June 13, 2017). The remaining respondents were previously found in default (collectively, “the Defaulting Respondents”). Commission Notice (May 26, 2017). In addition, the ’746 and ’959 patents were previously terminated from the investigation. Commission Notice (July 28, 2017).

On May 18, 2017, Nite Ize filed a Motion for Summary Determination of Violation by the Defaulting Respondents and for a Recommended Determination on Remedy and Bonding, Including Issuance of a General Exclusion Order, Limited Exclusion Orders, and Cease and Desist Orders. On June 16, 2017, the ALJ issued Order No. 14 granting in-part Nite Ize's motion for summary determination. The Commission determined not to review that ID. Commission Notice (July 14, 2017).

On September 12, 2017, the ALJ issued his final ID finding a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337. On the same day, the ALJ issued his Recommended Determination on Remedy and Bonding. No petitions for review were filed.

The Commission has determined to review the subject ID in-part. Specifically, the Commission has determined to review the ID's analysis and findings with respect to the economic prong of the domestic industry requirement. The Commission does not request any submissions on the issue under review.

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 *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (Dec. 1994) (Comm'n Op.). In particular, the written submissions should address any request for a cease and desist order in the context of recent Commission opinions, including those in *Certain Arrowheads with Deploying Blades and Components Thereof and Packaging Therefor*, Inv. No. 337-TA-977, Comm'n Op. (Apr. 28, 2017) and *Certain Electric Skin Care Devices, Brushes and Chargers Therefor, and Kits Containing the Same*, Inv. No. 337-TA-959, Comm'n Op. (Feb. 13, 2017). Specifically, if Complainant seeks a cease and desist order against a defaulting respondent, the written submissions should respond to the following requests:

- (1) Please identify with citations to the record any information regarding commercially significant inventory in the United States as to each respondent against whom a cease and desist order is sought. If Complainant also relies on other significant domestic operations that could undercut the remedy provided by an exclusion order, please identify with citations to the record such information as to each respondent against whom a cease and desist order is sought.

- (2) In relation to the infringing products, please identify any information in the record, including allegations in the pleadings, that addresses the existence of any domestic inventory, any domestic operations, or any sales-related activity directed at the United States for each respondent against whom a cease and desist order is sought.

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 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: Each party's written submission must be filed no later than close of business on Thursday, November 30, 2017. Reply submissions must be filed no later than the close of business on Thursday, December 7, 2017. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to Commission Rule 210.4(f), 19 C.F.R. 210.4(f). Submissions should refer to the investigation number ("Inv. No. 337-TA-1028") in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary, (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits,

reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel^[1], solely for cybersecurity purposes. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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 Part 210 of the Commission's Rules of Practice and Procedure, 19 C.F.R. Part 210.

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: November 13, 2017

^[1] All contract personnel will sign appropriate nondisclosure agreements.

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served by hand upon the Commission Investigative Attorney, Cortney Hoecherl, Esq., and the following parties as indicated, on 11/13/2017



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

On Behalf of Complainant Nite Ize, Inc.:

James B. Altman, Esq.
FOSTER, MURPHY, ALTMAN & NICKEL, P.C.
1899 L Street, NW, Suite 1150
Washington, DC 20036

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Respondents:

REXS LLC
16192 Coastal Highway
Lewes, DE 19958

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Spinido, Inc.
36 South 18th Avenue, Suite A
Brighton, CO 80601

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Shenzhen New Dream Technology Co., Ltd., d/b/a Newdreams,
Room 307, Haotai building Baomin Second
Road No. 1, Xixiang Street Bao'an,
Shenzhen, China, 518102

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

Certificate of Service – Page 2

Wang Zhi Gang d/b/a IceFox,
Room 806, Ge Lin Wang Yuan YanNan Road,
Futian District
Shenzhen, China, 518000

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Shenzhen Topworld Technology Co. d/b/a IdeaPro,
Rm 603, 6/F Hang Pont Comm. Bldg. 31
Tonk In St., Cheung Sha Wan Kln, Hong Kong,
Hong Kong

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Lin Zhen Mei d/b/a Anson
502, B Seat, 3 Building, Guandi Garden
Xian N7 area, Jiaan west Rd, Baoan Dist.
Shenzhen, Guangdong, China 518128

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Wu Xuying d/b/a Novoland
No 2336 Nanhai Road, Nanshan District
Shenzhen, China, 518054

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Trendbox USA LLC d/b/a Trendbox
16419 North 91st Street, Suite 125
Scottsdale, AZ 85260

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Tontek d/b/a Shenzhen Hetongtai Electronics Co., Ltd.,
B1505, Niulanqian Bldg., Minzhi Street, Longhua New Area,
Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Scotabc d/b/a ShenChuang Opto-electronics Technology Co. Ltd.,
Rm. 1203A, Zhanyuan Business Bldg, No. 912 Meilong Rd.,
Longhua town, Longhua Dist. Shenzhen, Guangdong,
China, 068100

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Tenswall d/b/a Shenzhen Tenswall
International Trading Co., Ltd.
14837 Proctor Ave. Ste. A,
La Puente, CA 91746

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

**CERTAIN MOBILE DEVICE HOLDERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1028

Certificate of Service – Page 3

Luo Jieqiong d/b/a Wekin
Room 1602, Building 20, Hua Sheng Shi Ji
Xin Cheng Yu Hua Dist. Chang Sha,
China, 410100

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Pecham d/b/a Baichen Technology Ltd.
Rm 20A, Kiu Fu Comm. Bldg. 300 Lockhart Rd.
Wan Chai, Hong Kong

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Wang Guoxiang d/b/a Minse
Rm. 609, Block 2, Xinghu Garden No. 9, Jinbi Rd,
Luohu Dist. Shenzhen, Guangdong,
China 518028

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Zhiping Zhou d/b/a Runshion
31F, Dong C, Jinganghuating, Baoandadao,
Baoanqu Shenzhenshi, Guangdong,
China, 518000

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Oumeiou d/b/a Shenzhen Oumeiou Technology Co., Ltd.
F3 Comprehensive Bldg. of Nankeng 2nd Industrial Park,
Bantian Street, Longgang,
Shenzhen, China, 518112

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Shenzhen Longwang Technology Co. Ltd. d/b/a LWANG
B21, 5/F, West of Bldg. 4, Seg Tech Park,
Huaqiang North Rd., Futian Dist., Shenzhen, Guangdong,
China, 518000

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN MOBILE DEVICE HOLDERS
AND COMPONENTS THEREOF**

Inv. No. 337-TA-1028

FINAL INITIAL DETERMINATION ON VIOLATION OF SECTION 337

Administrative Law Judge Thomas B. Pender

(September 12, 2017)

Pursuant to the Notice of Investigation and Rule 210.42(a) of the Rules of Practice and Procedure of the United States International Trade Commission, this is my Final Initial Determination in the matter of *Certain Mobile Device Holders and Components Thereof*, Inv.No. 337-TA-1028.

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Table of Abbreviations

CDX	Complainant's Demonstrative Exhibit
CPOST	Complainant's Post-Hearing Brief
CPHB	Complainant's Pre-Hearing Brief
CPX	Complainant's Physical Exhibit
CX	Complainant's Exhibit
SPOST	Commission Investigative Staff's Post-Hearing Brief
SPHB	Commission Investigative Staff's Pre-Hearing Brief
Dep.	Deposition
Hr'g Tr.	Hearing Transcript
JX	Joint Exhibit
Tr.	Transcript

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INITIAL DETERMINATION

I. INTRODUCTION

A. Procedural Background

On October 6, 2016, complainant Nite Ize, Inc. (“Nite Ize”) filed its original Complaint alleging infringement of two utility and two design patents by approximately three dozen respondents. Nite Ize supplemented the Complaint with amended exhibits on October 24, 2016 and October 26, 2016.

On November 14, 2016, by publication in the Federal Register, the Commission issued a Notice of Investigation (“NOI”) instituting investigation 337-TA-1028. In particular, the Commission ordered that:

Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain mobile device holders and components thereof by reason of infringement of one or more of claims 1, 11, and 12 of the ’376 patent; claims 1, 11, and 12 of the ’146 patent; claim 1 of the ’746 patent; claim 1 of the ’959 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

81 Fed. Reg. 79520. The NOI named the following respondents: Shenzhen Youtai Trade Company Limited, d/b/a NoChoice; REXS LLC; Spinido, Inc.; Luo, Qiben, d/b/a Lita International Shop; Guangzhou Kuaguoyi E-commerce co., ltd. d/b/a Kagu Culture; Shenzhen New Dream Technology Co., Ltd., d/b/a Newdreams; Shenzhen Gold South Technology Co., Ltd. d/b/a Baidatong; Sunpauto Co., ltd; Wang Zhi Gang d/b/a IceFox; Dang Yuya d/b/a Sminiker; Shenzhen Topworld Technology Co. d/b/a IdeaPro; Lin Zhen Mei d/b/a Anson; Wu Xuying d/b/a Novoland; Shenzhen New Dream Sailing Electronic Technology Co., Ltd. d/b/a

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MegaDream; Zhongshan Feiyu Hardware Technology Co., Ltd d/b/a YouFo; Ninghuaxian Wangfulong Chaojishichang Youxian Gongsi, Ltd., d/b/a EasybuyUS; Chang Lee d/b/a Frentaly; Trendbox USA LLC d/b/a Trendbox; Tontek d/b/a Shenzhen Hetongtai Electronics Co., Ltd.; Scotabc d/b/a ShenChuang Optoelectronics Technology Co., Ltd.; Tenswall d/b/a Shenzhen Tenswall International Trading Co., Ltd.; Luo Jieqiong d/b/a Wekin; Pecham d/b/a Baichen Technology Ltd.; Cyrift d/b/a Guangzhou Sunway Ecommerce LLC; Rymemo d/b/a Global Box, LLC; Wang Guoxiang d/b/a Minse; Yuan I d/b/a Bestrix; Huijukon d/b/a Shenzhen Hui Ju Kang Technology Co. Ltd.; Barsone d/b/a Shenzhen Senweite Electronic Commerce Ltd.; Oumeiou d/b/a Shenzhen Oumeiou Technology Co., Ltd.; Grando d/b/a Shenzhen Dashentai Network Technology Co., Ltd.; Shenzhen Yingxue Technology Co., Ltd.; Shenzhen Longwang Technology Co., Ltd., d/b/a LWANG; and Hu Peng d/b/a AtomBud. *Id.*

During the course of the investigation, all of these respondents were either terminated by motion or defaulted. The disposition of each respondent is as follows:

Respondent	Status	Docket Entry
Global Box, LLC	Terminated on the basis of a consent order	Order No. 8 (February 28, 2017)
Chang Lee d/b/a Frentaly	Terminated on the basis of a consent order	Order No. 10 (April 13, 2017)
Tenswall d/b/a Shenzhen Tenswall International Trading Co., Ltd ("Tenswall")	In default	Order No. 11 (May 1, 2017)
Trendbox USA LLC d/b/a Trendbox ("Trendbox")	In default	Order No. 11 (May 1, 2017)

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Sunpauto Co., Ltd. ("Sunpauto")	In default	Order No. 11 (May 1, 2017)
Shenzhen Topworld Technology Co., Ltd. d/b/a IdeaPro ("IdeaPro")	In default	Order No. 11 (May 1, 2017)
Guangzhou Kuaguoyi E-commerce Co., Ltd. d/b/a Kagu Culture ("Kagu Culture")	In default	Order No. 11 (May 1, 2017)
Shenzhen New Dream Technology Co., d/b/a Newdreams ("Newdreams")	In default	Order No. 11 (May 1, 2017)
Lin Zhen Mei d/b/a Anson ("Anson")	In default	Order No. 11 (May 1, 2017)
Zhongshan Feiyu Hardware Technology Co., Ltd. d/b/a YouFo ("YouFo")	In default	Order No. 11 (May 1, 2017)
Oumeiou d/b/a Shenzhen Oumeiou Technology Co., Ltd ("Oumeiou")	In default	Order No. 11 (May 1, 2017)
Shenzhen Yingxue Technology Co. Ltd. ("Shenzhen Yingxue")	In default	Order No. 11 (May 1, 2017)
Wang Guoxiang d/b/a Minse ("Minse")	In default	Order No. 11 (May 1, 2017)
Wu Xuying, an individual, d/b/a Novoland	In default	Order No. 11

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("Novoland")		(May 1, 2017)
Wang Zhi Gang, an individual, d/b/a IceFox and Shenzhen IceFox High Tec Group ("IceFox")	In default	Order No. 11 (May 1, 2017)
Scotabc d/b/a ShenChuang Opto- electronics Technology Co., Ltd ("Scotabc")	In default	Order No. 11 (May 1, 2017)
Zhiping Zhou d/b/a Runshion ("Runshion")	In default	Order No. 11 (May 1, 2017)
Pecham d/b/a Baichen Technology Ltd. ("Pecham")	In default	Order No. 11 (May 1, 2017)
Shenzhen Longwang Technology Co., Ltd. d/b/a LWANG ("LWANG")	In default	Order No. 11 (May 1, 2017)
Tontek d/b/a Shenzhen Hetongtai Electronics., Ltd. ("Tontek")	In default	Order No. 11 (May 1, 2017)
Luo Jieqiong d/b/a Wekin ("Wekin")	In default	Order No. 11 (May 1, 2017)
REXS LLC ("REXS LLC")	In default	Order No. 11 (May 1, 2017)
Barsone d/b/a Shenzhen Senweite Electronic Commerce Ltd.	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017)

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Shenzhen Youtai Trade Company Limited, d/b/a NoChoice	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017)
Ninghuaxian Wangfulong Chaojishichang Youxian Gongsi, Ltd., d/b/a EasybuyUS	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017)
Shenzhen Gold South Technology Co., Ltd. d/b/a Baidatong	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017)
Cyrift d/b/a Guangzhou Sunway E-Commerce LLC	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017)
Hu Peng d/b/a AtomBud	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017)
Grando d/b/a Shenzhen Dashentai Network Technology Co., Ltd.	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017)
Huijukon d/b/a Shenzhen Hui Ju Kang Technology Co. Ltd.	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017)
Luo, Qiben, d/b/a Lita International Shop	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017)
Shenzhen New Dream Sailing Electronic Technology Co., Ltd. d/b/a MegaDream	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017)
Spinido Inc.	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017)
Dang Yuya d/b/a Sminiker	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017)

PUBLIC VERSION

Yuan I d/b/a Bestrix	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017)
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Thus, on May 30, 2017, the last participating respondents were terminated from the investigation with Order No. 12. In compliance with 19 C.F.R. § 210.16(c)(2), Nite Ize included in its motion for termination of those respondents, a declaration that it would seek a general exclusion order (“GEO”). (Mot. Dkt. No. 1028-005.)

On the same day as that motion for termination, May 18, 2017, Nite Ize filed a Motion for Summary Determination of Violation by the Defaulting Respondents and for a Recommended Determination on Remedy and Bonding, Including Issuance of a General Exclusion Order, Limited Exclusion Orders, and Cease and Desist Orders. (Mot. Dkt. No. 1028-007.) Those twenty (20) respondents identified above as “in default” are herein collectively referred to as the “Defaulting Respondents” and their corresponding products the “Accused Products.” Specifically, Nite Ize moved for: (1) a summary determination that the Defaulting Respondents have sold for importation into the United States, imported into the United States, or sold after importation certain mobile device holders and components thereof that infringe certain claims of U.S. Patent No. 8,602,376 (the “376 Patent”); U.S. Patent No. 8,870,146 (“146 Patent”); U.S. Patent No. D734,746 (the “746 Patent”); and U.S. Patent No. D719,959 (the “959 Patent”) (collectively, the “Asserted Patents”) in violation of Section 337 of the Tariff Act as amended, 19 U.S.C. § 1337; (2) a summary determination that there is a domestic industry for the Asserted Patents; and (3) a recommendation for entry of a General Exclusion Order (“GEO”) (or, in the alternative, Limited Exclusion Orders (“LEOs”)), cease and desist orders (“CDOs”)

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against each of the defaulting respondents, and a bonding requirement during the Presidential review period. (*See Mot. at 2-3.*)

On May 30, 2017, the Commission Investigative Staff (“Staff”) filed a response in which it supported-in-part and opposed-in-part Nite Ize’s motion. (Staff Resp. at 1.) No other responses were received. On June 1, 2017, at my request, Nite Ize filed corrected exhibits to its motion for summary determination.

On June 16, 2017, I issued Order No. 14 as an initial determination which granted-in-part Nite Ize’s motion for summary determination. Specifically, I found no genuine issue of material facts which would preclude conclusions of law that:

1. All Accused Products have been imported into the United States;
2. Respondents Novoland, REXS, LLC; Kagu Culture, Sunpauto, Trendbox, Wekin, Runshion, Pecham, LWANG, Scotabc, TONTEK, Tenswall, and Shenzhen Yingxue imported, sold for importation, or sold after importation those Accused Products associated with each respondent, respectively;
3. Nite Ize is the sole assignee and owner of all the Asserted Patents;
4. The Accused Products from Anson, IceFox, Ideapro, Novoland, REXS LLC, Sunpauto, YouFo, Pecham, Runshion, LWANG, Minse, Oumeiou, Scotabc, Tontek, Tenswall, and Wekin infringe claims 1, 11, and 12 of the ’376 patent;
5. The Accused Products from Anson, IceFox, Ideapro, Novoland, REXS LLC, Sunpauto, YouFo, Pecham, Runshion, LWANG, Minse, Oumeiou, Scotabc, Tontek, Tenswall, and Wekin infringe claims 1, 11, and 12 of the ’146 patent;
6. The Accused Product from REXS LLC infringes the claim of the ’959 patent; and
7. The Accused Product from REXS LLC infringes the claim of the ’746 patent.

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(Order No. 14 at 56-57.)

I did find, however, that genuine issues existed and precluded summary determination on the other elements of 19 U.S.C. § 1337 required to show that a violation has occurred; notably, issues concerning the technical and economic prongs of the domestic industry requirement and the asserted infringement of the design patents. (*See generally* Order No. 14.) Thus, the investigation proceeded to an evidentiary hearing for those issues not determined as a matter of law through Order No. 14. The Commission chose not to review Order No. 14. (*See* Notice of Commission Determination Not to Review an Initial Determination Granting-in-Part Complainant's Motion for Summary Determination that the Defaulting Respondents Violated Section 337 (July 14, 2017).)

On June 23, 2017, Nite Ize filed an unopposed motion for partial termination of the investigation based on withdrawal of the design patents. I granted this motion on July 5, 2017 with Order No. 16.

The evidentiary hearing took place on July 19, 2017, in which Nite Ize presented a single witness, Mr. Richard Case, the CEO and founder of Nite Ize. After a single day of direct and cross examination of Mr. Case, the hearing concluded. Nite Ize submitted its post-hearing brief, pursuant to a brief extension I granted (*see* Order No. 17), on August 7, 2017. The Staff filed its brief on August 21, 2018, pursuant to the same extension.

B. The Parties

Complainant Nite Ize, Inc. is a corporation organized and existing under the laws of Colorado. (CPOST at 7 (citing Hr'g Tr. at 29:11-16; CX-238C [Case WS] at Q269).) Its corporate headquarters and principal place of business is 5660 Central Avenue, Boulder, Colorado. (*Id.*) Nite Ize owns the Asserted Patents by way of an assignment from the original

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inventors. (See Order No. 14 at 20.) Nite Ize describes itself as “a design, development, production and distribution company that designs, develops, manufactures and distributes various innovative customer products. . . . In general, Nite Ize is a first mover company with a focus on intellectual property.” (*Id.* (citing CX-238C at Q269; Hr’g Tr. at 34:9-11, 41:9-11).)

Respondent REXS LLC is a United States limited liability company incorporated in Delaware, having an address of 16192 Coastal Highway, Lewes, DE 19958. (CPOST at 8.)

Respondent Guangzhou Kuaguoyi E-Commerce Co., Ltd. having a d/b/a Kagu Culture is a foreign company having an address of C102, Mingzhu Creative Park No.66, Xiaogang Garden Rd, Yuncheng Street Baiyun, Guangzhou, China, 510000. (*Id.*)

Respondent Shenzhen New Dream Technology Co., Ltd. having a d/b/a Newdreams is a foreign company having an address of Room 307, Haotai building Baomin Second Road No.1, Xixiang Street Bao’an, Shenzhen, China, 518102. (*Id.*)

Respondent Sunpauto Co., Ltd. is a foreign company having an address of Unit 04, 7/F, Bright Way Tower, No. 33, Mong Kok Road, Kowloon, HK. (*Id.* at 9.)

Respondent Wang Zhi Gang is an individual having a d/b/a of IceFox and Shenzhen IceFox High Tec Group, and having an address of Room 806, Ge Lin Wang Yuan YanNan Road, Futian District, Shenzhen, China and Shenzhen IceFox High Tech Group, Room 3203, B zuo, dong fang hua du wen jin zhong lu 518001, Shenzhen China. (*Id.*)

Respondent Shenzhen Topworld Technology Co. Ltd. d/b/a IdeaPro, is a foreign company having an address of RM 603, 6/F Hang Pont Comm Bldg. 31 Tonk In St., Cheung Sha Wan Kln, Hong Kong, Hong Kong. (*Id.* at 9-10.)

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Respondent Lin Zhen Mei is an individual having a d/b/a of Anson and an address of 502, B Seat, 3 Building, Guandi Garden Xian N7 area, Jiaan west Rd, Baoan Dist. Shenzhen, Guangdong, China. (*Id.* at 10.)

Respondent Wu Xuying is an individual, selling and/or importing into the United States from China, having a d/b/a of Novoland, and an address of No. 2336 Nanhai Road, Nanshan District, Shenzhen, China. (*Id.*)

Respondent, Zhongshan Feiyu Hardware Technology Co., Ltd., d/b/a YouFo is a foreign company having an address of No. 13 Haotong Road, Minle Community, Yongle Village DongFeng Town, ZhongShan City Guangdong, China. (*Id.* at 11.)

Respondent Trendbox USA, LLC is a United States limited liability company having a d/b/a Trendbox and having an address of 16419 North 91st Street, Suite 125, Scottsdale, AZ, USA 85260. (*Id.*)

Respondent, Shenzhen Hetongtai Electronics Co., Ltd. having a d/b/a Tontek, is a limited liability company having an address of B1505, Niulanqian Bldg., Minzhi Street, Longhua New Area, Shenzhen, Guangdong, China. (*Id.* at 12.)

Respondent, ShenChuang Opto-electronics Technology Co., Ltd., is a foreign company having a d/b/a Scotabc is a limited liability company having an address of Rm. 1203A, Zhanyuan Business Bldg, No. 912 Meilong Rd., Longhua town, Longhua Dist. Shenzhen, Guangdong, China. (*Id.*)

Respondent, Shenzhen Tenswall International Trading Co., Ltd., is a foreign company having a d/b/a Tenswall is a limited liability company having an address of P16, Int'l Electronic Trading Center Huanan Town, Pingji Rd, Pinghu St, Longgang Shenzhen, Guangdong, China. (*Id.* at 13.)

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Respondent Luo Jieqiong is an individual having a d/b/a Wekin and having an address of Room 1602, Building 20 Hua Sheng Shi Ji Xin Cheng Yu Hua Dist Chang Sha, China. (*Id.*)

Respondent Baichen Technology Ltd. having a d/b/a Pecham is a limited liability company having an address of RM 20A, Kiu Fu Comm Bldg 300 Lockhart Rd. Wan Chai, Hong Kong. (*Id.*)

Respondent Wang Guoxiang having a d/b/a Minse is an individual selling and/or importing into the United States, having an address Rm 609, Block 2, Xinghu Garden No.9 Jinbi Rd, Luohu Dist Shenzhen, Guangdong, China. (*Id.* at 14.)

Respondent Zhiping Zhou is an individual having a d/b/a Runshion with an address 31F, Dong C, Jinganghuating, Baoandadao, Baoanqu Shenzhenshi, Guangdong, China, 518000. (*Id.*)

Respondent Shenzhen Oumeiou Technology Co., Ltd. is a foreign company having a d/b/a Oumeiou and having an address F3 Comprehensive Bldg of Nankeng 2nd Industrial Park, Bantian Street, Longgang Shenzhen, China. (*Id.* at 15.)

Respondent Shenzhen Yingxue Technology Co., Ltd. is a foreign company having an address Room 14H, Haojingmingyuan Phase II, No. 28 Zhengqing Road, Buji Town, Longgang District, Shenzhen, China 518112. (*Id.*)

Respondent Shenzhen Longwang Technology Co., Ltd. is a foreign company having a d/b/a LWANG and having an address B21, 5/F, West Of Bldg. 4, Seg Tech Park, Huaqiang North Rd., Futian Dist., Shenzhen, Guangdong, China, 518000. (*Id.* at 16.)

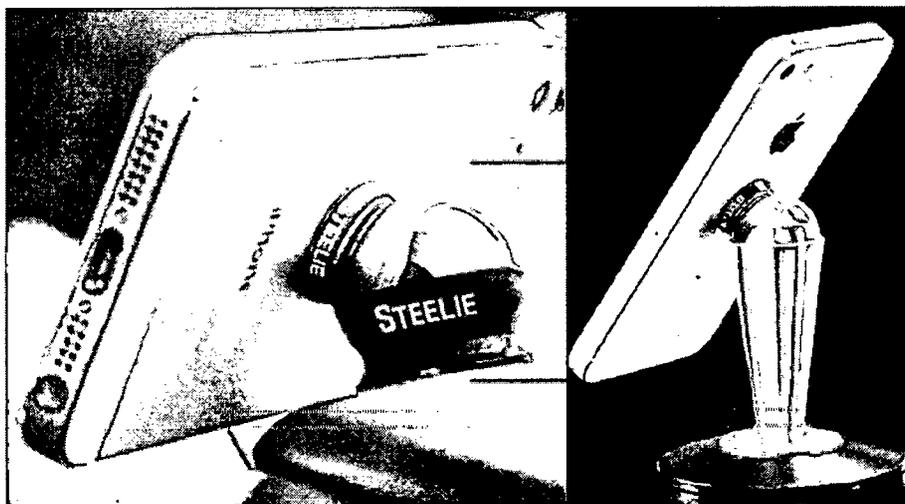
C. The Products at Issue

1. Domestic Industry Products

The Domestic Industry Products are a subset (*see* CPOST at 38-39; CX-238C at Q134) of the overall family of products Nite Ize refers to as the “Steelie® Ecosystem” (CPOST at 55; CX-238C at Q40). Steelie® products are ball-and-socket based mobile device holders, wherein the

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ball attaches to or is placed upon a fixed point (e.g. a desk surface, dashboard, etc.) and the socket attaches to the mobile device (e.g. smartphone, tablet, etc.). The socket and the ball are composed of magnetic materials whereby the attraction between the socket and ball holds the mobile device in a particular angular position for hands-free viewing. The magnetic attraction can be broken to allow for re-positioning, as shown in the images below. (See generally CPOST at 17.)



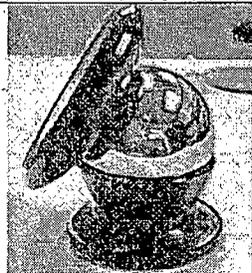
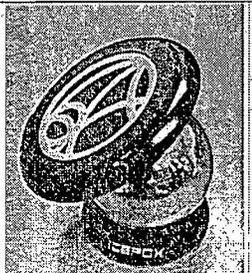
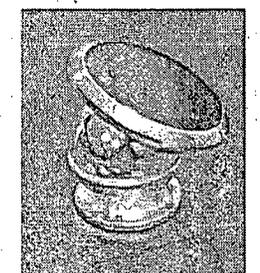
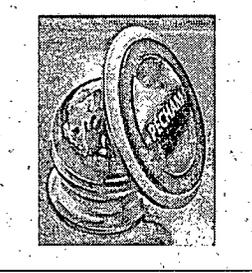
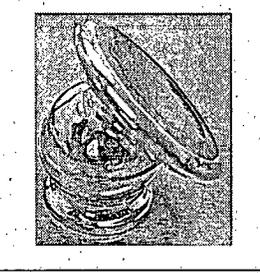
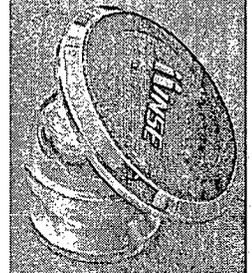
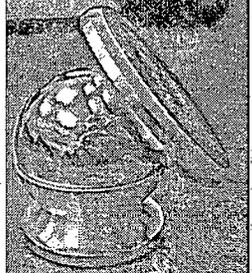
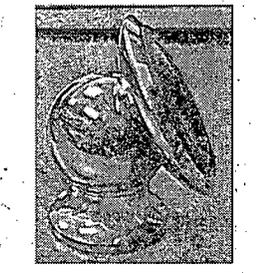
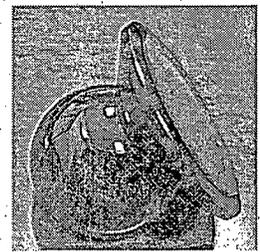
(CX-176 at 1; CX-225 at 1.)

2. Accused Products

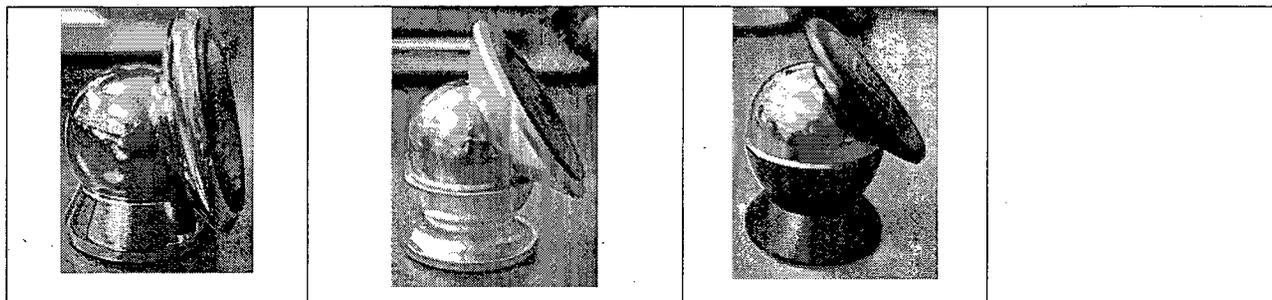
The Accused Products function almost identically to the domestic industry products described above. They are ball-and-socket based mobile device holders, held together by magnetic attraction. The table below, largely taken from Staff’s post-hearing brief, displays an exemplary photograph of each Accused Product.

Anson	IceFox	IdeaPro	Kagu Culture*
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Newdreams	Novoland	REXS LLC	Sunpauto
			
Trendbox*	YouFo	Pecham	Runshion
			
LWANG	Minse	Oumeiou	Scotabc
			
Tontek	Tenswall	Wekin	Shenzhen Yingxue
			

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(See SPOST at 14-15 (citing CX-238C at Q78-85); see also CPOST at 30 (supplying Kagu Culture and Trendbox photographs marked by * above); CPX-007; CPX-009; CPX-017.)

II. STANDARDS OF LAW

A. Violation of Section 337(a)(1)(B) and (a)(2)

To establish violation of Section 337(a)(1)(B) and (a)(2), a complainant must prove three elements: (1) the importation of goods into the United States, the sale for importation, or the sale within the United States after importation; (2) infringement by those goods of a valid and enforceable United States patent; and (3) a domestic industry in the United States. 19 U.S.C. §§ 1337(a)(1)(B), 1337(a)(2); *Alloc, Inc. v Int'l Trade Comm'n*, 342 F.3d 1361, 1365 (Fed. Cir. 2003).

1. Importation of Goods into the United States

A complainant “need only prove importation of a single accused product to satisfy the importation element.” *Certain Purple Protective Gloves*, Inv. No. 337-TA-500, Order No. 17, at 5 (Sept. 23, 2004); *Certain Trolley Wheel Assemblies*, Inv. No. 337-TA-161, USITC Pub. 1605, Comm’n Action & Order at 7-8 (Nov. 1984) (finding importation requirement satisfied by the importation of single trolley wheel assembly of no commercial value). The importation requirement can be established through a summary-determination motion. See *Certain Mobile Commc’ns & Computer Devices & Components Thereof*, Inv. No. 337-TA-704, Order No. 48, ID at 3 (Oct. 5, 2010) (granting summary determination as to importation requirement).

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2. Infringement

Section 337(a)(1)(B)(i) prohibits “the importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of articles that – (i) infringe a valid and enforceable United States patent.” 19 U.S.C. §1337(a)(1)(B)(i). The Commission has held that the word “infringe” in Section 337(a)(1)(B)(i) “derives its legal meaning from 35 U.S.C. § 271, the section of the Patent Act that defines patent infringement.” *Certain Electronic Devices with Image Processing Systems, Components Thereof, and Associated Software*, Inv. No. 337- TA-724, Comm’n Op. at 13-14 (December 21, 2011) (“*Electronic Devices*”). Under 35 U.S.C. § 271(a), direct infringement of a patent consists of making, using, offering to sell, or selling the patented invention without consent of the patent owner.

Determination of patent infringement requires a two-step analysis: first, the claims must be properly construed, and second, the properly construed claims must be compared to the infringing device. *See Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed. Cir. 1995). The first step—claim construction—is a matter of law, but the second step—comparison of the properly construed claims to the accused product—is a question of fact. *Zelinski v. Brunswick Corp.*, 185 F.3d 1311, 1315 (Fed. Cir. 1999) (citations omitted). “A claim for patent infringement must be proven by a preponderance of the evidence, which simply requires proving that infringement was more likely than not to have occurred.” *Warner-Lambert Co. v. Teva Pharm. USA, Inc.*, 418 F.3d 1326, 1341 n.15 (Fed. Cir. 2005) (internal citations omitted). To prove direct infringement, “the patentee must show that the accused device meets each claim limitation, either literally, or under the doctrine of equivalents.” *Catalina Mktg. Int’l, Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 812 (Fed. Cir. 2002) (citations omitted).

