

In the Matter of

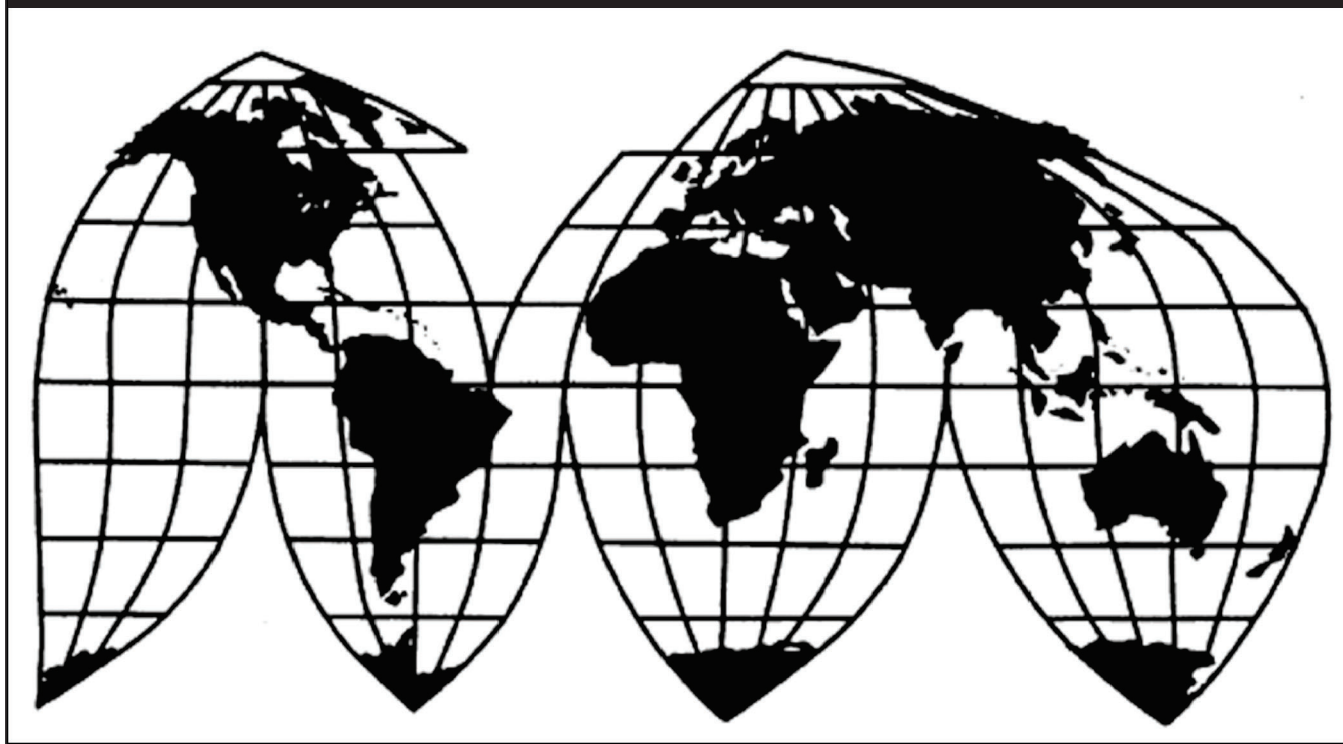
**CERTAIN COLLAPSIBLE SOCKETS FOR
MOBILE ELECTRONIC DEVICES AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1056

Publication 4978

September 2019

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

COMMISSIONERS

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Jason Kearns, Commissioner

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Washington, DC 20436**

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In the Matter of

CERTAIN COLLAPSIBLE SOCKETS FOR MOBILE ELECTRONIC DEVICES AND COMPONENTS THEREOF

Investigation No. 337-TA-1056



UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

In the Matter of

**CERTAIN COLLAPSIBLE SOCKETS
FOR MOBILE ELECTRONIC DEVICES
AND COMPONENTS THEREOF**

Investigation No. 337-TA-1056

**NOTICE OF THE COMMISSION'S FINAL DETERMINATION FINDING A
VIOLATION OF SECTION 337; ISSUANCE OF A GENERAL EXCLUSION ORDER;
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 found a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in this investigation. The Commission has issued a general exclusion order prohibiting the unlicensed importation of certain collapsible sockets that infringe certain claims of the asserted patent. The investigation is terminated.

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 May 15, 2017, based on a complaint filed on April 10, 2017 on behalf of PopSockets LLC of Boulder, Colorado ("PopSockets"). 82 FR 22348-49 (May 15, 2017). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain collapsible sockets for mobile electronic devices and components thereof by reason of infringement of U.S. Patent No. 8,560,031 ("the '031 patent"). *Id.* The notice of investigation named as respondents Agomax Group Ltd. of Kowloon, Hong Kong; Hangzhou Hangkai Technology Co., Ltd. of Zhejiang, China; Yiwu Wentou Import & Export Co., Ltd. of Zhejiang, China; Shenzhen Enruize Technology Co., Ltd. of Shenzhen, China; and Guangzhou

Xi Xun Electronics Co., Ltd.; Shenzhen Chuanghui Industry Co., Ltd. of Guangdong, China; Shenzhen VVI Electronic Limited; Shenzhen Yright Technology Co., Ltd.; Shenzhen Kinsen Technology Co., Limited; Shenzhen Showerstar Industrial Co., Ltd.; Shenzhen Lamye Technology Co., Ltd.; Jiangmen Besnovo Electronics Co., Ltd.; Shenzhen Belking Electronic Co., Ltd.; Shenzhen CEX Electronic Co., Limited, all of Guangdong, China. *Id.* The Office of Unfair Import Investigations (“OUII”) also was named as a party in the investigation.

On August 22, 2017, 13 out of 14 respondents were found in default. Notice (Aug. 22, 2017) (determining not to review Order No. 9 (Aug. 4, 2017)).

On September 18, 2017, the Commission terminated the last remaining respondent, Shenzhen Chuanghui Industry Co., Ltd., based on withdrawal of the complaint as to that respondent. Notice (Sept. 18, 2017) (determining not to review Order No. 10 (Aug. 28, 2017)).

On August 8, 2017, PopSockets filed a motion for summary determination that: (1) the defaulting respondents have sold for importation into the United States, imported into the United States, or sold after importation certain collapsible sockets for mobile electronic devices and components thereof that allegedly infringe certain claims of the ’031 patent in violation of section 337; (2) the accused products infringe the asserted claims of the ’031 patent; and (3) a domestic industry with respect to the ’031 patent exists. The motion also requested a recommendation for entry of a general exclusion order and a bonding requirement pending Presidential review. On August 31, 2017, OUII filed a response supporting the motion in substantial part and supporting the requested remedy of a general exclusion order.

On February 1, 2018, the administrative law judge (“ALJ”) issued the subject initial determination (“ID”) (Order No. 11), granting PopSockets’ motion for summary determination of a section 337 violation. The ID found that the defaulting respondents’ accused products infringe one or more of claims 9-12 of the ’031 patent, but found no infringement of claims 16 and 17 of the ’031 patent. The ID found that the defaulting respondents’ accused products have been imported into the United States and that a domestic industry exists in the United States with respect to the ’031 patent. No petitions for review of the ID were filed. The ALJ also issued a Recommended Determination on Remedy and Bonding, recommending that, if the Commission finds a section 337 violation, the Commission issue a general exclusion order and impose a bond of 100 percent during the period of Presidential review.

On March 19, 2018, the Commission determined to review in part the ID. 83 FR 12812 (Mar. 23, 2018). Specifically, the Commission determined to review (1) the ID’s findings on the technical prong of the domestic industry requirement to correct a typographical error and (2) the ID’s findings on the economic prong of the domestic industry requirement. The Commission determined not to review the remaining issues decided in the ID. The Commission requested additional briefing from the parties on the issues under review and also invited the parties, interested government agencies, and any other interested parties to file written submissions on the issues of remedy, the public interest, and bonding.

On April 2, 2018, PopSockets and OUII filed initial written submissions in response to the Commission's notice. On April 4, 2018, non-party Quest USA Corporation ("Quest") filed a written submission. On April 11, 2018, PopSockets filed a reply to Quest's submission. Also on that day, OUII filed a reply to the submissions of PopSockets and Quest.

Having examined the record of this investigation, including the ID and the various submissions, the Commission has determined to affirm, on modified grounds, the ID's finding of a section 337 violation. The Commission affirms the ID's finding that the complainant satisfied the technical prong of the domestic industry requirement with the modification of a citation to "Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 77 (Infringement Analysis and Chart)" at page 107 of the ID to "Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 61 (Analysis and Chart)." The Commission affirms, with modified reasoning set forth in the opinion issued concurrently herewith, the ID's finding with respect to the economic prong of the domestic industry requirement under section 337(a)(3)(B), but takes no position with respect to subsections (A) and (C) (19 U.S.C. 1337(a)(3)(A), (B), (C)).

The Commission finds that the statutory requirements for relief under section 337(g)(2) (19 U.S.C. 1337(g)(2)) are satisfied with respect to the defaulting respondents. In addition, the Commission finds that the public interest factors enumerated in section 337(g)(1) (19 U.S.C. 1337(g)(1)) do not preclude issuance of the statutory relief.

The Commission has determined the appropriate remedy is a general exclusion order prohibiting the unlicensed importation of certain collapsible sockets that infringe one or more of claims 9-12 of the '031 patent. The Commission has also determined to set a bond in the amount of 100 percent of the entered value of the infringing products imported during the period of Presidential review (19 U.S.C. 1337(j)). The Commission's order and opinion were delivered to the President and to 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 CFR part 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read "Lisa R. Barton", with a stylized flourish at the end.

Lisa R. Barton
Secretary to the Commission

Issued: June 14, 2018

**CERTAIN COLLAPSIBLE SOCKETS FOR MOBILE
ELECTRONIC DEVICES AND COMPONENTS THEREOF**

Inv. No. 337-TA-1056

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served by hand upon the Commission Investigative Attorney, **Paul Gennari, Esq.**, and the following parties as indicated, on 6/14/2018



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

On Behalf of Complainants PopSockets LLC:

Benjamin T. Horton, Esq.
MARSHALL, GERSTEIN & BORUN LLP
233 South Wacker Drive
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Respondents:

Agomax Group Ltd.
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Tsimshatsui, Kowloon, Hong Kong

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A3045 Floor 3, Lingnan Building, No. 25
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515, Xingdahua Building, Xixiang Street,
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China

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**CERTAIN COLLAPSIBLE SOCKETS FOR MOBILE
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Certificate of Service – Page 2

Hangzhou Hangkai Technology Co., Ltd.
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Hangzhou City, Zhejiang Province, China

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Shenzhen Kinsen Technology Co., Limited
1603, 16/F, MetroCity, Buji Street, Longgang Dist.,
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☒ Via Express Delivery
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☐ Other: _____

Shenzhen Enfuize Technology Co., Ltd.
Rm 220, 2/F Zhonglian Mansion, 402 Building,
Languang Road, Futian District,
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Shenzhen Showerstar Industrial Co., Ltd.
Rm 302, XueFeng Industrial Building, No. 1021
of XueGang South Rd, LongGang
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Shenzhen Lamye Technology Co., Ltd.
Room 407A-C YangNan Building, ChuangYe
Road 2, Baoan District, Shenzhen,
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- ☐ Via Hand Delivery
☒ Via Express Delivery
☐ Via First Class Mail
☐ Other: _____

Jiangmen Besnovo Electronics Co., Ltd.
No. 18 Plant, Songyuanju, Dubi Village
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Shenzhen Belking Electronic Co., Ltd.
8017A, 8/F, Bldg. 4 Seg Science and Technology Park,
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Guangdong, China

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☒ Via Express Delivery
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Yiwu Wentou Import & Export Co., Ltd.
Floor 8, Northside, No. 201-209, Chengbei Rd.,
Choucheng Street, Yiwu, Jinhua, Zhejiang,
China

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Shenzhen CEX Electronic Co., Limited
Baoan District, Minzhi road, Bahishilong,
First Area, Building 104, 1702 Shenzhen,
Guangdong, 518000, China

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- ☒ Via Express Delivery
- ☐ Via First Class Mail
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UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

In the Matter of

**CERTAIN COLLAPSIBLE SOCKETS
FOR MOBILE ELECTRONIC DEVICES
AND COMPONENTS THEREOF**

Investigation No. 337-TA-1056

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 into the United States, the sale for importation, and the sale within the United States after importation of certain collapsible sockets for mobile electronic devices and components thereof covered by one or more of claims 9-12 of U.S. Patent No. 8,560,031 (“the ’031 patent”).

Having reviewed the record of this investigation, including the written submissions, the Commission has made its determination 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 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 covered collapsible sockets for mobile electronic devices and components thereof (“covered products”).

The Commission has also determined that the public interest factors enumerated in 19 U.S.C. § 1337(g)(1) do not preclude the issuance of a general exclusion order and that the bond during the period of Presidential review shall be in the amount of 100 percent of the entered value for all covered products in question.

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

1. Collapsible sockets for mobile electronic devices and components thereof that are covered by one or more of claims 9-12 of the '031 patent are excluded from entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, for the remaining term of the patent, except under license of the patent owner or as provided by law.

2. Notwithstanding paragraph 1 of this Order, the aforementioned collapsible sockets for mobile electronic devices and components thereof are entitled to entry into the United States for consumption, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption under bond in the amount of 100 percent of the entered value of the products pursuant to subsection (j) of section 337 (19 U.S.C. § 1337(j)) and the Presidential Memorandum for the United States Trade Representative of July 21, 2005 (70 *Fed. Reg.* 43,251), from the day after this Order is received by the United States Trade Representative until such time as the United States Trade Representative notifies the Commission that this Order is approved or disapproved but, in any event, not later than sixty days after the date of receipt of this Order.

3. At the discretion of U.S. Customs and Border Protection ("CBP") and pursuant to procedures that it establishes, persons seeking to import collapsible sockets for mobile electronic devices and components thereof that are potentially subject to this Order may be required to certify that they are familiar with the terms of this Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the products being imported are not excluded from entry under paragraph 1 of this Order. At its discretion, CBP may require persons who have provided the certification described in this paragraph to furnish such records or analyses as are necessary to substantiate the certification.

4. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to collapsible sockets for mobile electronic devices and components thereof imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.

5. The Commission may modify this Order in accordance with the procedures described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

6. The Secretary shall serve copies of this Order upon each party of record in this investigation and upon CBP.

7. Notice of this Order shall be published in the *Federal Register*.

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', with a stylized flourish at the end.

Lisa R. Barton
Secretary to the Commission

Issued: June 14, 2018

**CERTAIN COLLAPSIBLE SOCKETS FOR MOBILE
ELECTRONIC DEVICES AND COMPONENTS THEREOF**

Inv. No. 337-TA-1056

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **Order, Commission** has been served by hand upon the Commission Investigative Attorney, **Paul Gennari, Esq.**, and the following parties as indicated, on 6/14/2018



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

On Behalf of Complainants PopSockets LLC:

Benjamin T. Horton, Esq.
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233 South Wacker Drive
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Respondents:

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UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

In the Matter of

**CERTAIN COLLAPSIBLE SOCKETS
FOR MOBILE ELECTRONIC DEVICES
AND COMPONENTS THEREOF**

Investigation No. 337-TA-1056

COMMISSION OPINION

On February 1, 2018, the presiding administrative law judge (“ALJ”) issued an initial determination (“ID”) (Order No. 11) granting summary determination that certain respondents that were found in default have violated section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337. The Commission determined to review in part the ID and requested briefing on certain issues under review and on the issues of remedy, the public interest, and bonding. 83 Fed. Reg. 12812 (Mar. 23, 2018).

Having considered the record of this investigation, including the ID and the various submissions, the Commission has determined to affirm, with modifications, the ID’s finding of a section 337 violation and to issue a general exclusion order.

I. BACKGROUND

A. Procedural History

The Commission instituted this investigation on May 15, 2017, based on a complaint filed on April 10, 2017 on behalf of PopSockets LLC of Boulder, Colorado (“PopSockets”). 82 Fed. Reg. 22348 (May 15, 2017). The complaint 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 collapsible sockets for mobile electronic devices and components thereof by reason of infringement of U.S. Patent No. 8,560,031 (“the ’031 patent”).

[REDACTED]

The notice of investigation named as respondents Agomax Group Ltd. of Kowloon, Hong Kong; Hangzhou Hangkai Technology Co., Ltd. of Zhejiang, China; Yiwu Wentou Import & Export Co., Ltd. of Zhejiang, China; Shenzhen Enruize Technology Co., Ltd. of Shenzhen, China; and Guangzhou Xi Xun Electronics Co., Ltd.; Shenzhen Chuanghui Industry Co., Ltd. of Guangdong, China; Shenzhen VVI Electronic Limited; Shenzhen Yright Technology Co., Ltd.; Shenzhen Kinsen Technology Co., Limited; Shenzhen Showerstar Industrial Co., Ltd.; Shenzhen Lamye Technology Co., Ltd.; Jiangmen Besnovo Electronics Co., Ltd.; Shenzhen Belking Electronic Co., Ltd.; Shenzhen CEX Electronic Co., Limited, all of Guangdong, China. The Office of Unfair Import Investigations ("OUII") also was named as a party in the investigation.

On August 22, 2017, 13 out of 14 respondents were found in default. Notice (Aug. 22, 2017) (determining not to review Order No. 9 (Aug. 4, 2017)). On September 18, 2017, the Commission terminated the only remaining respondent, Shenzhen Chuanghui Industry Co., Ltd., based on withdrawal of the complaint as to that respondent. Notice (Sept. 18, 2017) (determining not to review Order No. 10 (Aug. 28, 2017)).

On August 8, 2017, PopSockets filed a motion for summary determination that: (1) the defaulting respondents have sold for importation into the United States, imported into the United States, or sold after importation certain collapsible sockets for mobile electronic devices and components thereof that allegedly infringe certain claims of the '031 patent in violation of section 337; (2) the accused products infringe the asserted claims of the '031 patent; and (3) a domestic industry with respect to the '031 patent exists.¹ The motion also requested a

¹ See Complainant PopSockets' Motion for Summary Determination of Violations by the Defaulting Respondents, for the Existence of a Domestic Industry, for a General Exclusion

[REDACTED]

recommendation for entry of a general exclusion order and a bonding requirement pending Presidential review.² On August 31, 2017, OUII filed a response supporting the motion in substantial part and supporting the requested remedy of a general exclusion order.³

On February 1, 2018, the ALJ issued the subject ID (Order No. 11), granting PopSockets' motion for summary determination of a section 337 violation. The ID found that the defaulting respondents' accused products infringe one or more of claims 9-12 of the '031 patent (apparatus claims), but found no infringement of claims 16 and 17 of the '031 patent (method claims). The ID found that the defaulting respondents' accused products have been imported into the United States and that a domestic industry exists in the United States with respect to the '031 patent. The ALJ also issued a Recommended Determination on Remedy and Bonding ("RD"), recommending that, if the Commission finds a section 337 violation, the Commission issue a general exclusion order and impose a bond of 100 percent during the period of Presidential review. No petitions for review of the ID were filed.

On March 19, 2018, the Commission determined to review in part the ID. 83 Fed. Reg. at 12812. Specifically, the Commission determined to review (1) the ID's findings on the technical prong of the domestic industry requirement to correct a typographical error and (2) the

Order, and for a Recommended Determination on Remedy and Bonding; Complainant PopSockets' Memorandum of Points and Authorities in Support of Its Motion for Summary Determination of Violations by the Defaulting Respondents, for the Existence of a Domestic Industry, for a General Exclusion Order, and for a Recommended Determination of Remedy and Bonding ("PopSockets Mem.").

² *Id.*

³ See Commission Investigative Staff's Response to Complainant PopSockets' Motion for Summary Determination of Violations by Defaulting Respondents, for the Existence of a Domestic Industry, and for a Recommended Determination on Remedy and Bonding.

[REDACTED]

ID's findings on the economic prong of the domestic industry requirement. *Id.* The Commission determined not to review the remaining issues decided in the ID. *Id.* The Commission requested additional briefing from the parties on the issues under review and also invited the parties, interested government agencies, and any other interested parties to file written submissions on the issues of remedy, the public interest, and bonding. *Id.*

On April 2, 2018, PopSockets and OUII filed initial written submissions in response to the Commission's notice.⁴ On April 4, 2018, non-party Quest USA Corporation ("Quest") filed a written submission concerning remedy.⁵ On April 11, 2018, PopSockets filed a reply to Quest's submission.⁶ Also on that day, OUII filed a reply to the submissions of PopSockets and Quest.⁷

B. The Asserted Patent

The '031 patent is entitled "Extending Socket for Portable Media Player" and issued on October 15, 2013, to named inventors David B. Barnett and Lawrence E. Carlson. Compl. Ex. 1 ('031 patent). PopSockets is the sole assignee and owner of the '031 patent. *See* Compl. Ex. 3 (assignment); Compl. Ex. 4 (owner name change).

⁴ *See* Complainant PopSockets' Response Regarding the Notice of Commission Determination to Review an Initial Determination in Part ("PopSockets Br."); Submission of Office of Unfair Import Investigation on the Issues under Review, Remedy, Public Interest, and Bonding ("OUII Br.").

⁵ *See* Quest USA Corporation's Submission on Remedy, Bonding, and Public Interest ("Quest Br."). On March 30, 2018, the Chairman granted Quest a two-day extension to file a written submission until April 4, 2018, and further set the deadline for responses to Quest's submission for April 11, 2018. Ltr. from Secretary to Brian Schwartz (Mar. 30, 2018).

⁶ Complainant PopSockets' Reply to Non-Party Quest USA Corporation's Submission on Remedy, Bonding, and Public Interest ("PopSockets Reply").

⁷ Reply Submission of Office of Unfair Import Investigations on the Issues under Review, Remedy, Public Interest, and Bonding ("OUII Reply").

The '031 patent relates to extending sockets for portable media players and is directed to a feature that attaches to a portable media player to enable functions beyond protection of the player. Compl. Ex. 1 ('031 patent), 1:7-18. The extending sockets provide functions such as “storing headphone cords and preventing the cords from tangling, forming stand legs, forming gaming grips, clipping to belts, waistbands and shirt pockets, forming legs for wedging players that are phones between the shoulder and ear, and forming a grip that allows a user to securely hold and manipulate the player with one hand.” *Id.* 1:37-44.

Figure 1A below depicts an embodiment of the invention in which two sockets attached to a portable media player are retracted or collapsed. *Id.* 4:37-40. Figure 1B below depicts an embodiment of the invention in which the two sockets are opened or extended. *Id.* 4:40-42.

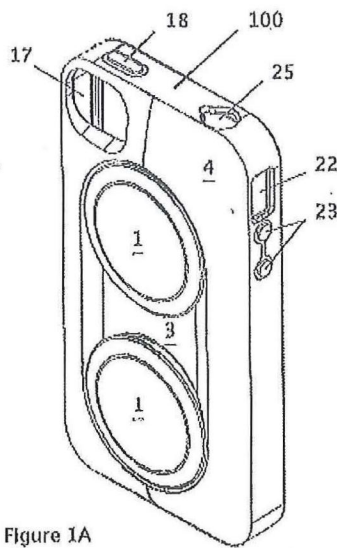


Figure 1A

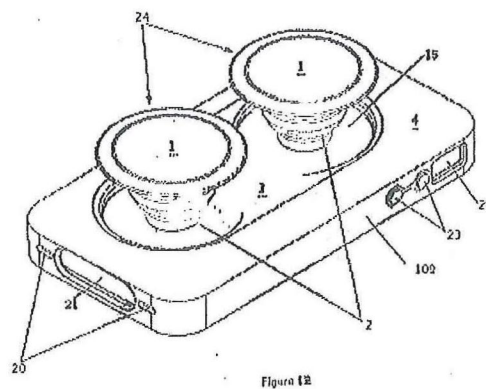


Figure 1B

At issue in this investigation are apparatus claims 9-12 and method claims 16 and 17 of the '031 patent. PopSockets asserts all of these claims against each defaulting respondent, except for claim 12, which is not asserted against Yiwu Wentou Import & Export Co., Ltd. ID at 30. Claims 9 and 16 are independent claims.

The asserted claims are recited below:

[REDACTED]

9. A socket for attaching to a portable media player or to a portable media player case, comprising:

a securing element for attaching the socket to the back of the portable media player or portable media player case; and

an accordion forming a tapered shape connected to the securing element, the accordion capable of extending outward generally along its axis from the portable media player and retracting back toward the portable media player by collapsing generally along its axis; and

a foot disposed at the distal end of the accordion.

10. The socket of claim 9 wherein the accordion comprises rigid walls interspersed with flexural hinges.

11. The socket of claim 10 wherein the tapered shape comprises a cone shape constructed and arranged such that the walls fold generally parallel to the axis of the accordion when the accordion is collapsed.

12. The socket of claim 11 wherein the accordion is formed of polyester-based thermoplastic polyurethane elastomer, the walls are about 1 to 2 mm thick and 2 to 4 mm long, and the flexural hinges are about 0.2 to 0.4 mm thick and 1 to 2 mm long.

16. A method comprising the steps of:

attaching a socket including an accordion forming a tapered shape and having walls interspaced with flexural hinges to a portable media player;

selectively extending the socket by unfolding the accordion generally along its axis; and

selectively retracting the socket by folding the accordion generally along its axis such that the walls fold next to each other.

17. The method of claim 16 wherein the retracting step folds the walls into an orientation such that the walls are generally parallel to the axis of the accordion.

Id., claims 9-12, 16-17; Certificate of Correction for U.S. Patent No. 8,560,031 (Mar. 7, 2017)

(correcting claims 1, 9, and 20).

II. STANDARD ON REVIEW

Once the Commission determines to review an initial determination, its review is conducted *de novo*. *Certain Polyethylene Terephthalate Yarn and Products Containing Same*,

[REDACTED]

Inv. No. 337-TA-457, USITC Pub. No. 3550, Comm'n Op. at 9 (June 18, 2002). Upon review, "the Commission has 'all the powers which it would have in making the initial determination,' except where the issues are limited on notice or by rule." *Certain Flash Memory Circuits and Products Containing Same*, Inv. No. 337-TA-382, USITC Pub. No. 3046, Comm'n Op. at 14 (June 26, 1997) (quoting *Certain Acid-Washed Denim Garments and Accessories*, Inv. No. 337-TA-324, USITC Pub. No. 2576, Comm'n Op. at 5 (Aug. 28, 1992)). Commission practice in this regard is consistent with the Administrative Procedure Act. *See* 5 U.S.C. § 557(b).

Upon review, "the Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, the initial determination of the administrative law judge." 19 C.F.R. § 210.45(c). "The Commission may also make any findings or conclusions that in its judgment are proper based on the record in the proceeding." *Id.* This rule reflects the fact that the Commission is not an appellate court, but is the body responsible for making the final agency decision.

III. DISCUSSION

A. Issues Under Review

The Commission determined to review (1) the ID's findings on the technical prong of the domestic industry requirement to correct a typographical error, namely, to modify a reference on page 107 of the ID from "Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 77 (Infringement Analysis and Chart)" to "Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 61 (Analysis and Chart)" and (2) the ID's findings on the economic prong of the domestic industry requirement. 83 Fed. Reg. at 12812. To assist with its review, the Commission requested responses from the parties to the following questions:

1. Please describe the nature and significance of PopSockets' alleged domestic industry investments, *i.e.*, in the context of PopSockets' operations, marketplace, or industry,

[REDACTED]

and whether PopSockets' activities have a direct bearing on the practice of the '031 patent. As part of your response, please describe in detail PopSockets' activities in engineering, research, development, operations, marketing, sales, service, and assembly and what amount or portion of the total alleged investment under each of 19 U.S.C. § 1337(a)(3)(A), (B), and (C) is allocable to each activity.

2. Please provide a basis for crediting any investments that occurred after the filing date of the complaint towards the domestic industry requirement.

Id.

1. Domestic Industry: Technical Prong

The ID found that the PopSockets product practices apparatus claims 9-12 of the '031 patent. ID at 105-11. As a result, the ID found unnecessary a technical prong analysis of method claims 16 and 17 but noted that PopSockets presented uncontroverted evidence showing the practice of such method claims. *Id.* at 111.

The Commission affirms the ID's finding on the technical prong with the exception of the ID's citation to Mr. Kemnitzer's infringement analysis instead of his domestic industry analysis. The citation at page 107 of the ID to "Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 77 (Infringement Analysis and Chart)" is corrected to refer instead to "Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 61 (Analysis and Chart)."

2. Domestic Industry: Economic Prong

Subsections 337(a)(2) and (3) set forth the domestic industry requirement:

(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

[REDACTED]

(C) substantial investment in its exploitation, including engineering, research and development, or licensing.

19 U.S.C. § 1337(a)(2)-(3).

a) The ID

The ID found that PopSockets satisfied the economic prong of the domestic industry requirement under 19 U.S.C. § 1337(a)(3)(A), (B), and (C). ID at 112-19.

Under subsection (A), the ID found that PopSockets' investments in plant and equipment consisted of the following:

- PopSockets maintains a [REDACTED] square foot facility at its headquarters in Boulder, Colorado, which houses [REDACTED] employees who perform various jobs relating to PopSockets products covered by the '031 patent, including engineering, product development, product assembly, supply chain and operation management, marketing, sales, customer service, and administration;
- Applying a sales-based allocation of [REDACTED] percent, approximately \$[REDACTED] spent on rent on the Boulder, Colorado facility from 2014 through July 2017 is allocable to the PopSockets domestic industry product; and
- Applying a sales-based allocation of [REDACTED] percent, approximately \$[REDACTED] spent on capital investments in fixtures and furniture used by employees at the facility, and in computer software and equipment used for the design, engineering, operations, and management from 2014 through July 2017 is associated with the PopSockets domestic industry product.

Id. at 114-15.

The ID found that PopSockets' investments in plant and equipment are significant, considering that PopSockets' domestic industry products were designed solely in the United States; all of the individuals involved in the design, engineering, operations, and management associated with the PopSockets' domestic industry products are located in Boulder; and PopSockets' domestic industry products would not exist without these investments, under the required contextual analysis. *Id.* at 115.

[REDACTED]

Under subsection (B), the ID found that PopSockets' investments in labor and capital consisted of the following:

- PopSockets employs at its facility in Boulder, Colorado, [REDACTED] individuals involved in engineering, research, development, operations, marketing, sales, service, and assembly of PopSockets products;
- PopSockets' employees have assembled, packed, and/or shipped approximately [REDACTED] PopSockets products covered by the '031 patent, and, as of March, 2017, printed approximately [REDACTED] top surface designs in Boulder, Colorado, and approximately [REDACTED] top surface designs in Seattle, Washington;
- PopSockets' total labor cost from 2014 through July 2017 is approximately \$[REDACTED] to its employees in the United States;
- PopSockets' total costs to outside vendors ([REDACTED] and Amazon.com) from 2014 through July 2017 for various services related to the PopSockets product is \$[REDACTED];
- PopSockets' total costs to physical retail stores in 2017 is approximately \$[REDACTED];
- PopSockets' U.S. expenditures for website hosting services and/or website developer fees from 2014 through 2017 are approximately \$[REDACTED];
- PopSockets' capital expenditures from 2014 through July 2017 in fixtures, furniture, computer software and equipment used by employees at its Boulder facility is approximately \$[REDACTED];
- PopSockets' total labor and capital expenditures from 2014 through July 2017 were approximately \$[REDACTED]; and
- Applying the sales-based allocation of [REDACTED] percent to these expenditures, PopSockets' total labor and capital expenditures from 2014 through July 2017 allocable to the domestic industry product are approximately \$[REDACTED].

Id. at 115-18.

The ID also found that PopSockets' investments in labor and capital are significant. *Id.* at 118. The ID noted that, while some of PopSockets' investments relating to marketing, sales, and distribution would not alone be sufficient to satisfy the economic prong, its investments in labor and capital as a whole are significant. *Id.* It further noted that the activities discussed

[REDACTED]

above, including the required product assembly, take place solely in the United States, making these investments significant. *Id.*

Under subsection (C), the ID found that PopSockets' investments in research and development consisted of the following:

- From the conception and patenting of the PopSockets product, and the personnel used in the engineering, marketing, business, to the distribution departments employed by PopSockets to research and develop, produce, sell, and design the PopSockets products—all of these activities are conducted at PopSockets' headquarters in Boulder, Colorado; and
- PopSockets invested, from 2014 through July 2017, approximately \$[REDACTED] in research and development costs for designing, engineering, and testing various aspects of the PopSockets products protected by the '031 patent.

Id. at 118-19.

The ID found that PopSockets' investments in research and development are substantial inasmuch as its domestic industry products were designed and developed in the United States; all of the individuals involved in the design, engineering, and testing associated with its domestic industry products are located in Colorado; its domestic industry products would not exist without them; and, under the required contextual analysis, PopSockets' research and development costs are substantial. *Id.* at 119.

b) The Parties' Arguments

PopSockets argues the nature and significance of its domestic industry investments separately from and before discussing its investments under each subsection of section 337(a)(3). PopSockets Br. at 6-8. Specifically, PopSockets argues that its business activities "focus almost exclusively" on the PopSockets domestic industry product and that its only other product is an accessory mount designed for use with the PopSockets product. *Id.* at 6. PopSockets argues that the PopSockets products "have experienced widespread acclaim and success in the marketplace" and that PopSockets' investments have grown to meet demand and market expectations,

[REDACTED]

including activities allowing consumers to customize the top surface of the PopSockets product. *Id.* at 7-8. With respect to its investments in plant and equipment, as well as labor and capital, PopSockets' arguments are generally consistent with the ID's findings, but with the following exceptions: (1) PopSockets provides investment totals through March 2017 (before the filing of the complaint); (2) PopSockets does not allocate any of its investments under subsections (A) and (B) to the PopSockets domestic industry product (as opposed to the accessory mount), yet argues that a sales-based allocation is appropriate with respect to its investments under subsection (C); and (3) PopSockets identifies, by submission of a new declaration, the portions of its investments that are allocable to each of the activities of engineering, research and development, operations, marketing and sales, service, and assembly. *Id.* at 8-15. With respect to its investments in the exploitation of the '031 patent, PopSockets provides a breakdown of the compensation component of its research and development activities by identifying the portions paid to certain individuals. *Id.* at 13. PopSockets also argues that, if the sales of the PopSockets domestic industry and the optional mount accessory are considered together, then "[REDACTED]"% of this U.S.-based revenue . . . is attributable to the substantial investment in the exploitation" of the '031 patent. *Id.* at 15. PopSockets argues that its post-complaint investments demonstrate that a domestic industry "exists or is in the process of being established" and that "such information demonstrates the growth of PopSockets' domestic industry." *Id.* at 19-20.

OUII generally agrees with the ID's findings. OUII argues that the record "does not provide sufficient detail to break out investments allocable to PopSockets' activities in engineering, research, development, operations, marketing, sales, service, and assembly as requested in the Commission's question." OUII Br. at 7-8. OUII argues that activities under subsections (A) and (B) need only relate to the article protected by the patent and that

[REDACTED]

PopSockets' product customization activities and sales and marketing investments may be included. *Id.* at 9. OUII argues that "at least the payment to PopSockets' contractor, [REDACTED], is an appropriate domestic industry expenditure" and that the payment is "representative of [REDACTED] investments in plant and equipment and labor and capital used to perform assembly services for PopSockets." *Id.* at 6 & n.4. OUII argues that PopSockets' investments in plant and equipment and labor and capital are significant because "all activities required to develop, make, and sell the product, with the exception of the molding of the plastic parts, take[] place in the United States"⁸ and "PopSockets' domestic investments in plant and equipment and labor and capital . . . are in excess of \$[REDACTED]" *Id.* at 9-10 (emphasis in original). OUII also argues that PopSockets' investments are significant based on other measures, including: (1) PopSockets' activities related to the domestic industry products compared to its activities related to the optional mount accessory; (2) PopSockets' activities in the United States compared to overseas; (3) various evidence as to the qualitative significance; and (4) PopSockets' investments as a percentage of sales of the PopSockets' domestic industry product. OUII Reply at 6-8. With respect to PopSockets' investments in the exploitation of the '031 patent, OUII argues that those investments may be overstated to the extent they include costs related to the design, printing, and application of the label placed on the top surface of PopSockets domestic industry product because "there is no nexus between the label and the '031 Patent and no activities relating solely to the label have a direct bearing on the practice of the '031 Patent." OUII Br. at 8. OUII argues that there is no basis to credit PopSockets' investments after the filing of the complaint. *Id.* at 10

⁸ OUII later notes that PopSockets also has foreign investments in the development and hosting of the PopSockets website. OUII Br. at 10 n.6.

[REDACTED]

(“Here no significant and unusual development occurred after the filing of the Complaint. The same investments continued, although their magnitude increased.”).

c) Analysis and Findings

At the outset, the Commission addresses several issues affecting the domestic industry analysis.