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3. Domestic Industry

In an investigation based on a claim of patent infringement, Section 337 requires that an industry in the United States, relating to the articles protected by the patent, exist or be in the process of being established. 19 U.S.C. § 1337(a)(2). Under Commission precedent, the domestic industry requirement has been divided into (i) an “economic prong” (which requires certain activities with respect to the protected articles) and (ii) a “technical prong” (which requires that the activities relate to the asserted patent). *Certain Video Game Systems and Controllers*, Inv. No. 337-TA-743, Comm’n Op. at 6-7 (April 14, 2011) (“*Video Games*”).

a. “Economic Prong”

The “economic prong” of the domestic industry requirement is satisfied when there exists in the United States in connection with products practicing at least one claim of the patent at issue: (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, and licensing. 19 U.S.C. § 1337(a)(3). Establishment of the “economic prong” is not dependent on any “minimum monetary expenditure” and there is no need for complainant “to define the industry itself in absolute mathematical terms.” *Certain Stringed Musical Instruments and Components Thereof*, Inv. No. 337-TA-586, Comm’n Op. at 25-26 (May 16, 2008) (“*Stringed Instruments*”). However, a complainant must substantiate the significance of its activities with respect to the articles protected by the patent. *Certain Printing and Imaging Devices and Components Thereof*, Inv. No. 337-TA-690, Comm’n Op. at 30 (February 17, 2011) (“*Imaging Devices*”). Further, a complainant can show that its activities are significant by showing how those activities are important to the articles protected by the patent in the context of the company’s operations, the marketplace, or the industry in question. *Id.* at 27-28. That significance, however, must be shown in a quantitative context. *Lelo Inc. v. Int’l Trade Comm’n*,

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786 F.3d 879, 886 (Fed. Cir. 2015). The Federal Circuit noted that when the ITC first addressed this requirement, it found the word “‘significant’ denoted ‘an assessment of the *relative* importance of the domestic activities.’” *Id.* at 883-4 (internal citation omitted) (emphasis added).

The Commission “has long recognized that the ‘its’ in the phrase ‘investment in its exploitation’ in subparagraph (C) refers to the asserted patent or other intellectual-property right being asserted. That conclusion is supported by the clear text of the statute.” *Certain Integrated Circuit Chips and Products Containing the Same*, Inv. No. 337-TA-859, Comm’n Op. at 36 (Aug. 11, 2014) (“*Circuit Chips*”). This connection between the investment and the patent is known as the “nexus” requirement. *Id.* at 38. “To the extent that the patented technology arises from endeavors in the United States, such a nexus would ordinarily exist.” *Id.* at 39. “‘Exploitation’ is a generally broad term that encompasses activities such as efforts to improve, develop, or otherwise take advantage of the asserted patent.” *Id.*

b. “Technical Prong”

The “technical prong” of the domestic industry requirement is satisfied when it is determined that the complainant practices at least one claim of each of the patents at issue. *Certain Microlithographic Machines and Components Thereof*, Inv. No. 337-TA-468, Initial Determination at 63 (April 1, 2003) (“*Microlithographic Machines*”). The test for determining whether a complainant is practicing a claim of a patent at issue is essentially the same as that for infringement, *i.e.*, it requires that a complainant’s domestic product practice at least one claim of the asserted patent. *Alloc*, 342 F.3d at 1375.

B. Default, General Exclusion Orders, and Cease and Desist Orders

After a respondent has been found in default by the Commission, the facts alleged in the complaint may be presumed true with respect to that respondent. *See* 19 C.F.R. § 210.16(c)(1);

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see also *Certain Toner Cartridges & Components Thereof*, Inv. No. 337-TA-740, Order No. 26 at 11-12 (June 1, 2011). This presumption occurs only when certain requirements are met:

- (A) a complaint is filed against a person under section 337;
- (B) the complaint and a notice of investigation are served on the person;
- (C) the person fails to respond to the complaint and notice or otherwise fails to appear to answer the complaint and notice;
- (D) the person fails to show good cause why the person should not be found in default;
and
- (E) the complainant seeks relief limited solely to that person.

19 U.S.C. § 1337(g)(1); see *Certain Arrowheads with Deploying Blades and Components Thereof and Packaging Therefor*, Inv. No. 337-TA-977, Comm'n Op. at 4-5 (April 6, 2017)

(“*Certain Arrowheads*”). “In addition, section 337(g)(2) grants the Commission the authority to issue a general exclusion order under default circumstances 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.”

Certain Arrowheads, Inv. No. 337-TA-977, Comm'n Op. at 5; 19 U.S.C. § 1337(g)(2). “Section 337(d)(2) grants the Commission the authority to issue [a general exclusion order] if:

- (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.”

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19 U.S.C. § 1337(d)(2); *Certain Arrowheads*, Inv. No. 337-TA-977, Comm'n Op. at 6.

With respect to cease and desist orders in default cases:

The Commission has examined similar facts to determine appropriate relief in any investigation in which a violation is found, namely whether defaulting respondents maintain commercially significant inventories in the United States or have significant domestic operations that could undercut the remedy provided by an exclusion order. However, as the legislative history notes, in investigations in which a default is found, discovery may be difficult, if not impossible, to obtain from the parties, and hence there are limited facts available in the record. In these investigations, the Commission examines the record, including facts alleged in the complaint that are deemed to be true, as well as any other information the complainant has been able to obtain, and has found it appropriate to draw certain inferences from this evidence in favor of the complainant to provide the necessary relief.

Certain Arrowheads, Inv. No. 337-TA-977, Comm'n Op. at 18. "As for defaulting respondents located outside the United States, the Commission has declined to automatically presume the presence of domestic inventories in the United States to support the issuance of a cease and desist order." *Id.*

III. IMPORTATION AND JURISDICTION

In Order No. 14, I determined as a matter of law that the Accused Products have been imported into the United States and that respondents Novoland, REXS, LLC, Kagu Culture, Sunpauto, Trendbox, Wekin, Runshion, Pecham, LWANG, Scotabc, TONTEK, Tenswall, and Shenzhen Yingxue imported, sold for importation, or sold after importation those Accused Products associated with each respondent. (Order No. 14 at 16.) Based on the evidence provided at that time, however, I did find genuine issues precluding the same determination for respondents IceFox, Newdreams, Anson, IdeaPro, Oumeiou, YouFo, and Minse. (*Id.* at 16-18.)

Now, Nite Ize presents additional evidence and argument concerning the importation, sale for importation, or sale after importation by respondents IceFox, Newdreams, Anson,

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IdeaPro, Oumeiou, YouFo, and Minse. Nite Ize argues “it is clear from the activities of the seven remaining Respondents for whom importation is still at issue that they receive orders for their Accused Products from U.S. customers and either act unilaterally, through an alias, or by directing a third-party, to ship the Accused Products to customers or distributors in the U.S.” (CPOST at 21.)

Nite Ize also suggests that “[s]ince none of the Defaulting Respondents participated in Discovery, Nite Ize’s allegations that all of the Defaulting Respondents imported into the United States are presumed true. 19 C.F.R. § 210.16(c)(1).” (*Id.* at 25.) As a preliminary matter, this is incorrect. As laid out in Commission Rule 210.16(c)(1), the facts alleged in Nite Ize’s complaint would be presumed true *if* Nite Ize had “file[d] with the Commission a declaration that it is seeking immediate entry of relief against the respondent in default.” 19 C.F.R. 210 § 210.16(C)(1). Nite Ize elected not to do this, so the presumption does not apply.

Moving back to the remaining respondents, and IceFox in particular, Nite Ize explains:

Nite Ize’s authorized agent purchased the Accused Product manufactured by Defaulting Respondent IceFox from the Amazon seller Vivotech. *See* CX-168C at 4. Nite Ize’s investigation revealed that Vivotech is merely an alias for Wang Zhi Gang doing business as IceFox. Evidence first shows that IceFox is owned or operated by Wang Zhi Gang. *See* CX-244 at 1-3. “IceFox” is the United States trademark owned by Wang Zhi Gang (also known as Bill Wang) in his individual capacity, reflecting his intent to sell products under the IceFox name in the United States. *Id.* Evidence also shows that Mr. Wang operates Vivotech to sell IceFox on Amazon.com. *See* CX-244 at 9. On August 15, 2015, Mr. Wang, under the Amazon.com seller name “vivotech” posted a question on the Amazon Seller Forum after (according to the post) Amazon.com suspended the Vivotech account. *See* CX-244 at 4-11. In the post, Mr. Wang stated, “we are considering to introduce [*sic*] a small card that says ‘Seal of Warranty – Original Icefox Product’.” *Id.* at 1, 9, 10. Mr. Wang signed the end of the thread “Sincerely, Bill Wang Vivotech.” *Id.* at 9. As such, the evidence presented adequately provides the relationship between seller

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“Vivotech” and product “IceFox” and that both entities are controlled by Wang Zhi Gang.

(CPOST at 23.) Previously, Nite Ize did not argue or provide evidence to show “Vivotech” is an alias for or controlled by respondent IceFox. Based on the argument and evidence now presented, I find that respondent IceFox has imported, sold for importation, or sold after importation its Accused Product in the United States.

Regarding Newdreams, Nite Ize states succinctly:

In addition, with respect to Newdreams, the USPTO’s Trademark Registry shows that it registered the seller name “Concok,” which it uses on Amazon.com. *See* CX-247 at 2; CX-169 at 25-26.

(CPOST at 22.) Previously, Nite Ize did not argue or provide evidence to show “Concok” is an alias for or controlled by respondent Newdreams. Based on the argument and evidence now presented, I find it more likely than not that respondent Newdreams has imported, sold for importation, or sold after importation its Accused Product in the United States.

Regarding Anson, Nite Ize explains:

Nite Ize’s authorized agent purchased the Accused Respondent Lin Zhen Mei’s (doing business as Anson) Accused Product from Amazon seller “unalin”. *See* CX-168C at 4. Unalin is merely another alias of Accused Respondent Lin Zhen Mei doing business as Anson. First, Lin Zhen Mei applied for a United States trademark for the character plus design mark “Anson”, reflecting intent to sell products under that name in the United States. *See* CX-246 at 5. Second, Accused Respondent Lin Zhen Mei was doing business as both unalin and “CCTV-Security Camera” on the Amazon.com sales platform. *See* CX-246 at 6, 7, 9.

Presumably, Accused Respondent Lin Zhen Mei is currently using yet another alias to sell its Accused Products in the United States to avoid this Investigation. Regardless, it is clear from the evidence presented that the Amazon seller “unalin” is an alias for Anson and that Anson intends to sell its Accused Products in the United States.

(CPOST at 24-25.) Previously, Nite Ize did not argue or provide evidence to show “unalin” is an alias for or controlled by respondent Anson. Based on the argument and evidence now

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presented, I find that respondent Anson has imported, sold for importation, or sold after importation its Accused Product in the United States.

Regarding IdeaPro, Nite Ize explains:

Nite Ize's authorized agent purchased Defaulting Respondent Ideapro's Accused Product from Amazon seller "Amazing-time." See CX-168C at 4. Amazing-time is an alias of Accused Respondent Shenzhen Topworld Technology Co., Ltd doing business as Ideapro. Nite Ize found that Shenzhen Topworld Technology Co., Ltd. applied for a United States trademark for the character mark "Ideapro". See CX-243 at 1. Ideapro also has a separate website that is not maintained by Amazon.com but is another forum to order and receive Ideapro's Accused Product into the United States. *Id.* at 3. The website describes "Ideapro" as being "established in USA [*sic*] for Accessories and 3C products. This brand is famous on Amazon for good quality and perfect feedbacks [*sic*]." *Id.* Evidence also shows that Amazon seller "Amazing-time" is an Amazon.com storefront that only sells Ideapro products. See CX-243 at 4. As such, the evidence presented shows that the seller name "Amazing-time" from the Amazon.com online sales platform is controlled by Ideapro.

(CPOST at 22-23.) Previously, Nite Ize did not argue or provide evidence to show "Amazing-time" is an alias of or controlled by respondent IdeaPro. Based on the argument and evidence now presented, I find it more likely than not that respondent IdeaPro has imported, sold for importation, or sold after importation its Accused Product in the United States.

Regarding Oumeiou Nite Ize explains:

Nite Ize's authorized agent purchased Oumeiou's Accused Product on the Amazon.com online sales platform from Amazon seller Mini HD Camera and the order was executed at an Amazon fulfillment center. See CX-168C at 11. Nite Ize discovered that Amazon seller Mini HD Camera is an alias for Accused Respondent Oumeiou. "Oumeiou" is the United States trademark owned by Shenzhen Oumeiou Technology Co., Ltd., reflecting an intent to sell products under that name in the United States. See CX-245 at 1. Amazon seller Mini HD Camera sells a variety of other products by Oumeiou; one being a hidden spy camera clock. *Id.* at 2. In at least one of the listings, the Oumeiou product advertises a "Full 1-Year Warranty and Lifetime Support Provided Directly from Oumeiou Brand ("Mini HD Camera "store [*sic*])"

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(emphasis added). *Id.* Not only does the Oumeiou brand identify as Amazon seller Mini HD Camera, the Oumeiou Brand's United Kingdom Amazon listing provides that UK Amazon seller "Mini HD Sport Camera's" business name is Shenzhen Oumeiou Technology Co., Ltd. *Id.* at 10. This evidence shows that Amazon seller Mini HD Camera is the Amazon.com alias for Accused Respondent Shenzhen Oumeiou Technology Co., Ltd.

(CPOST at 23-24.) Previously, Nite Ize did not argue or provide evidence to show "Mini HD Camera" is an alias for or controlled by respondent Oumeiou. Based on the argument and evidence now presented, I find it more likely than not that respondent Oumeiou has imported, sold for importation, or sold after importation its Accused Product in the United States.

Regarding YouFo, Nite Ize explains:

Nite Ize's authorized agent encountered numerous sellers of accused YouFo products on AliBaba.com. *See* CX-195 at 3-12. YouFo utilized many third-party distributors or aliases in order to sell its Accused Products with numerous listings for sale into the United States. *Id.* YouFo is aware of these sales into the United States, as evidenced by Nite Ize's agent's interactions with YouFo distributors, and the distributors' relayed conversations with YouFo agents. *Id.* at 4-5. YouFo also gives its distributors an express "license" to use the "STEELIE" mark. *Id.* at 4-8. YouFo also provides its distributors with scripts when takedown notices based on U.S. patent infringement are issued to AliBaba. *Id.* at 9-10. Moreover, Nite Ize's authorized agent has actually purchased an imported accused YouFo product from DHGate seller "Etoplink". CX-188C. These facts, taken together, make clear that YouFo is aware of sales of its infringing products into the United States and facilitates such sales. These facts show that, at a minimum, YouFo is selling its Accused Products for importation into the United States.

(CPOST at 25.) Previously, Nite Ize did not argue or provide evidence to show "Etoplink," as the entity Nite Ize's authorized agent actually purchased from, is an alias for or controlled by respondent YouFo. Nite Ize still does not argue this connection. It instead uses the declaration of Michael Goodman ("Goodman Declaration"), CX-195 (which previously had been used only as evidence to support a general exclusion order), to argue "YouFo is aware of sales of its

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infringing products into the United States and facilitates such sales.” (*See id.*) Even though much of the Goodman Declaration and its attached appendices focus on products which are not the particular Accused Product associated with YouFo (*compare* CX-195C at 27 *with* CPOST at 11) I find it more likely than not that respondent YouFo has imported, sold for importation, or sold after importation its Accused Product in the United States.

Regarding Minse, Nite Ize explains:

Nite Ize’s authorized agent purchased the Accused Respondent Minse’s Accused Product from Amazon seller CityFarmLights. *See* CX-168C at 15. CityFarmLights is an alias of Accused Respondent Wang Guoxiang doing business as Minse. First, Wang Guoxiang applied for a United States trademark for the character plus design mark “Minse”, reflecting intent to sell products under the Minse name in the United States. *See* CX-246 at 1. Second, Wang Guoxiang used the Amazon seller name “CityFarmLights” as an alias to hide its identity. *Id.* at 2.

(CPOST at 24.) Previously, Nite Ize did not argue or provide evidence to show “CityFarmLights” is an alias for or controlled by respondent Minse. Based on the argument and evidence now presented (*see, e.g.*, CX-246 at 3), I find it more likely than not that respondent Minse has imported, sold for importation, or sold after importation its Accused Product in the United States.

IV. THE ASSERTED PATENTS AND INFRINGEMENT

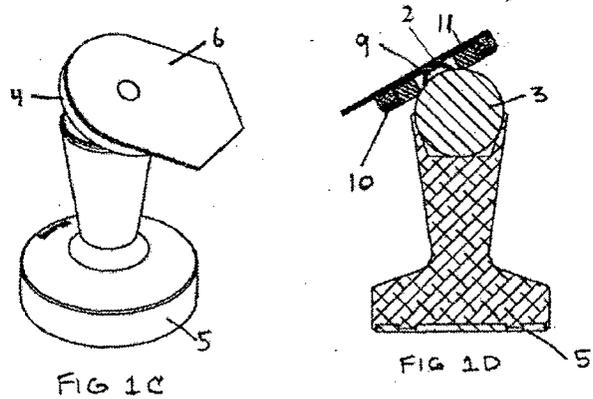
A. Introduction

U.S. Patent No. 8,602,376 is entitled “Multi-Positional Mount for Personal Electronic Devices with a Magnetic Interface.” The ’376 patent issued on December 10, 2013 based on a non-provisional application filed on May 31, 2012. The non-provisional application claimed priority to a provisional application filed on May 31, 2011. The ’376 patent lists Frank Vogel and Paul Turner as inventors and Nite Ize, Inc. as the assignee.

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U.S. Patent No. 8,870,146 is also entitled “Multi-Positional Mount for Personal Electronic Devices with a Magnetic Interface.” The ’146 patent issued on October 28, 2014 based on a non-provisional application filed December 5, 2013. This non-provisional application claims priority as a continuation of the application which led to the ’376 patent. The ’146 patent also lists Frank Vogel and Paul Turner as inventors, and Nite Ize, Inc. as the assignee.

The ’376 and ’146 patents share a common specification which is generally discloses a stand assembly for holding handheld electronic devices, where the electronic device can be supported in a variety of positions against a convex surface, which may itself stand on a flat surface or otherwise attach to irregular surfaces. The forces which hold the handheld device to the convex surface are magnetism and friction. Each of the ’376 and ’146 patents includes three independent and nine dependent claims. Representative figures of this stand assembly are shown below:



(’376 patent at Figs. 1C, 1D.) Regarding ownership, I determined in Order No. 14 that Nite Ize is the assignee to the entire right, title, and interest of the ’376 and ’146 patents. (Order No. 14 at 20.)

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B. Asserted Claims

Nite Ize asserts claims 1, 11, and 12 from each of the '376 and '146 patents (the "Asserted Claims") against each of the respondents. Claim 1 of the '376 patent reads:

1. A stand assembly comprising:

a first section shaped at one end to lay stably on a flat surface and shaped on another end with a curved surface, said curved surface of said first section constructed of a magnetic material; and

a second section having a front surface, said front surface having an indentation, said indentation capable of receiving said curved end of said first section and being of a size which can encompass a portion, but less than the whole diameter, of said curved end of said first section,

said second section having magnetic material capable of holding said first and said second sections together, wherein the second section includes a first piece of high-friction elastomeric material, the first piece of high-friction elastomeric material disposed of in the indentation of said second section

and the magnetic material positioned such that the magnetic material of the second section radially surrounds the first piece of high-friction elastomeric material.

Claim 11 of the '376 patent includes all of claim 1 verbatim and then adds:

... and the magnetic material of the second section has a ring shape.

Claim 12 of the '376 patent includes all of claim 1 verbatim and then adds:

... and the magnetic material of the second section has a shape complementary to the curved surface such that the magnetic material of the second section contacts the curved surface when the first and second sections are engaged.

Claims 1, 11, and 12 of the '146 patent mirror claims 1, 11, and 12 of the '376 patent, respectively, but remove the requirement of "a first section shaped at one end to lay stably on a flat surface." Thus, claim 1 of the '146 patent reads:

1. A stand assembly comprising:

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a first section having a first end shaped with a curved surface, said curved surface of said first section constructed of a magnetic material; and

a second section having a front surface, said front surface having an indentation, said indentation capable of receiving said curved end of said first section and being of a size which can encompass a portion, but less than the whole diameter, of said curved end of said first section,

said second section having magnetic material capable of holding said first and said second sections together, wherein the second section includes a first piece of high-friction elastomeric material, the first piece of high-friction elastomeric material disposed of in the indentation of said second section

and the magnetic material positioned such that the magnetic material of the second section radially surrounds the first piece of high-friction elastomeric material.

As in the '376 patent, claim 11 of the '146 patent includes all of claim 1 verbatim and then adds:

. . . and the magnetic material of the second section has a ring shape.

As in the '376 patent, claim 12 of the '146 patent includes all of claim 1 verbatim and then adds:

. . . and the magnetic material of the second section has a shape complementary to the curved surface such that the magnetic material of the second section contacts the curved surface when the first and second sections are engaged.

C. Level of Ordinary Skill in the Art

Shortly before the only participating respondent, Global Box, was terminated from the Investigation, Nite Ize and the Commission Investigative Staff filed opening claim construction briefs. (EDIS Doc. IDs 603956, 604036.) Each brief presented a preferred claim construction for the term “radially surrounds,” but neither provided a description of the person having

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ordinary skill in the art of the '376 and '146 patents at the time of the invention. (*See generally* EDIS Doc. IDs 603956, 604036.)

D. Claim Construction

As explained in Order No. 14, Nite Ize and the Staff proposed a particular construction for just one term from the '376 and '146 patents—"radially surrounds." (Order No. 14 at 22-23.) For the reasons explained in that order, I determined the construction of "radially surrounds" would be "encircles a center of." (*See id.*)

E. Infringement

In Order No. 14, I determined as a matter of law that the Accused Products from respondents Anson, IceFox, Ideapro, Novoland, REXS LLC, Sunpauto, YouFo, Pecham, Runshion, LWANG, Minse, Oumeiou, Scotabc, Tontek, Tenswall, and Wekin infringed claims 1, 11, and 12 of the '376 and '146 patents. (Order No. 14 at 27.)

Based on the evidence provided at that time, however, I did find genuine issues precluding the same determination for respondents Kagu Culture, Newdreams, Trendbox (collectively, the "Category II Products") and Shenzhen Yingxue. (*Id.* at 27-29.)

1. Kagu Culture, Newdreams, Trendbox

Specifically, I found that the photographs relied on for the three Category II Products were the exact same, but were presented as if of three separately purchased and received products—a practical impossibility. (*Id.* at 27-28.) This obvious copy and paste attempt precluded a finding of infringement at that time, and was unfortunately repeated in Nite Ize's pre-hearing submissions. I discussed the impropriety of this approach at the evidentiary hearing and advised Nite Ize of the need for precision in its post-hearing briefing. (*See Pre-Hearing Conference Tr. at 8:9-10:21.*)

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The claim charts containing limitation-by-limitation comparisons of the asserted claims and the Category II Products yet again copy and paste the same photographs as if they are for each product. (See CPOST at 29, n.11; CX-236 at 121-160 (Kagu Culture), 161-200 (Newdreams), 321-360 (Trendbox).) After review of the physical samples provided, however, I find that The Category II Products are, for all relevant purposes, identical. Therefore, I find Nite Ize's claim charts regarding infringement (CX-236 at 121-160 (Kagu Culture), 161-200 (Newdreams), 321-360 (Trendbox)) sufficiently demonstrate infringement of claims 1, 11 and 12 of the Asserted Patents.

As generally required by claim 1 of each asserted patent and argued by Nite Ize, I find:

The first section [of each Category II Product] has a curved surface that is constructed of a magnetic material. See CPX-007; CPX-009; CPX-017; CX-029; CX-030; CX-037; CX-038; CX-073; CX-074; CX-194C at 18-21; CX-238C at 27. The second section has a front surface with an indentation that is for receiving the curved surface of the Accused Product's first section. *Id.* Further, a high friction material is disposed of in the second section's indentation and is radially surrounded by a magnetic material. *Id.*

(CPOST at 30.) I also find that each Category II Product includes a first section "shaped at one end to lay stably on a flat surface" as additionally required by claim 1 of the '376 patent. (*Id.* at 30, n.12; CPX-007; CPX-009; CPX-017.)

Claim 11 of each asserted patent recites the same limitations as claim 1, and then adds "and the magnetic material of the second section has a ring shape." ('376 patent at cl. 11; '146 patent at cl. 11.) I agree with Nite Ize that, "the magnetic material in the second section of each Accused Product has a ring shape as described in Claim 11." (CPOST at 31.)

Claim 12 of each asserted patent recites the same limitations as claim 1, and then adds "and the magnetic material of the second section has a shape complementary to the curved surface such that the magnetic material of the second section contacts the curved surface when

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the first and second sections are engaged.” (’376 patent at cl. 11; ’146 patent at cl. 11.)

According to Nite Ize:

The issue raised by Order 14 is whether Claim 12 requires that the magnetic material of the second section must have a “concave” shape, while these Accused Products appear to have a planar shape.

....

The “concave” shape identified in Order 14 is that of the Accused Products (the “sixteen products discussed above each have a concave shape to receive the complementary convex shape”). *See* Order No. 14 at 28. However, there is no reference anywhere in the intrinsic evidence to a “concave” shape, so the concave shape of the Accused Products is, at best, extrinsic evidence when defining the scope of Claim 12. *See* CX-001; CX-002. Therefore, reading in the term “concave” into the definition of the shape of the magnetic material of the second section is unduly limiting.

(CPOST at 31.) Nite Ize goes on to argue that:

The patent drawings are consistent with this broader reading. The applicable figure of the patents appears to not show a concave shape for the magnetic material of the second section (denoted as 11 in Fig. 1D reproduced below). *See* CX-001 at Fig. 1D; CX-002 at Fig 1D. Instead, Fig. 1D shows a very similar configuration to that shown in the Category II products.

(*Id.* at 32.)

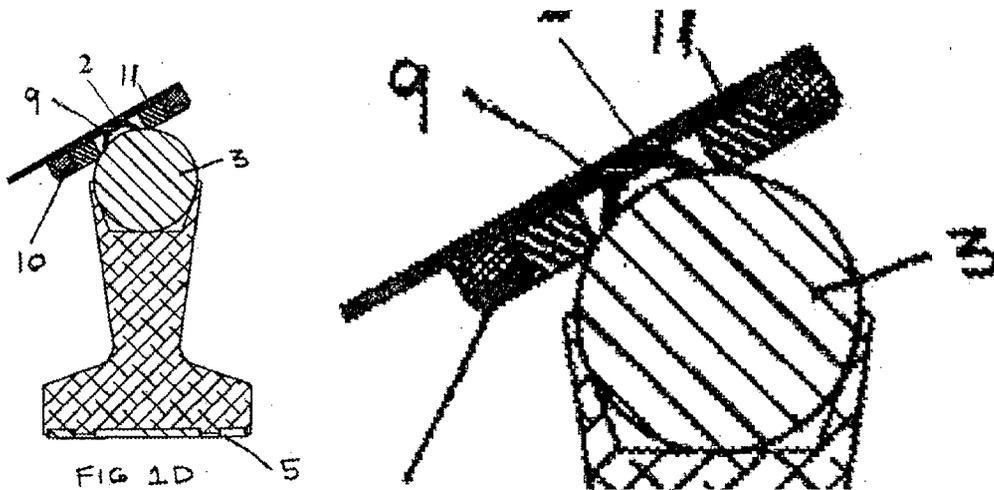
Nite Ize misunderstands Order No. 14. Claim 12 of the Asserted Patents requires “the magnetic material of the second section *has a shape complementary to the curved surface* such that the magnetic material of the second section contacts the curved surface when the first and second sections are engaged” (emphasis added). In Order No. 14, I did not replace “a shape complementary to the curved surface” with “a concave shape” as Nite Ize suggests. I simply questioned whether the “magnetic material of the second section” of the Category II Products had “a shape complementary,” by any understanding of the term, to the large curved surface of

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the steel ball. This is a reasonable question in light of the plain meaning of “complementary,” the figures of the Asserted Patents, and the intended operation of the invention.

First, the plain meaning of “a shape complementary to the curved surface” implies that the shape have features which match the curved surface in question. For example, in the packaging arts, a blister pack has a complementary shape to the surface of the product nestled within. For mobile devices, a protective case has a shape which is complementary to the surface of the mobile device it is adapted to surround and protect. These are examples of the ordinary meaning of “a shape complementary” to a surface.

Second, this ordinary meaning for “a shape complementary” is supported by the figures of the Asserted Patents. As shown below, Figure 1D of the '376 patent suggests a slight concavity to the corners of magnetic material 11 which would be “complementary” to the convex shape of second curved end 3:



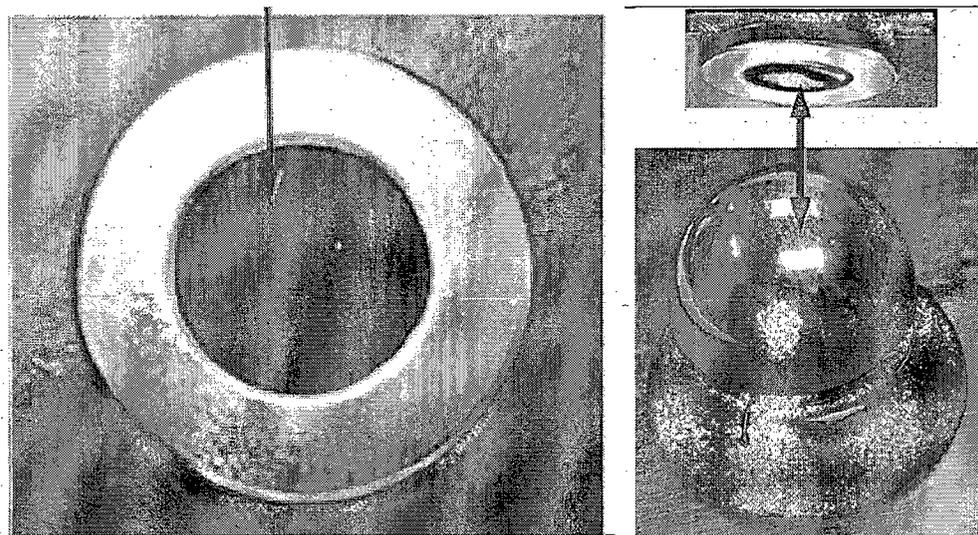
(’376 patent at Fig. 1D.) Indeed, this figure is perhaps the most important intrinsic evidence on the meaning of “complementary” because the term does not appear anywhere beyond claim 12.

(See generally ’376 patent; ’146 patent.).

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Third, a magnetic material with a shape that matches, or complements, the curvature of the curved surface, and then also “contacts the curved surface when the first and second sections are engaged,” assists with the intended operation of the invention; specifically, it helps “creat[e] friction to oppose gravity or other forces that may act on the magnetic coupling.” (’376 patent at 2:15-18.) In other words, it would reduce device slippage on the large steel ball.

Order No. 14 raised this question because the magnetic material of the Category II Products does not have any sort of corner-matching complementary shape. It is a straightforward washer-shape with a flat face:



(CX-236 at 136-37 (Kagu Culture).)

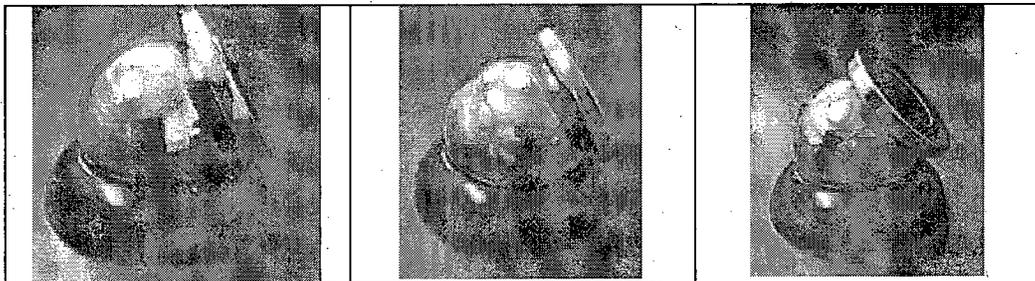
Just as it failed to do in its motion for summary determination, Nite Ize still does not explain how this washer-shape with a flat face is “complementary” to the convex surface of the large steel ball. It simply states that it is so. (See CX-236 at 137 (“As shown on the left, the shape of the indentation of the Socket is complementary to the curved surface of the top of the Ball Mount.”); CPOST at 31-33.)

Nevertheless, upon further consideration, I find that the Category II Products meet this limitation. Again, the limitation reads “the magnetic material of the second section has a shape

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complementary to the curved surface *such that the magnetic material of the second section contacts the curved surface* when the first and second sections are engaged.” (’376 patent at cl. 12 (emphasis added); ’146 patent at cl. 12 (emphasis added).) The language “such that” could be interpreted as an explicit self-definition of the term “complementary” (since it is not used anywhere else in the patents); whereby “complementary” is met whenever “the magnetic material of the second section contacts the curved surface when the first and second sections are engaged.” In other words, *any* magnetic material shape will do so long as “the magnetic material of the second section contacts the curved surface when the first and second sections are engaged.”

Under this interpretation, the Category II Products meet the limitation. The magnetic material of the second section in each product clearly contacts the steel ball (*i.e.*, curved surface of the first section) when engaged:



(CPOST at 30 (showing distinct photographs for each of Kagu Culture, Newdreams, and Trendbox).)

Thus, I find that all three of the Category II Products infringe claims 1, 11, and 12 of the ’376 and ’146 patents.

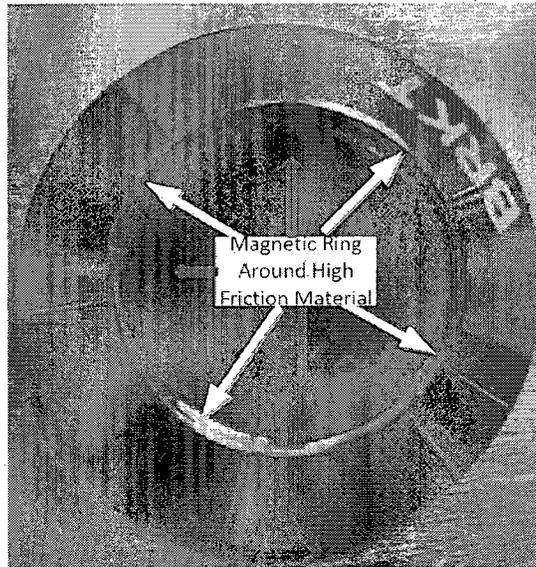
2. Shenzhen Yingxue

Regarding the Accused Product from Shenzhen Yingxue, Order No. 14 found a genuine issue over whether the magnetic material in this product “radially surrounds” the high friction

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material. (See Order No. 14 at 29; CPOST at 34.) This precluded a determination of infringement at that time for all of the asserted claims.