PopSockets’ Submission of New Evidence. In connection with its initial submission in response to the Commission’s March 23, 2018 notice, and despite the notice’s request for briefing “with reference to the applicable law and the record,” PopSockets filed a Second Supplemental Declaration of David B. Barnett (Apr. 2, 2018). This declaration was not before the ALJ and thus is not part of the record certified to the Commission by the ALJ. *See* 19 C.F.R. § 210.38; OUII Reply at 6 (describing declaration as “non-record evidence”). The Commission has determined not to consider this declaration in its disposition of the issues under review.

PopSockets’ Post-Complaint Expenditures. A large portion of the labor and capital expenditures asserted by PopSockets occurred after the complaint was filed on April 10, 2017. *See* ID at 112-19. For example, PopSockets’ capital investments in fixtures, furniture, and computer software and equipment through March 2017 totalled approximately \$[REDACTED], but, through July 2017, the capital expenditures increased to approximately \$[REDACTED]—an increase of nearly [REDACTED]%. *See* Supplemental Declaration of David B. Barnett (Aug. 4, 2017), PopSockets Mem. Ex. 10 (“Supp. Barnett Decl.”) at ¶ 6.⁹ As another example, PopSockets’ labor costs through March 2017 totalled approximately \$[REDACTED], but, through July 2017, the

⁹ This declaration is part of the record evidence and was relied upon by the ID. The record evidence provides PopSockets’ sales for 2014-2016 on an annual basis; for 2017, PopSockets’ sales are provided for January to March 2017 (before the filing date of the complaint) and for April to July 2017.

[REDACTED]

labor costs increased to approximately \$[REDACTED]—an increase of approximately [REDACTED]%. *See id.*

¶ 5. The ID considered the post-complaint expenditures without explanation.

However, even if “in appropriate situations based on the specific facts and circumstances of an investigation, the Commission may consider activities and investments beyond the filing of the complaint,” “as a general matter, the only activities that are relevant to the determination of whether a domestic industry exists or is in the process of being established are those that occurred before the complaint was filed.” *See Certain Video Game Systems and Controllers*, Inv. No. 337-TA-743, Comm’n Op. at 5-6 (Jan. 20, 2012), *aff’d sub nom. Motiva, LLC v. Int’l Trade Comm’n*, 716 F.3d 596, 601 n.6 (Fed. Cir. 2013).¹⁰ The Commission has determined not to credit any of PopSockets’ expenditures that occurred after the filing of the complaint. PopSockets’ submission on review does not identify any specific facts or circumstances, much less a significant and unusual development, to warrant considering expenditures after the filing of the complaint.

Sales-Based Allocation. In addition to the domestic industry product, PopSockets sells an optional mounting accessory, which PopSockets acknowledges is not covered by the ’031 patent and is not a domestic industry product. ID at 113. The ID applied a [REDACTED] percent sales-based allocation to apportion expenditures to the domestic industry product and to account for costs associated with the optional mounting accessory. *Id.* at 113-18. This sales allocation was based on PopSockets’ U.S. sales from 2014 through July 2017, which includes post-complaint

¹⁰ *See also Certain Television Sets, Television Receivers, Television Tuners, and Components Thereof* (“*Certain Television Sets*”), Inv. No. 337-TA-910, Comm’n Op. at 72 (Oct. 30, 2015) (“[T]he Commission will consider post-complaint evidence regarding domestic industry only in very specific circumstances, *i.e.*, ‘when a significant and unusual development has occurred after the complaint has been filed.’”).

[REDACTED]

investments. *See id.* at 113. A sales-based allocation may be applied to determine, under each subsection, the investments “relating to the articles protected by the patent.” *See* 19 U.S.C. § 1337(a)(3); *Certain Mobile Device Holders and Components Thereof*, Inv. No. 337-TA-1028, Comm’n Op. at 18-19 (Mar. 22, 2018). When only pre-complaint activities are considered, as set forth in the chart below showing PopSockets’ U.S. sales, the Commission finds that a sales-based allocation of [REDACTED] percent is appropriate.

Period	PopSockets U.S. Sales of Domestic Industry Products Only	PopSockets Combined U.S. Sales of Domestic Industry Products and Mounts	Sales-Based Allocation to Domestic Industry Product
2014 – July 2017 (including post-complaint expenditures)	\$ [REDACTED]	\$ [REDACTED]	[REDACTED] %
2014 – March 2017 (pre-complaint expenditures only)	\$ [REDACTED]	\$ [REDACTED]	[REDACTED] %

See Supp. Barnett Decl. at ¶ 18 & Table 10. Further, to the extent that PopSockets argues for consideration of its expenditures without any allocation, that argument is waived because PopSockets did not petition for review of the ID’s application of a sales-based allocation.

Turning to PopSockets’ alleged employment of labor and capital, the Commission finds that a domestic industry exists under subsection (B). The following chart, which is based on the Supplemental Declaration of David B. Barnett, summarizes the record related to subsection (B).

Employment of Labor and Capital	2014 – March 2017 (Pre-Complaint Expenditures)	■ % Sales-Based Allocation to Domestic Industry Product Through Filing of Complaint
Employees at Boulder, Colorado facility involved in engineering, product development, product assembly, supply chain and operation management, marketing, sales, customer service, and administration	Not in record evidence	Not in record evidence
Salaries paid to U.S. employees involved in engineering, product development, product assembly, supply chain and operation management, marketing, sales, customer service, and administration	\$ ■	Approximately \$ ■
Payments to U.S. vendor ■ for assembly and other services	\$ ■	Approximately \$ ■
Payments to U.S. vendor Amazon.com for marketing	\$ ■	Approximately \$ ■
Payments to U.S. vendors with physical retail stores, such as Target Stores, Wal-Mart, and others for marketing	Not in record evidence	Not in record evidence
Payment to website hosting services and/or website developers for marketing and sales	\$ ■	Approximately \$ ■
Capital investments in fixtures, furniture, computer software, and equipment used for design, engineering, operations, and management	\$ ■ 8	Approximately \$ ■

[REDACTED]

Supp. Barnett Decl. at ¶¶ 4-6, 12, 19, 21 & Tables 2, 3, 6, 11 & 12. The column under the heading “2014 – March 2017 (Pre-Complaint Expenditures)” identifies PopSockets’ expenditures prior to the filing of the complaint, which is the correct timeframe to consider domestic industry.¹¹ In the final column, the [REDACTED] percent sales-based allocation is applied to the pre-complaint expenditures. Adding the expenditures in the last column of the chart yields a total of approximately \$[REDACTED].¹² However, for the reasons explained below, the Commission finds that, at most, approximately \$[REDACTED] out of the \$[REDACTED] of PopSockets’ alleged employment in labor and capital may be credited toward the domestic industry under subsection (B).

The record evidence does not support crediting PopSockets’ approximately \$[REDACTED] in payments to [REDACTED]. Although the payments are for assembly, as well as unidentified “other services,” PopSockets has not shown what portion of its payments to [REDACTED] pertains to labor or capital. In *Lelo Inc. v. International Trade Commission*, the Federal Circuit rejected an alleged investment where the record contained “no data indicating the share of labor and capital costs attributable solely to purchases made by [the complainant]” and further noted that the analysis is “incomplete” if “it does not account for the value expended on *relevant* domestic activities, as opposed to total profit or total general administrative costs.” 786 F.3d 879, 884-85 & n.4 (Fed. Cir. 2015) (emphasis in original). Since *Lelo*, the Commission has found evidence insufficient

¹¹ It is not clear whether the amounts asserted under subsection (B) include PopSockets’ product customization activities, through which PopSockets employees create and print designs of varying colors or graphics selected by the customer for the top surface of the PopSockets products in the United States. See Supp. Barnett Decl. ¶¶ 9-10, 13. To the extent they are included and reflected in the chart above, they may be credited toward the domestic industry because they relate to the article protected by the patent. See 19 U.S.C. § 1337(a)(3).

¹² This total excludes expenditures for which PopSockets failed to provide sufficient information to determine a pre-complaint amount.

[REDACTED]

where the complainant relied on supplier payments without providing evidence regarding its suppliers' relevant investments in the complainant's products. *See Certain Television Sets*, Comm'n Op. at 63-64; *Certain Sleep-Disordered Breathing Treatment Systems and Components Thereof*, Inv. No. 337-TA-890 (Remand), Final ID at 19-22, 24 (Nov. 29, 2016), *aff'd in relevant part*, Notice at 3-4 (Jan. 12, 2017).

PopSockets' payments to Amazon.com, vendors with physical retail stores, and website hosting services and/or website developers also are not credited for a similar reason. PopSockets has not shown what portion of these investments pertains to the employment of labor or capital.

With respect to the remaining expenditures of approximately \$[REDACTED], it is well-settled that evidence of sales and marketing investments alone are not sufficient to demonstrate the existence of a domestic industry. *See* H. Rep. No. 100-40, at 157 (1987) ("Marketing and sales in the United States alone would not, however, be sufficient to meet this test."). While the Commission has, in some investigations, credited such investments in its assessment of a complainant's domestic industry under subsections (A) and (B), *see, e.g., Certain Air Mattress Systems, Components Thereof, and Methods of Using the Same*, Comm'n Op. at 44-47 (June 20, 2017); *Certain Protective Cases and Components Thereof*, Inv. No. 337-TA-780, Final ID at 104-09 (July 10, 2012), *not reviewed in relevant part*, Notice at 3 (Aug. 30, 2012), the analysis has always been conducted on a case-by-case basis.

In the case at hand, PopSockets is not relying solely on marketing and sales expenditures to satisfy the economic prong. While Popsockets has included sales and marketing expenditures, it has also provided evidence of significant expenditures in its employment of labor in other qualifying activities, such as engineering, product development, product assembly, supply chain and operation management, and customer service, as well as capital expenditures for fixtures,

[REDACTED]

furniture, software, and equipment used for design, engineering, and operation management, which are sufficient to establish the existence of a domestic industry under subsection (B).

The record demonstrates that PopSockets' expenditure of approximately \$ [REDACTED] constitutes significant employment of labor and capital. These expenditures represent approximately [REDACTED] percent of PopSockets' U.S. sales of its domestic industry product from 2014 through the filing of the complaint. *See* Supp. Barnett Decl. ¶ 18 & Table 10. Both the absolute and percentage amounts are quantitatively significant.

As OUII argues,¹³ the evidence as to PopSockets' size, industry, and the importance of being able to "provide customers the ability to select the colors and the decorative labels for their PopSockets products" are all evidence of the "qualitative significance" of PopSockets' domestic industry activities. OUII Reply at 7; *see also* PopSockets Br. at 6-8. Such qualitative evidence, while not sufficient on its own, supports a finding of significant employment of labor and capital.

The Commission has determined to take no position on whether a domestic industry exists under subsection (A) and (C). Having found the existence of a domestic industry under subsection (B), the Commission affirms, on modified grounds, the ID's finding of a section 337 violation.

¹³ OUII argues that the investments are quantitatively, as well as qualitatively, significant based on "a comparative analysis between its activities related to the asserted patent and its other operations" and "comparative analysis between its U.S. and foreign activities." OUII Reply at 6-7. But the former is simply the sales-based allocation that the ID used to determine the amount of the investments allocable to the article protected by the patent as opposed to other products that are not protected by the patent. OUII does not point to any instance in which the Commission has determined the quantitative significance of each of the asserted investments based solely on the sales-based allocation. As to the latter, a comparison of U.S. and foreign activities may be appropriate under certain circumstances, but the record here lacks information on PopSockets' foreign investments to make an adequate comparison. *See* OUII Br. at 9 ("[T]he value of the foreign molding of the plastic parts is not in the record.").

[REDACTED]

B. Remedy

1. The RD

The RD recommended that, in the event the Commission finds a violation of section 337, the Commission should issue a general exclusion order. RD at 131. The RD found that (1) a general exclusion is necessary to prevent circumvention of an exclusion order limited to products of the named entities and (2) there is a pattern of violation of section 337 and it is difficult to identify the sources of the infringing products. *Id.* at 121-30. In the event that the Commission does not issue a general exclusion order, the RD recommended the issuance of a limited exclusion order directed to the defaulting respondents. *Id.* at 121 & n.10.

2. The Parties' and Non-Parties' Arguments

PopSockets and OUII agree with the RD's findings and recommendation to issue a general exclusion order. PopSockets Br. at 22-39; OUII Br. at 12-15. PopSockets' submission does not request, and the RD does not recommend, issuance of cease and desist orders. *Id.* PopSockets and OUII each provide its own proposed general exclusion order. OUII notes that PopSockets' proposed general exclusion order covers claims 16 and 17 of the '031 patent, which the Commission found to be not infringed. OUII Reply at 14. PopSockets' submission also includes a reference to the '031 patent expiration date, HTSUS numbers that may cover the importation of the infringing products, and a list of known importers of the subject articles. PopSockets Br. at 42-43 & Ex. 2. OUII notes that many of the HTSUS numbers provided by PopSockets do not exist or were not verified. OUII Reply at 15-16.

Non-party Quest requests that the Commission decline to issue a general exclusion order or, in the alternative, to expressly exclude its products from the scope of any general exclusion order. Quest Br. at 1-2. Quest argues that issuance of a general exclusion order would contravene the Commission's policy of encouraging section 337 complainants to name all

[REDACTED]

suspected infringers that are known to the complainant before institution or at an investigation's early stages. *Id.* at 10-14. Quest argues that PopSockets knew of Quest's collapsible socket product two weeks after this investigation was instituted and filed a patent infringement suit against Quest in the U.S. District Court for the Eastern District of New York about a month later, but deliberately avoided naming Quest in the section 337 investigation to obtain quick relief against likely defaulters. *Id.* at 9, 13-14. Quest argues that, by contrast, it learned of this investigation after PopSockets filed its summary determination motion against the defaulting respondents and that PopSockets made certain representations indicating the investigation did not involve Quest. *Id.* at 9-10, 15. Quest argues that, under these circumstances, it did not have to intervene in the section 337 investigation and it would be unfair to place the burden on Quest to demonstrate to U.S. Customs and Border Protection ("Customs") that its products are not subject to a general exclusion order. *Id.* at 15 & n.7.

PopSockets and OUII argue that Quest's requests should be denied. PopSockets Reply at 1-2; OUII Reply at 14. PopSockets and OUII argue that Quest should or could have previously moved to intervene when it had notice of this investigation and that the Commission has denied similar attempts by non-parties to oppose or obtain a carve-out from a remedial order at the remedy phase. PopSockets Reply at 7-9; OUII Reply at 11-14. PopSockets and OUII argue that the Commission's *Federal Register* notice of institution provided notice of PopSockets' request for a general exclusion order. PopSockets Reply at 4-5, 8; OUII Reply at 14. PopSockets and OUII argue that the Commission has several procedures in which Quest may obtain a ruling as to whether its products are subject to any order issued by the Commission. PopSockets Br. at 8; OUII Reply at 13. PopSockets argues that Quest's noninfringement arguments are outside the scope of the issues on which non-parties may provide comments at this point (namely, remedy,

[REDACTED]

the public interest, and bonding) and that Quest does not dispute the evidence considered by the ALJ in recommending a general exclusion order nor does Quest raise any public interest concerns. PopSockets Reply at 5-7, 9-10. PopSockets argues that it was not aware of Quest's product until after the investigation was instituted and that Quest contorts the statements PopSockets made in district court out of context. *Id.* at 12-14.

3. Analysis and Findings

Section 337(g)(2) provides:

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

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

19 U.S.C. § 1337(g)(2). Section 337(d)(2) further provides that:

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

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

Id. § 1337(d)(2).

The Federal Circuit has recognized that “the Commission can impose a general exclusion order that binds parties and non-parties alike and effectively shifts to would-be importers of potentially infringing articles, as a condition of entry, the burden of establishing

[REDACTED]

noninfringement.” *Hyundai Elecs. Indus. Co. v. U.S. Int’l Trade Comm’n*, 899 F.2d 1204, 1210 (Fed. Cir. 1990); *Sealed Air Corp. v. U.S. Int’l Trade Comm’n*, 645 F.2d 976, 988-89 (C.C.P.A. 1981). “If a complainant wishes to obtain an exclusion order operative against articles of non-respondents, it must seek a GEO [general exclusion order] by satisfying the heightened burdens of §§ 1337(d)(2)(A) and (B).” *Kyocera Wireless Corp. v. Int’l Trade Comm’n*, 545 F.3d 1340, 1356 (Fed. Cir. 2008). “[T]he Commission has broad discretion in selecting the form, scope and extent of the remedy” *Viscofan, S.A. v. U.S. Int’l Trade Comm’n*, 787 F.2d 544, 548 (Fed. Cir. 1986).

The Commission finds that the record evidence supports the ALJ’s findings and issuance of a general exclusion order. No person has appeared to contest the section 337 allegations in this investigation. As discussed above and in the ID, the Commission’s finding of a section 337 violation is supported by substantial, reliable, and probative evidence. The requirements of § 1337(d)(2) are also met. *See* RD at 121-29.

Specifically, the record evidence demonstrates a widespread pattern of violation with respect to the ’031 patent. A significant number of additional instances of unlawful sales of infringing products have appeared on online marketplaces such as Amazon and on Alibaba. *See* PopSockets Mem. Ex. 3 (Monton Decl.) at ¶ 2. Manufacturers and sellers promote hundreds to thousands of new infringing product online listings per day; despite PopSockets’ efforts to enforce its intellectual property, those listings have not decreased. *See* Supp. Barnett Decl. ¶¶ 26-27 & Ex. 1; RD at 122-24. The record also shows difficulty in identifying the sources of infringing products. Manufacturers of collapsible sockets employ complex business arrangements, do business under more than one name, ship from multiple addresses, and/or form intricate arrays of confusingly similar affiliates. *See* Compl. Ex. 26 (Weber Decl.) at ¶¶ 11-24.

[REDACTED]

The small size and portability of the products and manufacturing equipment allow manufacturers to quickly and easily relocate. *See* Supp. Barnett Decl. ¶¶ 22-25. Suppliers of collapsible sockets are able to hide their identities and locations by conducting online transactions. *See* Compl. Ex. 26 (Weber Decl.) at ¶¶ 10-11, 22-24. Some sellers of collapsible sockets use packaging with confusing, contradictory, and/or incomplete labels, whereas others use photographs and packaging identical to that of the PopSockets products. *See* PopSockets Mem. Ex. 3 (Monton Decl.) ¶ 3 & Ex. 1-6; PopSockets Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 72.