Now, Nite Ize argues that the following annotated photograph, reflecting a close inspection, shows “the high friction material is positioned in a manner that meets the claim language:”



(CPOST at 35 (citing CX-194 at 27).) Nite Ize explains:

The term “radially surrounds” has been defined to mean that the magnetic material “encircles a center of” the high friction material. See Order No. 14 at 22. The Yingxue product’s high friction material dips into the indentation of the socket’s structure but is still encircled by the magnetic material. See CX-194C at 26; Hearing Tr. at 106:20-107:6. The magnetic material not only extends above but along the angle of the socket’s curvature. *Id.*

(CPOST at 35.) Nite Ize continues:

Mr. Case specifically identified the extent to which the magnetic ring runs in comparison to the high friction material in the Yingxue product, describing that the magnetic material “surrounds it.” See Hearing Tr. at 117:9-14. Mr. Case further indicated that a neodymium magnet was under the housing of the Yingxue product and that the magnet was a ring. *Id.* at 106:7-12, 106:20-107:3. Mr. Case further indicated that the ring extended along the angle of the outer housing. *Id.* at 106:20-107:3. Therefore, as indicated by Mr.

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Case, the magnetic material encircles a center of the high friction material.

(*Id.* at 36.) It is true that Mr. Case testified that hadn't taken apart the Shenzhen Yingxue product before, and would want to, to confirm his opinion on the shape and location of the magnetic material (Hr'g Tr. at 106:3-107:6); and then when he was given an opportunity to take the socket apart during redirect examination, confirmed that the magnetic ring surrounds the high-friction material (*id.* at 116:17-117:19).

Even with that now determined, however, it is plain the Shenzhen Yingxue Accused Product does not infringe. Each of claims 1, 11, and 12 of the '376 and '146 patents requires "a first piece of high-friction elastomeric material, the first piece of high-friction elastomeric material disposed of in the indentation of said second section." ('376 patent at cls. 1, 11, 12; '146 patent at cls. 1, 11, 12). After inspecting the physical exhibit, I have determined the material in the indentation of the socket in the Shenzhen Yingxue product is a nylon or nylon-like substance which is not an elastomer; *i.e.*, not an elastic substance. (*See* CPX-040.) I note that Nite Ize's post-hearing brief skips over the "elastomeric" aspect of the claim element, and repeatedly refers to it simply as "high friction material." (*See* CPOST at 33-37.)

Thus, I find that the Shenzhen Yingxue Accused Product does not infringe any asserted claim of the '376 and '146 patents.

V. DOMESTIC INDUSTRY

In Order No. 14, I determined that genuine issues of material fact precluded summary determination on the technical and economic prongs of domestic industry. (*See* Order No. 14 at 53-55.) Specifically, on the technical prong, I found issue, not with whether *any* Nite Ize product practices the Asserted Patents, but with *which* Nite Ize products practice the Asserted Patents. (*Id.* at 54.) Regarding economic prong, I found issue with a need to reliably determine the value

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of the domestic investments with respect to the articles protected by the patent, as compared to other Nite Ize investments. (*Id.* at 54-55.) Now, Nite Ize presents refined argument and evidence on both of these fronts, and I find a domestic industry does exist under 19 U.S.C. § 1337(a)(3)(C) as proffered.

A. Technical Prong

Nite Ize argues “[a]t least one asserted claim of the ‘146 utility patent covers every domestic industry Steelie® product except for the HobKnob products” and “[a]t least one claim of the ‘376 utility patent covers every domestic industry Steelie® product except for the HobKnob products, the Connect Case, and the Freemount Kit.” (CPOST at 38.) Nite Ize notes that this breakdown of practicing product is “very conservative” because “the domestic industry Steelie products, when used in combination, may practice Asserted Patents that they do not practice individually.” (*Id.* at 38, n.16.) Nite Ize continues, “[u]nder a broader theory that encompasses this intended use case, all of the domestic industry Steelie products except for the HobKnob products could satisfy the technical prong for both Asserted Patents. (*Id.*)

For the ‘146 patent, Nite Ize provides seven claim charts, each comparing a particular Nite Ize product to claims 1, 11, and 12. Those products covered by these charts include: Steelie® Car Mount Kit (CX-175), Steelie® Connect Case (CX-214)¹, Steelie® Magnetic Mount (CX-216), Steelie® Vent Mount Kit (CX-222), Steelie® Pedestal Kit for Smartphones (CX-224), Steelie® Pedestal Kit for Tablets (CX-227), and the Steelie® Freemount Vent Kit (CX-230). (*See* CPOST at 39.) Upon review of these exhibits, I agree that each product practices each of claims 1, 11 and 12 of the ‘146 patent, due in large part to the similar, if not identical, components which are shared across the products and are the focus of the claims. (*See* CPOST

¹ The title of this exhibit says “Product: ‘Steelie® Car Mount Kit,’” which is believed to be a mistake.

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at 39 (“these domestic industry Steelie® products all practice the claims of the ‘146 Patent in the same fashion”); CX-238C at ¶ 134.) Essentially, a base with a semi-spherical steel ball comprises the “first section having a first end shaped with a curved surface” of the claims. A disc-shaped socket comprises the “second section.” The socket has an indentation in the center of one face, in which is located a high-friction material, and a magnetic material encircles that indentation and high-friction material. When the socket is pressed to the steel ball, the magnets attract and, aided by the high-friction material also pressed against the steel ball, slippage or other unintentional movement between the disc and ball is arrested.

For the ‘376 patent, Nite Ize provides three claim charts, each comparing a particular Nite Ize product to claims 1, 11, and 12. Those products covered by these charts include: Steelie® Car Mount Kit (CX-176), Steelie® Pedestal Kit for Smartphones (CX-225), and the Steelie® Pedestal Kit for Tablets (CX-228). (*See* CPOST at 43.) Upon review of these exhibits, I agree that each product practices each of claims 1, 11 and 12 of the ‘376 patent, for the same reasons discussed above for the ‘146 patent. (*See* CPOST at 43 (“these domestic industry Steelie® products all practice the claims of the ‘146 Patent in the same fashion”); CX-238C at ¶ 134.) Additionally, each of these products includes a flat bottom to the base with steel ball to meet the “first section shaped at one end to lay stably on a flat surface” limitation which is particular to the ‘376 patent. (*Compare* ‘376 patent at cls. 1, 11, and 12 *with* ‘146 patent at cls. 1, 11, 12.)

Nite Ize provides the following table to clearly identify those products which it alleges practice the ‘376 and ‘146 patents:

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Product	Product Practices the Patent Claims Alone (Yes/No)	
	'146 Utility Patent	'376 Utility Patent
Steelie® Dash Mount Kit	Yes	Yes
Steelie® Connect Case System for iPhone 6/6s Plus ¹	Yes	No ¹
Steelie® HobKnob® Kit for Smartphone	No	No
Steelie® Desk & Dash System	Yes	Yes
Steelie® Vent Mount Kit	Yes	No
Steelie® Pedestal Kit for Smartphones	Yes	Yes
Steelie® Pedestal Kit	Yes	Yes
Steelie® HobKnob® Kit	No	No
Steelie® FreeMount ²	Yes	No ²
<p>¹ If Steelie® Connect Case is mounted to a mount that lays stably on a flat surface, the interconnection practices both the '146 and '376 utility patents. If Steelie® Connect Case is mounted to a mount that does not lay stably on a flat surface, such as a Steelie® Vent Mount component that is sold with the Connect Case, the interconnection practices the '146 utility patent.</p> <p>² If the Steelie® Freemount is mounted to a mount that lays stably on a flat surface, the interconnection practices the '146 and '376 utility patents. If the Steelie® Freemount is mounted to a mount that does not lay stably on a flat surface, such as a Steelie® Vent Mount component, the interconnection practices the '146 utility patent.</p>		

(CPOST at 38-39 (citing CX-238C at Q134).)

B. Economic Prong

1. Nite Ize's Position

By way of background, Nite Ize explains that it is “an American company . . . with a mission to create innovative, solution-based products with quality, performance, and value.”

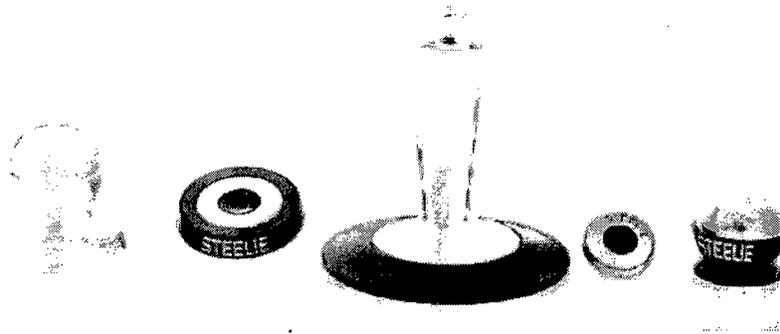
(CPOST at 47.) It began in 1989 with “just one innovative product: the Nite Ize Mini Flashlight Holder.” (*Id.*) Currently, it has a “large manufacturing facility, a distribution center, and corporate offices, all based in Boulder, Colorado.” (*Id.*)

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Nite Ize claims that its “domestic industry investments have a direct nexus to the Asserted Patents and domestic industry Steelie® products” and that the investments are “substantial under both existing caselaw for research and development domestic industries under subsection (C) and within a *Lelo*-style framework.” (*Id.* at 48.)

a. Summary of Research Activities

According to Nite Ize, its “Steelie® products offer the first mobile device holders that allow endless adjustable viewing angles, in the car, at home, and on the go.” (*Id.* at 52 (citing its own advertisements, CX-179).) Nite Ize explains that originally, the Steelie® product line was developed by Frank Vogel and Blackglass, LLC in 2012 (*id.* (citing CX-183)), but that Nite Ize “acquired the Steelie® product line, including the intellectual property rights asserted in this Investigation.” (*Id.*) Nite Ize shows the state of the Steelie® product line at the time of this acquisition with an image from Mr. Vogel’s Kickstarter campaign:



(CPOST at 53 (citing CX-184).) Nite Ize describes these five articles as “precursors to several current domestic industry Steelie® products” (*id.* at 52) that “were not ready for mass sale and distribution . . . because they included parts that were difficult to mass produce.” (*Id.* at 53 (citing Hr’g Tr. at 44:1-2).) Nite Ize states:

For instance, the original Pedestal tabletop stand was originally machined and had a plastic base. See Hearing Tr. at 43:24-44:1. The original device was not up to the high product standards that

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Nite Ize maintains and it could not be mass produced at a high quality. *Id.* Additionally, the device, like the other original devices, did not have standard drawings and specifications, and the designs needed to be updated. See CX-238C (Case Witness Statement) at ¶ 261. The engineering and research and development groups modified the manufacturing process from []. See Hearing Tr. at 44:1-4. Then the groups created [] in the Pedestal's platform and the aluminum stand to make the redesigned SteeIe Pedestal more precise and portable. *Id.* at 44:5-20.

(*Id.*)

Nite Ize states that “[a]ll of the design, research, and engineering performed by Nite Ize takes place in the United States.” (*Id.* at 54 (citing Hr’g Tr. at 78:17-79:5).) As for the domestic industry at issue in this investigation, Nite Ize explains that its first investment was the “updating, perfecting, and conversion of these original pieces” through work done by “engineers and designers familiar with the mass production needs of industry.” (*Id.* (citing Hr’g Tr. at 44:1-2).) The work involved the creation of specification drawings and prototypes for “new and redesigned domestic industry SteeIe products” with equipment such as “3D printers, an epilog laser, and equipment for shear and break testing.” (*Id.* (citing CX-238C at Q273; Hr’g Tr. at 37:5-7, 39:24-40:8, 60:10-13, 67:9-22, 78:17-79:5, 82:6-12).)

Nite Ize claims it continues to make product redesigns and improvements, along with the necessary domestic investment to “implement those new designs and improvements.” (*Id.*) Nite Ize presents the “Connect Case” product, which “Like the redesign efforts for the original SteeIe® products, this design required the drafting of specifications and design by engineers and designers and then required prototyping.” (*Id.* (citing CX-238C at Q189, 272; Hr’g Tr. at 63:7-64:8).) Also mentioned are the “SteeIe Vent Mount,” which, again, “required the drafting of specifications and design by engineers and designers and then required prototyping” (*id.* (citing CX-238C at Q272; Hr’g Tr. at 67:17-19)), and the “SteeIe Freemount” which “required the

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drafting of specifications and design by engineers and designers and then required prototyping”

(*id.* at 55 (citing CX-238C at Q156, 272; Hr’g Tr. at 64:12-16, 112:13-115:14).) Nite Ize

concludes:

These above described scenarios are exemplary of the substantial and critical development and engineering investments in products covered by the Asserted Patents that Nite Ize has made and continues to make in the United States. These complex design and development projects are conducted for every product offered by Nite Ize within the Steelie® line of products, including the creation of design drawings and specifications and prototyping as needed, and are exclusively performed in the United States. *Id.* at ¶ 272.

(*Id.*)

Nite Ize then turns to nexus, and claims it “is undisputed that there is a nexus between the domestic industry Steelie® products and Nite Ize’s research, development, exploitation and other investments.” (*Id.* at 56.) Nite Ize cites its CEO and sole witness, Richard Case, to state that it “designs its Steelie® products to be protected by and exploit the Asserted Patents, and drafted the ‘376 Patent to cover its Steelie® products.” (*Id.* (citing Hr’g Tr. at 61:21-23, 66:7-67:1, 76:6-14, 72:1-3, 76:6-14).) Nite Ize repeats “the undisputed record shows that Nite Ize’s engineers made and continue to make substantial efforts in the United States to exploit the Asserted Patents by improving and developing the Steelie Product Line that practice the Asserted Patents” and that this takes place in Boulder, CO. (*Id.* (citing CX-238C at Q261, 286; Hr’g Tr. at 11:21-23, 76:9-14).)

For more specificity, Nite Ize discussed the “Steelie Pedestal Kit,” where:

Nite Ize’s engineers redesigned and improved the Pedestal’s first section with a curved surface on one end and another end that lays stably by developing an [] process, determining tolerances for the [] and created [] for an attachment to the base so that the Pedestal’s base could lay stably flat on a surface. *See* Hearing Tr. at 43:24-44:20; CX-002 (‘376 patent) at p.7, Col. 4, Lines 44-47.

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(*Id.* at 57.) For the “Steelie Phone and Tablet Socket components:”

Nite Ize’s engineers redesigned the components to be distinguishable as a Nite Ize made, “Steelie” brand product. *See* Hearing Tr. at 45:24-46:11; CX-001 (‘146 patent) at p.7, Col. 4, Lines 51-57. The engineers in Boulder, Colorado redesigned the components’ front surface with a [] base that [] a newly designed [] magnet with a slight radius. *Id.*

(*Id.*) For the “Steelie Dash Ball” in particular:

Nite Ize redesigned the first section ball’s curved surface from [] without compromising its magnetic material so that it could be used in a variety of conditions. *See* Hearing Tr. at 50:6-10; CX-001 (‘146 patent) at p.7, Col. 4, Lines 48-50.

(*Id.*) For the “Steelie Vent Mount Kit:”

[I]n response to customer requests, Nite Ize’s engineers designed a Steelie® system for its traveling customers who use rental cars. *See* Hearing Tr. at 72:21-73:2. Nite Ize’s engineers created a prototype that modified the traditional Steelie Ball Mount so that it could clip to a vent rather than fix to a dashboard. *Id.* Nite Ize’s engineering team [] the first section’s curved, magnetic ball portion to make a lightweight mount that was light enough to clip to a vent. *See* Hearing Tr. at 73:9-74:2; CX-001 (‘146 patent) at p.7, Col. 4, Lines 48-50. Additionally, Nite Ize’s engineers increased the curved magnetic surface’s surface area while maintaining a strong magnetic intensity. *See* Hearing Tr. at 74:22-23.

(*Id.* at 57-58.) Many of the domestic industry products include an adhesive to attach the product to the mobile device—the research of which Nite Ize describes as:

[A] collaboration with 3M engineers on the [] was performed in the United States. *Id.* at 51:16-52:3, 52:11-14. Nite Ize’s engineers worked with 3M to find “the most optimized [] for an application that would support the amount of weight that was held by a tablet device, and also still allow for the magnetic socket to be removed.” *Id.* at 39:1-12. Additionally, Nite Ize and 3M engineers collaborated to find an adhesive that could be removed and that would withstand extreme temperatures in a vehicle. *Id.* at 49:21-50:3. Again, all such

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research and development was solely performed in the United States. *Id.* at 50:11-14.

(*Id.* at 58.) Nite Ize claims these “examples are only a small fraction of the research and development and engineering activities performed by Nite Ize’s engineers at Nite Ize’s Boulder, Colorado facilities to exploit the Asserted Patents for the domestic industry Steelie® products.” (*Id.* (citing Hr’g Tr. at 76:9-14).) “Accordingly,” Nite Ize states, “all of the domestic industry Steelie® products, except the HobKnob kit, practice and are designed to practice at least one of the Asserted Patents on their own.” (*Id.* at 58-59.) Nite Ize notes that “[r]esearch and development investments relating to the HobKnob Kit are still investments in the exploitation of the Asserted Patents, since the HobKnob is designed to work with the other Steelie® products, and its existence provides additional functionality for other Steelie® products.” (*Id.* at 59, n.20.)

Nite Ize adds “[e]ven now, Nite Ize’s mission is to use its Boulder, Colorado facilities to further adapt the ball and the socket (first and second sections as claimed in the Asserted Patents) of the domestic industry Steelie® products in order to keep up with the technology of the phones.” (*Id.* at 59 (citing Hr’g Tr. at 77:6-11).) Nite Ize states:

Because Nite Ize’s claimed domestic industry expenditures were directed at redesigning, using, and exploiting products practicing the technology of the Asserted Patents, it cannot and is not disputed that there is a clear nexus between Nite Ize’s domestic industry activities and the Asserted Patents.

(*Id.*)

Nite Ize moves on and repeats that it “has made and continues to make substantial investments in its domestic engineering, research, design, development, and other exploitation of the Asserted Patents.” (*Id.*) Nite Ize primarily points again to its effort of “redesign projects” which include:

[M]odifying the original design for mass production and distribution, including aspects of the patented ball and socket

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themselves, improving the function of the ball and socket to meet the evolving characteristics of smart phones and tablets, and improving the ball and socket interconnection system to meet the needs of consumers. *See, e.g.,* Hearing Tr. at 45:21-50:10.

(*Id.*) The redesigns, however, “are not merely limited to the Steelie® products themselves. In fact, Mr. Case indicated that he directs his Colorado-based research and development division to further develop the packaging for the domestic industry Steelie® products,” argues Nite Ize. (*Id.* at 60 (citing Hr’g Tr. at 57:2-9).) Nite Ize contends that such efforts are not “trivial” because “packaging is designed to draw attention to the product and the product’s endless possibilities” and “packaging is designed and engineered so that each product may be protected in shipping and displayed on hooks and shelves without sticking to other packages, and to prevent customer theft.” (*Id.* (citing Hr’g Tr. at 55:1-2, 54:19-57:9; CX-238C at Q276; CX-181).)

b. Allocation Techniques

Nite Ize then begins a discussion of how to allocate its investment amounts to the domestic industry products. Admittedly, “Nite Ize does not track the exact cost of research, development and design for individual products.” (*Id.* (citing Hr’g Tr. at 109:17-110:12).) Nite Ize presents two allocation techniques. First, for engineering labor, Nite Ize uses a time-spent allocation:

For compensation of engineers, Nite Ize’s witness, Rick Case, conducted a thorough internal examination of its engineers and determined that the domestic engineering, R&D, and design team at Nite Ize spent approximately [] of their time on the domestic industry Steelie® products from 2013 through August 2016, amounting to approximately \$[] in domestic Engineering/R&D/Design compensation of the \$[] paid in total compensation. *See* CX-238C at ¶ 233; Hearing Tr. at 67:9-13.

(*Id.* at 61.) Second, for all other investments, Nite Ize uses a percentage of gross profit allocation:

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[T]he percentage of overall company activities and expenditures that relate directly to the domestic industry Steelie® products can be estimated by the percentage of overall Nite Ize profit derived from Steelie® sales. CX-238C at ¶ 233. The domestic industry Steelie® products accounts for [] of Nite Ize’s gross profit.

(*Id.*) Nite Ize defends this use of gross profit over, for example, gross revenue (which, it claims, would yield a [] allocation percentage), because:

Nite Ize naturally spends more money for R&D, marketing, sales, and other activities in areas where it can make the most profit. *See* CX-238C at ¶ 233; Hearing Tr. at 30:24-32:12, 70:2-71:9. This methodology also accords the domestic industry Steelie® products the weight consistent with this emphasis on Steelie®-related research and development, as Nite Ize has invested a higher proportion of research and development in the Steelie® product line than a revenue-based allocation would suggest. *Id.* Finally, this [] figure is consistent with Richard Case’s recollection of research and development expenditures. *See* CX-238C at ¶ 233; Hearing Tr. at 121:10-15.

(*Id.*)

c. Facilities

Turning to the particular forms of investment, Nite Ize begins with its three facilities—“Central,” “Spine,” and “Longbow”—which are all in Boulder, CO. (*Id.*) These three facilities, it is explained, “house approximately [] employees, respectively, and occupy approximately [] square feet, respectively.” (*Id.* at 62.) Nite Ize applies its gross profit margin allocation of [] to conclude “approximately [] square feet of Nite-Ize’s Colorado facilities are dedicated to the development and engineering of its patented Steelie® products [] square feet x [] = [] square feet.” (*Id.* (citing CX-238C at Q270; Hr’g Tr. at 29:15-19, 30:1-4, 32:22-24).) Nite Ize states clearly, “Nite Ize attributes this spending to the Asserted Patents” (*id.*).

Continuing on, Nite Ize addresses the costs of these facilities, where it has “invested approximately \$ [] to lease these facilities between 2013 and July 2016.” (*Id.* (citing

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CX-190C).) Under the []% allocation described above, “Nite Ize conservatively estimates that it has invested approximately \$[] to lease facilities in the United States related to the design and development of its patented Steelie products,” (*Id.* (citing Hr’g Tr. at 90:9-16)) and summarizes with the below table.

Table 1	Total Steelie® Investment
Facility Lease Expenses	[]
Facility Square Footage	[]

(*Id.*) Nite Ize cautions, however:

Although all three of Nite Ize’s facilities are used in support of research and development, engineering, and quality control, the Central facility is where Nite Ize’s research and development equipment and tooling is kept. *See* CX-190C; Hearing Tr. at 88:20-91:5, 92:21-93:19. Nite Ize has invested approximately \$[] in lease and leasehold improvement for the Central facility from 2013 through the filing of the complaint. *Id.* [] of this facility by square footage is dedicated to research and development activities. *Id.* Allocating [] these investments to the domestic industry Steelie® products would yield \$[] and [] sq. ft. instead of the preferred figures in Table 1 which count all three facilities.

(*Id.* at 62, n.22.)

d. Equipment

Following facilities, Nite Ize turns to equipment. Nite Ize claims it “has substantial domestic investments in equipment used for research, development, and other exploitation of the Asserted Patents.” (*Id.*) Nite Ize values that equipment as “approximately \$[] for software and \$[] for hardware.” (*Id.* at 63 (citing CX-191C at 5, 6).) To this amount, Nite Ize applies the [] gross profit allocation to present a \$[] amount as allocable to the domestic industry products. (*Id.*) Nite Ize notes that []% of its company-wide salary is to sales and marketing personnel (*id.* (citing CX-186 at 3, 4, 11; CX-238C at Q227; Hr’g Tr. at 71:5-9), and thus provides an alternative equipment investment amount which is meant to

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exclude that portion of the equipment attributable to these persons (*id.*). The following Nite Ize table summarizes these approaches:

Nite Ize's Subsection (C) Computer Software and Hardware, 2013 – Jul. 2016:	
Table 2	Total Steelie® Investment
Computer Software and Hardware (including sales and marketing)	[REDACTED]
Computer Software and Hardware (excluding sales and marketing)	[REDACTED]

(*Id.* (citing CX-191C).)

Nite Ize presents additional equipment investments, which it calls “tooling:”

Nite Ize invests an additional \$[] in the United States on equipment dedicated to all of its products, such as tooling, 3D printers, laser engravers, and break and sheer testing equipment for all Nite Ize product lines (but excluding computer hardware and software).²⁵ CX-191C; Hearing Tr. at 82:3-12. Allocating [] of these investments to the domestic industry Steelie® products yields \$[]. *Id.* at 1-8. Because the vast majority of this equipment investment is related to actual engineering, design, and R&D, there is no need to exclude sales and marketing activities. *See* CX-191C. In any event, to the extent necessary, sales and marketing expenditure accounts for not more than [] of the equipment costs (allocating by percentage of sales and marketing compensation).²⁶ *See* CX-186 at 3, 4, and 11.

(*Id.* at 63-64.) The following Nite Ize table summarizes these approaches:

Nite Ize's Subsection (C) Equipment (primarily tooling), 2013 – Jul. 2016:	
Table 3	Total Steelie® Investment
Equipment (including sales and marketing)	[REDACTED]
Equipment (discounted 23% to exclude sales and marketing)	[REDACTED]

(*Id.* at 64 (citing CX-191C at ¶ [sic] 5).)

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e. Labor

Nite Ize begins its discussion of labor to state that “[m]ore than [] Nite Ize employees, all located in the United States, are involved in administration, business development, finance, information technology, marketing, operations, quality assurance/control, research and development, sales, and services, all relating to the domestic industry Steelie® products.” (*Id.* (citing CX-238C at Q275; Hr’g Tr. at 26:25).) Nite Ize states:

As explained by Mr. Case, after a thorough company investigation that included interviewing relevant engineers, the amount more precisely attributable to research and development and design activities for the domestic industry Steelie® products is approximately []% of the total \$[] related specifically to Engineering, R&D, and Design employee compensation, or \$[] *Id.* at ¶ 232; *Id.* at 67:9-13.

(*Id.* at 64-65 (emphasis added).) Nite Ize then revisits the work performed by these engineers:

As indicated, the work performed by Nite Ize’s domestic engineers include redesigning the original large tablet socket by putting “a slight radius on the inside ring of the magnet,” and by working with 3M to find “the most optimized [] for an application that would support the amount of weight that was held by a tablet device, and also still allow for the magnetic socket to be removed.” *See* Hearing Tr. at 39:1-12. To redesign the Pedestal table top stand, Nite Ize redesigned the stand for [] determined tolerances for the [] and created [] for attachment. *Id.* at 43:22-44:20. To redesign the original small Steelie® phone socket, Nite Ize designed a [] designed a [] with a slight radius, and engineered a [] mechanism for the two. *Id.* at 45:24-47:10. To redesign the original Steelie Dash Ball, Nite Ize engineered the ball to be rust resistant so that it could be used in a variety of conditions, and worked with 3M engineers to find an adhesive that could be removed and that would withstand extreme temperatures in a vehicle. *Id.* at 48:22-50:10. Additionally, Nite Ize designs the packaging of the domestic industry Steelie® products in such a way that the products may be sold so that the packaging does not stick together with other packages. *Id.* at 56:20-57:19. Nite Ize additionally spent a substantial amount of time redesigning the vent mount in response to consumers wanting the use the Steelie system when traveling and using a rental car or other vehicle. *Id.* at 74:11-76:5. This including [] the

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ball portion such that it would work on the vent mount system and still provided the needed magnetic intensity. The issue was that, if the traditional ball was used, the system would be too heavy for the vent of the vehicle. *Id.* Nite Ize further increased the adjustability of the Steelie Vent Mount by configuring a new way to attach a [] ball. *Id.* Nite Ize has further adapted the ball and the socket of the domestic industry Steelie® products in order to keep up with the technology of the phones. *Id.*

(*Id.* at 65-66.) Nite Ize also then provides labor costs for its sales and marketing personnel:

Of the [] Nite Ize employees, [] employees work in sales. See CX-238C at ¶ 259. From 2013 to August 2016, Nite Ize compensated its sales team approximately \$[] and expended another [] in travel and expenses in that same time period relating to the domestic industry Steelie® products. *Id.* Additionally, \$[] was paid in marketing compensation. See CX-238C at ¶ 248. If []% of the marketing and sale compensation is attributed to the Asserted Patents, then \$[] is attributable.

(*Id.* at 66.) Together, Nite Ize presents the engineering, sales, and marketing labor costs associated with the Steelie products as:

Summary of Nite Ize’s Subsection (C) Labor Investments, 2013-Jul. 2016:

Table 4	Total (100%)
R&D Compensation Costs	
Sales and Marketing Compensation Costs	
TOTAL	

(*Id.* (citing CX-238C at Q248).)

f. Miscellaneous

Nite Ize proffers that, in addition to the above amounts, it “has also paid approximately \$[] in royalties to Blackglass, LLC for the Asserted Patents from 2013 through May 2016.” (*Id.* (citing CX-238C at Q256).) Nite Ize describes this amount as “specifically a payment for past innovation and the right to use it.” (*Id.* at 67.) That amount is, again, presented in tabular form:

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Nite Ize's Royalty Investments in Steelie Innovation Subsection (C) Costs, 2013-Jul. 2016

Table 5	Total Steelie® Investment
Royalties	

(Id.)

g. Allocation to Asserted Patents

Nite Ize unabashedly states:

Because of the strong nexus between the domestic industry investments and the innovation protected by the Asserted Patents, there should not be a need to allocate Nite Ize's investments down to the Asserted Patents. Indeed, all of the research, development, and exploitation investments related to the Steelie® "Ecosystem" as a whole are in connection with products practicing at least one claim of each Asserted Patent. This is because all of the Steelie® products are designed to work together, and there would be no point to a variety of the investments allocated out of domestic industry expenses (such as development of Steelie® products that practice the Asserted Patents in conjunction with other Steelie® products or components) without the technology of the Asserted Patents. It is the two-part ball and socket system that creates a hands-free viewing platform with endless adjustable viewing angles which makes for the success of the domestic industry Steelie® products. *See* CX-179 (Nite Ize Advertisements).²⁷ *See* Tables 8 and 9, *supra*.

(Id. at 67.) In case I wish to make such an allocation, however, Nite Ize provides the following table which identifies those Steelie Products which do practice the Asserted Patents, and what portion of the Steelie gross revenue each is responsible for:

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Product	% of Steelie Revenue Attributable to Patent	
	'146 Utility Patent	'376 Utility Patent
Steelie® Dash Mount Kit		
Steelie® Connect Case System for iPhone 6/6s Plus (Discontinued) ²⁸		
Steelie® HobKnob® Kits (combined)		
Steelie® Desk & Dash System		
Steelie® Vent Mount Kit		
Steelie® Pedestal Kits (combined)		
Steelie® FreeMount (Not Offered August 2016) ²⁹		
Steelie® Socket Component		
Percentage of Steelie Revenue Allocable		

(*Id.* at 68 (citing CX-238C at Q270).) Nite Ize proffers that these proportions, when applied to the previous investment amounts, would result in the following:

Table 6	Total Steelie® Investment (100%)	'146 Patent (76%)	'376 Patent (63%)
R&D Compensation (Table 4)			
Sales and Marketing Compensation (Table 4)			
Lease (Table 1)			
Computer Software and Hardware (Table 2)			
Equipment (Table 3)			
Royalties (Table 5)			
TOTAL			

(*Id.* at 68-69.)

h. Substantial Investment

Nite Ize begins its discussion of whether its investments have been “substantial,” with a comparison to the complainant in *Certain Loom Kits for Creating Linked Articles*, Inv. No. 337-TA-923 (“*Certain Loom Kits*”), where a domestic industry under subsection (C) was found. (*Id.* at 69 (citing *Certain Loom Kits*, 337-TA-923, Comm’n Op. at 6-7 (Feb. 3, 2015)).) Nite Ize claims its activities are “similar in character” to those at issue in *Loom Kits*:

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Like in *Loom Kits*, Nite Ize manufactures its domestic industry products abroad, but it has done all of its research, development, prototyping, and other exploitation in the United States, and maintains all of its engineers, staff, equipment, and facilities for performing such activities domestically. Both Nite Ize and the complainant in *Loom Kits* invented a brand new product in the United States, and singlehandedly launched a successful industry in their respective products.

(*Id.* at 69.) To this end, Nite Ize provides a lengthy table presenting a high-level activity from description and a purportedly equivalent Nite Ize expenditure. (*See id.* at 70-71.) Nite Ize argues that “[t]he primary difference between the instant case and *Loom Kits* is a matter of size: while *Loom Kits* essentially concerned a one-man domestic industry working out of his home, Nite Ize employs over [] employees in the United States, operates three buildings in the United States, and sells hundreds of different products worldwide.” (*Id.* at 71.) Nite Ize adds that “the context of the investments in these two cases is strongly similar,” in that: Nite Ize “created a new market with a ball and socket style mobile device holder;” there is a low barrier to entry for those intending to infringe the Asserted Patents; and infringing products are found to consist of lower quality materials. (*See id.* at 72-73 (internal citations omitted).) In this way, Nite Ize proffers, its “research, development, design, and exploitation costs are much higher than the rest of the industry, and are substantial.” (*Id.* at 73.)

Moving on, Nite Ize argues its investments are qualitatively and quantitatively substantial under *Lelo v. Int’l Trade Comm’n*, 786 F.3d 879 (Fed. Cir. 2015). (*Id.* at 73.) Nite Ize avers “No investigation since *Lelo* has ever specifically required a showing of quantitative and qualitative substantiality when considering a domestic industry under subsection (C), even though the Commission has had several opportunities to consider this issue.” (*Id.*) In this light Nite Ize describes “*Lelo*’s applicability to substantiality under subsection (C)” as “optional.” (*Id.* at 74.)

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From a qualitative standpoint, Nite Ize generally argues that the investments “in research, development, design, engineering, and other exploitation of the Asserted Patents are critical to the domestic industry Steelie® products and to Nite Ize as a whole.” (*Id.* (citing Hr’g Tr. at 30:24-31:23, 38:22-39:23, 43:22-47:3).) Moreover, Nite Ize argues, “while Nite Ize purchased the ‘376 patent and very basic versions of some of the domestic industry Steelie® products from Blackglass, LLC, those early iterations were not suitable for mass marketing and production” and “such mass production would be simply impossible without some of the fundamental innovations made by Nite Ize and its U.S.-based engineers and other investments.” (*Id.* at 75 (citing CX-238C at Q227, 262; Hr’g Tr. at 38:22-39:23, 43:22-47:3).) Nite Ize then discusses: how it continues to expand the product offerings (*id.* (citing Hr’g Tr. at 36:7-10, 71:14-18, 112:16-115:14); Steelie products are “among Nite Ize’s premier products” (*id.* (citing Hr’g Tr. at 30:24-31:23); and Steelie products have “defined a whole new sector of the mobile device holder industry” (*id.* (citing Hr’g Tr. at 31:9-23, 34:9-11). Nite Ize repeats its belief that its competitors “simply knock off the Steelie® products and free-ride on Nite Ize’s innovation. . . . Such copyists also typically produce inferior products, so they put less effort and money into materials, molding, design, and packaging.” (*Id.* at 76 (citing Hr’g Tr. at 97:25-98:9).)