The record also demonstrates the necessity of a general exclusion order to prevent circumvention of an order limited to products of the named respondents. The record shows that suppliers of collapsible sockets can easily evade an exclusion order limited to the named respondents due to the difficulty in identifying the source of the infringing products, the nature of the relevant trade channels, and the ease of manufacturing and distribution of infringing collapsible sockets for mobile electronic devices. *See* Compl. Ex. 26 (Weber Decl.) at ¶¶ 10-11, 22-24; Supp. Barnett Decl. ¶¶ 22-25.

Quest does not argue that PopSockets failed to satisfy the statutory requirements for a general exclusion order. Nor does Quest provide a compelling reason why its products should be exempted from a general exclusion order. As such, the Commission denies Quest's request that it not issue a general exclusion order, and the Commission also denies Quest's alternative proposal to expressly exclude its products from the scope of any general exclusion order.

The Commission does have a policy of "encourag[ing] complainants to include in an investigation all those foreign manufacturers which it believes have entered, or are on the verge of entering, the domestic market with infringing articles." *Certain Crystalline Cefadroxil Monohydrate*, Inv. No. 337-TA-293, USITC Pub. No. 2391 (June 1991), Comm'n Op. at 31-32

[REDACTED]

(Mar. 15, 1990) (denying issuance of a general exclusion order and declining to include non-parties in a limited exclusion order where complainant “could have named [the entities] as proposed respondents before institution of or at a very early stage in [the] investigation” but did not); *see also Certain Condensers, Parts Thereof and Products Containing Same, Including Air Conditioners for Automobiles*, Inv. No. 337-TA-334 (Remand), USITC Pub. No. 3063 (Sept. 1997), Comm’n Op. at 35-36 (Sept. 10, 1997); *Certain Ground Fault Circuit Interrupters and Products Containing Same* (“Ground Fault Circuit Interrupters”), Inv. No. 337-TA-739 (Modification), Comm’n Op. at 8 (Nov. 13, 2012) (“[A]s a general matter, the Commission encourages complainants to name all known importers of infringing products when filing a complaint.”). However, in expressing this policy, the Commission’s decisions use a permissive term, such as “encouraging,” rather than a mandatory term, such as “requiring.”

This case is not materially different from *Ground Fault Circuit Interrupters*, where the Commission denied a non-party’s similar requests at the remedy phase. Comm’n Op. at 87-92 (June 8, 2012). After finding that the statutory requirements for issuance of a general exclusion order were satisfied, the Commission stated:

With regard to the request by [non-party] P&S to be carved out from a general exclusion order, we find that P&S has not presented a compelling reason to make such an exception. Moreover, P&S apparently knew about the present investigation as early as the institution phase, but chose not to intervene to protect its interests. Any burden imposed on P&S by remedial orders could have been avoided if P&S had participated in the present investigation and had presented meritorious defenses. P&S may avail itself of other Commission procedures to obtain a ruling as to whether its products are subject to the general exclusion order.

Id. at 91-92.

Here, the record shows that the *Federal Register* published notice of the Commission’s institution of this investigation and PopSockets’ request for a general exclusion order on May 15, 2017, and that Quest was aware of the investigation no later than August 30, 2017, three weeks

[REDACTED]

after PopSockets filed its summary determination motion against the defaulting respondents. *See* 82 Fed. Reg. 22348; Quest Br. Sroul Decl. ¶ 13, J. Sroul Decl. ¶ 7, Auvil Decl. ¶ 5. Quest knew early on in the investigation of the possibility that its products may be subject to exclusion but decided not to intervene to protect its interests. Any decision to rely on PopSockets' statements as to the subject of this investigation (*see* Quest Br. at 15)—rather than the *Federal Register* notice and the public record of this investigation as to the general exclusion order PopSockets was seeking—was at Quest's own peril. Further, the Federal Circuit in *Hyundai* already rejected Quest's "unfairness" argument by recognizing that a general exclusion order "binds parties and non-parties alike and effectively shifts to would-be importers of potentially infringing articles, as a condition of entry, the burden of establishing noninfringement." 899 F.2d at 1210.

As noted in *Ground Fault Circuit Interrupters*, the denial of Quest's request does not leave it without recourse. For example, prior to importation, Quest may seek an advisory opinion from the Commission, or a Part 177 ruling from Customs, regarding whether an article is subject to the exclusion order. *See* 19 C.F.R. § 210.79; 19 C.F.R. Part 177.

Accordingly, the Commission has determined to adopt the RD's findings and to issue a general exclusion order covering the claims that the Commission found to be infringed.

C. The Public Interest

Sections 337(d) and (g) of the Tariff Act of 1930, as amended, direct the Commission to consider certain public interest factors before issuing a remedy. These public interest factors include the effect of any remedial order on the "public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers." 19 U.S.C. § 1337(d), (g).

The Commission did not instruct the ALJ to issue a recommended determination concerning the public interest in this investigation. *See* 19 C.F.R. § 210.50(b)(1).

[REDACTED]

PopSockets and OUII argue that issuance of the recommended general exclusion order would not be contrary to the public interest. PopSockets Br. at 39-41; OUII Br. at 16. The Commission did not receive any comments from the public on this issue in response to its notice of review.

The Commission finds no evidence in the record indicating that a general exclusion order would have an adverse impact on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers. The products at issue are consumer products that attach to portable media players that make them more convenient to use. *See* Compl. Ex. 1 ('031 patent), 1:37-44. The evidence also shows that PopSockets, as well as numerous third-party suppliers, has the capacity to produce more PopSockets products to meet the demand for the infringing products if the infringing products are excluded from the United States. *See* Public Interest Statement at 4; PopSockets Mem. Ex. 2 (Kenmitzer Decl.) at ¶¶ 38-39.

Accordingly, the Commission finds that the statutory public interest factors do not preclude issuance of a general exclusion order.

D. Bonding

If the Commission enters an exclusion order, a respondent may continue to import and sell its products during the 60-day period of Presidential review under bond in an amount determined by the Commission to be "sufficient to protect the complainant from any injury." 19 U.S.C. § 1337(j)(3); *see also* 19 C.F.R. 210.50(a)(3). Ordinarily, the Commission sets the bond during the period of Presidential review based on the price differential between the domestic and the infringing products or based on a reasonable royalty. *Certain Ink Cartridges and Components Thereof*, Inv. No. 337-TA-946, Comm'n Op. at 18 (June 29, 2016). Where the

[REDACTED]

available pricing or royalty information is insufficient, the Commission has set a 100 percent bond. *Id.*

The RD recommended the imposition of a bond of 100 percent of the entered value of the infringing goods during the period of Presidential review. RD at 132. The RD found that the defaulting respondents' failure to participate in the investigation prevented PopSockets from developing reliable pricing and royalty information and that a 100 percent bond should be sufficient to prevent any harm to PopSockets during the period of Presidential review. *Id.*

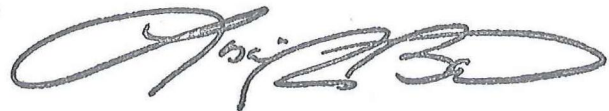
PopSockets and OUII agree with the RD. PopSockets Br. at 41-42; OUII Br. at 15.

The Commission finds that the defaulting respondents' failure to appear and participate in the investigation prevents the Commission from determining a price differential or a reasonable royalty. Accordingly, the Commission has determined to set the bond during the period of Presidential review at 100 percent of the entered value of the infringing products.

IV. CONCLUSION

The Commission has determined to affirm, on modified grounds, the ID's finding of a section 337 violation and to issue a general exclusion order prohibiting the unlicensed importation of certain collapsible sockets that infringe one or more of claims 9-12 of the '031 patent. The Commission adopts all findings and conclusions in the ID that are not inconsistent with this opinion.

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: **JUL 09 2018**

**CERTAIN COLLAPSIBLE SOCKETS FOR MOBILE
ELECTRONIC DEVICES AND COMPONENTS THEREOF**

Inv. No. 337-TA-1056

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **Opinion** has been served by hand upon the Commission Investigative Attorney, **Paul Gennari, Esq.**, and the following parties as indicated, on 7/9/2018



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

On Behalf of Complainants PopSockets LLC:

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MARSHALL, GERSTEIN & BORUN LLP
233 South Wacker Drive
6300 Willis Tower
Chicago, IL 60606-6357

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

Respondents:

Agomax Group Ltd.
Room 1015, Beverley Commercial Center
87-105 Chatham Road
Tsimshatsui, Kowloon, Hong Kong

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

Guangzhou Xi Xun Electronics Co., Ltd.
A3045 Floor 3, Lingnan Building, No. 25
Xiji Road, Liwan District, Guangzhou,
Guangdong, 510620, China

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

Shenzhen VVI Electronic Limited
10D, Building A, Shengnawei Area
Xixiang, Bao'an, Shenzhen, Guangdong,
China

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

Shenzhen Yright Technology Co., Ltd.
515, Xingdahua Building, Xixiang Street,
Bao'an District, Shenzhen, Guangdong,
China

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

**CERTAIN COLLAPSIBLE SOCKETS FOR MOBILE
ELECTRONIC DEVICES AND COMPONENTS THEREOF**

Inv. No. 337-TA-1056

Certificate of Service – Page 2

Hangzhou Hangkai Technology Co., Ltd.
Room 303, Block 3, Cloud Cube, #10
Liansheng Road, Wuchang Avenue, Yuhang District,
Hangzhou City, Zhejiang Province, China

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

Shenzhen Kinsen Technology Co., Limited
1603, 16/F, MetroCity, Buji Street, Longgang Dist.,
Shenzhen, Guangdong, 518000
China

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

Shenzhen Enfuize Technology Co., Ltd.
Rm 220, 2/F Zhonglian Mansion, 402 Building,
Languang Road, Futian District,
Shenzhen, China

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

Shenzhen Showerstar Industrial Co., Ltd.
Rm 302, XueFeng Industrial Building, No. 1021
of XueGang South Rd, LongGang
Shenzhen Guangdong, 518033, China

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

Shenzhen Lamye Technology Co., Ltd.
Room 407A-C YangNan Building, ChuangYe
Road 2, Baoan District, Shenzhen,
Guangdong, 518101, China

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

Jiangmen Besnovo Electronics Co., Ltd.
No. 18 Plant, Songyuanju, Dubi Village
Duruan Town, Pengjiang District, Jiangmen,
Guangdong, China

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

Shenzhen Belking Electronic Co., Ltd.
8017A, 8/F, Bldg. 4 Seg Science and Technology Park,
Huaqiang North Road, Futian District, Shenzhen,
Guangdong, China

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

Yiwu Wentou Import & Export Co., Ltd.
Floor 8, Northside, No. 201-209, Chengbei Rd.,
Choucheng Street, Yiwu, Jinhua, Zhejiang,
China

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

**CERTAIN COLLAPSIBLE SOCKETS FOR MOBILE
ELECTRONIC DEVICES AND COMPONENTS THEREOF**

Inv. No. 337-TA-1056

Certificate of Service – Page 3

Shenzhen CEX Electronic Co., Limited
Baoan District, Minzhi road, Bahishilong,
First Area, Building 104, 1702 Shenzhen,
Guangdong, 518000, China

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

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

In the Matter of

**CERTAIN COLLAPSIBLE SOCKETS
FOR MOBILE ELECTRONIC DEVICES
AND COMPONENTS THEREOF**

Investigation No. 337-TA-1056

**NOTICE OF COMMISSION DETERMINATION TO REVIEW
AN INITIAL DETERMINATION IN PART;
SCHEDULE FOR FILING WRITTEN SUBMISSIONS ON THE ISSUES
UNDER REVIEW AND ON REMEDY, THE PUBLIC INTEREST, AND BONDING**

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 presiding administrative law judge's initial determination (Order No. 11) granting summary determination that the defaulting respondents have violated section 337 in the above-captioned investigation. The Commission requests certain briefing from the parties on the issues under review, as indicated in this notice. The Commission also requests briefing from the parties and interested persons on the issues of remedy, the public interest, and bonding.

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 May 15, 2017, based on a complaint filed on behalf of PopSockets LLC of Boulder, Colorado ("PopSockets" or "Complainant"). 82 FR 22348-49 (May 15, 2017). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain collapsible sockets for mobile electronic devices and components thereof by reason of infringement of U.S. Patent No. 8,560,031 ("the '031 patent"). *Id.* The

notice of investigation named as respondents Agomax Group Ltd. of Kowloon, Hong Kong; Hangzhou Hangkai Technology Co., Ltd. of Zhejiang, China; Yiwu Wentou Import & Export Co., Ltd. of Zhejiang, China; Shenzhen Enruize Technology Co., Ltd. of Shenzhen, China; and Guangzhou Xi Xun Electronics Co., Ltd.; Shenzhen Chuanghui Industry Co., Ltd. of Guangdong, China; Shenzhen VVI Electronic Limited; Shenzhen Yright Technology Co., Ltd.; Shenzhen Kinsen Technology Co., Limited; Shenzhen Showerstar Industrial Co., Ltd.; Shenzhen Lamye Technology Co., Ltd.; Jiangmen Besnovo Electronics Co., Ltd.; Shenzhen Belking Electronic Co., Ltd.; Shenzhen CEX Electronic Co., Limited, all of Guangdong, China. *Id.* The Office of Unfair Import Investigations (“OUII”) also was named as a party in the investigation.

On August 22, 2017, the Commission found the following thirteen respondents in default: Agomax Group Ltd.; Yiwu Wentou Import & Export Co., Ltd.; Hangzhou Hangkai Technology Co., Ltd.; Shenzhen Enruize Technology Co., Ltd.; Guangzhou Xi Xun Electronics Co., Ltd.; Shenzhen VVI Electronic Limited; Shenzhen Yright Technology Co., Ltd.; Shenzhen Kinsen Technology Co., Limited; Shenzhen Showerstar Industrial Co., Ltd.; Shenzhen Lamye Technology Co., Ltd.; Jiangmen Besnovo Electronics Co., Ltd.; Shenzhen Belking Electronic Co., Ltd.; and Shenzhen CEX Electronic Co., Limited (collectively, “defaulting respondents”). Notice (Aug. 22, 2017) (determining not to review Order No. 9 (Aug. 4, 2017)).

On September 18, 2017, the Commission terminated Shenzhen Chuanghui Industry Co., Ltd. based on withdrawal of the complaint as to that respondent. Notice (Sept. 18, 2017) (determining not to review Order No. 10 (Aug. 28, 2017)).

On August 8, 2017, PopSockets filed a motion for summary determination that (1) the defaulting respondents have sold for importation into the United States, imported into the United States, or sold after importation certain collapsible sockets for mobile electronic devices and components thereof that allegedly infringe certain claims of the ’031 patent in violation of section 337; (2) the accused products infringe the asserted claims of the ’031 patent; and (3) a domestic industry with respect to the ’031 patent exists. The motion also requested a recommendation for entry of a general exclusion order and a bonding requirement pending Presidential review. On August 31, 2017, OUII filed a response supporting the motion in substantial part and supporting the requested remedy of a general exclusion order.

On February 1, 2018, the administrative law judge (“ALJ”) issued an initial determination (“ID”) (Order No. 11), granting PopSockets’ motion for summary determination of a section 337 violation. The ID found that the defaulting respondents’ accused products infringe one or more of claims 9-12 of the ’031 patent, but found no infringement of claims 16 and 17 of the ’031 patent. The ID found that the defaulting respondents’ accused products have been imported into the United States and that a domestic industry exists in the United States with respect to the ’031 patent. The ALJ also issued a Recommended Determination on Remedy and Bonding, recommending that, if the Commission finds a section 337 violation, the Commission issue a general exclusion order and impose a bond of 100 percent during the period of Presidential review. No petitions for review of the ID were filed.

Having examined the record of this investigation, including the ID, the Commission has determined to review in part the ALJ's determination of a section 337 violation. Specifically, the Commission has determined to review (1) the ID's findings on the technical prong of the domestic industry requirement to correct a typographical error, namely, to modify a citation to "Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 77 (Infringement Analysis and Chart)" at page 107 of the ID to "Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 61 (Analysis and Chart)" and (2) the ID's findings on the economic prong of the domestic industry requirement. The Commission has determined not to review the remaining issues decided in the ID.

In connection with its review, the Commission requests responses to the following questions. The parties are requested to brief their positions with reference to the applicable law and the record.

1. Please describe the nature and significance of PopSockets' alleged domestic industry investments, *i.e.*, in the context of PopSockets' operations, marketplace, or industry, and whether PopSockets' activities have a direct bearing on the practice of the '031 patent. As part of your response, please describe in detail PopSockets' activities in engineering, research, development, operations, marketing, sales, service, and assembly and what amount or portion of the total alleged investment under each of 19 U.S.C. § 1337(a)(3)(A), (B), and (C) is allocable to each activity.
2. Please provide a basis for crediting any investments that occurred after the filing date of the complaint towards the domestic industry requirement.

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 a cease and desist order that could result in the respondent 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 Opinion. 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 order 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: The parties to the investigation are requested to file written submissions on all of the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant is also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the date that the asserted patents expire and the HTSUS numbers under which the accused products are imported, and provide identification information for all known importers of the subject articles. Initial written submissions and proposed remedial orders must be filed no later than close of business on **Monday, April 2, 2018**. Reply submissions must be filed no later than the close of business on **Monday, April 9, 2018**. 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 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-1056) 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 at (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 C.F.R. 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 nonconfidential 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.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', with a stylized flourish at the end.

Lisa R. Barton
Secretary to the Commission

Issued: March 19, 2018

¹ All contract personnel will sign appropriate nondisclosure agreements.

**CERTAIN COLLAPSIBLE SOCKETS FOR MOBILE
ELECTRONIC DEVICES AND COMPONENTS THEREOF**

Inv. No. 337-TA-1056

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served by hand upon the Commission Investigative Attorney, **Paul Gennari, Esq.**, and the following parties as indicated, on March 19, 2018.