From a quantitative standpoint, Nite Ize presents an analysis structured to the holding in *Certain Multimedia Display and Navigation Devices and Systems, Components Thereof and Products Containing Same*, Inv. No. 337-TA-694—whereby under subsection (C) the Commission considers:

- (1) the value added to the article in the United States by the domestic activities;
- (2) the relative domestic contribution to the protected article by comparing the complainant’s product-related domestic activities to its product-related foreign activities;

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(3) whether complainant's activities are directed to the practice of one or more claims of the asserted patents; and

(4) whether complainant's activities target industry creation and production.

(See generally *id.* at 76-84.) Nite Ize adds that:

[S]ome of the considerations for licensing-based domestic industries may not be suitable for evaluating quantitative substantiality in the research and development context, other economic factors may be considered, such as proportion of Nite Ize's overall profits, Steelie® profit margins, or other quantitative indicia of the domestic industry Steelie® products' success and importance to Nite Ize. Nite Ize's domestic industry investments in research, development, and other exploitation of the Steelie® products can also be compared to those of its competitors in the mobile device holder industry. A final basis for weighing quantitative significance is to compare the alleged domestic industry costs against overall domestic or worldwide costs.

(*Id.* at 77-78.)

Nite Ize first takes a "value added" approach. Nite Ize claims that the domestic amounts of \$[] for the '146 Patent and \$[] for the '376 Patent "are so fundamental to the existence of the Steelie® products that the actual economic value added by this research is nearly 100% of the value of the Steelie® products." (*Id.* at 78.) Nite Ize then repeats its position that without the domestic activities, the products from Blackglass, LLC would never have been suitable for mass production and new Steelie products couldn't exist. (*Id.*) Similarly, the production which occurs abroad would not be possible without the "engineering, prototyping, tooling, and other activities that take place in the United States." (*Id.*) Alternatively, Nite Ize suggests the price differential between its products and its competitors is illustrative of the value added by its research and development (*i.e.*, claimed domestic activities). (*Id.* at 78-79.) Nite Ize expresses this contribution as between []% and []% the value of its product. (*See id.* at 79.) Nite Ize's point here is, essentially, "[b]ecause the domestic industry Steelie® products could not

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exist without Nite Ize's domestic research and development investments and activities, the value added by Nite Ize's domestic industry is substantial." (*Id.*)

Nite Ize then references the "comparative analysis" it already discussed previously while also arguing that such analyses are the province of "significant" domestic industries under subsections (A) and (B), and not "substantial" ones under subsection (C). (*Id.* at 79-80.) Nite Ize adds that such comparisons "are not preferred" anyways because successful research and development leads to high investments and economic activity which "punish[es] successful innovation" (*id.* at 80), but if one is needed it "can be found in the Witness Statement of Richard Case, CX-238 at ¶ 220" (*id.* at 80, n.36).

Nite Ize moves on to "practice of the asserted patents" next. Here, Nite Ize repeats its claim that although "[]% of Steelie® products by revenue practice the '376 patent as sold, and []% of Steelie® products by revenue practice the '146 patent as sold," all products are designed to work together "in service of the practice of the Asserted Patents." (*Id.* at 80.) Thus, "[t]he strong tie between the domestic industry Steelie® products (and therefore in investments in those products) and the Asserted Patents is further evidence of the substantiality of Nite Ize's domestic industry Steelie® research, development, and exploitation investments ." (*Id.*)

Next, Nite Ize considers a "relationship to industry creation and production" approach. Here, Nite Ize touts how it purchased but then expanded upon the Steelie Product line and Asserted Patents (*id.* at 81 (citing Hr'g Tr. at 33:4-6, 37:5-7, 44:2-4, 36:7-10, 71:14-18, and 112:16-115:14)) and "continues to be the leader in an industry that is full of knockoffs and inferior copies" (*id.* (citing CX-238C at Q100; Hr'g Tr. at 97:25-98:9)). Thus, according to Nite Ize, its activities to "facilitate production and the creation of a new industry of mobile device holders" is further evidence of the substantiality of its investments. (*Id.*)

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Finally, Nite Ize discusses other “economic factors evidencing substantiality.” Nite Ize begins with a recap of the purpose of the domestic industry requirement and then repeats its claim that comparisons between R&D expenditures and other activity amounts is not necessarily probative of the issue:

Unlike subsections (A) and (B), however, research and development costs do not necessarily tell the whole story of the American industry that those investments spawn. If a complainant has an extremely successful innovation, that innovation may lead to many millions of dollars in domestic activity, a fact which is not necessarily captured by measuring the costs to produce that innovation alone. Comparing the cost of innovation to the cost of production and support for a highly successful product is nonsensical in this light; other measures of domestic economic activity should be employed to determine quantitative substantiality

(*Id.* at 82.) With this understanding, Nite Ize argues that “[j]ust as royalties can be circumstantial evidence that a substantial investment was made in the licensing context, revenues from the sales of domestic industry products may serve as analogous evidence in the research and development context.” (*Id.* (citing *Certain Multimedia Display and Navigation Devices and Systems, Components Thereof and Products Containing Same*, Inv. No. 337-TA-694, Comm’n Op., at 24-25 (Aug. 8, 2011)).) Thus, according to Nite Ize, the “over \$[] in revenue,” []% profit margin, and []% of overall company profits due to the Steelie products are indicators of “the relative importance of the domestic industry Steelie® products to Nite Ize as a whole.” (*Id.* at 82-83 (citing Hr’g Tr. 30:24-31:23,116:6-14).) Nite Ize cautions, however, that “Such a comparison may not be reasonable in every situation because a company that makes numerous products or other highly successful products should not be penalized for its success in other areas.” (*Id.* at 83, n.37.)

Finally, Nite Ize turns back to a comparison of its efforts to those of its competitors. Nite Ize makes the outstanding claim that “[p]rior to the invention of the Steelie® products and the

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innovations in the Asserted Patents, no mobile device holders featured a ball and socket mechanism.” (*Id.* at 83.) Moreover, “[t]he Steelie® products’ direct competitors in the market are pure knockoffs: as discussed *supra*, these competitors reverse-engineer the Steelie® products and produce inferior copies.” (*Id.* (citing CX-238C at Q100; Hr’g Tr. at 97:25-98:9).) Nite Ize claims its “competitors need only minimal investments in engineers, tooling, prototyping, customer surveying, and all of the supporting facilities, equipment, and labor to copy the Steelie® products and contract a factory to produce knockoffs.” (*Id.* (citing CX-193C at 6:25-7:9, 13:7-25, 7:11-12).) Nite Ize points to the relevance of such a circumstance as discussed in *Loom Kits*. (*Id.*)

2. Staff’s Position

The Commission Investigative Staff agrees with Nite Ize that its investments into research and development are “substantial.” (SPOST at 54.) The Staff first identifies which articles are protected by the Asserted Patents, then discusses investments in exploitation of the Asserted Patents, and then explains why, in its view, those investments are “substantial” in the context of subsection (C) of 19 U.S.C. § 1337(a)(3). (*See id.* at 41-56.)

a. Identification of Articles

Beginning with the identification of articles, the Staff argues that:

[T]he evidence shows that: (1) the Steelie® Car Mount Kit, Steelie® Pedestal Kit (for Tablets), Steelie® Pedestal Kit for Smartphones, and Steelie® Desk & Dash System are kits and/or systems (*i.e.*, stand assemblies) that practice at least Claim 1 of the ’376 Patent and at least Claim 1 of the ’146 Patent; and (2) the Steelie® Vent Mount Kit and Steelie® Connect Case System for iPhone 6/6s & 6/6s Plus are kits and/or systems (*i.e.*, stand assemblies) that practice at least Claim 1 of the ’146 Patent. Accordingly, the evidence shows that the investments that Nite Ize made in engineering, research and development related to these kits and/or systems are investments with respect to articles protected by one or more of the Asserted Patents.

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(SPOST at 42-43.) The Staff argues that investments toward the Steelie Freemount component are also “investments with respect to an article protected by the Asserted Patents” because the Freemount “is a specifically tailored, significant component of a stand assembly that practices at least Claim 1 of the ’376 Patent and at least Claim 1 of the ’146 Patent (*e.g.* when used with the Steelie® Ball (Dash) Mount, and/or Steelie® Tabletop Stand).” (*Id.* (citing CX-238C at Q134, 151, 158, 266; CX-230).) To do this Staff invokes the rule that “an investment directed to a specifically tailored, significant aspect of the article is still directed to the article.” (*Id.* (citing *Motorola Mobility, LLC v. Int’l Trade Comm’n*, 737 F.3d 1345, 1351 (Fed. Cir. 2013)).) The Staff reports, however, that “[w]ith respect to the Steelie® HobKnob Kit for Smartphones, Steelie® HobKnob Kit, and Steelie® Components, Nite Ize does not allege that these products are covered by the Asserted Patents.” (*Id.* (citing CX-238C at Q134).)

b. Investments in Exploitation of the Asserted Patents

The Staff begins with a restatement of the need for “a nexus between its investment and any of the asserted patents” where the nexus “may readily be inferred based on evidence that the claimed investment is in the domestic industry article, which itself is the physical embodiment of the asserted patent.” (*Id.* at 44 (citing *Certain Integrated Circuit Chips*, Inv. No. 337-TA-859, Comm’n Op. at 49-50).)

Under this principle, the Staff reasons:

Nite Ize has made investments in the exploitation of the Asserted Patents through its investments in the engineering and research and development of the above Steelie® kits and systems (and Steelie® Freemount component). Specifically, the evidence shows that Nite Ize has made investments in compensation and benefits for its Engineering/R&D/Design division, along with investments in facilities and equipment (*e.g.* lease payments, computer software, and tooling) used for the engineering and research and development of the Steelie® products that practice the Asserted Patents.

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(*Id.* at 44-45.) The Staff breaks down the investments into: “Engineering/R&D/Design compensation;” “Facilities;” and “Equipment.” (*See id.* at 45-54.)

Regarding “Engineering/R&D/Design compensation,” the Staff repeats Nite Ize’s contention that “Approximately []% of Nite Ize’s compensation and benefits for its Engineering/R&D/Design division (or \$[]) is attributable to the research, development, and (re)design of certain Steelie® products.” (*Id.* at 46 (citing CX-238C at Q233; Hr’g Tr. at 67:2-13).) The Staff finds that this labor was spent on, “at least, the following projects: redesigning the original STEELIE products (depicted below) to make the products suitable for mass production; and developing new Steelie® product offerings, including the Steelie® Connect Case System for iPhone 6/6s & 6/6s Plus and Steelie® Vent Mount Kit (as well as the Steelie® Freemount Component).” (*Id.* at 46-47.)

The Staff finds that all but []% of this value (*i.e.*, that % sales revenue attributable to the Steelie HobKnob Kit) is directed to articles protected by the ’146 patent—which amounts to \$[] (*Id.* at 47 (citing CX-238C at Q281; CX-235C).) The Staff finds that a similar revenue allocation yields []% of the value directed to articles protected by the ’376 patent—which amounts to \$[] (*Id.* at 48 (citing CX238C at Q242, 278, 280, 283; CX-235C).)

Regarding “Facilities,” the Staff observes that, of Nite Ize’s three locations, only the Central facility bears a relationship to Nite Ize’s research and development efforts. (*Id.* at 49.) Specifically, according to the Staff, the Spine facility is a distribution center and the Longbow facility is for production, and testimony at the hearing revealed that the facilities could be considered to be used for R&D to the extent engineers are “moving through the building.” (*Id.* (citing Hr’g Tr. at 30:1-4, 32:14-24, 78:14-75:17, 90:9-91:5).) For the Central facility, the Staff assigns \$[] in rental payments spent by Nite Ize during the period in question, and

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around [] square feet of space. (*Id.* at 49-50 (citing CX-190C at 1; Hr’g Tr. at 29:9-19, 91:6-92:24).) To arrive at the amount attributable to the claimed domestic industry, the Staff applies a []% multiplier (to reflect portion of space for R&D), a []% multiplier (to reflect Steelie product line), and then []% and []% multipliers for the ’146 and ’376 patents, respectively (to reflect practicing Steelie products). (*See id.* at 49-50 (citing CX-238C at Q227, 269, 270; CX-235C; CX-190C at 1; Hr’g Tr. at 29:9-19, 8:14-79:17, 89:9-90:8, 91:6-92:24).) Overall, in the Staff’s view, this results in \$[] and [] square feet attributable to the ’146 patent, and \$[] and [] square feet for the ’376 patent. (*Id.* at 50.)

The Staff also observes that Nite Ize spent \$[] on leasehold improvements for this facility and that “at least part of, the leasehold improvements encompassed an expansion of the offices for Nite Ize’s engineers.” (*Id.* at 50-51 (citing Hr’g Tr. at 92:25-93:20).) The Staff does not arrive at a particular investment amount however; it simply notes that “at least, some portion of the leasehold improvements is attributable to the exploitation of the Asserted Patents.” (*Id.* at 51.)

Regarding “Equipment,” the Staff argues that “Nite Ize has also made investments in equipment (including 3D printers, an epilog laser, and equipment created for break testing and shear testing) located at its Central facility, that is used to support the design, engineering, and creation of Nite Ize’s products (including its Steelie® products).” (*Id.* at 51 (citing Hr’g Tr. at 79:9-80:12, 81:10-82:25, 87:12-21, 88:11-17, 89:2-8; CX-238C at Q 274).) The Staff believes the value of that equipment is \$[]. (*Id.* (citing Hr’g Tr. at 88:18-89:1).) The Staff applies the same []% multiplier to this number, and then []% and []% multipliers, to arrive at \$[] attributable to the ’146 patent and \$[] to the ’376 patent. (*Id.* at 51-52.) The Staff also

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includes a brief warning—“Nite Ize improperly includes manufacturing equipment located in China.” (*Id.* at 51, n.42 (citing CX-191C at 105; Hr’g Tr. at 83:16-84:10, 87:22-88:10).)

The Staff continues with an accounting of software investments made by Nite Ize. Specifically, “The evidence adduced at the evidentiary hearing also demonstrates that Nite Ize has made investments in at least the SOLIDWORKS computer software used by its engineers for the engineering and research and development of all of Nite Ize’s products, including its Steelie® products.” (*Id.* at 52 (citing Hr’g Tr. at 79:9-17, 79:24-80:12, 86:7-13).) The Staff finds support for this claim in CX-191C, which reflects a total value for the SOLIDWORKS software as \$[] (*Id.* at 52-53 (citing CX-191C at 8).) The Staff cautions, again, that contrary to Nite Ize’s claim that “all of its computer hardware and software is used to support the design, engineering, and creation of all of Nite Ize’s products”—“the evidence adduced at the evidentiary hearing demonstrates that the computer hardware and software are also used for other activities besides engineering and research and development.” (*Id.* at 52, n.44 (citing Hr’g Tr. at 85:24-86:1, 86:24-87:11).) Essentially, “[t]he Staff respectfully submits that Nite Ize has failed to provide an explanation for why the use of its computer hardware and/or software by its employees in, for example, administration, finance, or information technology constitutes exploitation of the Asserted Patents.” (*Id.*) Of that \$[] the Staff applies the same []%, then []% and []% multipliers to arrive at \$[] attributable to the ’146 patent and \$[] to the ’376 patent. (*Id.* at 53-54.)

c. Substantial Investments

“The Staff submits that Nite Ize’s investments are both quantitatively and qualitatively ‘substantial.’” (*Id.* at 54.) The Staff recites its calculated amount for engineering labor (\$[] for the ’146 patent; \$[] for the ’376 patent), and mentions that some amount of facilities and equipment amount can be added to this, before declaring that “Nite Ize

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has made quantitatively significant investments under Section 337(a)(3)(C).” (*Id.* at 54-55 (citing *Certain Cases for Portable Electronic Devices*, ITC Inv. Nos. 337-TA-861, -867, Order No. 15 at 30 (September 10, 2013) (unreviewed) (“*Certain Portable Cases*”)).) With respect to qualitative significance, the Staff explains:

[T]he evidence shows that, although the percentage of Nite Ize’s domestic investments may be relatively small when compared to Nite Ize’s total sales or revenues, such expenditures are a significant and critical contributor to Nite Ize’s actual sales of its Steelie® products that practice the Asserted Patents

(*Id.* at 55.) The Staff’s proffered support for its conclusion includes:

Nite Ize considers the Steelie® products to be some of its “premier products;

Nite Ize has spent approximately []% of its compensation and benefits for its Engineering/R&D/Design division on the research, development, and design of the Steelie® product line (products which yield between []% and []% of Nite Ize’s total annual revenue and []% of its gross profit margin);

All of Nite Ize’s engineering, research and design, and development of the domestic industry products take place in Boulder, Colorado;

The Steelie® product offerings were increased from three to nine products in the period between Nite Ize’s acquisition of the Steelie® products in December of 2012 and August 2016

Nite Ize has continued to expand its Steelie® product offerings based on consumer Demand; and

The increase in product offerings for the Steelie® line “is demonstrative of the company’s investments, efforts and emphasis put into developing and improving the Steelie® Products.

(*Id.* at 55-56 (citing CX-238C at 153-155, 162, 163, 227, 233, 269, 272; Hr’g Tr. at 30:17-32:12, 66:19-67:1, 70:20-25).).

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3. Analysis

a. Investment Amounts

To begin, it is important to note that Nite Ize pursues economic prong domestic industry only through subsection (C)—“substantial investment in its exploitation, including engineering, research and development, or licensing.” (CPHB at 72, n.19 (“Nite Ize is not alleging a domestic industry under subsections (A) and (B)”)). Specifically, Nite Ize pursues “engineering, research and development,” rather than licensing. (CPOST at 48.) Towards this goal, Nite Ize presents investments of facilities (*id.* at 61-62), equipment (*id.* at 62-64), labor (*id.* at 64-66), and patent acquisition (*id.* at 66-67).

Facilities

With respect to its facility investments, Nite Ize has claimed too much. As the Staff elicited from Nite Ize’s witness, Mr. Case, two of the three facilities (Spine and Longbow) have effectively no relation to engineering, research and development. (*See* SPOST at 49, n.38.) Mr. Case testified that the engineers’ offices and equipment are located in the Central facility (Hr’g Tr. at 79:6-8), the Spine facility is a distribution center (*id.* at 90:17-23), and the Longbow facility is a production center (*id.* at 32:14-24, 90:24-91:5). Therefore, I do not credit the lease payments for, or equipment located in, these locations towards Nite Ize’s engineering, research and development domestic industry. The evidence showed, however, that Nite Ize has spent \$[] in lease payments for the Central facility which does house the engineering, research and development activities. (CX-190C at 1.) I also find that Nite Ize spent \$[] in leasehold improvements to the Central facility (*id.* at 1) which Mr. Case described as an office expansion which would have encompassed the engineering division (Hr’g Tr. at 93:9-20).

Together, the lease payments and leasehold improvements for the entire Central facility total \$[] The next question is how much of this amount can be allocated to the

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exploitation of the Asserted Patents through engineering, research and development. To answer this, Nite Ize would have me apply a []% multiplier, which represents the gross profit received from the Steelie® product line compared to company-wide gross profit. (CPOST at 62 (citing CX-238C at Q270); *see also* Hr’g Tr. at 120:4-16) Nite Ize would therefore claim that \$[] is attributable to the engineering of the Steelie® product line. (*See id.*)^{2,3}

I am not entirely convinced that Nite Ize’s gross profit is a useful allocation technique. The Commission frequently accepts sales-based allocations to account for portions of activity dedicated to the articles or projects at issue for domestic industry, but these sales-based allocations are usually based on percentage of revenue. *See, e.g., Certain Marine Sonar Imaging Devices, Including Downscan and Sidescan Devices, Products Containing the Same, and Components Thereof*, Inv. No. 337-TA-921, Comm’n Op. at 61-62 (Dec. 1, 2015) (discussing appropriateness of weighted sales-based allocation to arrive at investment amount for a given product); *Certain Toner Cartridges and Components Thereof*, Inv. No. 337-TA-740, Order No. 26, at 14 (June 1, 2011) (noting allocation based on available production and sales figures is “a formula accepted by the Commission in past investigations”). The logic here is that if a particular product makes up 50% of a company’s revenue, it is reasonable to assume that 50% of that company’s resources would have been used to produce that revenue.

Profit is a more complex metric than revenue, however. Profit already includes revenue, and then introduces an additional cost component (profit = revenue – cost). So the same logic

² I say here “would apply” and “would therefore claim” because Nite Ize improperly includes the cost of the Spine and Longbow facilities in its calculus, and does not actually claim \$[] as its investment.

³ From CX-190C, and between 2013-2016, I calculate (\$[] (lease) + \$[] (improvement) = \$[]); yet Nite Ize presents the number as \$[] (CPOST at 62, n.22).

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applied to profit is somewhat redundant; *i.e.*, 50% of a company's (costs) are used to generate 50% of its (revenue minus cost). Yet this is exactly what Nite Ize argues should be used:

The domestic industry Steelie® products accounts for []% of Nite Ize's gross profit. *See* CX-238C at ¶ 227. This allocation methodology is preferred because Nite Ize naturally spends more money for R&D, marketing, sales, and other activities in areas where it can make the most profit. *See* CX-238C at ¶ 233; Hearing Tr. at 30:24-32:12, 70:2-71:9.

(CPOST at 61.) This choice comes as no surprise because the Steelie® products only make up []% of Nite Ize's gross revenue (CX-187C at 1), which would dramatically reduce the investment amounts considered.

I find that such a profit-based allocation is only appropriate, if ever, for research and development because research and development is a distinct effort from the generation of revenue (*e.g.*, manufacturing, distribution, sales, marketing). I can follow Nite Ize's argument that it invests its time researching, or developing, new technologies or improvements "where it can make the most profit." (CX-238C at Q233; *see also* Hr'g Tr. at 121:10-122:23.) Oppositely, I find manufacturing, distribution, sales, and marketing-type activities are better allocated by revenue, or when possible, actual time spent, because of their direct link to the generation of revenue. Thus, I find it reasonable, under present circumstances, to allocate []% of the Central facility's lease payments and leasehold improvement value to the Steelie® product line.

I also find it reasonable to further apply a []% multiplier to the amount allocated to reflect the amount of the facility "dedicated to research and development activities." (CPOST at 62, n.22; SPOST at 49.) For example, Mr. Case acknowledged at the hearing that much of the computer hardware equipment located at the Central facility is used for activities other than research and development. (Hr'g Tr. at 84:11-86:1; *see* CX-190C at 7 (including, for example,

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“SHORETEL PHONE SYSTEM”).) It stands to reason, then, that less than all of the facility’s value can be attributable to engineering, research and development.

The Staff concurs with the calculus up to this point, but would have me further reduce the investment by []% and []% multipliers to reflect the revenue share of Steelie® products which actually practice the ’146 and ’376 patent claims by themselves. (SPOST at 50.) These are multipliers that Nite Ize also offers, but argues should not apply. (CPOST at 67-68.) In relevant part, Nite Ize states:

Indeed, all of the research, development, and exploitation investments related to the Steelie® “Ecosystem” as a whole are in connection with products practicing at least one claim of each Asserted Patent. This is because all of the Steelie® products are designed to work together, and there would be no point to a variety of the investments allocated out of domestic industry expenses (such as development of Steelie® products that practice the Asserted Patents in conjunction with other Steelie® products or components) without the technology of the Asserted Patents. . . . However, in the event that the Administrative Law Judge wants to make such an allocation, the domestic industry investments may be allocated to each patent based on the percentage of Steelie® revenue derived from products that *by themselves* practice the Asserted Patents

(*Id.*)

I decline to apply these []% and []% multipliers under the present circumstances. While it is true there are Steelie® products which do not by themselves practice any claim of the ’146 or ’376 patents, this is not the test. Under subsection (C), once an actual article is shown to practice the patent, the question becomes whether the “engineering, research and development” investment (*i.e.*, the “exploitation”) has a nexus to an asserted patent. *See Certain Integrated Circuit Chips*, Inv. No. 337-TA-859, Comm’n Op. at 38. I find Nite Ize’s research, even when it implicates products which do not directly practice the Asserted Patents, has such a nexus.

For example, the “Steelie® Socket Component” is one of the products removed from the Staff’s calculation because it, by itself, does not directly practice any claim:

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Product	% of Stealie Revenue Attributable to Patent	
	'146 Utility Patent	'376 Utility Patent
Steealie® Dash Mount Kit	[REDACTED]	
Steealie® Connect Case System for iPhone 6/6s Plus (Discontinued) ²⁸		
Steealie® HobKnob® Kits (combined)		
Steealie® Desk & Dash System		
Steealie® Vent Mount Kit		
Steealie® Pedestal Kits (combined)		
Steealie® FreeMount (Not Offered August 2016) ²⁹		
Steealie® Socket Component		
Percentage of Stealie Revenue Allocable		

(See CPOST at 68 (citing CX-238C at Q270) (annotated); see also SPOST at 50.) Yet the “Steealie® Socket Component” is exactly the “second section” explicitly recited *in detail* in all asserted claims; it is practically the entire invention:

1. A stand assembly comprising
 - a first section shaped at one end to lay stably on a flat surface and shaped on another end with a curved surface, said curved surface of said first section constructed of a magnetic material; and
 - a second section having a front surface, said front surface having an indentation, said indentation capable of receiving said curved end of said first section and being of a size which can encompass a portion, but less than the whole diameter, of said curved end of said first section, said second section having magnetic material capable of holding said first and said second sections together, wherein the second section includes a first piece of high-friction elastomeric material, the first piece of high-friction elastomeric material disposed of in the indentation of said second section and the magnetic material positioned such that the magnetic material of the second section radially surrounds the first piece of high-friction elastomeric material.*

(See '376 patent at cls. 1, 11, 12 (emphasis added); '146 patent at cls. 1, 11, 12.) Clearly, research and development into the Stealie® socket is an effort to exploit claims 1, 11, and 12 of

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both Asserted Patents; *i.e.*, it has a “nexus” and is eligible for domestic industry consideration.

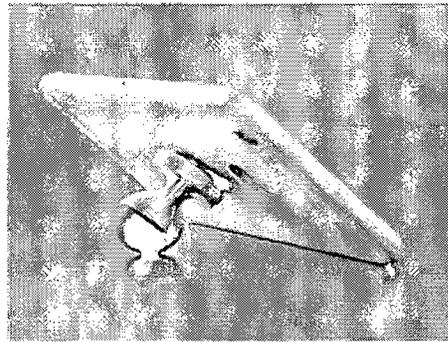
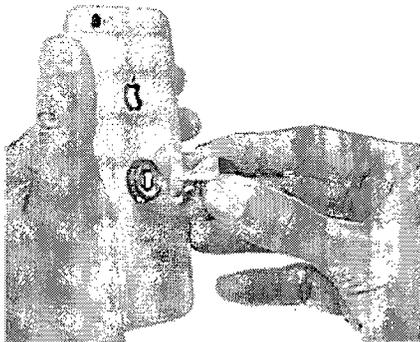
This is very different from the alleged research and development in *Certain Integrated Circuit*

Chips:

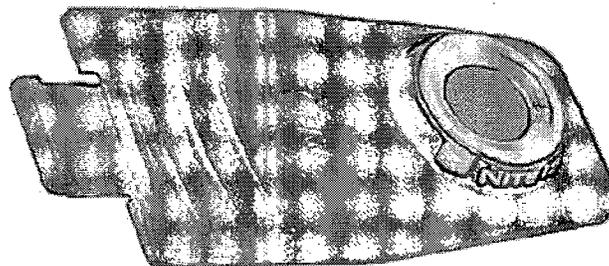
Similarly, there is no evidence of Realtek engineers in the United States possessing, modeling, or otherwise taking advantage of the '928 patented technology as part of their research and development endeavor. Rather, all or substantially all of the effort to connect the '928 bond pad to the U.S.-researched structures occurred overseas.

Inv. No. 337-TA-859, Comm'n Op. at 50.

The Steelie® Connect Case, HobKnob, and FreeMount products, which *by themselves* do not practice any asserted claim, each prominently feature the Steelie® socket discussed above in their structures:

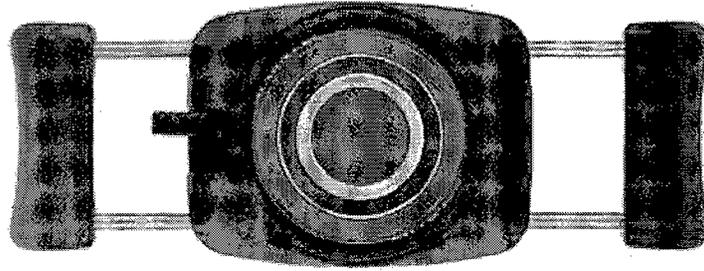


(CX-238C at Q206 (showing HobKnob kit));



(*id.* at Q189 (showing ConnectCase));

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(*id.* at Q158 (showing FreeMount)). Thus, I find merit in Nite Ize’s assertion that “all of the research, development, and exploitation investments related to the Steelie® ‘Ecosystem’ as a whole are in connection with products practicing at least one claim of each Asserted Patent. This is because all of the Steelie® products are designed to work together.” (CPOST at 67-68.) At the hearing, Mr. Case described an ongoing effort to find new applications for the ball and socket apparatus which is the core of the asserted patent claims. (*See, e.g.*, Hr’g Tr. at 112:4-114:13 (discussing development efforts of yet-to-be released products using ball and socket).)

Therefore, I find that []% of the Central facility’s lease payments and leasehold improvement value are attributable to engineering, research, and development, and then []% of that amount to the Steelie® product line—*i.e.*, \$[.]

Equipment

Turning now to equipment, Nite Ize again claims too much. Nite Ize’s claimed amounts come from CX-191C, which contains line by line entries of equipment names, cost, acquisition date, and location. (*See* CPOST at 61-64.) Nite Ize limits itself to those sections of the document entitled “manufacturing equipment,” “computer hardware,” and “computer software [sic].” (*See id.*; *see also* CX-191C at 1-5 (“manufacturing equipment”), 7 (“computer hardware”), 8 (“computer software”).) Nite Ize then applies its []% multiplier to allocate the value attributable to the Steelie® product line. (CPOST at 61-64.) Nite Ize also offers, but does not advocate for, an additional []% reduction (*i.e.*, []% multiplier) to account for how much of

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the equipment is used for sales and marketing purposes. (*Id.* at 63-64.) The []% comes from the amount of overall labor compensation paid to sales and marketing personnel. (*Id.* at 64 (citing CX-186 at 3, 4, 11).)

Starting with “computer hardware,” Nite Ize argues for all of \$[] computer hardware value as the starting point, a subtotal taken directly from CX-191C. (CPOST at 63; see CX-191C at 7.) The Staff apparently assigns no value at all to computer hardware (*see* SPOST at 51-53) while also challenging Nite Ize’s offer of a sales and marketing personnel allocation as over-inclusive. The Staff points out that while Nite Ize engineers number [] out of [] employees, Nite Ize’s offer implies []% of the computer hardware is used exclusively for research and development. (SPOST at 52, n.44.) This is a fair concern. For example, the most expensive computer hardware item listed is the “SHORETEL PHONE SYSTEM.” (CX-191C at 7.) The “PowerConnect 6248P” items are also phone systems. (*Id.*; Hr’g Tr. at 85:3-19.) I find it more likely than not that these phone systems are used for more than just the research and development effort. (*See* Hr’g Tr. at 85:20-86:1 (“Q. Is the computer hardware used for other activities besides engineering, research and development? A. Yes.”).) I find it more likely than not that this is true for the other computer hardware as well.

Thus, I decline to use the []% and instead apply the same []% multiplier used in the facilities context discussed above, to arrive at the value of computer hardware attributable to engineering, research and development efforts. When the []% multiplier is also applied (to identify amount dedicated to Steelie® products), the investment of computer hardware becomes \$[].⁴

⁴ I also decline at this time to make note, as no party has done, of the purchase dates of the hardware and other assets shown in CX-191C, and, for those that were purchased before 2013, to attempt to undertake some depreciation calculation for them.

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With respect to “computer software,” Nite Ize wishes again to use all of \$[] as the starting point, as this is the entire “computer software” subtotal shown on CX-191C. (CPOST at 63; CX-191C at 8.) Staff, on the other hand, highlights only the three “Solidworks” entries for a \$[] starting point value. (SPOST at 52-53 (citing Hr’g Tr. at 79:9-17; 79:24-80:12, 86:7-13).)

I find Staff’s less-than-all approach to be more reasonable. Mr. Case admitted at the hearing that some of the computer software entries are “used for activities other than engineering, research and development.” (Hr’g Tr. at 86:24-87:11.) Indeed, it is hard to argue that software entries such as, the most expensive item, “DSD New Warehouse Software” for the Spine distribution facility (CX-191C at 8) are used for research and development at the Central facility; even though this is what Nite Ize seeks. (See CPOST at 63 (offering only, in the alternative, to remove sales and marketing).)

Thus, I apply the same formula as used for computer hardware to computer software. Of those entries which list Central as the location, I find []% (to reflect engineering, research and development) and []% (to reflect the Steelie® product line) multipliers are appropriate. (See, e.g., Hr’g Tr. at 86:7-19 (discussing engineering files held on servers and Microsoft SQL license).) This yields \$[].^{5,6} For the same reasons discussed above, I decline to further reduce this amount by []% and []% as the Staff did. (See SPOST at 53-54.)

Moving finally to “manufacturing equipment,” Nite Ize argues that it is entitled to []% of \$[] worth of equipment, a total which is, again, a subtotal taken directly from CX-

⁵ I again decline at this time to make note of the purchase dates of the software assets shown in CX-191C, and, for those that were purchased before 2013, to attempt to undertake some depreciation calculation for them.

⁶ Calculated as \$[] (software located in Central) * [] (engineering, R&D) * [] (Steelie® product line) = \$[]

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191C. (CPOST at 63.) As an alternative, Nite Ize offers to take []% of that amount to account for equipment that might be used by sales and marketing personnel, but cautions “the vast majority of this equipment investment is related to actual engineering, design, and R&D, there is no need to exclude sales and marketing activities.” (*Id.* at 63-64.)