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

On Behalf of Complainants PopSockets LLC:

Benjamin T. Horton, Esq.
MARSHALL, GERSTEIN & BORUN LLP
233 South Wacker Drive
6300 Willis Tower
Chicago, IL 60606-6357

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

PUBLIC VERSION

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C. 20436**

In the Matter of

**CERTAIN COLLAPSIBLE SOCKETS FOR
MOBILE ELECTRONIC DEVICES AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1056

Order No. 11

INITIAL DETERMINATION

**Granting Complainants' Motion for Summary Determination of Violation by the
Defaulting Respondents**

And

RECOMMENDED DETERMINATION

On Remedy and Bonding

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I. Background

A. Institution of the Investigation; Procedural History

By publication of a notice in the *Federal Register* on May 15, 2017, pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, the Commission instituted this investigation to determine:

[W]hether 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 collapsible sockets for mobile electronic devices and components thereof by reason of infringement of one or more of claims 9–13, 16, and 17 of the ‘031 patent [U.S. Patent No. 8,560,031], and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

82 Fed. Reg. 22348 (May 15, 2017).

The complainant is PopSockets LLC. (“PopSockets”) of Boulder, Colorado. The respondents are:

1. Agomax Group Ltd. of Kowloon, Hong Kong;
2. Guangzhou Xi Xun Electronics Co., Ltd. of Guangdong, China;
3. Shenzhen Chuanghui Industry Co., Ltd. of Guangdong, China;
4. Shenzhen VVI Electronic Limited of Guangdong, China;
5. Shenzhen Yright Technology Co., Ltd. of Guangdong, China;
6. Hangzhou Hangkai Technology Co., Ltd. of Zhejiang Province, China;
7. Shenzhen Kinsen Technology Co., Limited of Guangdong, China;
8. Shenzhen Enruize Technology Co., Ltd. of Shenzhen, China;
9. Shenzhen Showerstar Industrial Co., Ltd. of Guangdong, China;
10. Shenzhen Lamye Technology Co., Ltd. of Guangdong, China;
11. Jiangmen Besnovo Electronics Co., Ltd. of Guangdong, China;
12. Shenzhen Belking Electronic Co., Ltd. of Guangdong, China;
13. Yiwu Wentou Import & Export Co., Ltd. of Zhejiang, China; and
14. Shenzhen CEX Electronic Co., Limited of Guangdong, China.

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The Office of Unfair Import Investigations is also a party to this investigation. *Id.*

The target date for completion of this investigation was set at 13 months, *i.e.*, June 15, 2018. *See* Order No. 4 at 2 (June 15, 2017). Accordingly, the initial determination on alleged violation of section 337 is due on February 15, 2018.

On June 21, 2017, PopSockets filed a motion for an order to show cause why certain respondents that had not responded to PopSockets' complaint or discovery requests should not be found in default. Motion Docket No. 1056-1. On July 7, 2017, the administrative law judge issued an order to show cause, ordering, *inter alia*, respondents Agomax Group Ltd.; Guangzhou Xi Xun Electronics Co., Ltd.; Shenzhen VVI Electronic Limited; Shenzhen Yright Technology Co., Ltd.; Hangzhou Hangkai Technology Co., Ltd; Shenzhen Kinsen Technology Co., Limited; Shenzhen Enruize Technology Co., Ltd.; Shenzhen Showerstar Industrial Co., Ltd.; Shenzhen Lamye Technology Co., Ltd.; Jiangmen Besnovo Electronics Co., Ltd.; Shenzhen Belking Electronic Co., Ltd; Yiwu Wentou Import & Export Co., Ltd.; and Shenzhen CEX Electronic Co., Limited to respond by no later than July 20, 2017. *See* Order No. 6. None of the 13 respondents listed above responded to the order to show cause. On August 4, 2017, the administrative law judge issued an initial determination finding the aforementioned 13 respondents (collectively, "defaulting respondents") in default. Order No. 9 (Aug. 4, 2017), *aff'd*, Notice of the Commission's Determination Not to Review an Initial Determination Finding Certain Respondents in Default (Aug. 22, 2017).

The last remaining respondent Shenzhen Chuanghui Industry Co., Ltd. has been terminated based on a withdrawal of the complaint as to that respondent. *See* Order No. 10 (Aug. 28, 2017), *aff'd*, Notice of a Commission Determination Not to Review an

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Initial Determination Granting an Unopposed Motion for Termination of the Investigation As to Certain Respondent Based on Withdrawal of the Complaint (Sept. 18, 2017).

On June 30, 2017, PopSockets filed a motion to stay the procedural schedule and for leave to file a motion for summary determination of violations by defaulting respondents and entry of a general exclusion order. Motion Docket No. 1056-3. On July 13, 2017, the administrative law judge granted the the motion. *See* Order No. 8.

On August 8, 2017, PopSockets filed a motion for summary determination that (1) the defaulting respondents have sold for importation into the United States, imported into the United States, or sold after importation collapsible sockets for mobile electronic devices and components thereof (the “accused products”) that allegedly infringe the asserted claims of U.S. Patent No. 8,560,031 (“the ‘031 patent”)¹ in violation of Section 337 of the Tariff Act as amended, 19 U.S.C. § 1337; (2) the defaulting respondents’ accused products infringe the asserted claims of the ‘031 patent; and (3) there exists a domestic industry with respect to the ‘031 patent. The motion requests a recommendation for entry of a general exclusion order and a bonding requirement pending Presidential review. Motion Docket No. 1056-5 at 1, 16.

On August 31, 2017, the Staff filed a response supporting the motion in substantial part, and supporting the requested remedy of a general exclusion order. See EDIS Doc. ID No. 621835.

¹ Complaint Ex. 1 (‘031 Patent).

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B. The Parties

1. Complainant

Complainant PopSockets is a limited liability company organized under the laws of Colorado with its corporate headquarters and principal place of business at 3033 Sterling Circle, Boulder, Colorado 80301. Complaint, ¶ 5. PopSockets designs and develops collapsible sockets for mobile electronic devices that can be attached to mobile devices or mobile device cases, such as mobile phones or mobile phone cases, to transform the mobile device's capabilities for the user. Complaint, ¶ 6. PopSockets is the sole assignee and owner of the '031 patent. The '031 patent was assigned by the inventors, David B. Barnett and Lawrence E. Carlson, to iButtons LLC on January 2012. *See* Complaint Ex. 3. On June 7, 2012, iButtons LLC changed its name to PopSockets LLC. *See* Complaint Ex. 4.

2. Respondents

Respondent Agomax Group Ltd. is a foreign company having a primary address of Room 1015, Beverley Commercial Centre, 87-105 Chatham Road, Tsimshatsui, Kowloon, Hong Kong. Complaint, ¶ 12. In its complaint, PopSockets alleges that Agomax Group Ltd. sells accused products that infringe claims 9-13 and 16-17 of the '031 patent for importation into the United States, imports the accused products into the United States, and/or sells the accused products after importation in the United States, using online e-commerce websites, such as for example, Alibaba.com. Complaint, ¶¶ 2, 11. PopSockets also alleges that Agomax Group Ltd. is associated with and/or ships accused products into the United States from the following additional address(es) and/or entity(s): (1) 2F, Building B, No.33, Ji Xiang 2nd Road, Xiang Yuan New Village, Ping

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Di Street, Long Gang Zone, Shenzhen, China; (2) Tracy, 075525185443, (ALI) FLAT 14L, HUA DU YUAN BUI, 518001 Shenzhen Guang, People's Republic of China. Complaint, ¶ 12.

Respondent Guangzhou Xi Xun Electronics Co., Ltd. is a foreign company having a primary address of A3045 Floor 3, Lingnan Building, N0.25 Xiji Road, Liwan District, Guangzhou, Guangdong, 510620, China. Complaint, ¶ 13. In its complaint, PopSockets alleges that Guangzhou Xi Xun Electronics Co., Ltd. sells accused products that infringe claims 9-13 and 16-17 of the '031 patent for importation into the United States, imports the accused products into the United States, and/or sells the accused products after importation in the United States, using online e-commerce websites, such as for example, Alibaba.com. Complaint, ¶¶ 2, 11. PopSockets also alleges that Guangzhou Xi Xun Electronics Co., Ltd. is associated with and/or ships accused products into the United States from the following additional address(es), names, or entity(s): (1) A3045, Floor 3, Lingnan Electric City, No. 25, Xinji Road, Liwan District, Guangzhou, Guangdong, China; (2) Litian "Interonal [*sic*]" Trade Co. Ltd., Room 1601 1602 16/F DongShan, Plaza No 69 Xianliezhong Road, Hong Kong, HK 999077. Complaint, ¶ 13.

Respondent Shenzhen VVI Electronic Limited is a foreign company having a primary address of 1 OD, Building A, Shengnawei Area, Xixiang, Baoan, Shenzhen, Guangdong, China. Complaint, ¶ 15. In its complaint, PopSockets alleges that Shenzhen VVI Electronic Limited sells accused products that infringe claims 9-13 and 16-17 of the '031 patent for importation into the United States, imports the accused products into the United States, and/or sells the accused products after importation in the United States, using online e-commerce websites, such as for example, Alibaba.com. Complaint, ¶¶ 2,

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11. PopSockets also alleges that Shenzhen VVI Electronic Limited is associated with and/or ships products into the United States from the following additional address(es), names, or entity(s): (1) 12/F, Building B1, Rongtaiyuan, Shajing town, Baoan district, Shenzhen, Guangdong, 518102, China; (2) AA, AA, Room 909 Longxing Songyu Rd, Songgang, SHENZHEN Shi GUANGDONG 518100, CHINA. Complaint, ¶ 15.

Respondent Shenzhen Yright Technology Co., Ltd. is a foreign company having a primary address of 515, Xingdahuaifu Building, Xixiang Street, Baoan District, Shenzhen, Guangdong, China. Complaint, ¶ 16. In its complaint, PopSockets alleges that Shenzhen Yright Technology Co., Ltd. sells accused products that infringe claims 9-13 and 16-17 of the '031 patent for importation into the United States, imports the accused products into the United States, and/or sells the accused products after importation in the United States, using online e-commerce websites, such as for example, Alibaba.com.

Complaint, ¶¶ 2, 11. PopSockets also alleges that Shenzhen Yright Technology Co., Ltd. is associated with and/or ships products into the United States from the following additional address(es), names, or entity(s): (1) Lam Shen International Trade Co. Ltd., Sally G, No. 6 On 6/Fl., Block 2, Golden Ind. Bldg., 16-26 Kwai Tak St., Kwai Chung, Hong Kong; (2) Taoyuanju, Xixiang Street, Baoan District, Shenzhen, Guangdong, 518126, China. Complaint, ¶ 16.

Respondent Hangzhou Hangkai Technology Co., Ltd. is a foreign company having a primary address of Room 303, Block 3, Cloud Cube # 10 Liansheng Road, Wuchang Avenue, Yuhang District, Hangzhou City, Zhejiang Province, China. Complaint, ¶ 17. In its complaint, PopSockets alleges that Hangzhou Hangkai Technology Co., Ltd. sells accused products that infringe claims 9-13 and 16-17 of the

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‘031 patent for importation into the United States, imports the accused products into the United States, and/or sells the accused products after importation in the United States, using online e-commerce websites, such as for example, Alibaba.com. Complaint, ¶¶ 2, 11. PopSockets also alleges that Hangzhou Hangkai Technology Co., Ltd. is associated with and/or ships products into the United States from the following additional address(es), names, or entity(s): (1) Room 517, 4th Building, Xixi Feng Shang, 499 Wen San West Rd., West Lake District, Hangzhou, Zhejiang, China; (2) xu sihang, Room 503, Huake Xixihui Block 2 door 3, #10 Liansheng Rd, HANGZHOU, YUHANG, ZHEJIANG, China, 310023; (3) Room 503, Block 3, 2nd Bldg., No. 10, Liansheng Road, Wuchang Street, Yuhang Area, Hangzhou, Zhejiang, China; (4) “Sikai Case”; (5) “Sikai”; (6) “sikai2011.” Complaint, ¶ 17.

Respondent Shenzhen Kinsen Technology Co., Limited is a foreign company having a primary address of 1603, 16/F, Metro City, Buji Street, Longgang Dist., Shenzhen, Guangdong, 518000, China. Complaint, ¶ 18. In its complaint, PopSockets alleges that Shenzhen Kinsen Technology Co., Limited sells accused products that infringe claims 9-13 and 16-17 of the ‘031 patent for importation into the United States, imports the accused products into the United States, and/or sells the accused products after importation in the United States, using online e-commerce websites, such as for example, Alibaba.com. Complaint, ¶¶ 2, 11. PopSockets also alleges that Shenzhen Kinsen Technology Co., Limited is associated with and/or ships products into the United States from the following additional address(es), names, or entity(s): (1) B206, Xiliang Jialong Apartment Area, Erjie Rd., Bayue, Buji, Longgang Dist., Shenzhen, Guangdong,

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China; (2) Huwang Technology Co. Limited, Vinda Manager-LH-A6, Room X 1204 Huayi Science Technology Building, Shenzhen, China. Complaint, ¶ 18.

Respondent Shenzhen Enruize Technology Co., Ltd. is a foreign company having a primary address of Room 220, 2/F Zhonglian Mansion, 402 Building, Languang Road, Futian District, Shenzhen, China. Complaint, ¶ 19. In its complaint, PopSockets alleges that Shenzhen Enruize Technology Co., Ltd. sells accused products that infringe claims 9-13 and 16-17 of the ‘031 patent for importation into the United States, imports the accused products into the United States, and/or sells the accused products after importation in the United States, using online e-commerce websites, such as for example, Alibaba.com. Complaint, ¶¶ 2, 11. PopSockets also alleges that Shenzhen Enruize Technology Co., Ltd. is associated with and/or ships products into the United States from the following additional address(es), names, or entity(s): (1) Jun Guo Guo, Jun Guo Guo, RM B427 BaohuaHua Yuan Gardem, Fanshen 72th District Bao An, IF RTO, PLS RTN TO HKG FOR SHPR INST, HONG KONG, HONG KONG; (2) 1/Floor, Building 2, No. 6 of Donglian Industry Zone, Jinsa Community, Pingshan New Area, Shenzhen, China; (3) “G&T Technology Co., Ltd.” Complaint, ¶ 19.

Respondent Shenzhen Showerstar Industrial Co., Ltd. is a foreign company having a primary address of Rm302, XueFeng Industrial Building, No. 1021 of XueGang South Rd, LongGang, Shenzhen, Guangdong, 518033, China. Complaint, ¶ 20. In its complaint, PopSockets alleges that Shenzhen Showerstar Industrial Co., Ltd. sells accused products that infringe claims 9-13 and 16-17 of the ‘031 patent for importation into the United States, imports the accused products into the United States, and/or sells the accused products after importation in the United States, using online e-commerce

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websites, such as for example, Alibaba.com. Complaint, ¶¶ 2, 11. PopSockets also alleges that Shenzhen Showerstar Industrial Co., Ltd. is associated with and/or ships products into the United States from the following additional address(es), names, or entity(s): (1) Miaohaigou Xx01, Tony, 101 Alps Avenue #01-01, Singapore 498793, 339156 Singapore, Singapore; (2) 3rd floor, Fenghua Industrial Building 5, Xuegang South Road No. 1021, Bantian Street, Longgang District, Shenzhen, China; (3) B-816, Xinghe Shiji Bldg., 3069, Caitian Road, Gangxia, Futian, Shenzhen, Guangdong, China. Complaint, ¶ 20.

Respondent Shenzhen Lamy Technology Co., Ltd. is a foreign company having a primary address of Room 407A-C YangNan Building, Chuang Ye Road 2, Baoan District, Shenzhen, Guangdong, 518101, China. Complaint, ¶ 21. In its complaint, PopSockets alleges that Shenzhen Lamy Technology Co., Ltd. sells accused products that infringe claims 9-13 and 16-17 of the '031 patent for importation into the United States, imports the accused products into the United States, and/or sells the accused products after importation in the United States, using online e-commerce websites, such as for example, Alibaba.com. Complaint, ¶¶ 2, 11. PopSockets also alleges that Shenzhen Lamy Technology Co., Ltd. is associated with and/or ships products into the United States from the following additional address(es), names, or entity(s): Lingspect Technology Hk Compan, H Ricki-66822 C/O Data Express, Gzx No 2 Yintian Road, Xixiang Town Baoan, Shenzhen China, Hongkong Hkg, Hongkong. Complaint, ¶ 21.

Respondent Jiangmen Besnovo Electronics Co., Ltd. is a foreign company having a primary address of No. 18 Plant, Songyuanju, Dubi Village, Durnan Town, Pengjiang District, Jiangmen, Guangdong, China. Complaint, ¶ 22. In its complaint, PopSockets

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alleges that Jiangmen Besnovo Electronics Co., Ltd. sells accused products that infringe claims 9-13 and 16-17 of the '031 patent for importation into the United States, imports the accused products into the United States, and/or sells the accused products after importation in the United States, using online e-commerce websites, such as for example, Alibaba.com. Complaint, ¶¶ 2, 11. PopSockets also alleges that Jiangmen Besnovo Electronics Co., Ltd. is associated with and/or ships products into the United States from the following additional address(es), names, or entity(s): (1) Ees Supply Chain(Hk)Co. Ltd., Ryan, Unit 9 22/F, Cre Centre 889 Cheung Sha Wan Road, Cheung Sha Wan, Kowloon, Hong Kong; (2) NO. 18 Songyuanzui Industrial Park, Duran Town, Jiangmen City, Guangdong, 529000, China; and (3) "MaxMio." Complaint, ¶ 22.

Respondent Shenzhen Belking Electronic Co., Ltd. is a foreign company having a primary address of 8017 A, 8/F, Bldg. 4, Seg Science And Technology Industrial Park, Huaqiang North Road, Futian District, Shenzhen, Guangdong, China. Complaint, ¶ 23. In its complaint, PopSockets alleges that Shenzhen Belking Electronic Co., Ltd. sells accused products that infringe claims 9-13 and 16-17 of the '031 patent for importation into the United States, imports the accused products into the United States, and/or sells the accused products after importation in the United States, using online e-commerce websites, such as for example, Alibaba.com. Complaint, ¶¶ 2, 11. PopSockets also alleges that Shenzhen Belking Electronic Co., Ltd. is associated with and/or ships products into the United States from the following additional address(es), names, or entity(s): (1) Shenzhen Dongyuan Tech Co. Ltd., Mr Band C/O Leadon, Flat 1 No. 3 Bldg. Fuzhong Ind, Xiashiwei Rd, Fuyong Town, Baoan Shenzhen, Hong Kong, Hong Kong; (2) Huaqlang Road, Shenzhen, Guangdong, 518000, China. Complaint, ¶ 23.

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Respondent Yiwu Wentou Import & Export Co., Ltd. is a foreign company having a primary address of Floor 8, Northside, No. 201-209, Chengbei Rd., Choucheng Street, Yiwu, Jinhua, Zhejiang, China. Complaint, ¶ 24. In its complaint, PopSockets alleges that Yiwu Wentou Import & Export Co., Ltd. sells accused products that infringe claims 9-13 and 16-17 of the '031 patent for importation into the United States, imports the accused products into the United States, and/or sells the accused products after importation in the United States, using online e-commerce websites, such as for example, Alibaba.com. Complaint, ¶¶ 2, 11. PopSockets also alleges that Yiwu Wentou Import & Export Co., Ltd. is associated with and/or ships products into the United States from the following additional address(es), names, or entity(s): (1) Quzhou And Import Export Trade Co.-Ltd./Liu Yijun, No 16 Xingwei Road, Fuyong Town Shenzhen, IF RTO, PLS RTN TO HKG FOR SHPR INST, HONG KONG, HONG KONG; (2); F/8, No. 201-209, Chengbei Rd, Yiwu China, Yiwu City, Zhejiang, 322000, China (3) Yao Wei Xing, Quzhou and Import & Export Trade Co. Ltd, 1-6 of three stores, 89 building, Chunhan Beiyuan, YiWu. Complaint, ¶ 24.

Respondent Shenzhen CEX Electronic Co., Limited is a foreign company having a primary address of Baoan District, Minzhi Road, Bahishilong, First Area, Building 104, 1702, Shenzhen, Guangdong, 518000, China. Complaint, ¶ 25. In its complaint, PopSockets alleges that Yiwu Wentou Import & Export Co., Ltd. sells accused products that infringe claims 9-13 and 16-17 of the '031 patent for importation into the United States, imports the accused products into the United States, and/or sells the accused products after importation in the United States, using online e-commerce websites, such as for example, Alibaba.com. Complaint, ¶¶ 2, 11. PopSockets also alleges that

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Shenzhen CEX Electronic Co., Limited is associated with and/or ships products into the United States from the following additional address(es), names, or entity(s): (1) 6B68, 6th Floor, East 3rd Block, Seg Technology Park, North Huaqiang, Futian District, Shenzhen, Guangdong, China; (2) Sinotrans, 86-18126419295, Sinotrans, Floor 1 C Warehouse, Buchong, 518104 Shenzhen Szx, China, People's Republic Of; (3) 1702, Building 104, Baishilong First Area, Minzhi Street, Baoan District, Shenzhen, Guangdong, China. Complaint, ¶ 25.

C. Technological Background

United States Patent No. 8,560,031 (“the ‘031 patent”), entitled “Extending Socket for Portable Media Player,” issued on October 15, 2013, to named inventors David B. Barnett and Lawrence E. Carlson. The ‘031 patent issued from Application No. 13/403,729 (“the ‘729 Application”), filed on February 23, 2012. *See* Complaint Ex. 1 (‘031 Patent). The ‘031 patent has 22 claims, including four independent claims and 18 dependent claims. The ‘031 patent was assigned by named inventors, David B. Barnett and Lawrence E. Carlson, to iButtons LLC on January 2012. *See* Complaint Ex. 3. On June 7, 2012, iButtons LLC changed its name to PopSockets LLC. *See* Complaint Ex. 4.

The ‘031 patent is directed to an extra feature on or attachable to a portable media player case that enables features other than protection, with this extra feature called an extending “socket.” *See* Complaint Ex. 1 (‘031 Patent) at col. 1, lns. 17-57. The extending sockets provide functions such as, for example, “storing headphone cords and preventing the cords from tangling, forming stand legs, forming gaming grips, clipping to belts, waistbands and shirt pockets, forming legs for wedging players that are phones



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between the shoulder and ear, and forming a grip that allows a user to securely hold and manipulate the player with one hand.” *Id.*, at col. 1, lns. 37-44.





D. The Products at Issue

1. The Accused Products




Below is a table that provides a summary of the defaulting respondents’ accused product, including a photograph of each accused product, a reference to each product’s physical exhibit number filed with the complaint, and a reference to PopSockets’ evidence of importation for each:

RESPONDENT	ACCUSED PRODUCT	EVIDENCE OF IMPORTATION (COMPLAINT Ex.)	PHYSICAL EXHIBIT (COMPLAINT Ex.)
Agomax Group Ltd.		12	31
Guangzhou Xi Xun Electronics Co., Ltd.		13	32

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Shenzhen VVI Electronic Limited		15	34
Shenzhen Yright Technology Co., Ltd.		16	35
Hangzhou Hangkai Technology Co., Ltd.		17	36
Shenzhen Kinsen Technology Co., Limited		18	37

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Shenzhen Enruize Technology Co., Ltd.		19	38
Shenzhen Showerstar Industrial Co., Ltd.		20	39
Shenzhen Lamy Technology Co., Ltd.		21	40
Jiangmen Besnovo Electronics Co., Ltd.		22	41

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Shenzhen Belking Electronic Co., Ltd.		23	42
Yiwu Wentou Import & Export Co., Ltd.		24	43
Shenzhen CEX Electronic Co., Limited		25	44

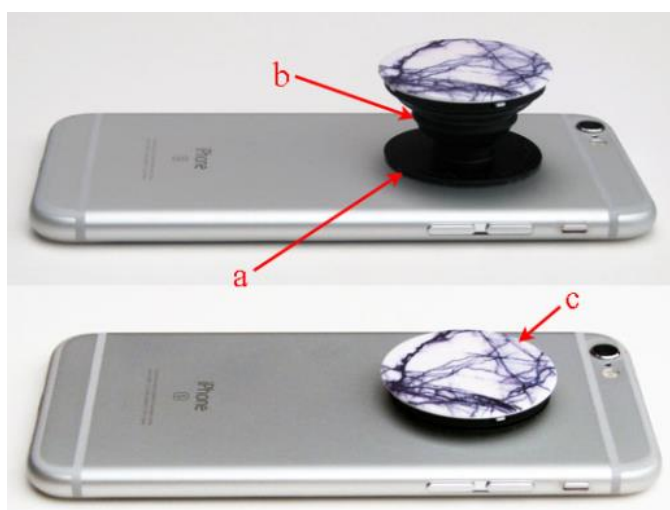
See Mem. at 16-20; Mem. Ex. 2 (Kemnitzer Decl.) at ¶¶ 75-76, 78-79, 81-82, 84-85, 87-88, 90-91, 93-94, 96-97, 99-100, 102-03, 105-06, 108-09, 111-12, and 114-15.

2. The Domestic Industry Products

For its domestic industry products, PopSockets relies on its collapsible sockets for mobile electronic devices (“PopSockets products”) that can be attached to portable media players or portable media player cases, such as mobile phones (*e.g.*, the Apple iPhone) or mobile phone cases (*e.g.*, a case for an Apple iPhone), to transform the mobile device’s capabilities for the user. See Mem. at 105. PopSockets argues that “[t]he PopSockets

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product, as covered by the '031 Patent and described herein, practices at least claims 9-12, and PopSockets itself, or others that PopSockets encourages, practice at least claims 16, and 17 of the '031 Patent.” Mem. at 117; Mem. Ex. 2 (Kemnitzer Decl.) at ¶¶ 59-63. Examples of PopSockets’ products are shown below, the latter product shown attached to a portable media player.



See Mem. at 106, 119; Complaint Ex. 45 (physical exhibit).

II. Jurisdiction

No party has contested the Commission's *in rem* jurisdiction over the accused products. Evidence of specific instances of importation of the accused products is provided in PopSockets' complaint and accompanying exhibits. *See* Complaint, ¶¶ 11-25, 44-51, and 56-65; Complaint Exs. 12, 13 and 15-25 (evidence of importation by each of the defaulting respondents); Complaint Ex. 26 (declaration of Timothy J. Weber regarding the evidence of importation for each of the defaulting respondents); Complaint Exs. 31, 32, and 34-44 (physical exhibit samples representative of the accused products for each defaulting respondent). PopSockets' motion includes a declaration of its expert, Ronald Kemnitzer, who opines that each of the defaulting respondents sells for importation into the United States, imports into the United States, and/or sells within the United States after importation, the accused products. *See* Mem. Ex. 2 (Kemnitzer Decl.) at ¶¶ 75-76, 78-79, 81-82, 84-85, 87-88, 90-91, 93-94, 96-97, 99-100, 102-03, 105-06, 108-09, 111-12, and 114-15. Accordingly, it is found that the Commission has *in rem* jurisdiction over the accused products.

As indicated in the Commission's notice of investigation, discussed above, this investigation involves the importation of products alleged to infringe United States patents in a manner that violates section 337 of the Tariff Act, as amended. Based on those facts alone, it may be found that the Commission has subject matter jurisdiction over this investigation. Further, no party has contested the Commission's jurisdiction over the subject matter of this investigation.

No party has contested the Commission's personal jurisdiction over it. In particular, the respondents have all been given notice of this investigation at least through

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service of the complaint and notice of investigation. It is therefore found that the Commission has personal jurisdiction over all parties.

III. General Principles of Applicable Law

A. Summary Determination

Section 337 prohibits “[t]he importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of articles that (i) infringe a valid and enforceable United States patent” 19 U.S.C. § 1337(a)(1)(B). A complainant need only prove importation of a single accused product to satisfy the importation element. *Certain Trolley Wheel Assemblies*, Inv. No. 337-TA-161, Comm’n Op. at 7-8, USITC Pub. No. 1605 (Nov. 1984).

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

B. Claim Construction

Claim construction begins with the plain language of the claim.² Claims should be given their ordinary and customary meaning as understood by a person of ordinary

² Only those claim terms that are in controversy need to be construed, and only to the extent necessary to resolve the controversy. *Vanderlande Indus. Nederland BV v. Int’l Trade Comm.*, 366 F.3d 1311, 1323 (Fed. Cir. 2004); *Vivid Tech., Inc. v. American Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999).

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skill in the art, viewing the claim terms in the context of the entire patent.³ *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005), *cert. denied*, 546 U.S. 1170 (2006).

In some instances, claim terms do not have particular meaning in a field of art, and claim construction involves little more than the application of the widely accepted meaning of commonly understood words. *Phillips*, 415 F.3d at 1314. “In such circumstances, general purpose dictionaries may be helpful.” *Id.*

In many cases, claim terms have a specialized meaning, and it is necessary to determine what a person of skill in the art would have understood the disputed claim language to mean. “Because the meaning of a claim term as understood by persons of skill in the art is often not immediately apparent, and because patentees frequently use terms idiosyncratically, the court looks to ‘those sources available to the public that show what a person of skill in the art would have understood disputed claim language to mean.’” *Phillips*, 415 F.3d at 1314 (quoting *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1116 (Fed. Cir. 2004)). The public sources identified in *Phillips* include “the words of the claims themselves, the remainder of the specification, the prosecution history, and extrinsic evidence concerning relevant scientific principles, the meaning of technical terms, and the state of the art.” *Id.* (quoting *Innova*, 381 F.3d at 1116).

³ Factors that may be considered when determining the level of ordinary skill in the art include: “(1) the educational level of the inventor; (2) type of problems encountered in the art; (3) prior art solutions to those problems; (4) rapidity with which innovations are made; (5) sophistication of the technology; and (6) educational level of active workers in the field.” *Environmental Designs, Ltd. v. Union Oil Co.*, 713 F.2d 693, 696 (Fed. Cir. 1983), *cert. denied*, 464 U.S. 1043 (1984).

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In cases in which the meaning of a claim term is uncertain, the specification usually is the best guide to the meaning of the term. *Phillips*, 415 F.3d at 1315. As a general rule, the particular examples or embodiments discussed in the specification are not to be read into the claims as limitations. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995) (*en banc*), *aff'd*, 517 U.S. 370 (1996). The specification is, however, always highly relevant to the claim construction analysis, and is usually dispositive. *Phillips*, 415 F.3d at 1315 (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)). Moreover, “[t]he construction that stays true to the claim language and most naturally aligns with the patent’s description of the invention will be, in the end, the correct construction.” *Id.* at 1316.

Claims are not necessarily, and are not usually, limited in scope to the preferred embodiment. *RF Delaware, Inc. v. Pacific Keystone Techs., Inc.*, 326 F.3d 1255, 1263 (Fed. Cir. 2003); *Decisioning.com, Inc. v. Federated Dep’t Stores, Inc.*, 527 F.3d 1300, 1314 (Fed. Cir. 2008) (“[The] description of a preferred embodiment, in the absence of a clear intention to limit claim scope, is an insufficient basis on which to narrow the claims.”). Nevertheless, claim constructions that exclude the preferred embodiment are “rarely, if ever, correct and require highly persuasive evidentiary support.” *Vitronics*, 90 F.3d at 1583. Such a conclusion can be mandated in rare instances by clear intrinsic evidence, such as unambiguous claim language or a clear disclaimer by the patentees during patent prosecution. *Elektia Instrument S.A. v. O.U.R. Sci. Int’l, Inc.*, 214 F.3d 1302, 1308 (Fed. Cir. 2000); *Rheox, Inc. v. Entact, Inc.*, 276 F.3d 1319 (Fed. Cir. 2002).

If the intrinsic evidence does not establish the meaning of a claim, then extrinsic evidence may be considered. Extrinsic evidence consists of all evidence external to the

patent and the prosecution history, and includes inventor testimony, expert testimony, and learned treatises. *Phillips*, 415 F.3d at 1317. Inventor testimony can be useful to shed light on the relevant art. In evaluating expert testimony, a court should discount any expert testimony that is clearly at odds with the claim construction mandated by the claims themselves, the written description, and the prosecution history, in other words, with the written record of the patent. *Id.* at 1318. Extrinsic evidence may be considered if a court deems it helpful in determining the true meaning of language used in the patent claims. *Id.*

C. Infringement

Under 35 U.S.C. §271(a), direct infringement consists of making, using, offering to sell, or selling a patented invention without consent of the patent owner. The complainant in a section 337 investigation bears the burden of proving infringement of the asserted patent claims by a “preponderance of the evidence.” *Certain Flooring Products*, Inv. No. 337-TA-443, Comm’n Notice of Final Determination of No Violation of Section 337, 2002 WL 448690, at *59, (Mar. 22, 2002); *Enercon GmbH v. Int’l Trade Comm’n*, 151 F.3d 1376 (Fed. Cir. 1998).

Literal infringement of a claim occurs when every limitation recited in the claim appears in the accused device, *i.e.*, when the properly construed claim reads on the accused device exactly.⁴ *Amhil Enters., Ltd. v. Wawa, Inc.*, 81 F.3d 1554, 1562 (Fed. Cir. 1996); *Southwall Tech. v. Cardinal IG Co.*, 54 F.3d 1570, 1575 (Fed Cir. 1995).

⁴ Each patent claim element or limitation is considered material and essential. *London v. Carson Pirie Scott & Co.*, 946 F.2d 1534, 1538 (Fed. Cir. 1991). If an accused device lacks a limitation of an independent claim, the device cannot infringe a dependent claim. See *Wahpeton Canvas Co. v. Frontier, Inc.*, 870 F.2d 1546, 1552 n.9 (Fed. Cir. 1989).

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Section 271(b) of the Patent Act provides: “Whoever actively induces infringement of a patent shall be liable as an infringer.” 35 U.S.C. § 271(b).

“To prevail on a claim of induced infringement, in addition to inducement by the defendant, the patentee must also show that the asserted patent was directly infringed.”

Epcon Gas Sys. v. Bauer Compressors, Inc., 279 F.3d 1022, 1033 (Fed. Cir. 2002).

Further, “[s]ection 271(b) covers active inducement of infringement, which typically includes acts that intentionally cause, urge, encourage, or aid another to directly infringe a patent.” *Arris Group v. British Telecomm. PLC*, 639 F.3d 1368, 1379 n.13 (Fed. Cir. 2011).

D. Domestic Industry

A violation of section 337(a)(1)(B), (C), (D) or (E) can be found “only if an industry in the United States, with respect to the articles protected by the patent, copyright, trademark, mask work, or design concerned, exists or is in the process of being established.” 19 U.S.C. § 1337(a)(2). Section 337(a) further provides:

(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.

19 U.S.C. § 1337(a)(3).

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These statutory requirements consist of an economic prong (which requires certain activities)⁵ and a technical prong (which requires that these activities relate to the intellectual property being protected). *Certain Stringed Musical Instruments and Components Thereof*, Inv. No. 337-TA-586, Comm’n Op. at 13 (May 16, 2008) (“*Stringed Musical Instruments*”). The burden is on the complainant to show by a preponderance of the evidence that the domestic industry requirement is satisfied. *Certain Multimedia Display and Navigation Devices and Systems, Components Thereof, and Products Containing Same*, Inv. No. 337-TA-694, Comm’n Op. at 5 (July 22, 2011) (“*Navigation Devices*”).

“With respect to section 337(a)(3)(A) and (B), the technical prong is the requirement that the investments in plant or equipment and employment in labor or capital are actually related to ‘articles protected by’ the intellectual property right which forms the basis of the complaint.” *Stringed Musical Instruments*, Comm’n Op. at 13-14. “The test for satisfying the ‘technical prong’ of the industry requirement is essentially same as that for infringement, i.e., a comparison of domestic products to the asserted claims.” *Alloc, Inc. v. Int’l Trade Comm’n*, 342 F.3d 1361, 1375 (Fed. Cir. 2003). “With

⁵ The Commission practice is usually to assess the facts relating to the economic prong at the time that the complaint was filed. See *Certain Coaxial Cable Connectors and Components Thereof and Products Containing Same*, Inv. No. 337-TA-560, Comm’n Op. at 39 n.17 (Apr. 14, 2010) (“We note that only activities that occurred before the filing of a complaint with the Commission are relevant to whether a domestic industry exists or is in the process of being established under sections 337(a)(2)-(3).”) (citing *Bally/Midway Mfg. Co. v. U.S. Int’l Trade Comm’n*, 714 F.2d 1117, 1121 (Fed. Cir. 1983)). In some cases, however, the Commission will consider later developments in the alleged industry, such as “when a significant and unusual development occurred after the complaint has been filed.” See *Certain Video Game Systems and Controllers*, Inv. No. 337-TA-743, Comm’n Op., at 5-6 (Jan. 20, 2012) (“[I]n appropriate situations based on the specific facts and circumstances of an investigation, the Commission may consider activities and investments beyond the filing of the complaint.”).

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respect to section 337(a)(3)(C), the technical prong is the requirement that the activities of engineering, research and development, and licensing are actually related to the asserted intellectual property right.” *Stringed Musical Instruments*, Comm’n Op. at 13.

With respect to the economic prong, and whether or not section 337(a)(3)(A) or (B) is satisfied, the Commission has held that “whether a complainant has established that its investment and/or employment activities are significant with respect to the articles protected by the intellectual property right concerned is not evaluated according to any rigid mathematical formula.” *Certain Printing and Imaging Devices and Components Thereof*, Inv. No. 337-TA-690, Comm’n Op. at 27 (Feb. 17, 2011) (citing *Certain Male Prophylactic Devices*, Inv. No. 337 TA-546, Comm’n Op. at 39 (Aug. 1, 2007)). Rather, the Commission examines “the facts in each investigation, the article of commerce, and the realities of the marketplace. *Id.* “The determination takes into account the nature of the investment and/or employment activities, ‘the industry in question, and the complainant’s relative size.’” *Id.* (citing *Stringed Musical Instruments*, Comm’n Op. at 26).