I decline to take attribute any portion of the \$[] to domestic engineering, research, and development. As mentioned, this \$[] figure is taken from CX-191C at page 5, as the total of all the preceding entries:

Tooling for yellow Cross Glow Family of Products		Spinee
Tooling for Inka Mobile Pen - 6 Tools	8/27/2012	China
Tooling for Nite 3D 400L Lantern 752 B	3/16/2016	China
Tooling for Nite Ize Rechargeable 300L MC Lantern 75	3/16/2016	China
Tooling - Radiant	9/25/2013	China
Rotary Blister Sealing Machine Model FAB6-1418 & ac	4/30/2012	Spine
SubZipper Product Line	1/1/2016	Spinee

(See CX-191C at 5 (annotated).) Only *one* of the manufacturing equipment entries identifies the Central facility as the “Location:”

Tooling for KMTLL-1101-XX01 overmold 1X4 tool	3/1/2016	China
CROWN 35RRT	7/28/2011	Spine
EXPRESS TOOL & PRODUCTION TOOL FLASHLIGHT MO	10/20/2011	China
Tooling for Aluminium CamJam body & Cam	11/29/2013	China
LPI Hot Cutter	5/7/1999	Central
Tooling for LDB-TOP-HOUSING(LDB-1100-011) 1*4 cav	3/26/2015	China
Mould for Handleband Extended	10/11/2015	China
Tooling for HRSABack housing	3/16/2016	China

(CX-191C at 3 (annotated).) The *vast* majority of entries also list China as their location, which cannot be counted for obvious reasons. (*Id.* at 1-5; *see* SPOST at 51, n.42.) I cannot fathom why Nite Ize would believe this document supports its claim to \$[] worth of manufacturing equipment in the United States—a document which Mr. Case described as “represent[ing] all of our assets as a whole that may or may not be located at the Boulder facilities.” (Hr’g Tr. at 83:16-20.)

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The Staff nevertheless argues that there is relevant equipment in the Central facility to be counted for domestic industry. Specifically, I refer to Staff's reference of "(including 3D printers, an epilog laser, and equipment created for break testing and shear testing) located at its Central facility" which Staff values at \$[] based on testimony from Mr. Case. (SPOST at 51 (citing Hr'g Tr. at 79:9-80:12, 81:10-82:25, 87:12-21, 88:11-17, 89:2-8; CX-238C at Q274).)

I am willing to believe this type of equipment could exist in the Central facility, but I am strongly inclined not to assign it any value for the domestic industry calculation for two reasons. One, if these items exist in the Central facility, they should have been among the list of fixed assets, CX-191C, which, again, Mr. Case described as "represent[ing] all of our assets as a whole that may or may not be located at the Boulder facilities." (Hr'g Tr. at 83:16-20.) Two, while Nite Ize mentions the same "3D printers, laser engravers, and break and sheer [sic] testing equipment" in its post-hearing brief, it does not assign the equipment the same \$[] value as the Staff did. Rather, the equipment description is used in an attempt to coax me into including the now-debunked \$[] value into the domestic industry evaluation:

Nite Ize invests an additional \$[] in the United States on equipment dedicated to all of its products, such as tooling, 3D printers, laser engravers, and break and sheer testing equipment for all Nite Ize product lines (but excluding computer hardware and software).

(CPOST at 63.)

Nevertheless, I found Mr. Case to be a credible witness at the evidentiary hearing. I find it more likely than not that there is a greater-than-zero amount of manufacturing or testing-related equipment at the Central facility, considering that is where the engineers are exclusively located. Thus, I assign []% (gross profit attributable to Steelie® products) of \$[] as the Staff has done, to the domestic industry calculus—\$[] (See SPOST at 51.) For the same

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reasons discussed above, however, I decline to further reduce this amount by []% and []% as the Staff did. (*See id.* at 51-52.)

Labor

Labor is the most significant source of investment for Nite Ize. Nite Ize argues:

As explained by Mr. Case, after a thorough company investigation that included interviewing relevant engineers, the amount more precisely attributable to research and development and design activities for the domestic industry Steelie® products is approximately []% of the total \$[] related specifically to Engineering, R&D, and Design employee compensation, or \$[]. *Id.* at ¶ 232; *Id.* at 67:9-13.

(CPOST at 64.) Nite Ize also offers to include an additional \$[] in sales and marketing salary. (*Id.* at 66.)

The Staff does not challenge the reliability of the \$[] cost for the engineers, but, rather uniquely, would reduce it by []% (*i.e.*, []% multiplier) to account for those Steelie® products which actually practice of the '146 patent, and a roughly []% multiplier for practice of the '376 patent. (SPOST at 47-48 (applying []% to the []%).) The Staff apparently does not credit salary for sales and marketing at all.

At the outset, as I did with facilities, computer hardware, and computer software, I do not include labor costs for sales and marketing in the economic prong calculus. *Certain Soft-Edged Trampolines and Components Thereof*, Inv. No. 337-TA-908, Comm'n Op. at 56 (Apr. 16, 2015) (“Consistent with prior Commission decisions, the ALJ excluded Springfree’s activities related to sales and marketing.”); *Certain Portable Cases*, Inv. Nos. 337-TA-861, -867, Order No. 15 at 30. I do however include the full \$[] towards domestic industry—a figure which stands uncontroverted. Again, I found Mr. Case’s testimony regarding the importance of Steelie® products and the Asserted Patents to Nite Ize to be credible, and I decline to reduce this amount

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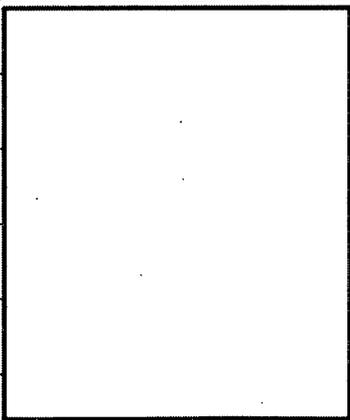
by []%, []%, []% or []%, or any other percentage based on revenue share of products which directly practice the claims.

Patent Acquisition

The last investments Nite Ize seeks to include are the royalties it paid and continues to pay to its assignor of the Asserted Patents, Blackglass LLC. (CPOST at 66-67.) The Staff rightfully concludes that including such payments is improper from economic prong domestic industry. (SPOST at 45, n.27 (citing *Certain Digital Processors and Digital Processing Systems, Components Thereof, and Products Containing Same*, Inv. No. 337-TA-559, Initial Determination at 93 (May 11, 2007)).) I find that these royalties, as an assignment, are no different than patent prosecution costs, which are also understood to be ineligible for the domestic industry calculus. *Certain Loom Kits*, Inv. No. 337-TA-923, Comm’n Op. at 6 (“We set aside the statements on page 40 of the ID crediting expenditures for ‘paying a patent attorney to prosecute U.S. and international patent applications.’”)

Conclusion

The table below gathers my conclusions on the proper investment amounts attributable to Nite Ize’s domestic industry of engineering, research and development.

Investment	Amount Credited to Domestic Industry
Central facility	
Computer hardware	
Computer software	
Manufacturing equipment	
Labor	
<i>*total*</i>	

b. Nexus to Asserted Patents

The next issue is whether these investments have sufficient connection, or “nexus,” to the claims of the Asserted Patents. As discussed above, the Commission “has long recognized that the ‘its’ in the phrase ‘investment in its exploitation’ in subparagraph (C) refers to the asserted patent or other intellectual-property right being asserted. That conclusion is supported by the clear text of the statute.” *Certain Integrated Circuit Chips*, Inv. No. 337-TA-859, Comm’n Op. at 36. “‘Exploitation’ is a generally broad term that encompasses activities such as efforts to improve, develop, or otherwise take advantage of the asserted patent.” *Id.* at 39.

I find that Nite Ize has demonstrated a sufficient nexus between its research and development activities and the claims 1, 11, and 12 of each asserted patent. Specifically, Nite Ize describes a few of its relevant research efforts as:

- Modifying the manufacturing process of original Pedestal tabletop stand from [] (CPOST at 53, 57; Hr’g Tr. at 43:24-44:20);
- Created [] in the Pedestal’s platform and aluminum stand (CPOST at 53, 55; Hr’g Tr. at 44:5-20);
- Integrated Steelie® sockets into a line of electronic device case products (CPOST at 54; CX-238C at Q189; Hr’g Tr. at 63:7-64:8);
- Designed a new vent mount vase, referred to as the Steelie Vent Mount, which clips to vent rather than fix to a dashboard, with [] ball portion to save weight and increased surface area for greater positioning (CPOST at 54, 58, 65; CX-238C at Q272; Hr’g Tr. at 67:17-19, 73:9-76:5);

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- Designed a new socket system for holding a phone, called the Steelie® Freemount (CPOST at 55; CX-238C at Q156; Hr’g Tr. at 64:12-16);
- Redesigned the Steelie® Phone and Tablet Socket components’ front surface with a [] base and [] with a slight radius (CPOST at 57, 65; Hr’g Tr. at 45:24-47:10, 39:1-4);
- Redesigned the Steelie® Dash ball’s first section curved surface from chromium to nickel-plating for rust resistance without compromising magnetic material (CPOST at 57, 65; Hr’g Tr. at 49:6-14, 50:6-10);
- Collaborated with 3M engineers to find improved adhesives that support weight but also provide removability between socket and mobile device, an survive temperature changes (CPOST at 58, 65; Hr’g Tr. at 48:22-50:10, 51:16-52:3, 52:11-14, 39:1-12, 49:21-50:3); and
- Continued adaptation of the ball and the socket to keep up with the technology of phones (CPOST at 59; Hr’g Tr. at 77:6-11).

I find that each of these research efforts has a strong link to a structure recited by asserted and unasserted claims, whether that be the “first section . . . with a curved surface” (’376 patent at cl. 1), the “second section . . . having an indentation” (*id.*), “magnetic material” (*id.*), “high-friction elastomeric material” (*id.*), “a back surface with a means for attaching to a surface” (*id.* at cl. 2), “second section . . . being contiguous with a protective cover” (*id.* at cl. 3), or “means for attaching to irregular surfaces” (*id.* at cl. 8).

These examples and Nite Ize’s more general statements on redesigning the products for mass production “support the inference that the research and development efforts in these articles are inextricably linked to the asserted patents themselves.” *Certain Integrated Circuit Chips*,

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337-TA-859, Comm'n Op. at 39-40 (discussing *Certain Portable Cases*, Inv. No. 337-TA-861 & -867, Order No. 15 (Sept. 10, 2013); *Certain Foam Footwear*, Inv. No. 337-TA-567, Order No. 34 at 7 (Nov. 7, 2006) (unreviewed)).

In addition, Nite Ize's CEO, Richard Case, testified it was "'super key' for Nite Ize to develop products that practice one or more of the Asserted Patents." (CPOST at 58 (citing Hr'g Tr. at 76:9-14).) I find this testimony, in the context in which it was given, to be credible and commensurate with the links between research effort and patent claim limitation shown above. This is what is meant by the phrase "in its exploitation" as found in the statute. *Certain Integrated Circuit Chips*, Inv. No. 337-TA-859, Comm'n Op. at 39 ("'Exploitation' is a generally broad term that encompasses activities such as efforts to improve, develop, or otherwise take advantage of the asserted patent.").

Thus, in light of the above, I find a sufficient "nexus" between Nite Ize's proffered research activities and the "the asserted patent[s] . . . being asserted" in this investigation.

c. Substantial Exploitation

The final issue is whether the \$[] worth of domestic investment in engineering, research and development is "substantial" under the statute. In *Lelo*, the Federal Circuit explicitly held:

First, the terms "significant" and "substantial" refer to an increase in quantity, or to a benchmark in numbers. The plain meaning of an "investment" is "an expenditure of money for income or profit or to purchase something of intrinsic value." Webster's Third New International Dictionary 1190 (1986). An "investment in plant and equipment" therefore is characterized quantitatively, *i.e.*, by the amount of money invested in the plant and equipment. . . . Prior ITC § 337 investigations confirm that a § 337 analysis is quantitatively based.

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786 F.3d at 883. Thus, the “substantial investment” referenced in subsection (C) of the statute means a particular benchmark, or amount, of dollars.⁷ This benchmark, or “magnitude of investment,” “cannot be assessed without consideration of the nature and importance of the complainant’s activities to the patented products in the context of the marketplace or industry in question.” *Imaging Devices*, Inv. No. 337-TA-690, Comm’n Op. at 27.

The domestic industry articles and Accused Products at issue in this investigation are relatively simple—a spherical surface adapted to serve as a stable base, and a magnetic disc-shaped socket with an adhesive face. It is purely mechanical with a dozen or fewer constituent components. I find that the marketplace for these products does not, and, due to price points, cannot require intense research and development costs. Thus, the benchmark for “substantial” research and development investment is relatively low.

I find Nite Ize’s investment in the United States meets this benchmark. Nite Ize’s revenue for all Steelie® products between 2013 and mid-2016 was \$[]. (CX-187C at 1.) Mr. Case testified that the average cost of production for a Steelie Product is roughly []% of sale price. (CX-238C at Q220; see Hr’g Tr. at 119:6-12.) []% of the total Steelie® worldwide revenue is \$[]. In other words Nite Ize has spent \$[] making the Steelie products and \$[] developing them; *i.e.*, development cost is []% of the production cost. I find it is more likely than not that []% is a substantial ratio of research to manufacturing expenditures for this marketplace. I also find that the following unusual factors support this finding: the non-participation of the Defaulting Respondents, the large number of

⁷ Now, as Nite Ize points out, the Commission’s opinion in *Certain Loom Kits* issued after the Federal Circuit’s *Lelo* opinion but does not discuss or apply *Lelo*’s holdings. (CPOST at 74.) I do not find, as Nite Ize argues, however, that this failure to discuss means “*Lelo*’s applicability to substantiality under subsection (C)” is “optional.” (See CPOST at 73.)

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respondents that were never successfully located, and the similarity in appearance between the Accused Products from different respondents.

VI. CONCLUSIONS OF LAW

1. The importation or sale requirement of Section 337 is satisfied with respect to the IceFox, Newdreams, Anson, IdeaPro, Oumeiou, YouFo, and Minse respondents.
2. The Accused Products from Kagu Culture, Newdreams, and Trendbox infringe claims 1, 11, and 12 of the '376 patent.
3. The Accused Products from Kagu Culture, Newdreams, and Trendbox infringe claims 1, 11, and 12 of the '146 patent.
4. The Accused Product from Shenzhen Yingxue does not infringe claims 1, 11, or 12 of the '376 patent.
5. The Accused Product from Shenzhen Yingxue does not infringe claims 1, 11, or 12 of the '146 patent.
6. Nite Ize's domestic industry products practice one or more claims of the '376 patent.
7. Nite Ize's domestic industry products practice one or more claims of the '146 patent.
8. Nite Ize satisfies economic prong domestic industry with respect to the '376 patent through "substantial investment in its exploitation, including engineering, research and development, or licensing."
9. Nite Ize satisfies economic prong domestic industry with respect to the '146 patent through "substantial investment in its exploitation, including engineering, research and development, or licensing."
10. There is a violation of Section 337 with respect to the '376 patent.
11. There is a violation of Section 337 with respect to the '146 patent.

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VII. INITIAL DETERMINATION

Based on the foregoing,⁸ it is my Initial Determination that there is a violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain mobile device holders and components thereof, in connection with the asserted claims of U.S. Patent Nos. 8,602,376 and 8,870,146.

Furthermore, it is my determination that a domestic industry in the United States exists that practices or exploits each of the Asserted Patents.

The undersigned hereby CERTIFIES to the Commission this Initial Determination, together with the record of the hearing in this investigation consisting of the following: the transcript of the evidentiary hearing, with appropriate corrections as may hereafter be ordered; and the exhibits accepted into evidence in this investigation as listed in the appendices hereto.⁹

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 contained herein.

This Initial Determination is being issued as confidential, and a public version will be issued pursuant to Commission Rule 210.5(f). Within seven (7) days of the date of this Initial Determination, the parties shall jointly submit: (1) a proposed public version of this opinion with

⁸ The failure to discuss any matter raised by the parties or any portion of the record herein does not indicate that said matter was not considered. Rather, any such matter(s) or portion(s) of the record has/have been determined to be irrelevant, immaterial, meritless, and/or cumulative. Arguments made on brief which were otherwise unsupported by record evidence or legal precedent have been accorded no weight.

⁹ The pleadings of the parties filed with the Secretary need not be certified as they are already in the Commission's possession in accordance with Commission rules.

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any proposed redactions bracketed in red; and (2) a written justification for any proposed redactions specifically explaining why the piece of information sought to be redacted is confidential and why disclosure of the information would be likely to cause substantial harm or likely to have the effect of impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions.^{10,11}

SO ORDERED.



Thomas B. Pender
Administrative Law Judge

¹⁰ Under Commission Rules 210.5 and 201.6(a), confidential business information includes: information which concerns or relates to the trade secrets, processes, operations, style of works, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, or other information of commercial value, the disclosure of which is likely to have the effect of either impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions, or causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained, unless the Commission is required by law to disclose such information.

See 19 C.F.R. § 201.6(a). Thus, to constitute confidential business information the disclosure of the information sought to be designated confidential must **likely have the effect of** either: (1) impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions; or (2) **causing substantial harm** to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained.

¹¹ While the parties are required to jointly submit the proposed redactions, there is no requirement that the parties must agree on all the redactions. However, the parties' written justification for any proposed redactions should distinguish between those redactions that are agreed upon and those proposed by the individual parties.

CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **PUBLIC INITIAL DETERMINATION** has been served by hand upon the Commission Investigative Attorney, **Cortney Hoecherl, Esq.**, and the following parties as indicated, on

OCT 03 2017



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street SW, Room 112A
Washington, DC 20436

FOR COMPLAINANT NITE IZE, INC.

James B. Altman, Esq.
FOSTER, MURPHY, ALTMAN & NICKEL PC
1899 L Street N.W., Suite 1150
Washington, DC 20036

- Via Hand Delivery
- Express Delivery
- Via First Class Mail
- Other: _____

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

In the Matter of

**CERTAIN MOBILE DEVICE
HOLDERS AND COMPONENTS
THEREOF**

Investigation No. 337-TA-1028

**NOTICE OF COMMISSION DETERMINATION NOT TO REVIEW
AN INITIAL DETERMINATION GRANTING-IN-PART
COMPLAINANT'S MOTION FOR SUMMARY DETERMINATION THAT THE
DEFAULTING RESPONDENTS VIOLATED SECTION 337**

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 the presiding administrative law judge's initial determination (Order No. 14) granting-in-part complainant's motion for summary determination that certain respondents found in default have violated section 337.

FOR FURTHER INFORMATION CONTACT: Lucy Grace D. Noyola, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202-205-3438. 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 SW, Washington, DC 20436, telephone 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<https://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://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 November 14, 2016, based on a complaint and supplements, filed on behalf of Nite Ize, Inc. of Boulder, Colorado ("Nite Ize"). 81 *Fed. Reg.* 79519 (Nov. 14, 2016). The complaint as supplemented alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain mobile device holders and components thereof by reason of infringement of certain claims of U.S. Patent No. 8,602,376 ("the '376 patent"); U.S. Patent No. 8,870,146 ("the '146 patent"); U.S. Patent No. D734,746 ("the '746 patent"); and U.S. Patent No. D719,959 ("the '959 patent"). *Id.* at 79519-20. The notice of investigation named many respondents, including the following

respondents that were found in default: REXS LLC of Lewes, Delaware (“REXS LLC”); Guangzhou Kuaguoyi E-commerce Co., Ltd. d/b/a Kagu Culture of Baiyun, China (“Kagu Culture”); Sunpauto Co., Ltd. of Kowloon, Hong Kong (“Sunpauto”); Shenzhen Topworld Technology Co. d/b/a IdeaPro of Hong Kong, Hong Kong (“IdeaPro”); Trendbox USA LLC d/b/a Trendbox of Scottsdale, Arizona (“Trendbox”); Tenswall d/b/a Shenzhen Tenswall International Trading Co., Ltd. of La Puente, California (“Tenswall”); Luo Jieqiong d/b/a Wekin of Chang Sha, China (“Wekin”); Pecham d/b/a Baichen Technology Ltd. of Wan Chai, Hong Kong (“Pecham”); Zhongshan Feiyu Hardware Technology Co., Ltd d/b/a YouFo of Zhongshan City, China (“YouFo”); and Shenzhen New Dream Technology Co., Ltd. d/b/a Newdreams; Wang Zhi Gang d/b/a IceFox (“IceFox”); Lin Zhen Mei d/b/a Anson (“Anson”); Tontek d/b/a Shenzhen Hetongtai Electronics Co., Ltd. (“Tontek”); Scotabc d/b/a ShenChuang Optoelectronics Technology Co., Ltd. (“Scotabc”); Zhiping Zhou d/b/a Runshion (“Runshion”); Oumeiou d/b/a Shenzhen Oumeiou Technology Co., Ltd. (“Oumeiou”); Shenzhen Yingxue Technology Co. Ltd. (“Shenzhen Yingxue”); Wu Xuying d/b/a Novoland (“Novoland”); Shenzhen Longwang Technology Co., Ltd. d/b/a LWANG (“LWANG”); Wang Guoxiang d/b/a Minse (“Minse”), all of Shenzhen, China (collectively, “the defaulting respondents”). *Id.* at 79520-21; Order No. 11 (May 1, 2017), *not reviewed*, Notice (May 26, 2017). The Office of Unfair Import Investigations (“OUII”) also was named as a party to the investigation. *Id.* at 79521.

On May 18, 2017, Nite Ize filed a motion for (1) summary determination that the defaulting respondents have sold for importation into the United States, imported into the United States, or sold after importation certain mobile device holders and components thereof that infringe the asserted patents; (2) summary determination that there is a domestic industry for the asserted patents; and (3) recommendation for entry of a general exclusion order or, in the alternative, limited exclusion orders, cease and desist orders against each of the defaulting respondents, and a bonding requirement during the presidential review period. On May 30, 2017, OUII filed a response, supporting-in-part and opposing-in-part Nite Ize’s motion.

On June 16, 2017, the presiding administrative law judge (“ALJ”) issued an initial determination (Order No. 14) granting-in-part Nite Ize’s motion. Specifically, the ALJ found that all the accused products have been imported into the United States. The ALJ found that Novoland, REXS LLC, Kagu Culture, Sunpauto, Trendbox, Wekin, Runshion, Pecham, LWANG, Scotabc, Tontek, Tenswall, and Shenzhen Yingxue imported, sold for importation, or sold after importation the accused products associated with each respondent. The ALJ found that Nite Ize is the sole assignee and owner of all the asserted patents. The ALJ found that the accused products from Anson, IceFox, Ideapro, Novoland, REXS LLC, Sunpauto, YouFo, Pecham, Runshion, LWANG, Minse, Oumeiou, Scotabc, Tontek, Tenswall, and Wekin infringe claims 1, 11, and 12 of the ’376 patent and claims 1, 11, and 12 of the ’146 patent. The ALJ also found that the accused product from REXS LLC infringes the claims of the ’959 and ’746 patents. The ALJ also found genuine issues of material fact as to whether IceFox, Newdreams, Anson, IdeaPro, Oumeiou, YouFo, and Minse import, sell for importation, or sell after importation the accused products associated with each respondent; whether Kagu Culture, Newdreams, Trendbox, and Shenzhen Yingxue infringe the asserted claims of the ’376 and ’146 patents; whether the accused products of the defaulting respondents other than REXS LLC infringe the claims of the ’959 and ’746 patents; and whether the domestic industry requirement is satisfied. Because the ALJ found that genuine issues of material fact preclude a summary

determination that a section 337 violation has occurred, the ALJ did not make findings related to a recommended determination on remedy and bonding. No petitions for review were filed.

The Commission has determined not to review the subject ID. However, the Commission notes a typographical error on page 40 of the ID describing the claim of the '746 patent as an "ornamental design for a large socket." The Commission corrects that statement to describe that claim as an "ornamental design for a phone kit."

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 part 210 of the Commission's Rules of Practice and Procedure (19 C.F.R. part 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton
Secretary to the Commission

Issued: July 14, 2017

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served by hand upon the Commission Investigative Attorney, Cortney Hoecherl, Esq., and the following parties as indicated, on 7/14/2017



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

On Behalf of Complainant Nite Ize, Inc.:

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- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

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

In the Matter of

**CERTAIN MOBILE DEVICE HOLDERS
AND COMPONENTS THEREOF**

Inv. No. 337-TA-1028

**ORDER NO. 14: INITIAL DETERMINATION GRANTING-IN-PART
COMPLAINANT NITE IZE'S MOTION FOR SUMMARY
DETERMINATION THAT THE DEFAULTING RESPONDENTS
VIOLATED SECTION 337 AND FOR ENTRY OF A GENERAL
EXCLUSION ORDER AND DENYING MOTION FOR STAY**

(June 16, 2017)

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INITIAL DETERMINATION

On May 18, 2017, complainant Nite Ize, Inc. (“Nite Ize”) filed a Motion for Summary Determination of Violation and for Entry of a General Exclusion Order (hereafter, the “Motion”). (Motion Docket No. 1028-007.) Specifically, Nite Ize moved for: (1) a summary determination that those Respondents found in default have sold for importation into the United States, imported into the United States, or sold after importation certain mobile device holders and components thereof that infringe certain claims of U.S. Patent No. 8,602,376 (the “’376 Patent”); U.S. Patent No. 8,870,146 (“’146 Patent”); U.S. Patent No. D734,746 (the “’746 Patent”); and U.S. Patent No. D719,959 (the “’959 Patent”) (collectively, the “Asserted Patents”) in violation of Section 337 of the Tariff Act as amended, 19 U.S.C. § 1337; (2) a summary determination that there is a domestic industry for the Asserted Patents; and (3) a recommendation for entry of a General Exclusion Order (“GEO”) (or, in the alternative, Limited Exclusion Orders (“LEOs”)), cease and desist orders (“CDOs”) against each of the defaulting respondents, and a bonding requirement during the Presidential review period. (*See Mot.* at 2-3.)

On May 30, 2017, the Commission Investigative Staff (“Staff”) filed a response in which it supports-in-part and opposes-in-part Nite Ize’s motion. (Staff Resp. at 1.) No other responses were received. On June 1, 2017, at my request, Nite Ize filed corrected exhibits to its motion for summary determination.

Also on May 18, 2017 Nite Ize filed an Unopposed Motion to Stay the Procedural Schedule. (Mot. Dkt. No. 1028-006.) For the reasons discussed below which only grant-in-part Nite Ize’s motion on violation, the motion to stay is DENIED.

I. BACKGROUND

On October 6, 2016, Nite Ize filed its original Complaint. Nite Ize supplemented the Complaint with amended exhibits on October 24, 2016 and October 26, 2016.

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On November 14, 2016, by publication in the Federal Register, the Commission issued a Notice of Investigation (“NOI”) instituting investigation 337-TA-1028. In particular, the Commission ordered that:

Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain mobile device holders and components thereof by reason of infringement of one or more of claims 1, 11, and 12 of the '376 patent; claims 1, 11, and 12 of the '146 patent; claim 1 of the '746 patent; claim 1 of the '959 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

81 Fed. Reg. 79520. The NOI named the following Respondents: Shenzhen Youtai Trade Company Limited, d/b/a NoChoice; REXS LLC; Spinido, Inc.; Luo, Qiben, d/b/a Lita International Shop; Guangzhou Kuaguoyi E-commerce co., ltd. d/b/a Kagu Culture; Shenzhen New Dream Technology Co., Ltd., d/b/a Newdreams; Shenzhen Gold South Technology Co., Ltd. d/b/a Baidatong; Sunpauto Co., ltd; Wang Zhi Gang d/b/a IceFox; Dang Yuya d/b/a Sminiker; Shenzhen Topworld Technology Co. d/b/a IdeaPro; Lin Zhen Mei d/b/a Anson; Wu Xuying d/b/a Novoland; Shenzhen New Dream Sailing Electronic Technology Co., Ltd. d/b/a MegaDream; Zhongshan Feiyu Hardware Technology Co., Ltd d/b/a YouFo; Ninghuaxian Wangfulong Chaojishichang Youxian Gongs, Ltd., d/b/a EasybuyUS; Chang Lee d/b/a Frentaly; Trendbox USA LLC d/b/a Trendbox; Tontek d/b/a Shenzhen Hetongtai Electronics Co., Ltd.; Scotabc d/b/a ShenChuang Optoelectronics Technology Co., Ltd.; Tenswall d/b/a Shenzhen Tenswall International Trading Co., Ltd.; Luo Jieqiong d/b/a Wekin; Pecham d/b/a Baichen Technology Ltd.; Cyrift d/b/a Guangzhou Sunway Ecommerce LLC; Rymemo d/b/a Global Box, LLC; Wang Guoxiang d/b/a Minse; Yuan I d/b/a Bestrix; Huijukon d/b/a Shenzhen Hui Ju Kang Technology Co. Ltd.; Barsone d/b/a Shenzhen Senweite Electronic Commerce Ltd.; Oumeiou

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d/b/a Shenzhen Oumeiou Technology Co., Ltd.; Grando d/b/a Shenzhen Dashentai Network Technology Co., Ltd.; Shenzhen Yingxue Technology Co., Ltd.; Shenzhen Longwang Technology Co., Ltd., d/b/a LWANG; and Hu Peng d/b/a AtomBud. *Id.*

During the course of the investigation, all respondents either have been terminated or defaulted. The current status of each respondent is as follows:

Respondent	Status	Docket Entry
Global Box, LLC	Terminated on the basis of a consent order	Order No. 8 (February 28, 2017)
Chang Lee d/b/a Frentaly	Terminated on the basis of a consent order	Order No. 10 (April 13, 2017)
Tenswall d/b/a Shenzhen Tenswall International Trading Co., Ltd ("Tenswall")	In default	Order No. 11 (May 1, 2017)
Trendbox USA LLC d/b/a Trendbox ("Trendbox")	In default	Order No. 11 (May 1, 2017)
Sunpauto Co., Ltd. ("Sunpauto")	In default	Order No. 11 (May 1, 2017)
Shenzhen Topworld Technology Co., Ltd. d/b/a IdeaPro ("IdeaPro")	In default	Order No. 11 (May 1, 2017)
Guangzhou Kuaguoyi E-commerce Co., Ltd. d/b/a Kagu Culture ("Kagu Culture")	In default	Order No. 11 (May 1, 2017)

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Shenzhen New Dream Technology Co., d/b/a Newdreams ("Newdreams")	In default	Order No. 11 (May 1, 2017)
Lin Zhen Mei d/b/a Anson ("Anson")	In default	Order No. 11 (May 1, 2017)
Zhongshan Feiyu Hardware Technology Co., Ltd. d/b/a YouFo ("YouFo")	In default	Order No. 11 (May 1, 2017)
Oumeiou d/b/a Shenzhen Oumeiou Technology Co., Ltd ("Oumeiou")	In default	Order No. 11 (May 1, 2017)
Shenzhen Yingxue Technology Co. Ltd. ("Shenzhen Yingxue")	In default	Order No. 11 (May 1, 2017)
Wang Guoxiang having a d/b/a Minse ("Minse")	In default	Order No. 11 (May 1, 2017)
Wu Xuying, an individual, d/b/a Novoland ("Novoland")	In default	Order No. 11 (May 1, 2017)
Wang Zhi Gang, an individual, d/b/a IceFox and Shenzhen IceFox High Tec Group ("IceFox")	In default	Order No. 11 (May 1, 2017)
Scotabc d/b/a ShenChuang Optoelectronics Technology Co., Ltd ("Scotabc")	In default	Order No. 11 (May 1, 2017)

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Zhiping Zhou d/b/a Runshion ("Runshion")	In default	Order No. 11 (May 1, 2017)
Pecham d/b/a Baichen Technology Ltd. ("Pecham")	In default	Order No. 11 (May 1, 2017)
Shenzhen Longwang Technology Co., Ltd. d/b/a LWANG ("LWANG")	In default	Order No. 11 (May 1, 2017)
Tontek d/b/a Shenzhen Hetongtai Electronics., Ltd. ("Tontek")	In default	Order No. 11 (May 1, 2017)
Luo Jieqiong d/b/a Wekin ("Wekin")	In default	Order No. 11 (May 1, 2017)
REXS LLC ("REXS LLC")	In default	Order No. 11 (May 1, 2017)
Barsone d/b/a Shenzhen Senweite Electronic Commerce Ltd.	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017)
Shenzhen Youtai Trade Company Limited, d/b/a NoChoice	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017)
Ninghuaxian Wangfulong Chaojishichang Youxian Gongsi, Ltd., d/b/a EasybuyUS	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017)
Shenzhen Gold South Technology Co., Ltd. d/b/a Baidatong	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017)
Cyriфт d/b/a Guangzhou Sunway E-Commerce LLC	Terminated for good cause for failure of service of Complaint and Notice of	Order No. 12

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	Investigation	(May 30, 2017)
Hu Peng d/b/a AtomBud	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017)
Grando d/b/a Shenzhen Dashentai Network Technology Co., Ltd.	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017)
Huijukon d/b/a Shenzhen Hui Ju Kang Technology Co. Ltd.	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017)
Luo, Qiben, d/b/a Lita International Shop	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017)
Shenzhen New Dream Sailing Electronic Technology Co., Ltd. d/b/a MegaDream	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017)
Spinido Inc.	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017)
Dang Yuya d/b/a Sminiker	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017)
Yuan I d/b/a Bestrix	Terminated for good cause for failure of service of Complaint and Notice of Investigation	Order No. 12 (May 30, 2017)

Thus, on May 30, 2017, the last participating respondents were terminated from the investigation with Order No. 12. In compliance with 19 C.F.R. § 210.16(c)(2), Nite Ize included in the motion for that termination a declaration that it would seek a general exclusion order (“GEO”). (Mot. Dkt. No. 1028-005.) On the same day as that motion, May 18, 2017, Nite Ize filed a Motion for Summary Determination of Violation by the Defaulting Respondents and for a

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Recommended Determination on Remedy and Bonding, Including Issuance of a General Exclusion Order, Limited Exclusion Orders, and Cease and Desist Orders. (Mot. Dkt. No. 1028-007.) Those twenty (20) respondents identified above as “in default” are herein collectively referred to as the “Respondents in Default” and their corresponding products the “Accused Products.”