With respect to section 337(a)(3)(C), whether an investment in domestic industry is “substantial” is a fact-dependent inquiry for which the complainant bears the burden of proof. *Stringed Musical Instruments*, Comm’n Op. at 14. There is no minimum monetary expenditure that a complainant must demonstrate to qualify as a domestic industry under the “substantial investment” requirement of this section. *Id.* at 25. There is no need to define or quantify an industry in absolute mathematical terms. *Id.* at 26. Rather, “the requirement for showing the existence of a domestic industry will depend on the industry in question, and the complainant’s relative size.” *Id.* at 25-26.

IV. Summary Determination

A. Importation

Section 337 prohibits “[t]he importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of articles that – (i) infringe a valid and enforceable United States patent” 19 U.S.C. § 1337(a)(1)(B). 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, Views of the Commission at 7-8 (Aug. 29, 1984), USITC Pub. No. 1605 (Nov. 1984), *available as* 1984 WL 951859 (importation of product sample sufficient to establish violation, even though sample “had no commercial value and had not been sold in the United States”). As discussed above, the evidence shows that each of the defaulting respondents has imported accused products and/or sold such products within the United States after importation.

B. Infringement

PopSockets asserts apparatus claims 9-12 and method claims 16-17 of the ‘031 patent against each defaulting respondent, except that of those claims, claim 12 is not asserted against respondent Yiwu Wentou Import & Export Co., Ltd. *See* Mem. at 24, n.2. Claims 9 and 16 are independent claims. Claims 10-12 depend from claim 9, and claim 17 depends from claim 16.

1. Asserted Patent

United States Patent No. 8,560,031 (“the ‘031 patent”), entitled “Extending

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Socket for Portable Media Player,” issued on October 15, 2013, to named inventors David B. Barnett and Lawrence E. Carlson. The ‘031 patent issued from Application No. 13/403,729 (“the ‘729 Application”), filed on February 23, 2012. *See* Complaint Ex. 1 (‘031 Patent). The ‘031 patent has 22 claims, including four independent claims and 18 dependent claims.

The ‘031 patent is directed to an extra feature on or attachable to a portable media player case that enables features other than protection, with this extra feature called an extending “socket.” *See* Complaint Ex. 1 (‘031 Patent) at col. 1, lns. 17-57. The extending sockets provide functions such as, for example, “storing headphone cords and preventing the cords from tangling, forming stand legs, forming gaming grips, clipping to belts, waistbands and shirt pockets, forming legs for wedging players that are phones between the shoulder and ear, and forming a grip that allows a user to securely hold and manipulate the player with one hand.” *Id.*, at col. 1, lns. 37-44.

The sockets are “extendable outward from the case ...[and] generally include extending elements, called ‘accordions,’ comprising cylindrical or conical membranes with flexural hinges having feet at their distal ends.” *Id.* at col. 1, lns. 44-47. Figures 1A and 1B, below, illustrates an isometric back view drawing of an embodiment of a portable medial player case 100 with sockets attached thereto according to the ‘031 patent:

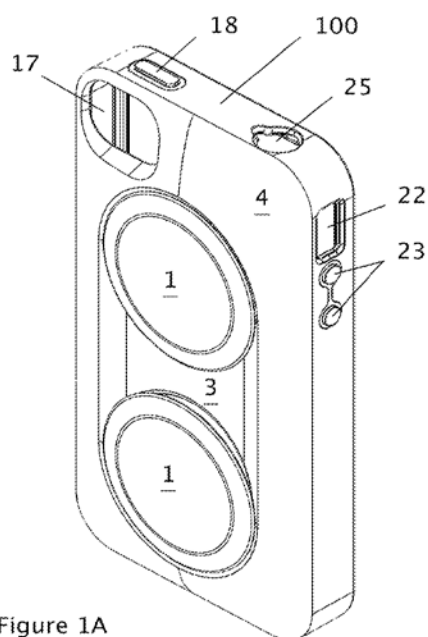


Figure 1A

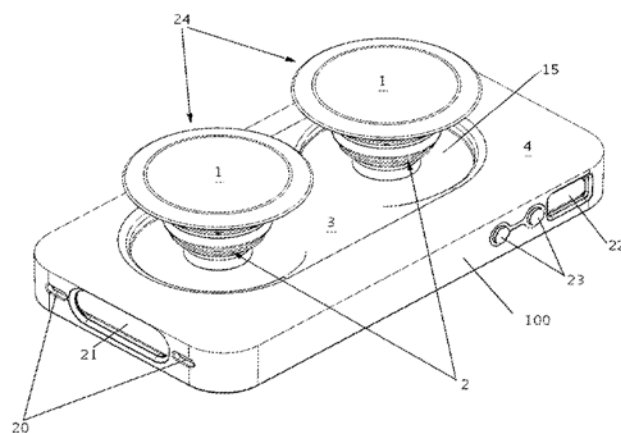


Figure 1B

Complaint Ex. 1 ('031 Patent), Figures 1A, 1B.

“Case 100 comprises outer case body 4, including socket-board 3, and sockets 24. Each socket 24 generally comprises a collapsible accordion 2 attached to case 100 such that it collapses to nestle within cavity 15, and a button 1 attached to the distal end of accordion 2. Button 1 may comprise a separate attached element or may be integral with accordion 2.” *Id.* at col. 4, lns. 43-49.

Figures 3A and 3B, below, illustrate the structure of a preferred embodiment of accordion 2 in detail:

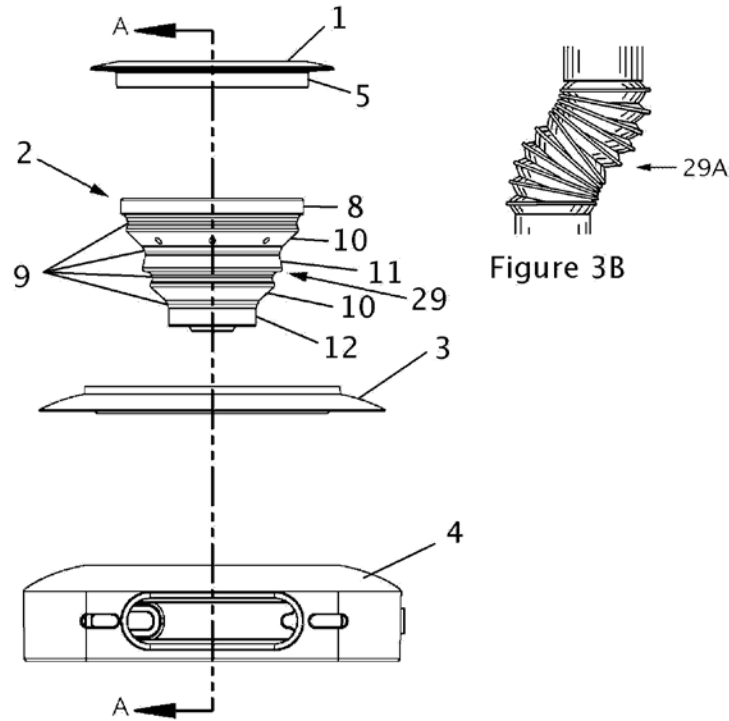


Figure 3A

Complaint Ex. 1 ('031 Patent), Figures 3A, 3B.

Each accordion 2 includes a folding section 29 comprising a series of relatively rigid walls 10, 11, 12 interspersed with flexural (or “living”) hinges 9, which flex as accordion 2 is collapsed or expanded. Accordion 2 further comprises top vertical wall 8 (for connection to button 1) and bottom vertical wall 12.

FIG. 3B shows an alternative folding section 29A of accordion 2. In these examples, folding sections 29A comprises flexible membranes including hinges. In the embodiment of FIG. 3A, accordion 2 forms a cone. This allows walls 8, 10, 11, 12 to fold next to one another (as shown in FIG. 5) rather than stacking on top of one another as is the case with the embodiment of FIG. 3B. Both embodiments 29 and 29A are stable in various extended configurations.

Complaint Ex. 1 ('031 Patent) at col. 5, lns. 50-63.

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PopSockets asserts apparatus claims 9-12 and method claims 16-17 of the '031 patent against each defaulting respondent, except that of those claims, claim 12 is not asserted against respondent Yiwu Wentou Import & Export Co., Ltd. *See* Mem. at 24, n.2. Claims 9 and 16 are independent claims. Claims 10-12 depend from claim 9, and claim 17 depends from claim 16.

The asserted claims are recited below:

9. A socket for attaching to a portable media player or to a portable media player case, comprising:

a securing element for attaching the socket to the back of the portable media player or portable media player case; and

an accordion forming a tapered shape connected to the securing element, the accordion capable of extending outward generally along its from the portable media player and retracting back toward the portable media player by collapsing generally along its axis; and

a foot disposed at the distal end of the accordion.

10. The socket of claim **9** wherein the accordion comprises rigid walls interspersed with flexural hinges.

11. The socket of claim **10** wherein the tapered shape comprises a cone shape constructed and arranged such that the walls fold generally parallel to the axis of the accordion when the accordion is collapsed.

12. The socket of claim **11** wherein the accordion is formed of polyester-based thermoplastic polyurethane elastomer, the walls are about 1 to 2 mm thick and 2 to 4 mm long, and the flexural hinges are about 0.2 to 0.4 mm thick and 1 to 2 mm long.

16. A method comprising the steps of:

attaching a socket including an accordion forming a tapered shape and having walls interspaced with flexural hinges to a portable media player;

selectively extending the socket by unfolding the

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accordion generally along its axis; and
selectively retracting the socket by folding the
accordion generally along its axis such that the walls
fold next to each other.

17. The method of claim **16** wherein the retracting step
folds the walls into an orientation such that the walls are
generally parallel to the axis of the accordion.

Complaint Ex. 1 ('031 Patent) at col. 7, ln. 60 – col. 8, ln. 16; col. 8, lns. 25-37.

2. A Person of Ordinary Skill in the Art

PopSockets argues that a person of ordinary skill in the art at the time of the
claimed inventions would have been a person having a bachelor's degree in industrial
design and would have had one (1) or more years of work experience in designing and
assembling small, injection-molded components, or, in the alternative, a person having at
least three (3) or more years of work experience in designing and assembling small,
injection-molded components. *See* Mem. at 21; Mem. Ex. 2 (Kemnitzer Decl.), ¶ 51.

The Staff states that it has no objection to PopSockets' proposed level of ordinary
skill in the art. Staff Resp. at 31.

It is clear from the parties' arguments that PopSockets' proposed qualifications of
a person of ordinary skill are not disputed. In any event, the parties have not argued that
the qualification level of a person of ordinary skill makes a difference in claim
construction of the disputed claim terms. The administrative law judge finds that
PopSockets' proposed definition is reasonable in view of the technology encompassed by
the '031 patent. Thus, the administrative law judge has determined to adopt PopSockets'
proposed definition of a person of ordinary skill in the art with respect to the '031 patent.

3. Claim Construction

“Determination of a claim of infringement involves a two step inquiry. First, the claims are construed, a question of law in which the scope of the asserted claims is defined.” *Advanced Cardiovascular Sys.*, 261 F.3d at 1336. To ascertain the meaning of a claim term, the courts rely on intrinsic evidence: the claims, specification, and prosecution history for the patent at issue. *Phillips*, 415 F.3d 1303, 1313-14 (Fed. Cir. 2005) (*en banc*); *Vitronics*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). Extrinsic evidence may be considered if necessary to explain scientific principles, technical terms, and terms of art that appear in the patent and prosecution history. Extrinsic evidence consists of all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises. *Vitronics*, 90 F.3d at 1582-83.

A court need not construe every term in a claim, but may limit its analysis to terms that do not have a readily apparent ordinary meaning and are relevant to the dispute. *O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1360 (Fed. Cir. 2008); *U.S. Surgical Corp. v. Ethicon, Inc.*, 103 F.3d 1554, 1568 (Fed. Cir. 1997).

On July 7, 2017, the Staff filed a list of claim terms for construction, identifying two claim terms: (1) “portable media player,” and (2) “flexural hinges.” *See* Commission Investigative Staff’s List of Claim Terms for Construction (EDIS Doc. ID No. 616508); Mem. at 21. On July 10, 2017, PopSockets and filed a statement concerning proposed claim constructions stating that “no claim term of any of the claims 9-13 and 16-17, or any other claim term of the remaining claims of the ’031 Patent, requires construction.” Complainant PopSockets’ Statement Regarding Claim Terms Pursuant to GR 6.b (EDIS

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Doc. ID No. 616512). No respondent participated in the exchanges of claim terms and proposed claim constructions.

The two claim terms “portable media player” and “flexure hinges” are discussed below.

a. “portable media player”

Below is a chart showing the parties’ proposed claim constructions.

Complainant’s Proposed Construction	Staff’s Proposed Construction
“a portable device capable of playing media, such as a smartphone, tablet, or MP3 player”	“a portable device capable of playing media, such as a smartphone, tablet, or MP3 player”

See Mem. at 21-22; Staff Resp. at 31-33.

The claim term “portable media player” is recited in claims 9 and 16, which read as follows:

9. A socket for attaching to a *portable media player* or to a *portable media player* case, comprising:

a securing element for attaching the socket to the back of the *portable media player* or *portable media player* case; and

an accordion forming a tapered shape connected to the securing element, the accordion capable of extending outward generally along its from the *portable media player* and retracting back toward the *portable media player* by collapsing generally along its axis; and

a foot disposed at the distal end of the accordion.

16. A method comprising the steps of:

attaching a socket including an accordion forming a tapered shape and having walls interspaced with flexural hinges to a *portable media player*;

selectively extending the socket by unfolding the

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accordion generally along its axis; and
selectively retracting the socket by folding the
accordion generally along its axis such that the walls
fold next to each other.

Complaint Ex. 1 ('031 Patent) at col. 7, ln. 60 – col. 8, ln. 4 (emphasis added); col. 8, lns. 25-33 (emphasis added).

PopSockets argues that the claim term “portable media player” should be given its plain and ordinary meaning, *i.e.*, “a portable device capable of playing media, such as a smartphone, tablet, or MP3 player.” Mem. at 21. The Staff states that it does not object to this proposed construction. Staff Resp. at 32.

As argued by PopSockets, this construction is supported by the '031 patent specification, and by the testimony of its expert, Mr. Kemnitzer. Mem. at 21; Complaint Ex. 1 ('031 Patent) at col. 1, lns. 11-16; col. 5, lns. 12-14; col. 7, lns. 21-24, and FIG. 1D; *see also* Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 53. Specifically, the '031 patent describes that MP3 players, smart phones (*e.g.*, an Apple iPhone), a tablet device, or other such devices (*e.g.*, an Apple iPod Touch) are each examples of portable media players. *See, e.g.*, Complaint Ex. 1 ('031 Patent) at col. 1, lns. 11-16 (“Portable media players such as MP3 players and smart phones ...”), col. 5, lns. 12-14 (“a media player 200 (such as an iPhoneTM smart phone)”), col. 7, lns. 21-24 (“media player 200 might be a tablet or an MP3 player or other device such as an iPod TouchTM”). As argued by PopSockets, each of these portable media players are portable devices capable of playing media, which includes, for example, media such as audio, video, etc. Mem. at 22. Also, there is no evidence in the intrinsic record to suggest that the claim term “portable media player” should be given a meaning other than its plain and ordinary meaning.

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Accordingly, as proposed by PopSockets and agreed to by the Staff, the administrative law judge has determined that the claim term “portable media player” should be given its plain and ordinary meaning, *i.e.*, “a portable device capable of playing media, such as a smartphone, tablet, or MP3 player.”

b. “flexural hinges”

Below is a chart showing the parties’ proposed claim constructions.

Complainant’s Proposed Construction	Staff’s Proposed Construction
“hinges capable of flexing as the accordion moves”	“hinges capable of flexing as the accordion moves”

See Mem. at 22-24; Staff Resp. at 33-35.

The claim term “flexural hinges” is recited in claims 10 and 12 (which depends from claim 11) and 16, which read as follows:

10. The socket of claim **9** wherein the accordion comprises rigid walls interspersed with *flexural hinges*.

11. The socket of claim **10** wherein the tapered shape comprises a cone shape constructed and arranged such that the walls fold generally parallel to the axis of the accordion when the accordion is collapsed.

12. The socket of claim **11** wherein the accordion is formed of polyester-based thermoplastic polyurethane elastomer, the walls are about 1 to 2 mm thick and 2 to 4 mm long, and the *flexural hinges* are about 0.2 to 0.4 mm thick and 1 to 2 mm long.

16. A method comprising the steps of:

attaching a socket including an accordion forming a tapered shape and having walls interspaced with *flexural hinges* to a portable media player;
selectively extending the socket by unfolding the accordion generally along its axis; and

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selectively retracting the socket by folding the
accordion generally along its axis such that the walls
fold next to each other.

Complaint Ex. 1 ('031 Patent) at col. 8, lns. 5-16, 25-33 (emphasis added).

PopSockets argues that the claim term “flexural hinges” should be given its plain and ordinary meaning, *i.e.*, “hinges capable of flexing as the accordion moves.” Mem. at 22. The Staff states that it does not object to this proposed construction. Staff Resp. at 34.

As seen above in claims 10, 11, 12, and 16, the claims recite that the “flexural hinges” are formed in, or are part of, the claimed “accordion” socket. Thus, as claimed, the flexural feature of the hinges is associated with the accordion.

As argued by PopSockets, the proposed construction is supported by the '031 patent specification, and by the testimony of its expert, Mr. Kemnitzer. *See* Mem. at 22-23; Complaint Ex. 1 ('031 Patent) at col. 5, lns. 48-53 and FIG. 3A; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 53. For example, the '031 patent describes, with reference to FIG. 3A (shown above), that flexural hinges are hinges that “flex as accordion 2 is collapsed or expanded.” Complaint Ex. 1 ('031 Patent) at col. 5, lns. 48-53; Mem. at 23.

PopSockets argues that the '031 patent refers to the “flexural hinges” as “living” hinges. Mem. at 23 (citing '031 Patent at col. 5, lns. 48-53 (“flexural (or ‘living’) hinges”)). Relying on its expert, PopSockets argues that the term “living” hinge would have been well-known to those of ordinary skill in the art at the time of the '031 patent inventions. PopSockets argues:

For example, according to PopSockets' expert Mr. Kemnitzer, a well-known magazine entitled *Machine Design*, which was a widely read periodic publication reviewed by persons of ordinary skill in the art as

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defined above, described the term “living hinge” as “thin sections of plastic that join two mating parts.” *See* Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 53; *see also* Kemnitzer Ex. T at 64 (Jean M. Hoffman, Care and Feeding of Living Hinges, Machine Design, pp. 64-65 (Aug. 19, 2004)). This description accords with Figure 3A, the “flexural hinges” depicted therein, and the proposed meaning that the flexural hinges are hinges capable of flexing as the accordion moves, because flexural hinges of the ‘031 Patent serve as thin sections of plastic that join two mating parts of the accordion.