II. STANDARDS OF LAW

A. Summary Determination

Pursuant to Commission Rule 210.18(b), 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 should therefore be granted when a hearing on the matter at issue would serve no useful purpose and the movant is entitled to judgment as a matter of law. *See Certain Recombinant Erythropoietin*, Inv. No. 337-TA-281, USITC Pub. 2186, ID at 70 (Jan. 19, 1989).

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). If the movant satisfies its initial burden, the burden then shifts to the non-movant to demonstrate specific facts showing that there is a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). When evaluating a motion for summary determination, the evidence is to be examined in the light most favorable to the non-moving party, and all justifiable inferences are to be drawn in its favor. *Anderson*, 477 U.S. at 255; *Certain Lens-Fitted Film Packages*, Inv. No. 337-TA-406, Order No. 7 at 3 (July 10, 1998). Any doubt as to the existence of a genuine issue of material fact must be resolved in favor of the non-moving party. *Certain Coated Optical Waveguide Fibers and Products Containing Same*,

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Inv. No. 337-TA-410, Order No. 6 at 3 (July 28, 1998) (denying a motion for summary determination of non-infringement). Summary determination is improper where “the record contains facts which, if explored and developed, might lead the Commission to accept the position of the non-moving party.” *Id.* However, “[a] party may not overcome a grant of summary judgment by merely offering conclusory statements.” *TechSearch L.L.C. v. Intel Corp.*, 286 F.3d 1360, 1371 (Fed. Cir. 2002).

B. Default and General Exclusion Orders

After a respondent has been found in default by the Commission, the facts alleged in the complaint will be presumed true with respect to that respondent. *See* 19 C.F.R. § 210.16(c)(1); *see also Certain Toner Cartridges & Components Thereof*, Inv. No. 337-TA-740, Order No. 26, ID/RD at 11-12 (June 1, 2011). This, however, is only true when the relief sought does not include a general exclusion order. In that case, “[t]he Commission may issue a general exclusion order pursuant to section 337(g)(2) of the Tariff Act of 1930, regardless of the source or importer of the articles concerned, *provided that a violation of section 337 of the Tariff Act of 1930 is established by substantial, reliable, and probative evidence* and that the other requirements of 19 U.S.C. 1337(d)(2) are satisfied, and only after considering the aforementioned public interest factors and the requirements of § 210.50(c).” 19 C.F.R. § 210.16(c)(2) (emphasis added).

C. Violation of Section 337(a)(1)(B) and (a)(2)

To establish violation of Section 337(a)(1)(B) and (a)(2), a complainant must prove three elements: (1) the importation of goods into the United States, the sale for importation, or the sale within the United States after importation; (2) infringement by those goods of a valid and enforceable United States patent; and (3) a domestic industry in the United States. 19 U.S.C. §§

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1337(a)(1)(B), 1337(a)(2); *Alloc, Inc. v Int'l Trade Comm'n*, 342 F.3d 1361, 1365 (Fed. Cir. 2003).

1. Importation of Goods Into the United States

A complainant “need only prove importation of a single accused product to satisfy the importation element.” *Certain Purple Protective Gloves*, Inv. No. 337-TA-500, Order No. 17, at 5 (Sept. 23, 2004); *Certain Trolley Wheel Assemblies*, Inv. No. 337-TA-161, USITC Pub. 1605, Comm’n Action & Order at 7-8 (Nov. 1984) (finding importation requirement satisfied by the importation of single trolley wheel assembly of no commercial value). The importation requirement can be established through a summary-determination motion. *See Certain Mobile Commc’ns & Computer Devices & Components Thereof*, Inv. No. 337-TA-704, Order No. 48, ID at 3 (Oct. 5, 2010) (granting summary determination as to importation requirement).

2. Infringement

Section 337(a)(1)(B)(i) prohibits “the importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of articles that – (i) infringe a valid and enforceable United States patent.” 19 U.S.C. §1337(a)(1)(B)(i). The Commission has held that the word “infringe” in Section 337(a)(1)(B)(i) “derives its legal meaning from 35 U.S.C. § 271, the section of the Patent Act that defines patent infringement.” *Certain Electronic Devices with Image Processing Systems, Components Thereof, and Associated Software (“Electronic Devices”)*, Inv. No. 337- TA-724, Comm’n Op. at 13-14 (December 21, 2011)). Under 35 U.S.C. § 271(a), direct infringement of a patent consists of making, using, offering to sell, or selling the patented invention without consent of the patent owner.

Determination of patent infringement requires a two-step analysis: first, the claims must be properly construed, and second, the properly construed claims must be compared to the

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infringing device. *See Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed. Cir. 1995). The first step—claim construction—is a matter of law, but the second step—comparison of the properly construed claims to the accused product—is a question of fact. *Zelinski v. Brunswick Corp.*, 185 F.3d 1311, 1315 (Fed. Cir. 1999) (citations omitted). “A claim for patent infringement must be proven by a preponderance of the evidence, which simply requires proving that infringement was more likely than not to have occurred.” *Warner-Lambert Co. v. Teva Pharm. USA, Inc.*, 418 F.3d 1326, 1341 n.15 (Fed. Cir. 2005) (internal citations omitted). To prove direct infringement, “the patentee must show that the accused device meets each claim limitation, either literally, or under the doctrine of equivalents.” *Catalina Mktg. Int’l, Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 812 (Fed. Cir. 2002) (citations omitted).

Regarding design patent infringement, the scope of a claimed design is “better represented by an illustration rather than a description.” *Ethicon Endo-Surgery, Inc. v. Covidien, Inc.*, 796 F.3d 1312, 1333 (Fed. Cir. 2015). A written description of the scope, however, may particularly help distinguish “between features of the claimed design that are ornamental and those that are purely functional.” *Id.* (citing *Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665, 680 (Fed. Cir. 2008)). For the infringement determination, the test is an “ordinary observer” one, which is whether “an ordinary observer, familiar with the prior art designs, would be deceived into believing that the accused product is the same as the patented design.” *Crocs, Inc. v. Int’l Trade Comm’n*, 598 F.3d 1294, 1303 (Fed. Cir. 2010) (citing *Egyptian Goddess*, 543 F.3d at 678). More specifically, “a design patent is infringed ‘if, in the eye of an ordinary observer, giving such attention as a purchaser usually gives, two designs are substantially the same, if the resemblance is such as to deceive such an observer, inducing him to purchase one supposing it to be the other.’” *Ethicon*, 796 F.3d at 1335 (citing *Egyptian Goddess*, 543 F.3d at 670). “Where

the claimed and accused designs are ‘sufficiently distinct’ and ‘plainly dissimilar,’ the patentee fails to meet its burden of proving infringement as a matter of law.” *Id.*

3. Domestic Industry

In an investigation based on a claim of patent infringement, Section 337 requires that an industry in the United States, relating to the articles protected by the patent, exist or be in the process of being established. 19 U.S.C. § 1337(a)(2). Under Commission precedent, the domestic industry requirement has been divided into (i) an “economic prong” (which requires certain activities with respect to the protected articles) and (ii) a “technical prong” (which requires that the activities relate to the asserted patent). *Certain Video Game Systems and Controllers (“Video Games”)*, Inv. No. 337-TA-743, Comm’n Op. at 6-7 (April 14, 2011).

a. “Economic Prong”

The “economic prong” of the domestic industry requirement is satisfied when there exists in the United States in connection with products practicing at least one claim of the patent at issue: (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, and licensing. 19 U.S.C. §1337(a)(3). Establishment of the “economic prong” is not dependent on any “minimum monetary expenditure” and there is no need for complainant “to define the industry itself in absolute mathematical terms.” *Certain Stringed Musical Instruments and Components Thereof (“Stringed Instruments”)*, Inv. No. 337-TA-586, Comm’n Op. at 25-26 (May 16, 2008). However, a complainant must substantiate the significance of its activities with respect to the articles protected by the patent. *Certain Printing and Imaging Devices and Components Thereof (“Imaging Devices”)*, Inv. No. 337-TA-694, Comm’n Op. at 30 (February 17, 2011). Further, a complainant can show that its activities are significant by showing how those activities are important to the articles protected by the patent in the context of the

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company's operations, the marketplace, or the industry in question. *Id.* at 27-28. That significance, however, must be shown in a quantitative context. *Lelo Inc. v. Int'l Trade Comm'n*, 786 F.3d 879, 886 (Fed. Cir. 2015). The Federal Circuit noted that when the ITC first addressed this requirement, it found the word "'significant' denoted 'an assessment of the *relative* importance of the domestic activities.'" *Id.* at 883-4 (internal citation omitted) (emphasis added).

b. "Technical Prong"

The "technical prong" of the domestic industry requirement is satisfied when it is determined that the complainant practices at least one claim of each of the patents at issue. *Certain Microlithographic Machines and Components Thereof ("Microlithographic Machines")*, Inv. No. 337-TA-468, Initial Determination at 63 (April 1, 2003). The test for determining whether a complainant is practicing a claim of a patent at issue is essentially the same as that for infringement, *i.e.*, it requires that a complainant's domestic product practice at least one claim of the asserted patent. *Alloc, Inc. v. Int'l Trade Comm'n*, 342 F.3d 1361, 1375 (Fed. Cir. 2003).

III. IMPORTATION AND JURISDICTION

Regarding importation, Nite Ize alleges "[t]he infringing products sold by Defaulting Respondents were imported into the United States. Evidence of specific instances of importation of infringing mobile device holders and components thereof by or for the Defaulting Respondents is provided in Nite Ize's Complaint and included here as Exhibits 3 and 4." (Mot. Mem. at 8.) Nite Ize describes its Exhibit 3 as "[a]dvertisements from each Defaulting Respondent on at least one of the online sales platforms" and Exhibit 4 as "The sales invoice for all purchased products from each Defaulting Responded [sic]." (*Id.*) Nite Ize also relies on Exhibit 5 as support for Respondents' alleged importation, which is a collection of images of the Accused Products which, according to Nite Ize, "state or strongly suggest that the products were 'Made in China.'" (*Id.*) Finally, Nite Ize relies on Exhibit 6, which is the testimony of "Joy

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Mercado, Managing Director of Respondent Global Box, LLC,” where it is explained that: “at least the Accused Products sold by Global Box, LLC are believed to be available ‘wholesale at the market in Shenzhen, China.’” (*Id.* at 9.) Thus, according to Nite Ize, “the Defaulting Respondents imported and/or sold a foreign infringing product into the United States.” (*Id.*)

The Commission Investigative Staff concurs with Nite Ize’s assessment of the evidence (Staff Resp. at 3) and further points to the declaration of “Robert P. Ziemian, counsel for Nite Ize, in support of the Complaint in this Investigation” which “attests to the purchase, and receipt in the United States (in Littleton, Colorado), of the accused mobile device holders from each of the Defaulting Respondents” (*id.* at 33).

Upon review, I find there to be no genuine issue over whether the Accused Products have been imported into the United States in light of Nite Ize’s Exhibit 5. The images of the Accused Products and their packing materials contain Chinese script, explicitly include the phrase “Made in China” or other extra-territorial source, or come from a sales advertisement indicating shipment comes from outside the United States. (*See* Mot., Ex. 5 at 1-2 (Anson), 3-4 (IceFox), 5-6 (IdeaPro), 7 (Kagu Culture), 8 (Newdreams), 9-10 (Novoland), 11-12 (REXS LLC), 13-14 (Sunpauto), 15 (Trendbox), 16 (YouFo), 17 (Pecham), 18 (Runshion), 19-20 (LWANG), 21 (Minse), 22-23 (Oumeiou), 24 (Scotabc), 25 (TONTEK), 26 (Tenswall), 27 (Wekin), 28-29 (Shenzhen Yingxue).) As a result of these products having been imported, I find that the Commission has *in rem* jurisdiction over all products accused under the asserted claims of the Asserted Patents, which no party has contested.

I find a genuine issue, however, over whether *all* of the Respondents in Default imported, sold for importation, or sold after importation the Accused Products. Several of the specific instances of importation cited by Nite Ize, and recorded by the declaration of Mr. Ziemian, are

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from sellers that have not been shown to have any connection to the respective named respondent. Specifically, the product associated with respondent IceFox was purchased from an entity listed as “vivotech” (Mot., Ex. 4 at 4; Compl., Ex. 188 at ¶ 2); the Newdreams product was purchased from “CONCOK” (Mot., Ex. 4 at 4; Compl., Ex. 188 at ¶ 2); the Anson product was purchased from “unalin” (Mot., Ex. 4 at 4; Compl., Ex. 188 at ¶ 2); the IdeaPro product was purchased from “Amazing-time” (Mot., Ex. 4 at 4; Compl., Ex. 188 at ¶ 2); the Oumeiou product was purchased from “Mini HD Camera” (Mot., Ex. 4 at 11; Compl., Ex. 188 at ¶ 7); the YouFo product is declared by Mr. Ziemian to have been sold by “Etoplink” (Compl., Ex. 188 at ¶ 4); and the Minse product was purchased from “CityFarmLights” (Mot., Ex. 4 at 15; Compl., Ex. 188 at ¶ 7). I provide an example of this distinction below:

Condition: New
1 of: *Minse 360 Degree Rotatable Magnetic Mini Cell Phone Car Mount Holder For iPhone 6s 5se Samsung Galaxy s7 s6edge not5 /Ultra Strong & Sticky (Gold)* \$7.99
Sold by: CityFarmLights ([seller profile](#)) | Product question? [Ask Seller](#)

Condition: New
1 of: *Minse 360 Degree Rotatab
s6edge not5 /Ultra Strong & Sti
Sold by: CityFarmLights ([seller profile](#)) |*

(Mot., Ex. 4 at 15.)

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Cell Phones & Accessories • Carrier Phones • Unlocked Phones • Prime Exclusive Phones • Accessories • Cases • Wearable Tech

Prime Student FREE Two-Day Shipping for college students Learn more

Minse 360 Degree Rotatable Magnetic Mini Cell Phone Car Mount Holder For iPhone 6s 5se Samsung Galaxy s7 s6edge not5 /Ultra Strong & Sticky (Gold) by Minse

Price: \$29.00
Sale: \$7.99 & FREE Shipping on orders over \$49.
Details
You Save: \$21.02 (73%)

In Stock
Get it by Thursday, Sept. 1. Order within 14 hrs 36 mins and choose this date at checkout
Sold by CityParadise and Fulfilled by Amazon

Color: Gold

POWERFUL MAGNETIC PHONE HOLDER 250g

(Mot., Ex. 3 at 21 (annotated).)

This is not to say that I find respondents IceFox, Newdreams, Anson, IdeaPro, Oumeiou, YouFo, and Minse do not import, sell for importation, or sell after importation the Accused Products. I only find that the evidence as presented by Nite Ize in its motion leaves a genuine issue over this material fact.

For the other respondents, the specific instances of importation leave no genuine issue over the importation, sale for importation, or sale after importation because the seller Mr. Ziemian transacted with matches the named respondent. (See Mot., Ex. 4 at 2 (Novoland, REXS LLC), 3 (Kagu Culture), 4 (Sunpauto), 6 (Trendbox), 11 (Wekin), 13 (Runshion), 13-14 (Pecham), 15 (LWANG, Scotabc, TONTEK), 16 (Tenswall), 18 (Shenzhen Yingxue).)

Thus, summary determination is appropriate to find that:

- 1) All Accused Products have been imported into the United States;
- 2) Respondents Novoland, REXS, LLC, Kagu Culture, Sunpauto, Trendbox, Wekin, Runshion, Pecham, LWANG, Scotabc, TONTEK, Tenswall, and Shenzhen Yingxue

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imported, sold for importation, or sold after importation those Accused Products associated with each respondent, respectively.

IV. THE ASSERTED PATENTS AND INFRINGEMENT

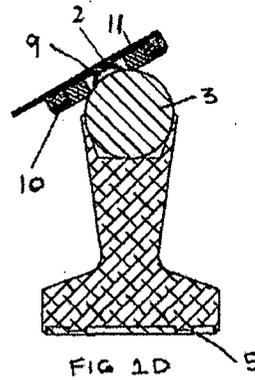
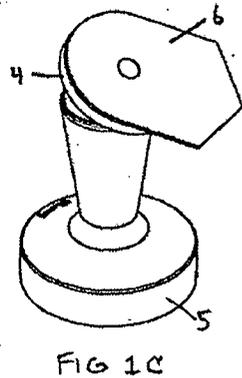
A. U.S. Patent Nos. 8,602,376 and 8,870,146

1. Introduction

U.S. Patent No. 8,602,376 is entitled “Multi-Positional Mount for Personal Electronic Devices with a Magnetic Interface.” The ’376 patent issued on December 10, 2013 based on a non-provisional application filed on May 31, 2012. The non-provisional application claimed priority to a provisional application filed on May 31, 2011. The ’376 patent lists Frank Vogel and Paul Turner as inventors and Nite Ize, Inc. as the assignee.

U.S. Patent No. 8,870,146 is also entitled “Multi-Positional Mount for Personal Electronic Devices with a Magnetic Interface.” The ’146 patent issued on October 28, 2014 based on a non-provisional application filed December 5, 2013. This non-provisional application claims priority as a continuation of the application which led to the ’376 patent. The ’146 patent also lists Frank Vogel and Paul Turner as inventors, and Nite Ize, Inc. as the assignee.

The ’376 and ’146 patents share a common specification which is generally discloses a stand assembly for holding handheld electronic devices, where the electronic device can be supported in a variety of positions against a convex surface, which may itself stand on a flat surface or otherwise attach to irregular surfaces. The forces which hold the handheld device to the convex surface are magnetism and friction. Each of the ’376 and ’146 patents includes 3 independent and 9 dependent claims. Representative figures of this stand assembly are shown below:



Nite Ize asserts that it “entered into an agreement under which it purchased—and was assigned—all of the rights to the intellectual property associated with the Steelie® Products, including among others, all invention rights, all design and utility patent rights, all trademark rights and trade dress rights, all goodwill, and all trade secrets.” (Mot. Mem. at 9-10.) Thus, it argues it is the sole assignee and owner of all Asserted Patents in this Investigation, including the ’376 and ’146 patents. (*Id.* (citing Complaint Exs. 165-167.)) The Staff agrees with this assessment. (Staff Resp. at 18, 20.)

Regarding ownership, I find there is no genuine dispute over the material fact that each of the ’376 and ’146 patent inventors assigned their entire right, title, and interest to Nite Ize. (*See* Compl., Ex. 165.)

2. Asserted Claims

Nite Ize asserts claims 1, 11, and 12 from each of the ’376 and ’146 patents (the “Asserted Claims”) against each of the respondents. Claim 1 of the ’376 patent reads:

1. A stand assembly comprising:

a first section shaped at one end to lay stably on a flat surface and shaped on another end with a curved surface, said curved surface of said first section constructed of a magnetic material; and

a second section having a front surface, said front surface having an indentation, said indentation capable of receiving said curved end of said first section and being of a size which can encompass a

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portion, but less than the whole diameter, of said curved end of said first section,

said second section having magnetic material capable of holding said first and said second sections together, wherein the second section includes a first piece of high-friction elastomeric material, the first piece of high-friction elastomeric material disposed of in the indentation of said second section

and the magnetic material positioned such that the magnetic material of the second section radially surrounds the first piece of high-friction elastomeric material.

Claim 11 of the '376 patent includes all of claim 1 verbatim and then adds:

... and the magnetic material of the second section has a ring shape.

Claim 12 of the '376 patent includes all of claim 1 verbatim and then adds:

... and the magnetic material of the second section has a shape complementary to the curved surface such that the magnetic material of the second section contacts the curved surface when the first and second sections are engaged.

Claims 1, 11, and 12 of the '146 patent mirror claims 1, 11, and 12 of the '376 patent, respectively, but remove the requirement of "a first section shaped at one end to lay stably on a flat surface." Thus, claim 1 of the '146 patent reads:

1. A stand assembly comprising:

a first section having a first end shaped with a curved surface, said curved surface of said first section constructed of a magnetic material; and

a second section having a front surface, said front surface having an indentation, said indentation capable of receiving said curved end of said first section and being of a size which can encompass a portion, but less than the whole diameter, of said curved end of said first section,

said second section having magnetic material capable of holding said first and said second sections together, wherein the second section includes a first piece of high-friction elastomeric material, the first piece of high-friction elastomeric material disposed of in the indentation of said second section

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and the magnetic material positioned such that the magnetic material of the second section radially surrounds the first piece of high-friction elastomeric material.

As in the '376 patent, claim 11 of the '146 patent includes all of claim 1 verbatim and then adds:

... and the magnetic material of the second section has a ring shape.

As in the '376 patent, claim 12 of the '146 patent includes all of claim 1 verbatim and then adds:

... and the magnetic material of the second section has a shape complementary to the curved surface such that the magnetic material of the second section contacts the curved surface when the first and second sections are engaged.

3. Level of Ordinary Skill in the Art

Shortly before the only participating respondent, Global Box, was terminated from the Investigation, Nite Ize and the Commission Investigative Staff filed opening claim construction briefs. (EDIS Doc. IDs 603956, 604036.) Each brief presented a preferred claim construction for the term “radially surrounds,” but neither provided a description of the person having ordinary skill in the art of the '376 and '146 patents at the time of the invention. (*See generally* EDIS Doc. IDs 603956, 604036.)

4. Claim Construction

The opening claim construction briefs filed by both Nite Ize and the Staff addressed just one term from the '376 and '146 patents—“radially surrounds.” Nite Ize and the Staff agree that the proper construction for this term is “encircles a center of.” (EDIS Doc. ID 603956 at 3; EDIS Doc. ID 604036 at 1.)

I find Nite Ize and the Staff’s proposed construction to be appropriate in view of the intrinsic evidence and the plain and ordinary meaning of “radially surrounds.” *Phillips v. AWH*

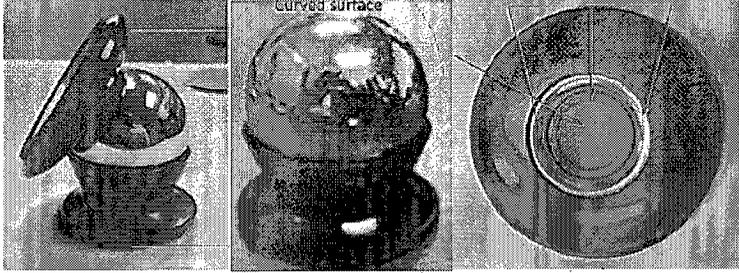
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Corp., 415 F.3d 1303, 1314 (Fed. Cir. 2005) (“In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words”). Ordinarily, this phrase describes an object which surrounds another object at a given radius; *i.e.* a certain distance from a center point. This concept is reflected in the figures of the ’376 and ’146 patents and in the parties’ construction “encircles a center of.” Therefore, I find as a matter of law that “radially surrounds” as used in the ’376 and ’146 patents means “encircles a center of.”

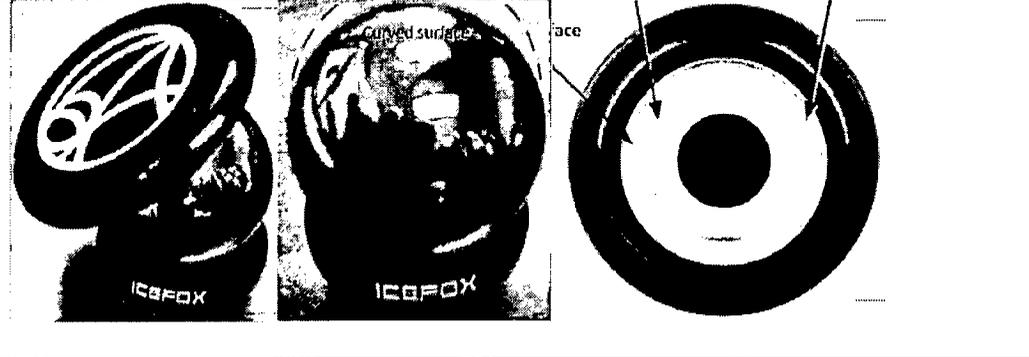
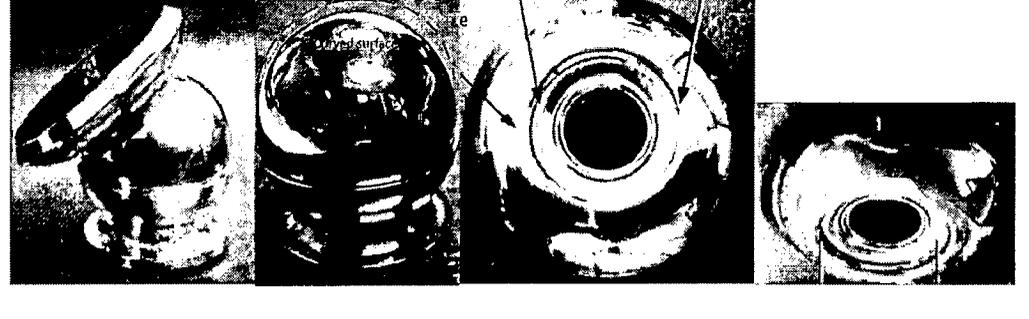
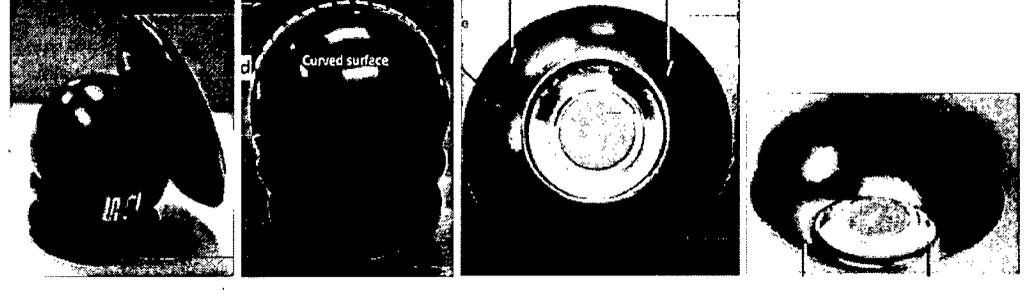
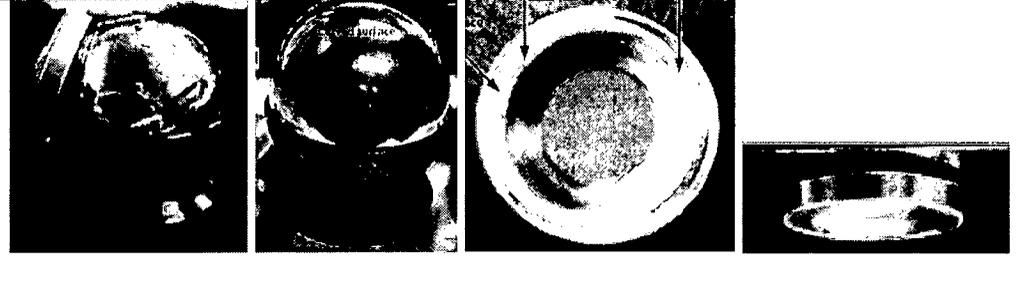
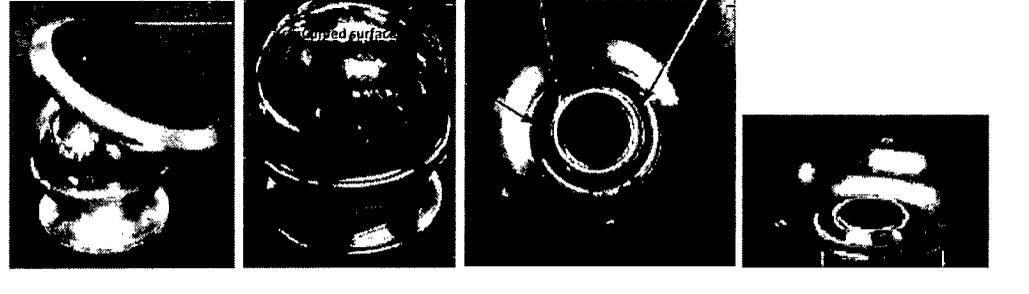
5. Infringement

Nite Ize alleges that each of the Respondents in Default has violated Section 337 by importing, selling for importation, and/or selling importation certain mobile device holders that infringe claims 1, 11, and 12 of both the ’376 and ’146 patents. (Mot. Mem. at 12-14.) The Commission Investigative Staff agrees with the conclusion that all of the Accused Products meet the limitations of these claims. (Staff Resp. at 50, 54.)

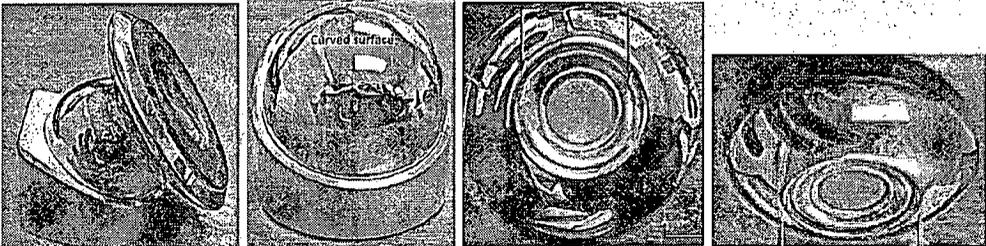
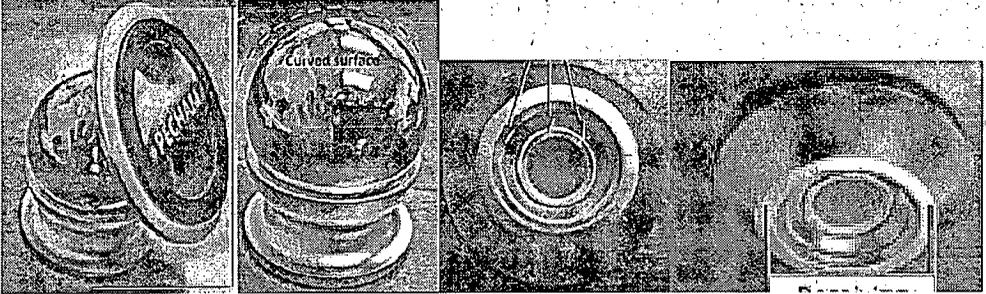
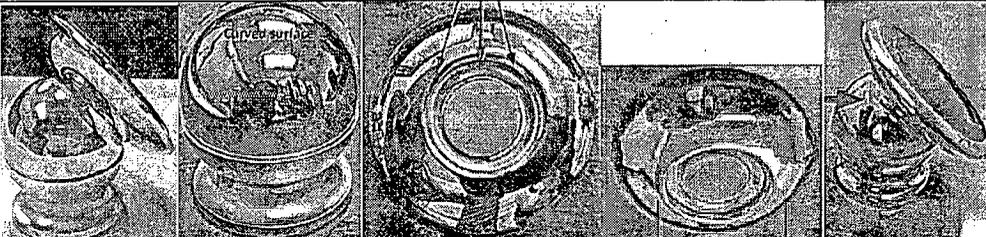
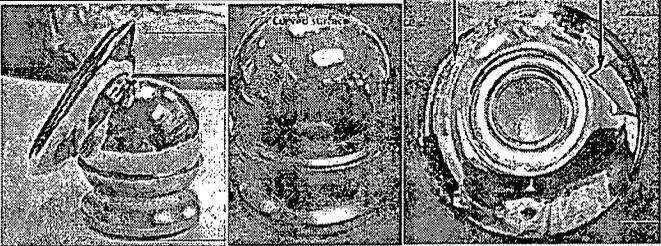
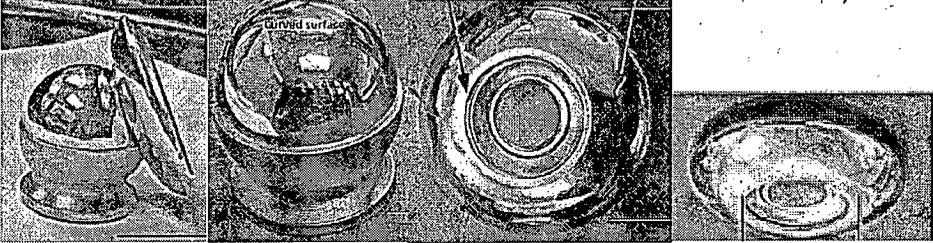
The table below gathers the evidence presented by Nite Ize for sixteen of the twenty Respondents in Default. (*See generally* Mot., Ex. 7.)

Respondent	Evidence Cited in Claim Charts Supporting Claim of Infringement
Anson	

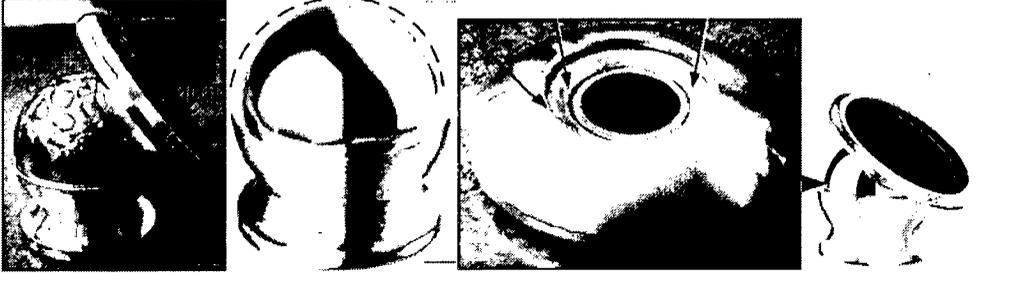
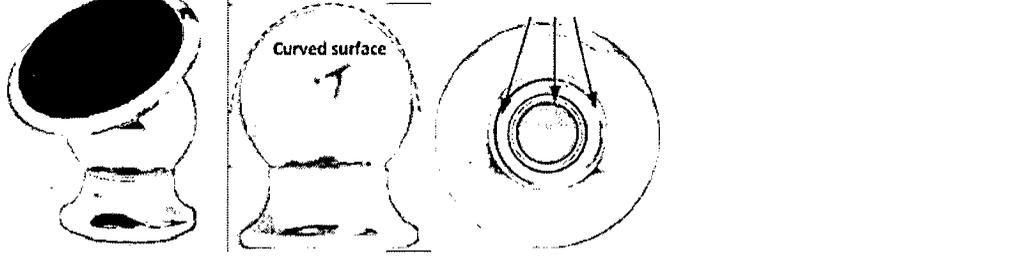
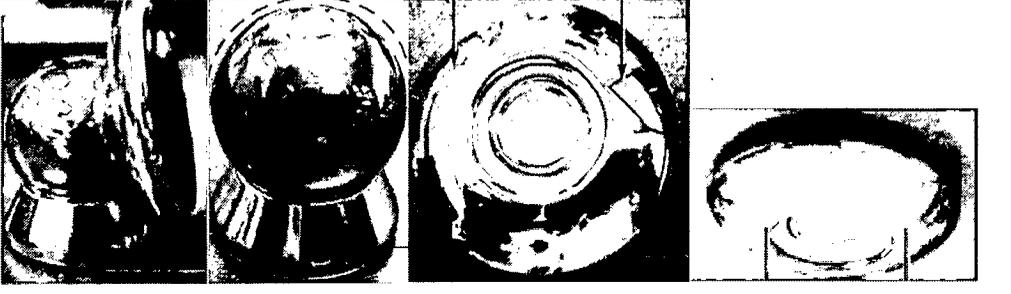
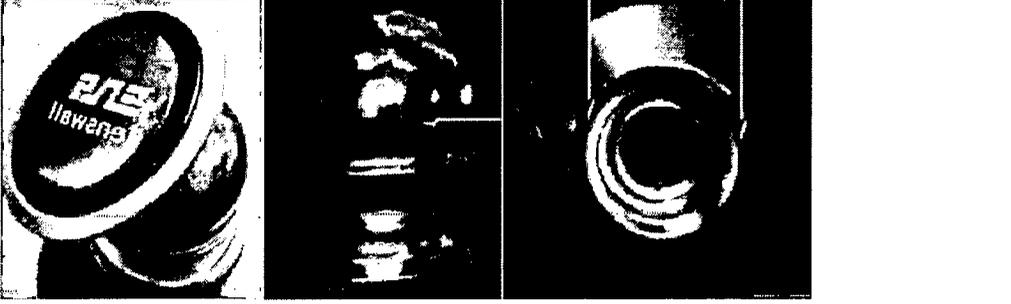
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IceFox	 A set of three images for IceFox. The first shows a lid with a stylized logo. The second shows the interior of a cup with a curved surface, labeled 'Curved surface'. The third shows a top-down view of the cup with arrows pointing to the inner rim, labeled 'face'.
IdeaPro	 A set of four images for IdeaPro. The first shows a lid being placed on a cup. The second shows the interior of the cup with a curved surface, labeled 'Curved surface'. The third shows a top-down view of the cup. The fourth is a close-up of the inner rim.
Novoland	 A set of four images for Novoland. The first shows a lid with a logo. The second shows the interior of a cup with a curved surface, labeled 'Curved surface'. The third shows a top-down view of the cup. The fourth is a close-up of the inner rim.
REXS LLC	 A set of four images for REXS LLC. The first shows a lid. The second shows the interior of a cup with a curved surface, labeled 'Curved surface'. The third shows a top-down view of the cup. The fourth is a close-up of the inner rim.
Sunpauto	 A set of four images for Sunpauto. The first shows a lid. The second shows the interior of a cup with a curved surface, labeled 'Curved surface'. The third shows a top-down view of the cup. The fourth is a close-up of the inner rim.

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YouFo	
Pecham	
Runshion	
LWANG	
Minse	

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Oumeiou	
Scotabc	
Tontek	
Tenswall	
Wekin	

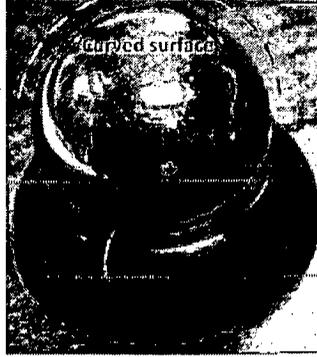
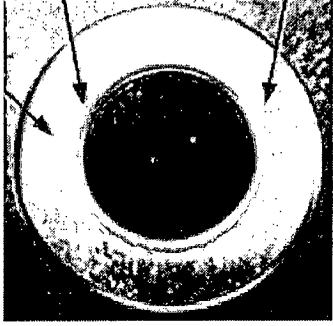
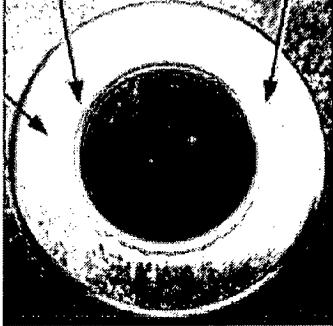
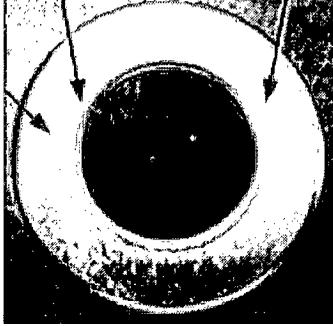
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I find that these photographs leave no genuine issue of material fact that these sixteen Accused Products infringe the asserted claims of both the '376 and '146 patents. Each product includes all limitations of these claims, most notably: 1) "a first section shaped at one end to lay stably on a flat surface;" 2) "curved surface of said first section constructed of a magnetic material;" 3) a front surface on a second section having "an indentation" where the indentation receives a portion of the curved surface of magnetic material; 4) the indentation is itself made of a magnetic material, is ring-shaped, and includes a piece of high friction elastomeric material in its center; and 5) the magnetic material of the section has concave shape which is complementary (i.e. opposite and matching) to the convex shape of the large metal sphere in the first section.

I cannot draw the same conclusion for four of the Accused Products, however, as I find genuine issues over material facts. Specifically, the photographs relied on for the Kagu Culture, Newdreams, and Trendbox Accused Products are the exact same, as shown below, but Nite Ize presents the photographs as if they are for each manufacturer. (*Compare Mot., Ex. 7 at 121-154 with 161-194 with 321-354.*) As a result, I am not left with any understanding as to which of the three respondents the set of four photographs belong to.

Kagu Culture	Newdreams	Trendbox
		

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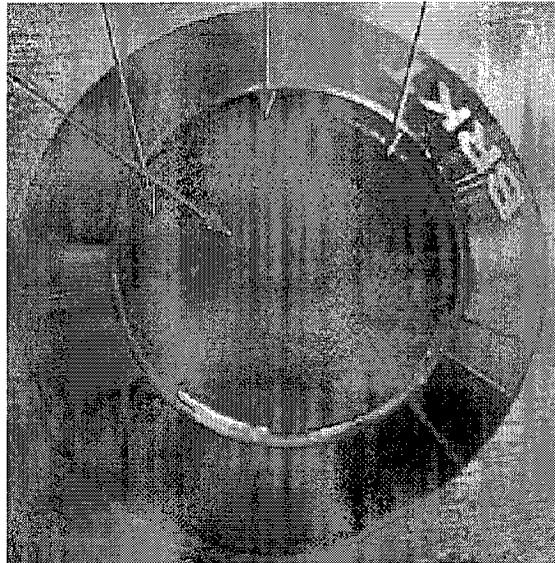
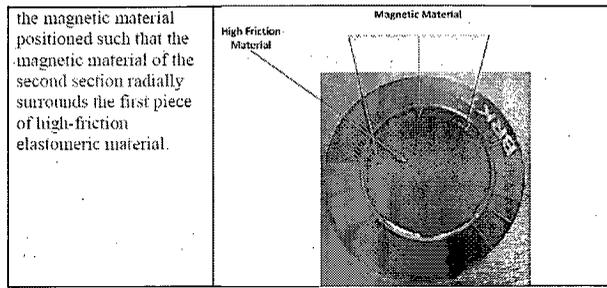
(Mot., Ex. 7 at 121)	(Mot., Ex. 7 at 161)	(Mot., Ex. 7 at 321)
		
(Mot., Ex. 7 at 121)	(Mot., Ex. 7 at 161)	(Mot., Ex. 7 at 321)
		
(Mot., Ex. 7 at 122)	(Mot., Ex. 7 at 162)	(Mot., Ex. 7 at 322)
		
(Mot., Ex. 7 at 123)	(Mot., Ex. 7 at 163)	(Mot., Ex. 7 at 323)

Additionally, the “magnetic material of the second section” in these products does not appear to “[have] a shape complementary to the curved surface [of the first section]” as required by claim 12 of the ’376 and ’146 patents. The magnetic ring appears to have a planar face, whereas the magnetic rings in the sixteen products discussed above each have a concave shape to receive the complementary convex shape of the large metal sphere of the first section. Thus, I

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find a separate genuine issue over whether the Accused Products from Kagu Culture, Newdreams; and Trendbox practice claim 12 of the '376 and '146 patents.

Finally, regarding the last respondent Shenzhen Yingxue, I find a genuine issue over whether the evidence shows infringement. An excerpt of Nite Ize's claim chart is reproduced below, and as best can be gathered from the photographs provided, the high friction material in the center of the Shenzhen Yingxue socket is not "radially surround[ed]" by a magnetic material as required by all asserted claims. Rather, the high friction material lies completely on top of what is likely to be the magnetic material which holds the socket on to the first curved surface.



(Mot., Ex. 7 at 767.)

For this reason, I find a genuine issue over a material fact precluding a determination that the product from Shenzhen Yingxue infringes the asserted claims of the '376 and '146 patents.

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Thus, summary determination is appropriate to find that:

- 1) The accused products from Anson, IceFox, Ideapro, Novoland, REXS LLC, Sunpauto, YouFo, Pecham, Runshion, LWANG, Minse, Oumeiou, Scotabc, Tontek, Tenswall, and Wekin infringe claims 1, 11, and 12 of the '376 patent.
- 2) The accused products from Anson, IceFox, Ideapro, Novoland, REXS LLC, Sunpauto, YouFo, Pecham, Runshion, LWANG, Minse, Oumeiou, Scotabc, Tontek, Tenswall, and Wekin infringe claims 1, 11, and 12 of the '146 patent.

B. U.S. Patent Nos. D719,959

1. Introduction

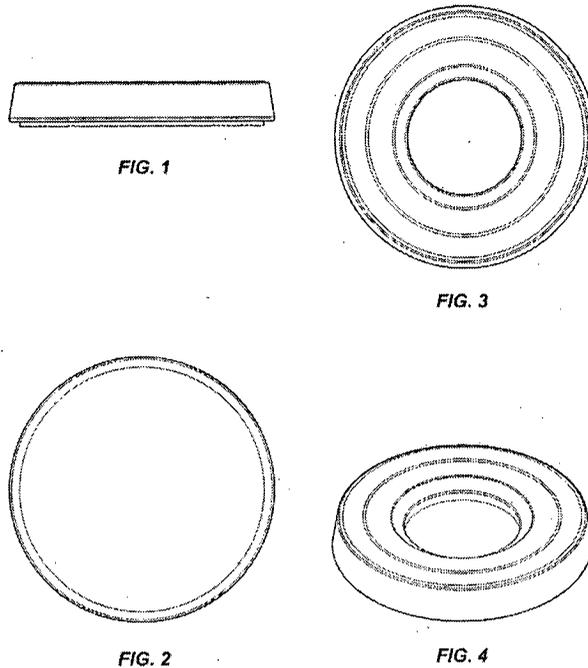
U.S. Patent No. D719,959 is entitled “Large Socket.” The '959 patent issued on December 23, 2014 based on an application filed on January 14, 2013. The application claimed priority, as a continuation-in-part application, to the application which became the '376 asserted patent. The '959 patent lists Frank Vogel as the inventor and Nite Ize, Inc. as the assignee. As with the '376 and '146 patents, Nite Ize asserts that it “entered into an agreement under which it purchased—and was assigned—all of the rights to the intellectual property associated with the Steelie® Products, including among others, all invention rights, all design and utility patent rights, all trademark rights and trade dress rights, all goodwill, and all trade secrets.” (Mot. Mem. at 9-10.) Thus, it argues it is the sole assignee and owner of the '959 patent. (*Id.* (citing Complaint Exs. 165-167.) The Staff agrees with this assessment. (Staff Resp. at 23.)

Regarding ownership, I find there is no genuine dispute over the material fact that the '959 patent inventor assigned his entire right, title, and interest to Nite Ize. (*See* Compl., Ex. 167.)

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2. Asserted Claims

As a design patent, the '959 patent has one claim—an “ornamental design for a large socket” as shown and described by the below figures:



3. Claim Construction

While I am mindful to not rely excessively on a detailed verbal description of the claim of the '959 patent when evaluating infringement, *Crocs*, 598 F.3d at 1302-3, I find an ordinary observer would consider the ornamental appearance of the patent’s “large socket” to include: an overall disc shape with tapered sidewalls, a top face with multiple concentric rings, and substantially reduced thickness towards the center of the socket.

Neither Nite Ize nor the Staff’s response offers a verbal description for the '959 patent (*see generally* Mot. Mem.; Staff Resp.), but in Nite Ize’s attached expert report from Richard Case (Exhibit 8), it is explained that:

The look of the socket portion of the Steelie® that is covered by the '959 design patent is also found in all of the Accused Products, in somewhat different forms. All of these forms include the basic

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look of the disc design that is covered by '959 design patent, such that an ordinary observer would be deceived into believing that the design is that of the Steelie® as covered by the '959 design patent. To best understand this, it is important to realize that the Steelie® product was the first of its type using the distinctive ball in socket design for holding an electronic device. Therefore, any design for a socket that holds electronic devices resembling the disc and socket nature of the shown design would be infringed.

(Mot., Ex. 8 at 14-15).

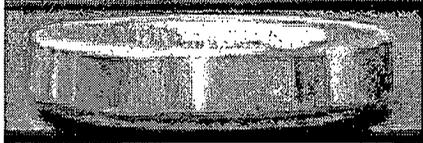
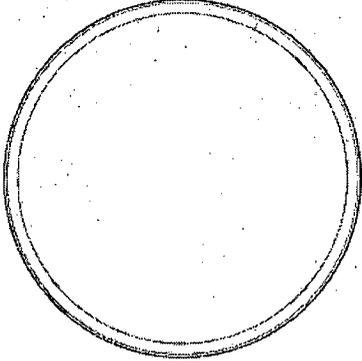
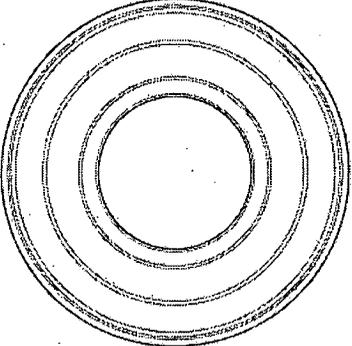
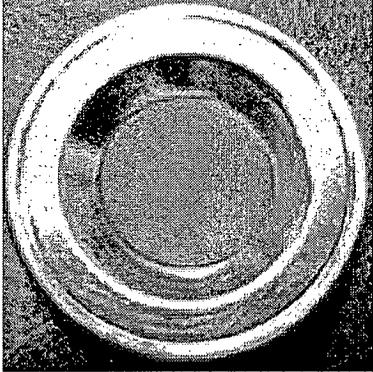
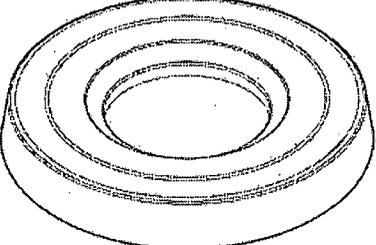
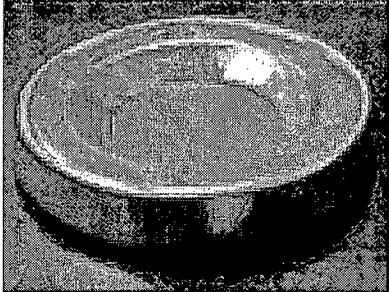
I find this description of the scope of the '959 patent to be helpful in understanding why Nite Ize claims infringement for those Accused Products which are plainly dissimilar from the design of the patent, as discussed below. The description does not, however, capture any of the details contained in the patent's figures which limit the scope of the claim; details such as the tapered sidewalls, concentric rings, or diminished thickness.

4. Infringement

Nite Ize alleges that each of the Respondents in Default has violated Section 337 by importing, selling for importation, and/or selling importation certain mobile device holders that infringe the '959 patent. (Mot. Mem. at 12-14.) The Commission Investigative Staff agrees with the conclusion that all of the Accused Products meet the claim of this patent. (Staff Resp. at 57.)

In light of the photographic evidence presented by Nite Ize, I find that there is no genuine issue over a material fact with respect to infringement for just one respondent, REXS LLC. That product is shown below in a side-by-side comparison with the figures of the '959 patent.

<p>'959 patent</p>	<p>REXS LLC Accused Product (Mot., Ex. 7 at 279-280)</p>
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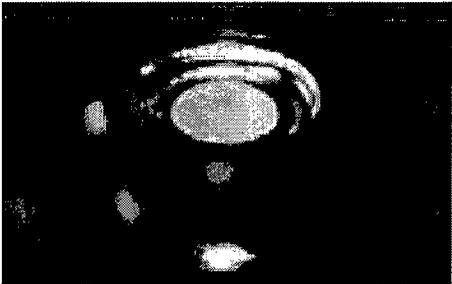
 <p>FIG. 1</p>	
 <p>FIG. 2</p>	
 <p>FIG. 3</p>	
 <p>FIG. 4</p>	

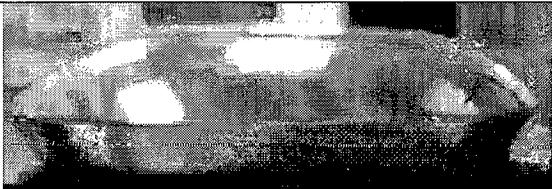
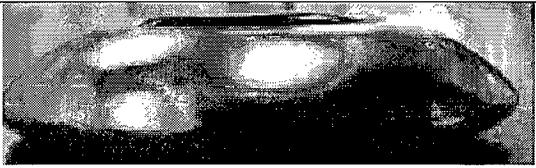
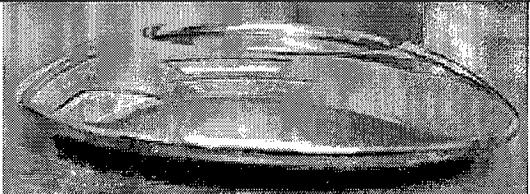
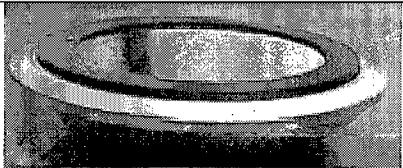
As shown in the table above, the REXS LLC Accused Product includes the overall design concepts reflected in the figures of the '959 patent as well as each of the most noticeable details:

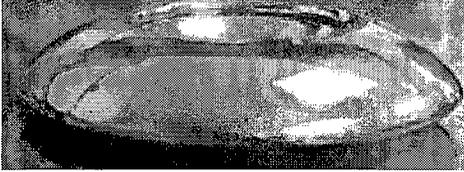
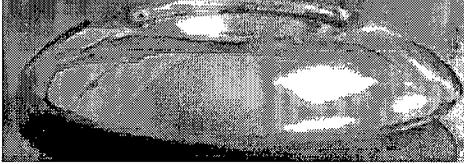
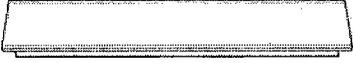
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an overall disc shape with tapered sidewalls, a top face with multiple concentric rings, and substantially reduced thickness towards the center of the socket. Indeed, the REXS LLC Accused Product is practically identical to the patented design. I find no issue as to whether this similarity would “deceive such an [ordinary] observer, inducing him to purchase” the REXS LLC product while supposing it to be the Nite Ize design. *Ethicon*, 796 F.3d at 1335.

I cannot draw the same conclusion for the other nineteen Accused Products based on the evidence presented because I find a genuine issue over whether an ordinary consumer would be deceived by the appearances of these Accused Products. Below is a first table of side-by-side comparisons of the '959 patent claim and certain Accused Products to demonstrate an example of the conflict in ornamental appearance.

'959 patent	Accused Product
 <p data-bbox="456 1115 529 1142">FIG. 1</p>	  <p data-bbox="930 1495 1321 1530">(Mot., Ex. 7 at 39-40 [Anson])</p>
 <p data-bbox="456 1692 529 1719">FIG. 1</p>	 <p data-bbox="948 1766 1304 1801">(Mot., Ex. 7 at 79 [IceFox])</p>

 <p>FIG. 1</p>	 <p>(Mot., Ex. 7 at 119 [Ideapro])</p>
 <p>FIG. 1</p>	 <p>(Mot., Ex. 7 at 239 [Novoland])</p>
 <p>FIG. 1</p>	 <p>(Mot., Ex. 7 at 319 [Sunpauto])</p>
 <p>FIG. 1</p>	 <p>(Mot., Ex. 7 at 399 [YouFo])</p>
 <p>FIG. 1</p>	 <p>(Mot., Ex. 7 at 439-440 [Pecham])</p>
 <p>FIG. 1</p>	

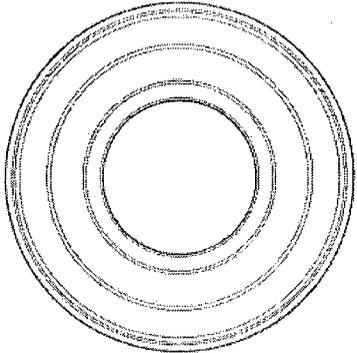
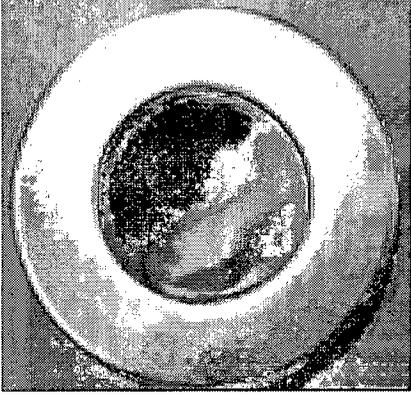
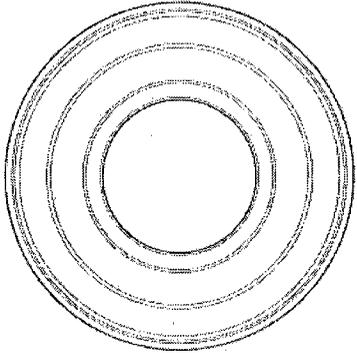
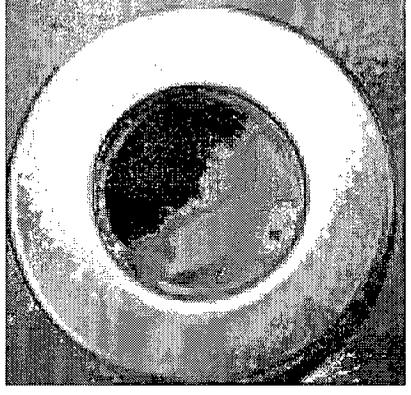
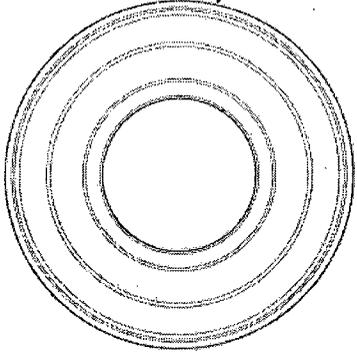
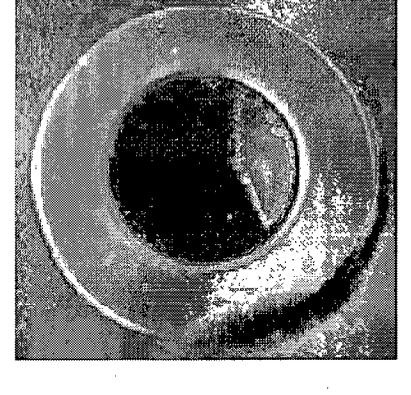
	<p>(Mot., Ex. 7 at 479 [Runshion])</p>
 <p>FIG. 1</p>	 <p>(Mot., Ex. 7 at 521 [LWANG] (rotated 180°))</p>
 <p>FIG. 1</p>	 <p>(Mot., Ex. 7 at 561 [Minse] (rotated 180°))</p>
 <p>FIG. 1</p>	 <p>(Mot., Ex. 7 at 601 [Oumeiou] (rotated 180°))</p>
 <p>FIG. 1</p>	 <p>(Mot., Ex. 7 at 641 [Scotabc] (rotated 180°))</p>
 <p>FIG. 1</p>	 <p>(Mot., Ex. 7 at 681 [Tontek] (rotated 180°))</p>

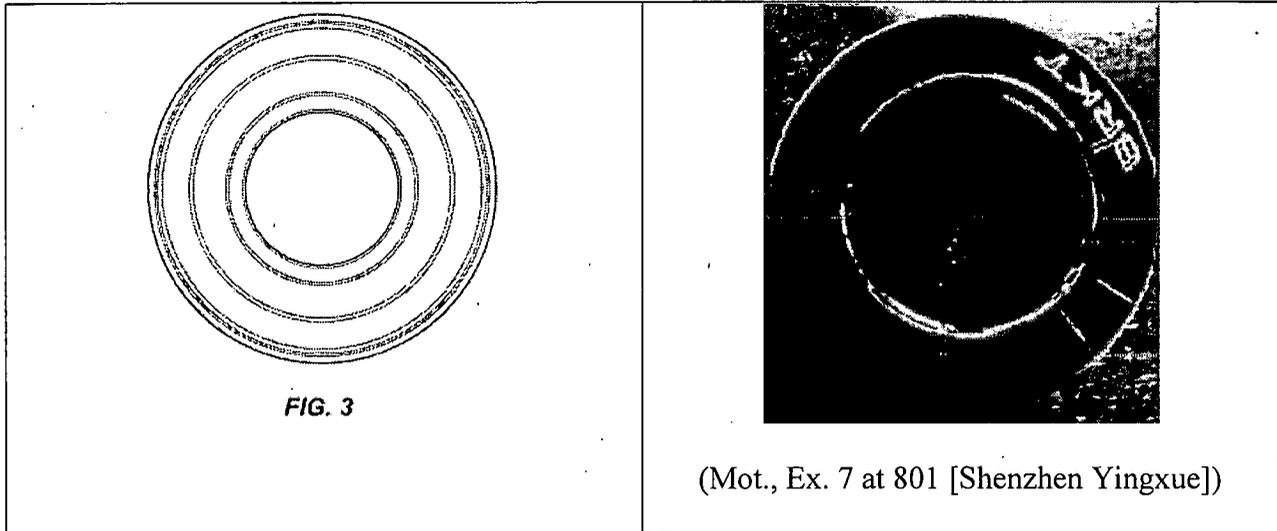
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 <p>FIG. 1</p>	 <p>(Mot., Ex. 7 at 721 [Tenswall] (rotated 180°))</p>
 <p>FIG. 1</p>	 <p>(Mot., Ex. 7 at 761 [Wekin] (rotated 180°))</p>

In each of the above side-by-side comparisons, it is plain to see that the Accused Product sockets have a different side profile than the socket disclosed in the '959 patent. This is important because the sockets generally take the shape of a disc and a disc really only has two dimensions, diameter and thickness, to design around. If one of those dimensions is dissimilar from the patented design—that is significant and eye catching. The '959 patent design has sidewalls defining its thickness which are straight and tapered. For the most part, the sidewalls in the Accused Products have complex shapes but are more rounded than straight. The exception is perhaps the Tenswall product, but there the sidewall angle is so great compared to the '959 patent that the difference is noticeable as well. The appearance of these products' sidewalls sets them apart from the '959 patent and creates a genuine issue over whether customer confusion would exist.

Below is a second table showing a different class of differences between certain Accused Products and the '959 patent.

'959 patent	Accused Product
 <p data-bbox="448 646 526 674">FIG. 3</p>	 <p data-bbox="902 688 1354 726">(Mot. Ex. 7 at 159 [Kagu Culture])</p>
 <p data-bbox="448 1155 526 1182">FIG. 3</p>	 <p data-bbox="902 1192 1354 1230">(Mot., Ex. 7 at 199 [Newdreams])</p>
 <p data-bbox="448 1654 526 1682">FIG. 3</p>	 <p data-bbox="902 1675 1354 1713">(Mot., Ex. 7 at 359 [Trendbox])</p>



In these comparisons, a marked difference between the surfaces of the '959 patent socket and the Accused Product sockets is clear. The '959 patent involves multiple concentric rings, at least some of which mark thickness or material changes. The Accused Products shown above have just one ring which marks the change from magnetic material to high friction material. The design of the '959 patent is so simple that the absence of these rings is eye catching and it leaves a different visual impression with the observer. Indeed, the design of the '959 patent is sophisticated enough that it makes the products from Kagu Culture, Newdreams, and Trendbox look like repurposed washers from the hardware store. Although not shown in the photo presented above, the product from Shenzhen Yingxue also has sidewalls that differ from the '959 patent in the same way as the previous table of products.

Generally, if each of these nineteen Accused Product sockets were “arrayed in matching colors and mixed up randomly” in a box with the Nite Ize design, I find at this time that a customer could pull the Nite Ize products out with ease. *See Crocs*, 598 F.3d at 1306 (“In one comparison after another, the shoes appear nearly identical. If the claimed design and the accused designs were arrayed in matching colors and mixed up randomly, this court is not

confident that an ordinary observer could properly restore them to their original order without very careful and prolonged effort.”). Those Accused Product sockets which have broad curved surfaces could be pulled out readily. The plain washer-like sockets could as well.

Thus, summary determination is appropriate only to find that the accused product from REXS LLC infringes the claim of the '959 patent.

C. U.S. Patent Nos. D734,746

1. Introduction

U.S. Patent No. D734,746 is entitled “Phone Kit.” The '746 patent issued on July 21, 2015 based on an application filed on January 14, 2013. The application claimed priority, as a continuation-in-part application, to the application which became the '376 asserted patent, as well as a provisional application filed on May 31, 2011. The '959 patent lists Frank Vogel as the inventor and Nite Ize, Inc. as the assignee. As with the '959 patent, Nite Ize asserts that it “entered into an agreement under which it purchased—and was assigned—all of the rights to the intellectual property associated with the Steelie® Products, including among others, all invention rights, all design and utility patent rights, all trademark rights and trade dress rights, all goodwill, and all trade secrets.” (Mot. Mem. at 9-10.) Thus, it argues it is the sole assignee and owner of the '746 patent. (*Id.* (citing Complaint Exs. 165-167.) The Staff agrees with this assessment. (Staff Resp. at 21.)

Regarding ownership, I find there is no genuine dispute over the material fact that the '746 patent inventor assigned his entire right, title, and interest to Nite Ize. (*See* Compl., Ex. 166.)

2. Asserted Claims

As a design patent, the '746 patent has one claim—an “ornamental design for a large socket” as shown and described by the below figures:

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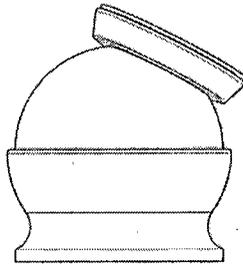


FIG. 1

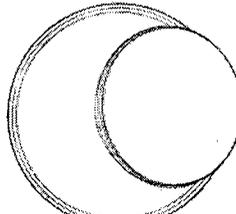


FIG. 3

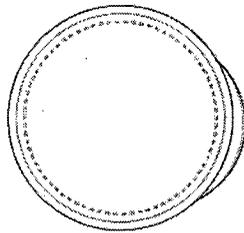


FIG. 2

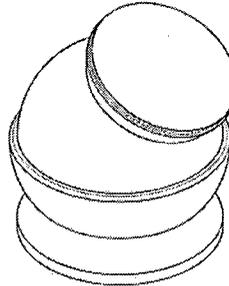


FIG. 4

3. Claim Construction

Again, while I am mindful to not rely excessively on a detailed verbal description of the claim of the '746 patent when evaluating infringement, *Crocs*, 598 F.3d at 1302-3, I find an ordinary observer would consider the ornamental appearance of the patent's "phone kit" to include: an overall shape of a sphere sitting halfway deep in a cup, where the cup has a flat bottom face and a base which curves inward before extending outward to capture the sphere, and a disc-shaped socket positioned against a portion of the sphere, where the socket has tapered sidewalls and a diameter less than that of the sphere.

Neither Nite Ize nor the Staff's response offers a verbal description for the '746 patent (*see generally* Mot. Mem.; Staff Resp.), but in Nite Ize's attached expert report, the expert explains, "[a]ll of the Respondent's products include the look of this steel ball with a disc located on it. Although some of the Respondents' products include a somewhat different base portion, the primary piece of the claimed design is the distinctive exposed ball design" (Mot., Ex. 8 at 8), and also:

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This curved surface is also one of the primary design features, claimed in the '746 design patent, that would be noticed by an ordinary observer and judged to be infringing. Notably, this curved surface is where Steelie® derives its name, through the provision of a steel ball shaped surface. Without the curved surface being magnetic, the design would not function since the pieces of the stand would not be held together. This curved surface and its identification can be seen in all of the Respondents' products that were identified in the Complaint.

(*id.* at 13-14).

Mr. Case's focus on the "curved surface" of the '746 patent's design for evaluating the scope of the claim is problematic for two reasons. One, the claim of the '746 patent includes much more than the presence of a curved surface. It includes the shape of the base and the shape of the socket attached to the curved surface as shown by solid lines. (*See, e.g.*, '746 patent at Description (describing it is only the "broken lines in the drawings depict environmental subject matter only and form no part of the claimed design").) Any infringement analysis must then be done on that "claimed design as a whole" and not any singular aspect. *See Ethicon*, 796 F.3d at 1335.

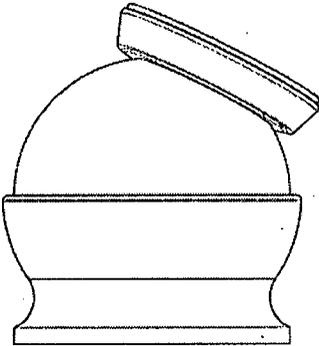
The second reason is that the curved face of the ball is arguably primarily functional as one-half of what is commonly known as a ball-and-socket joint. Indeed, the symmetrical (*i.e.* spherical) convex shape is relied on by the product so that the socket can enjoy the very well-known benefit of multiple positioning options—a benefit intrinsic to all ball-and-socket joints. In this way, the "curved surface" may fairly be read out of the '746 patent's claim and is not a secure basis on which to evaluate infringement. *OddzOn Prods., Inc. v. Just Toys, Inc.*, 122 F.3d 1396, 1405 (Fed. Cir. 1997) ("We agree with the district court's claim construction, which properly limits the scope of the patent to its overall ornamental visual impression, rather than to the broader general design concept of a rocket-like tossing ball. . . . We therefore reject

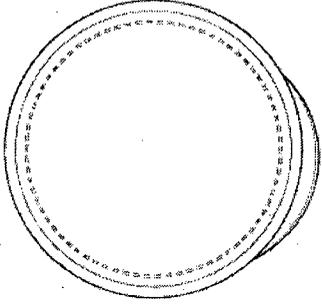
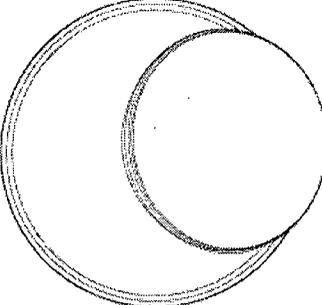
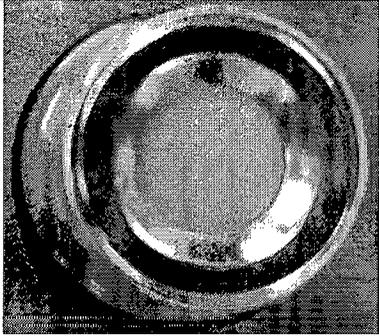
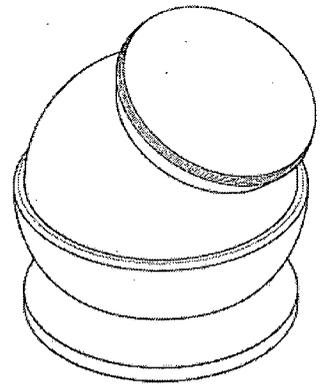
OddzOn's contention that overall similarity of the 'rocket-like' appearance is sufficient to show infringement.").

4. Infringement

Nite Ize alleges that each of the Respondents in Default has violated Section 337 by importing, selling for importation, and/or selling importation certain mobile device holders that infringe the '746 patent. (Mot. Mem. at 12-14.) The Commission Investigative Staff agrees with the conclusion that all of the Accused Products meet the claim of this patent. (Staff Resp. at 55.)

In light of the photographic evidence presented by Nite Ize, I find that there is no genuine issue over a material fact with respect to infringement for just one respondent, REXS LLC. That product is shown below in a side-by-side comparison with the figures of the '746 patent.

'746 patent	REXS LLC Accused Product (Mot., Ex. 7 at 275-278)
 <p data-bbox="444 1507 516 1535">FIG. 1</p>	

 <p>FIG. 2</p>	
 <p>FIG. 3</p>	
 <p>FIG. 4</p>	

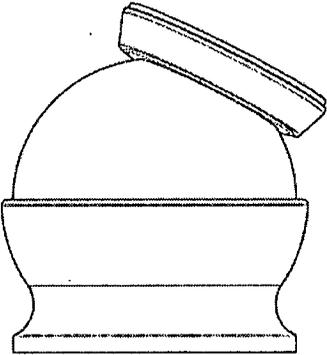
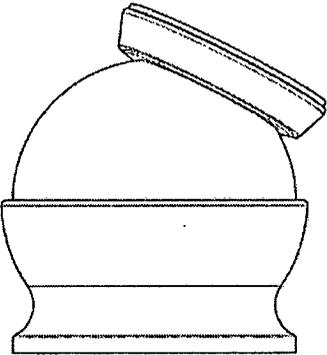
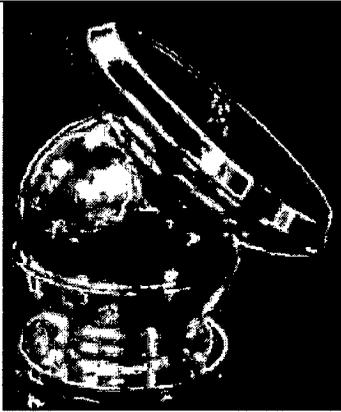
As shown in the table above, the REXS LLC Accused Product includes the overall design concepts reflected in the figures of the '746 patent, as well as each of the most noticeable ornamental details: an overall shape of a sphere sitting halfway deep in a cup, where the cup has a flat bottom face and a base which curves inward before extending outward to capture the sphere, and a coin-shaped socket positioned against a portion of the sphere, where the socket has

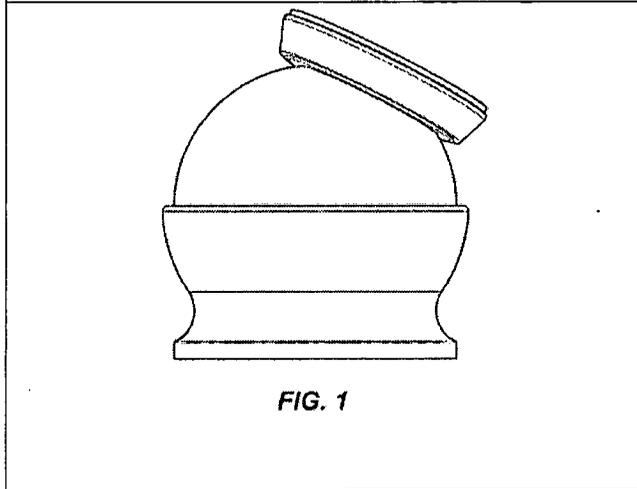
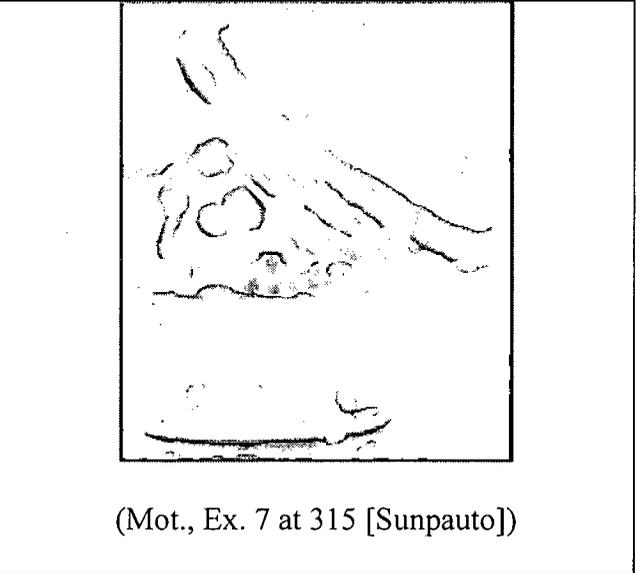
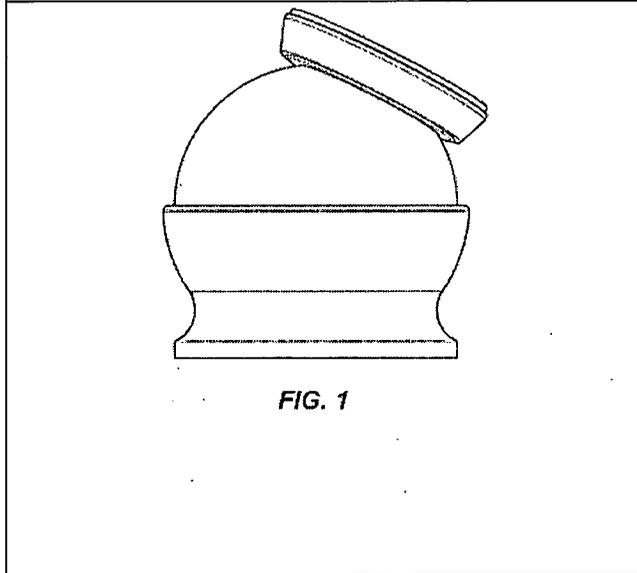
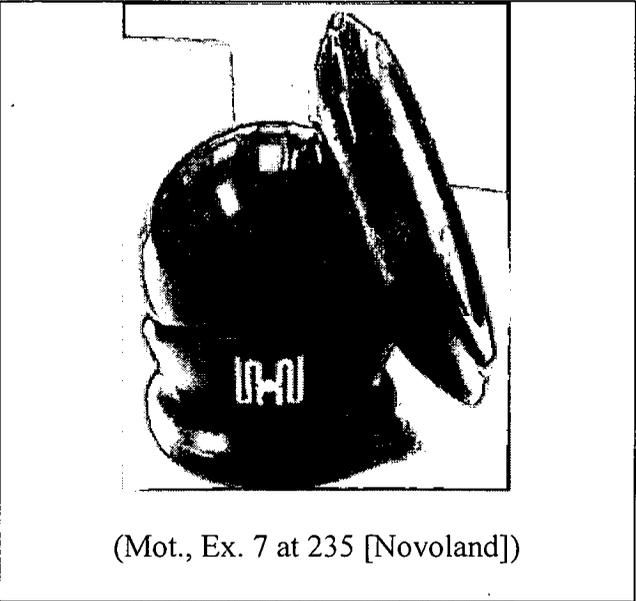
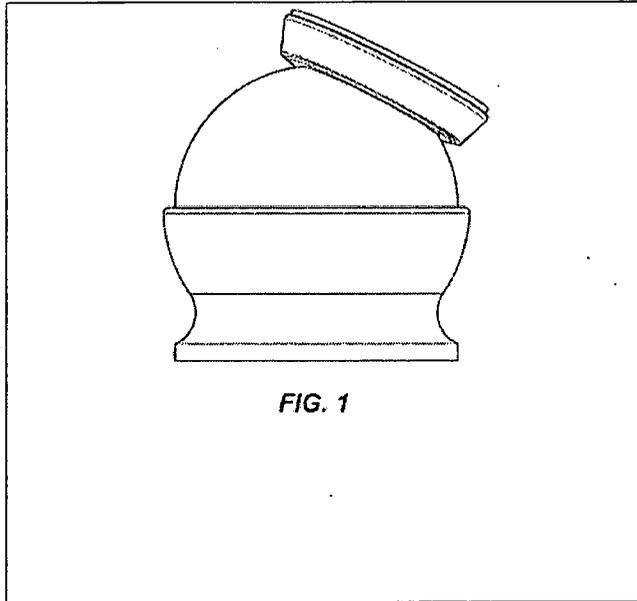
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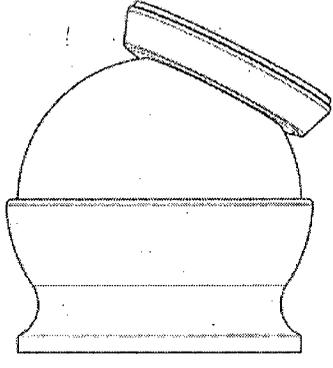
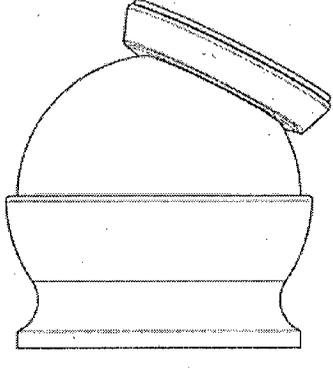
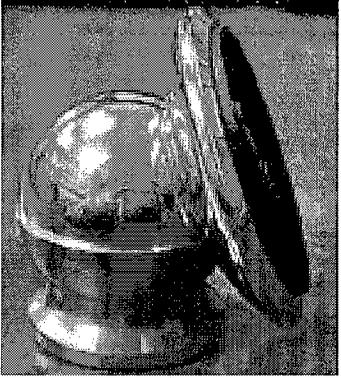
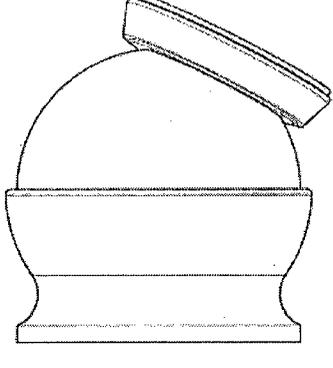
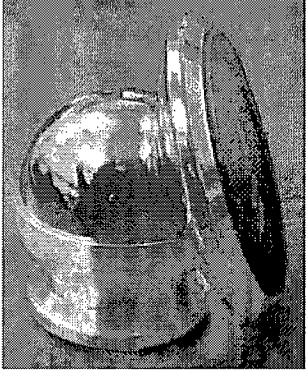
a diameter less than that of the sphere. Indeed, the REXS LLC Accused Product is practically identical to the patented design. I find no issue as to whether this similarity would “deceive such an [ordinary] observer, inducing him to purchase” the REXS LLC product while supposing it to be the Nite Ize design. *Ethicon*, 796 F.3d at 1335.

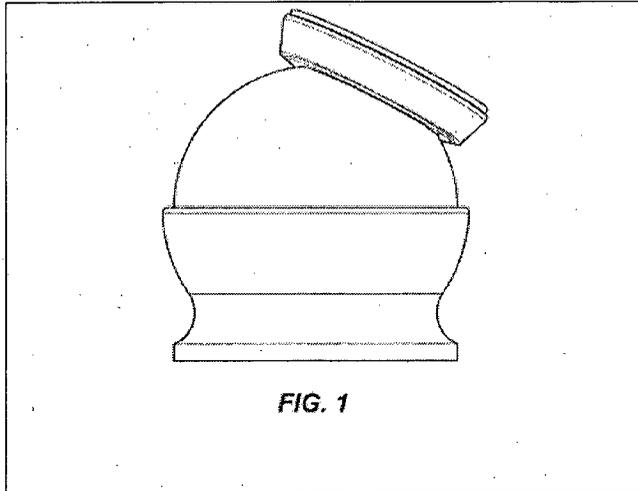
I cannot draw the same conclusion for the other nineteen Accused Products based on the evidence presented. Indeed, I find several of the designs to be plainly dissimilar.

Below is a first table of side-by-side comparisons of the '746 patent claim and certain Accused Products to demonstrate an example of the conflict in ornamental appearance.

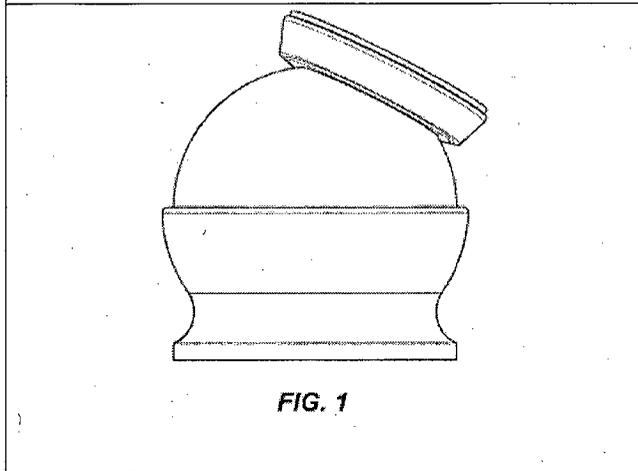
'746 patent	Accused Product
 <p data-bbox="443 1228 516 1255">FIG. 1</p>	 <p data-bbox="954 1241 1300 1276">(Mot., Ex. 7 at 35 [Anson])</p>
 <p data-bbox="443 1698 516 1726">FIG. 1</p>	 <p data-bbox="938 1766 1317 1801">(Mot., Ex. 7 at 115 [Ideapro])</p>



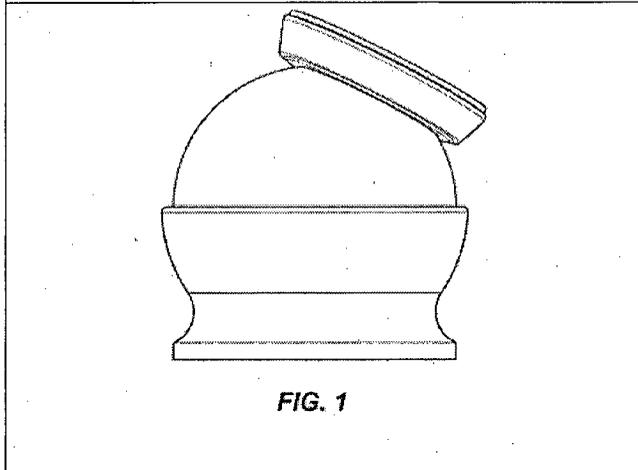
	<p>(Mot., Ex. 7 at 435 [Pecham])</p>
 <p>FIG. 1</p>	 <p>(Mot., Ex. 7 at 475 [Runshion])</p>
 <p>FIG. 1</p>	 <p>(Mot., Ex. 7 at 517 [LWANG])</p>
 <p>FIG. 1</p>	 <p>(Mot., Ex. 7 at 557 [Minse])</p>



(Mot., Ex. 7 at 597 [Oumeiou])

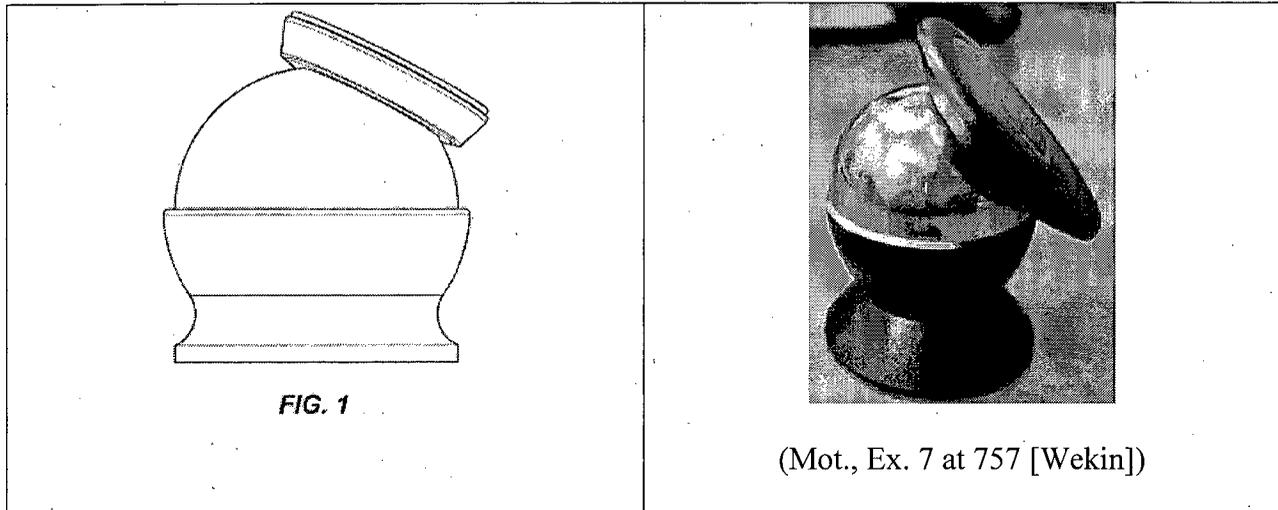


(Mot., Ex. 7 at 637 [Scotabc])



(Mot., Ex. 7 at 717 [Tenswall])

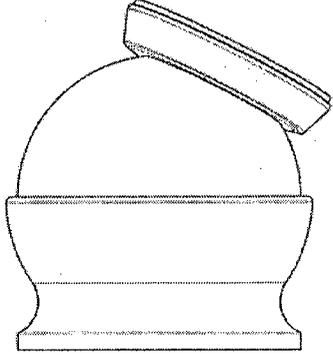
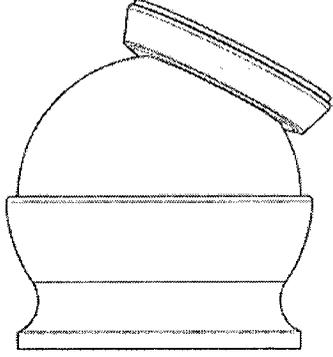
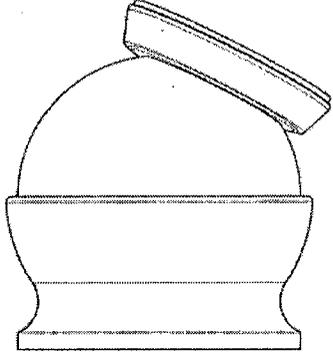
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In each of the above side-by-side comparisons, it is plain to see that the Accused Product sockets have a different side profile than the socket disclosed in the '746 patent, much in the same way as in the '959 patent. This is important for all of the same reasons discussed above and creates a genuine issue over whether customer confusion would exist.

Perhaps more importantly, however, the size ratio between the sphere and the socket in each Accused Product is opposite from that in the patented design. In the '746 patent, the socket has a smaller diameter than the sphere to which it is attached. In the Accused Products, it is the reverse; the socket has a larger diameter than the sphere. This visual effect stands out and creates a genuine issue over whether an ordinary consumer would be confused between the two basic design choices. *Compare Ethicon*, 796 F.3d 1336 (holding a plain dissimilarity between an “overall contoured shape” in the patent and an “overall linear shape” in the accused product) *with Crocs*, 598 F.3d at 1306 (holding infringement when both product and patent have the same overall visual effects from converging design lines and focal points).

Below is a second table showing a different class of differences between certain Accused Products and the '746 patent.

'746 patent	Accused Product
 <p>FIG. 1</p>	 <p>(Mot., Ex. 7 at 75 [IceFox])</p>
 <p>FIG. 1</p>	 <p>(Mot., Ex. 7 at 155 [Kagu Culture])</p>
 <p>FIG. 1</p>	 <p>(Mot., Ex. 7 at 195 [Newdreams])</p>

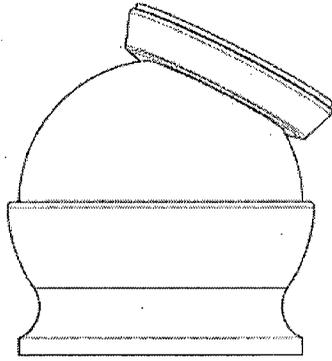


FIG. 1



(Mot., Ex. 7 at 358 [Trendbox] (image taken from comparison to Fig. 4))

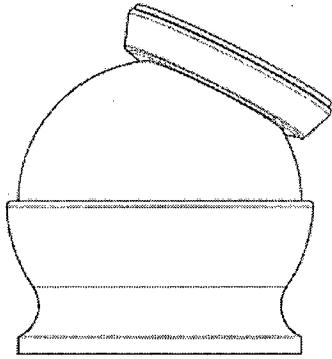


FIG. 1



(Mot., Ex. 7 at 395 [YouFo])

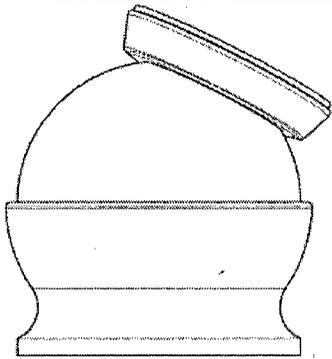
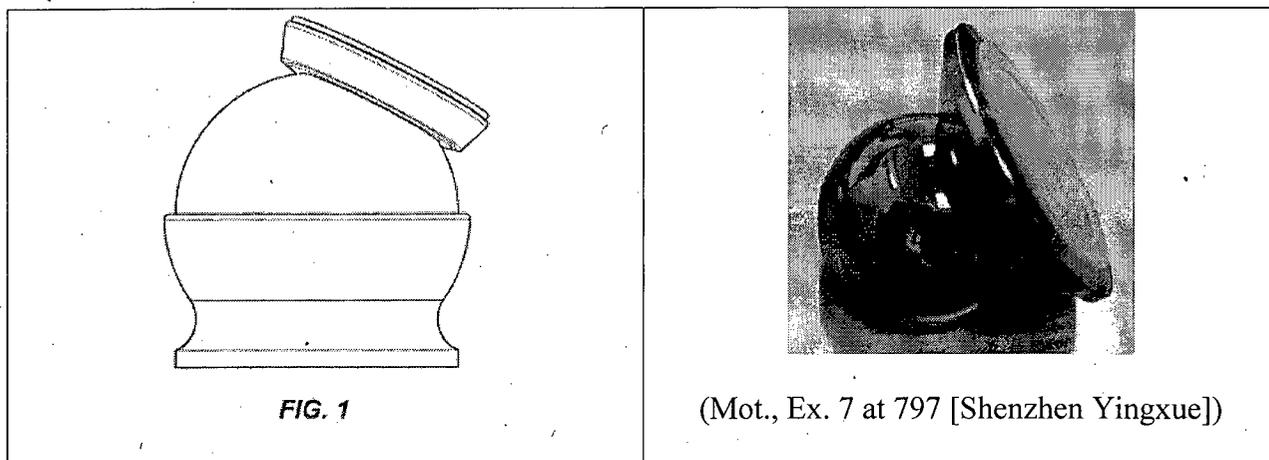


FIG. 1



(Mot., Ex. 7 at 677 [Tontek])



In these preceding side-by-side comparisons, many of the Accused Products again have a socket disc that is shaped differently from the patent's socket and much larger than the sphere to which it is attached—design considerations which create a genuine issue over customer confusion.

These comparisons also show a significant change in style with respect to the base which supports the sphere. None of the bases in the above Accused Products include the concave curvature of the base in the '746 patent. These Accused Product bases are either linear or convex. The concavity is a primary feature of the '746 patent's base which is itself a primary component of the overall product. That the Accused Products avoid this feature in favor of linear and convex (*i.e. opposite*) designs calls into question whether customer confusion would result. I find it particularly troublesome that a claim for confusion has been made at all over the YouFo and Shenzhen Yingxue Accused Products which are incredibly dissimilar from the '746 patent.

Again, generally, if each of these nineteen Accused Products were “arrayed in matching colors and mixed up randomly” in a box with the Nite Ize design, I find at this time that a customer could pull the Nite Ize products out with ease. *See Crocs*, 598 F.3d at 1306. In this

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context, it is especially important to remember that when elements like the base, sphere, and socket of these mobile device holders have functional purposes, a design patent can only protect the ornamental designs adorning those elements, and not the general concept of their arrangement. *See Ethicon*, 796 F.3d at 1337.

Thus, summary determination is appropriate only to find that the accused product from REXS LLC infringes the claim of the '746 patent.

V. DOMESTIC INDUSTRY

In its motion, Nite Ize argues “Nite Ize’s domestic investments in its activities relating to the Steelie® products and the exploitation of the Asserted Patents satisfy both the economic and technical prongs of the domestic industry requirement.” (Mot. Mem. at 22.) To support the economic prong, Nite Ize relies in large part on the witness declaration of Richard Case (Exhibit 9). To support the technical prong, Nite Ize provides claim charts in the same manner as it had done for infringement against the Accused Products, where the product known as the “Steelie® Car Mount Kit” is compared to the claims of the Asserted Patents (Exhibits 13-16).

In the Staff’s view, however, “there are genuine issues of material fact as to whether Nite Ize has made significant and/or substantial investments with respect to articles protected by the Asserted Patents, thus satisfying the requirements of 19 U.S.C. § 1337(a)(3)(A), (B) or (C).” (Staff Resp. at 58.) The Staff agrees that there is no dispute over whether the “Steelie® Car Mount Kit” practices claims 1, 11, and 12 of the '146 and '376 patents, as well as the claims of the '959 and '746 patents. (*Id.*) The Staff does find an issue with the economic prong; specifically what the “article(s) of commerce” are and what the bases are for concluding Nite Ize’s investments are significant and/or substantial. (*Id.* at 59.)

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Having thoroughly reviewed and considered the motion, memorandum, and exhibits attached thereto, I find that summary determination is inappropriate because, as one example, the facts presented do not create a prima facie case of domestic industry.

On the technical prong, I agree with the Staff that it is unclear what the domestic industry articles are. Nite Ize claims the “Steelie® Product Line” practices the ’146, ’376, and ’746 patents (Mot. Mem. at 27, 30, 33), and the “Steelie® Product Line’s Socket” practices the ’959 patent (*id.* at 34). Yet, the claim charts used to support these claims only address one product—the Car Mount Kit—and there is no testimony or other evidence offered to explain why the Car Mount Kit fairly represents all of the “Steelie® Product Line” with respect to the claims of the asserted patents (*see id.*, Exs. 13-16) or even which products constitute the “Steelie® Product Line.” This omission is meaningful given that Nite Ize claims “[t]he Steelie® product line has grown to thirteen products in only four years” (*id.* at 23) and, as the Staff has presented and I agree, there exist “components and/or products in its ‘Steelie® line’ that may or may not incorporate the patented inventions of the Asserted Patents (and may or may not incorporate patented components)” (Staff Resp. at 59 (citing Staff Resp., Exs. C, D, E)).

This uncertainty in the technical prong creates a corresponding uncertainty in the economic prong, yet there is an additional overarching deficiency here. Specifically, there are no figures on the actual costs of the domestic industry articles which are needed to securely evaluate the significance of Nite Ize’s claimed investments. Put another way, it cannot be determined from the Motion how much of the investment behind the domestic industry articles occurs in the United States, even if I were to decide that Nite Ize’s choice of a gross-profit percentage was a reliable means of allocation (as compared to revenue, unit count, production time, etc.). Moreover, some of the other financial figures are not supported by the cited evidence or may

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include costs without an appropriate connection to the domestic industry articles. (*Compare* Mot. Mem. at 23, 25 (identifying \$[] in computer hardware and software and citing Exhibit 9, ¶ 4.4) *with* Mot., Ex. 9 at ¶ 4.4 (applying]% of \$[] in computer hardware and software); *see also* Mot., Ex. 10 (including in the computer hardware calculus, for example, “Upgrade Website’s B2B feature,” “Payroll Accrual [],” “Websitepipeline new Niteize Website”).)

For at least these reasons, I find a genuine issue over material facts precluding summary determination that Nite Ize operates a sufficient domestic industry.

VI. VALIDITY

The Asserted Patents are presumed valid as a matter of law. 35 U.S.C. § 282. This presumption of validity may be overcome only by “clear and convincing evidence.” *Pfizer, Inc. v. Apotex, Inc.*, 480 F.3d 1348, 1359 (Fed. Cir. 2007). On this issue, Nite Ize seeks “a finding that those patent claims are valid and enforceable.” (Mot. Mem. at 2.) The Commission Investigative Staff states it “presumes—and does not challenge---the validity of the Asserted Patents.” (Staff Resp. at 45.)

With no evidence or argument to the contrary, I concur that the Asserted Patents are presumed valid and that they have not been shown to be invalid or unenforceable. *See, e.g., Lannom Mfg. Co., Inc. v. Int’l Trade Comm’n*, 799 F.2d 1572, 1580 (Fed. Cir. 1986) (holding that the Commission does not have authority to redetermine patent validity when no defense of invalidity had been raised).

VII. REMEDY AND BONDING

Nite Ize’s motion requests:

[T]hat the Commission issue cease and desist orders pursuant to 19 U.S.C. § 1337(f)(1) directed to the Defaulting Respondents and set the bond for the Presidential Review Period at 100% of the entered

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value of the infringing mobile device holders and components thereof. Additionally, Nite Ize requests the Commission issue a general exclusion order pursuant to 19 U.S.C. § 1337(d)(2) covering mobile device holders and components thereof that infringe one or more of the Asserted Claims.

(Mot. Mem. at 2).

19 C.F.R. § 210.42(a)(1)(ii) states:

Unless the Commission orders otherwise, within 14 days after issuance of the initial determination on violation of section 337 of the Tariff Act of 1930, the administrative law judge shall issue a recommended determination containing findings of fact and recommendations concerning – (A) The appropriate remedy in the event that the Commission finds a violation of section 337, and (B) The amount of the bond to be posted by the respondents during Presidential review of Commission action under section 337(j) of the Tariff Act.

Since I find at this time that genuine issues of material fact preclude a summary determination that a violation has taken place, the present initial determination is not properly considered the “initial determination on violation of section 337” as referred to in this Rule. As such, I decline, under this Commission Rule, to make findings related to the recommended determination on remedy and bond should the Commission find a violation has taken place.

VIII. INITIAL DETERMINATION

Overall, I find that there are genuine issues of material fact or law precluding a determination that a violation of section 337 has taken place. For the reasons stated above, however, it is my Initial Determination that:

1. All Accused Products have been imported into the United States;
2. Respondents Novoland, REXS, LLC, Kagu Culture, Sunpauto, Trendbox, Wekin, Runshion, Pecham, LWANG, Scotabc, TONTEK, Tenswall, and Shenzhen Yingxue imported, sold for importation, or sold after importation those Accused Products associated with each respondent, respectively;

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3. Nite Ize is the sole assignee and owner of all the Asserted Patents;
4. The Accused Products from Anson, IceFox, Ideapro, Novoland, REXS LLC, Sunpauto, YouFo, Pecham, Runshion, LWANG, Minse, Oumeiou, Scotabc, Tontek, Tenswall, and Wekin infringe claims 1, 11, and 12 of the '376 patent;
5. The Accused Products from Anson, IceFox, Ideapro, Novoland, REXS LLC, Sunpauto, YouFo, Pecham, Runshion, LWANG, Minse, Oumeiou, Scotabc, Tontek, Tenswall, and Wekin infringe claims 1, 11, and 12 of the '146 patent;
6. The Accused Product from REXS LLC infringes the claim of the '959 patent; and
7. The Accused Product from REXS LLC infringes the claim of the '746 patent.

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 contained herein.

To expedite service of the public version, the parties are hereby ORDERED to jointly submit no later than seven (7) days from the date of this Order: (1) a proposed public version of this ID with any proposed redactions bracketed in red; and (2) a written justification for any proposed redactions specifically explaining why the piece of information sought to be redacted is

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confidential and why disclosure of the information would be likely to cause substantial harm or likely to have the effect of impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions.^{1 2}

SO ORDERED.



Thomas B. Pender
Administrative Law Judge

¹ Under Commission Rules 210.5 and 201.6(a), confidential business information includes: information which concerns or relates to the trade secrets, processes, operations, style of works, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, or other information of commercial value, the disclosure of which is likely to have the effect of either impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions, or causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained, unless the Commission is required by law to disclose such information.

See 19 C.F.R. § 201.6(a). Thus, to constitute confidential business information the disclosure of the information sought to be designated confidential must *likely have the effect of* either: (1) impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions; or (2) *causing substantial harm* to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained.

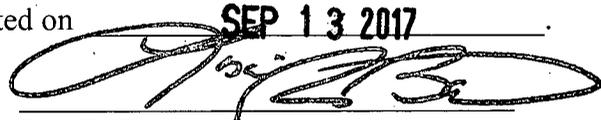
² While the parties are required to jointly submit the proposed redactions, there is no requirement that the parties must agree on all the redactions. However, the parties' written justification for any proposed redactions should distinguish between those redactions that are agreed upon and those proposed by the individual parties.

**IN THE MATTER OF CERTAIN MOBILE DEVICE
HOLDERS AND COMPONENTS THEREOF**

337-TA-1028

CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **PUBLIC INITIAL DETERMINATION ORDER NO. 14** has been served upon the **Commission Investigative Attorney, Cortney Hoecherl, Esq**, and the following parties as indicated on SEP 13 2017



Lisa R. Barton, Secretary
U.S. International Trade Commission
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