Mem. at 23-24.

This evidence supports PopSockets’ proposed construction. Also, there is no evidence in the intrinsic record to suggest that the claim term “flexural hinges” should be given a meaning other than its plain and ordinary meaning.

Accordingly, as proposed by PopSockets and agreed to by the Staff, the administrative law judge has determined that the claim term “flexural hinges” should be given its plain and ordinary meaning, *i.e.*, “hinges capable of flexing as the accordion moves.”

4. Infringement Analysis of Apparatus Claims

For the reasons discussed below, the record evidence supports a finding of infringement of the asserted apparatus claims 9, 10, 11, and 12 by each of the defaulting respondents.

PopSockets submitted the declaration of Mr. Kemnitzer detailing his infringement opinions after analyzing each of defaulting respondents’ accused products. *See, e.g.*, Mem. Ex. 2 (Kemnitzer Decl.) at ¶¶ 12-17. Mr. Kemnitzer has been a practicing industrial designer for over 40 years; he received a Master of Arts degree in Design from Northern Illinois University in 1973, and a Bachelor’s of Science Degree in Industrial Design from the University of Cincinnati in 1967. Mr. Kemnitzer therefore qualifies as

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an expert who can opine as to the knowledge of a person of ordinary skill in the art.

Mr. Kemnitzer personally examined each defaulting respondents' accused product samples and/or photographs of the accused products. Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 12. Mr. Kemnitzer's examination included attaching a sample of each defaulting respondents' accused products to a portable media player (*i.e.*, an Apple iPhone) and observing features of the accused products against the asserted claims of the '031 patent. *See* Mem. Ex. 2 (Kemnitzer Decl.) at ¶¶ 77-116. Mr. Kemnitzer prepared claims charts for each of the accused products, demonstrating how the asserted claims reads on those products. *Id.*

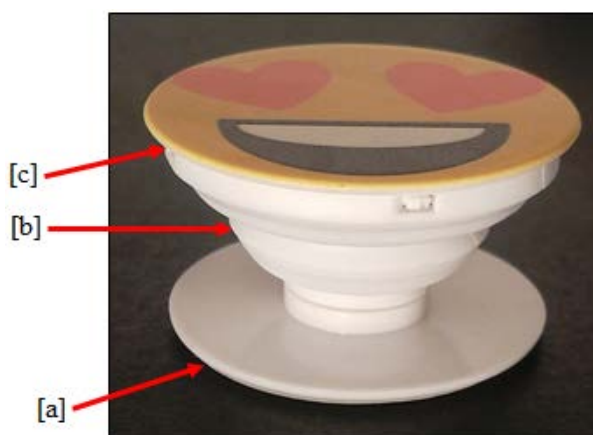
a. Agomax Group Ltd.

In support of the pending motion, PopSockets has submitted the Declaration of Ronald Kemnitzer with attached claim charts to show that the accused products of respondent Agomax Group Ltd. ("Agomax") infringe asserted apparatus claims 9, 10, 11, and 12 of the '031 patent. In addition, PopSockets cites to its complaint and exhibits thereto, including a physical exhibit and infringement chart. As discussed below, the Agomax accused products practice each and every limitation of claims 9-12.

Claim 9

An Agomax accused product is shown below.

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See Complaint Ex. 12 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 77 (Infringement Analysis and Chart); Complaint Ex. 31 (Physical Exhibit); Complaint Ex. A (Infringement Chart).

For claim 9, as shown above, each of the claim 9 elements [a]-[c], and the claim 9 [preamble] to the extent that it is limiting, are found in the Agomax accused product, as purchased for importation and imported into the United States. See Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 77 (Infringement Analysis and Chart). As shown above, portion [a] of the Agomax accused product includes a securing element for attaching the socket to the back of a portable media player or portable media player case. *Id.* In addition, portion [b] of the Agomax accused product includes an accordion forming a tapered shape connected to the securing element. *Id.* Finally, portion [c] of the Agomax accused product includes a foot disposed at the distal end of the accordion. *Id.*

The Agomax accused product extends outward generally from the portable media player, as shown above, and also retracts back toward the portable media player by collapsing generally along its axis, as shown below:

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See Complaint Ex. 12 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 77 (Infringement Analysis and Chart).

The Agomax accused product attaches to a portable media player or to a portable media player case as shown in the image from Agomax's product packaging or website, reproduced below.



See Complaint Ex. 12 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 77 (Infringement Analysis and Chart).

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This is further shown in the below image, depicting an Agomax accused product as attached by PopSockets' expert, Rondald Kemnitzer, to his portable media player (*e.g.*, an Apple iPhone):



See Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 77 (Infringement Analysis and Chart).

Applying the construction for “portable media player,” the iPhone in the above image is “a portable device capable of playing media, such as a smartphone, tablet, or MP3 player” inasmuch as it is a smartphone capable of playing media, and, therefore is a “portable media player” as identified in the ‘031 patent claims. *See also* Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 77 (Infringement Analysis and Chart).

Claim 10

For claim 10, the accordion element of the Agomax accused product includes rigid walls interspersed with flexural hinges. This is shown, for example, for claim 9, element [b], above. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 77 (Infringement Analysis and Chart). Applying the construction for “flexural hinges,” the Agomax accused product in the above image, for claim 9, element [b] includes “hinges

capable of flexing as the accordion moves” inasmuch as the hinges of the Agomax accused product flex as the accordion of the Agomax accused product moves, and, therefore the Agomax accused product includes “flexural hinges” as identified in the ‘031 patent claims. *Id.*

Claim 11

For claim 11, the tapered shape of the Agomax accused product includes a cone shape as constructed and is arranged such that the walls fold generally parallel to the axis of the accordion when the accordion is collapsed. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 77 (Infringement Analysis and Chart). This is shown, for example, for claim 9, element [b], above. *Id.*

Claim 12

For claim 12, the accordion of the Agomax accused product is formed of polyester-based thermoplastic polyurethane elastomer, the walls are about 1 to 2 mm thick and 2 to 4 mm long, and the flexural hinges are about 0.2 to 0.4 mm thick and 1 to 2 mm long. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 77 (Infringement Analysis and Chart). PopSockets’ expert, Mr. Kemnitzer, inspected an Agomax accused product and verified that its accordion is formed of polyester-based thermoplastic polyurethane elastomer. *Id.* Using a digital micrometer, Mr. Kemnitzer inspected and measured the wall thicknesses of the accordion. *Id.* Mr. Kemnitzer determined that the walls of the Agomax accused product measured 1.5 mm thick and were 2.9 to 3.9 mm long. *Id.* The flexural hinges measured 0.2 to 0.38 mm thick by approximately 1.9 mm long. *Id.* Inasmuch as the Agomax accused product includes hinges capable of flexing as

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the accordion moves, the Agomax accused product includes “flexural hinges,” as that claim term has been construed as discussed above for claim 10.

* * *

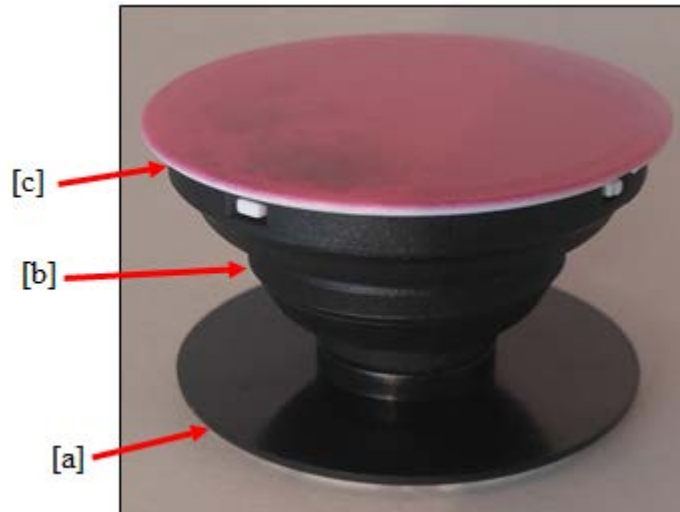
It is therefore determined that PopSockets has established by substantial, reliable, and probative evidence that the accused products of respondent Agomax infringe asserted apparatus claims 9, 10, 11, and 12 of the ‘031 patent.

b. Guangzhou Xi Xun Electronics Co., Ltd.

In support of the pending motion, PopSockets has submitted the Declaration of Ronald Kemnitzer with attached claim charts to show that the accused products of respondent Guangzhou Xi Xun Electronics Co., Ltd. (“Xi Xun”) infringe asserted apparatus claims 9, 10, 11, and 12 of the ‘031 patent. In addition, PopSockets cites to its complaint and exhibits thereto, including a physical exhibit and infringement chart. As discussed below, the Xi Xun accused products practice each and every limitation of claims 9-12.

Claim 9

A Xi Xun accused product is shown below.

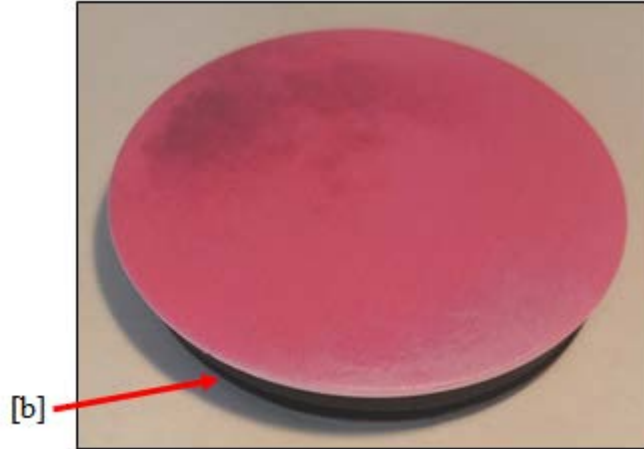


See Complaint Ex. 13 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 80 (Infringement Analysis and Chart); Complaint Ex. 32 (Physical Exhibit); Complaint Ex. B (Infringement Chart).

For claim 9, as shown above, each of the claim 9 elements [a]-[c], and the claim 9 [preamble] to the extent that it is limiting, are found in the Xi Xun accused product, as purchased for importation and imported into the United States. See Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 80 (Infringement Analysis and Chart). As shown above, portion [a] of the Xi Xun accused product includes a securing element for attaching the socket to the back of a portable media player or portable media player case. *Id.* In addition, portion [b] of the Xi Xun accused product includes an accordion forming a tapered shape connected to the securing element. *Id.* Finally, portion [c] of the Xi Xun accused product includes a foot disposed at the distal end of the accordion. *Id.*

A Xi Xun accused product extends outward generally from the portable media player, as shown above, and also retracts back toward the portable media player by collapsing generally along its axis, as shown below:

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See Complaint Ex. 13 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 80 (Infringement Analysis and Chart).

A Xi Xun accused product attaches to a portable media player or to a portable media player case as shown in the image from Xi Xun's product packaging or website, reproduced below.



See Complaint Ex. 13 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 80 (Infringement Analysis and Chart).

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This is further shown in the below image, depicting a Xi Xun accused product as attached by PopSockets' expert, Rondald Kemnitzer, to his portable media player (*e.g.*, an Apple iPhone):



See Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 80 (Infringement Analysis and Chart).

Applying the construction for “portable media player,” the iPhone in the above image is “a portable device capable of playing media, such as a smartphone, tablet, or MP3 player” inasmuch as it is a smartphone capable of playing media, and, therefore is a “portable media player” as identified in the ‘031 patent claims. *See also* Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 80 (Infringement Analysis and Chart).

Claim 10

For claim 10, the accordion element of the Xi Xun accused product includes rigid walls interspersed with flexural hinges. This is shown, for example, for claim 9, element [b], above. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 80 (Infringement Analysis and Chart). Applying the construction for “flexural hinges,” the Xi Xun accused product in the above image, for claim 9, element [b] includes “hinges capable of

flexing as the accordion moves” inasmuch as the hinges of the Xi Xun accused product flex as the accordion of the Xi Xun accused product moves, and, therefore the Xi Xun accused product includes “flexural hinges” as identified in the ‘031 patent claims. *Id.*

Claim 11

For claim 11, the tapered shape of the Xi Xun accused product includes a cone shape as constructed and is arranged such that the walls fold generally parallel to the axis of the accordion when the accordion is collapsed. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 80 (Infringement Analysis and Chart). This is shown, for example, for claim 9, element [b], above. *Id.*

Claim 12

For claim 12, the accordion of the Xi Xun accused product is formed of polyester-based thermoplastic polyurethane elastomer, the walls are about 1 to 2 mm thick and 2 to 4 mm long, and the flexural hinges are about 0.2 to 0.4 mm thick and 1 to 2 mm long. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 80 (Infringement Analysis and Chart). PopSockets’ expert, Mr. Kemnitzer, inspected a Xi Xun accused product and verified that its accordion is formed of polyester-based thermoplastic polyurethane elastomer. *Id.* Using a digital micrometer, Mr. Kemnitzer inspected and measured the wall thicknesses of the accordion. *Id.* Mr. Kemnitzer determined that the walls of the Xi Xun accused product measured 1.3 to 1.4 mm thick and were 3.0 to 3.8 mm long. *Id.* The flexural hinges measured 0.2 to 0.4 mm thick by approximately 2.0 mm long. *Id.* Inasmuch as the Xi Xun accused product includes hinges capable of flexing as the

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accordion moves, the Xi Xun accused product includes “flexural hinges,” as that claim term has been construed as discussed above for claim 10.

* * *

It is therefore determined that PopSockets has established by substantial, reliable, and probative evidence that the accused products of respondent Xi Xun infringe asserted apparatus claims 9, 10, 11, and 12 of the ‘031 patent.

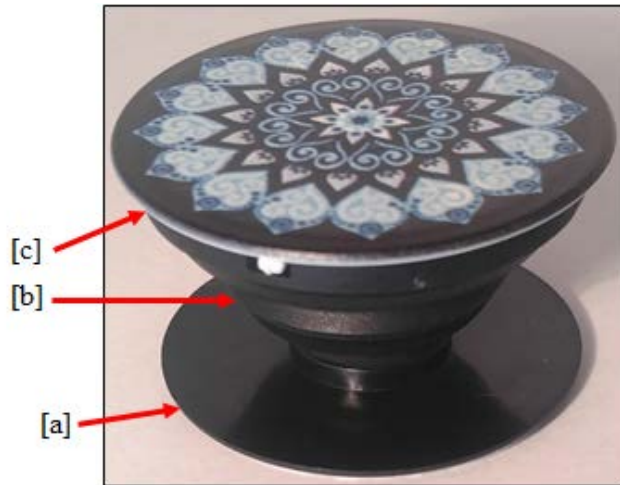
c. Shenzhen VVI Electronic Limited

In support of the pending motion, PopSockets has submitted the Declaration of Ronald Kemnitzer with attached claim charts to show that the accused products of respondent Shenzhen VVI Electronic Limited (“Shenzhen VVI Electronic”) infringe asserted apparatus claims 9, 10, 11, and 12 of the ‘031 patent. In addition, PopSockets cites to its complaint and exhibits thereto, including a physical exhibit and infringement chart. As discussed below, the Shenzhen VVI Electronic accused products practice each and every limitation of claims 9-12.

Claim 9

A Shenzhen VVI Electronic accused product is shown below.

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See Complaint Ex. 15 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 86 (Infringement Analysis and Chart); Complaint Ex. 34 (Physical Exhibit); Complaint Ex. D (Infringement Chart).

For claim 9, as shown above, each of the claim 9 elements [a]-[c], and the claim 9 [preamble] to the extent that it is limiting, are found in the Shenzhen VVI Electronic accused product, as purchased for importation and imported into the United States. See Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 86 (Infringement Analysis and Chart). As shown above, portion [a] of the Shenzhen VVI Electronic accused product includes a securing element for attaching the socket to the back of a portable media player or portable media player case. *Id.* In addition, portion [b] of the Shenzhen VVI Electronic accused product includes an accordion forming a tapered shape connected to the securing element. *Id.* Finally, portion [c] of the Shenzhen VVI Electronic accused product includes a foot disposed at the distal end of the accordion. *Id.*

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The Shenzhen VVI Electronic accused product extends outward generally from the portable media player, as shown above, and also retracts back toward the portable media player by collapsing generally along its axis, as shown below:



See Complaint Ex. 15 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 86 (Infringement Analysis and Chart).

The Shenzhen VVI Electronic accused product attaches to a portable media player or to a portable media player case as shown in the image from Shenzhen VVI Electronic's product packaging or website, reproduced below.

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See Complaint Ex. 15 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 86 (Infringement Analysis and Chart).

This is further shown in the below image, depicting a Shenzhen VVI Electronic accused product as attached by PopSockets' expert, Rondald Kemnitzer, to his portable media player (*e.g.*, an Apple iPhone):



See Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 86 (Infringement Analysis and Chart).

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Applying the construction for “portable media player,” the iPhone in the above image is “a portable device capable of playing media, such as a smartphone, tablet, or MP3 player” inasmuch as it is a smartphone capable of playing media, and, therefore is a “portable media player” as identified in the ‘031 patent claims. *See also* Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 86 (Infringement Analysis and Chart).

Claim 10

For claim 10, the accordion element of the Shenzhen VVI Electronic accused product includes rigid walls interspersed with flexural hinges. This is shown, for example, for claim 9, element [b], above. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 86 (Infringement Analysis and Chart). Applying the construction for “flexural hinges,” the Shenzhen VVI Electronic accused product in the above image, for claim 9, element [b] includes “hinges capable of flexing as the accordion moves” inasmuch as the hinges of the Shenzhen VVI Electronic accused product flex as the accordion of the Shenzhen VVI Electronic accused product moves, and, therefore the Shenzhen VVI Electronic accused product includes “flexural hinges” as identified in the ‘031 patent claims. *Id.*

Claim 11

For claim 11, the tapered shape of the Shenzhen VVI Electronic accused product includes a cone shape as constructed and is arranged such that the walls fold generally parallel to the axis of the accordion when the accordion is collapsed. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 86 (Infringement Analysis and Chart). This is shown, for example, for claim 9, element [b], above. *Id.*

Claim 12

For claim 12, the accordion of the Shenzhen VVI Electronic accused product is formed of polyester-based thermoplastic polyurethane elastomer, the walls are about 1 to 2 mm thick and 2 to 4 mm long, and the flexural hinges are about 0.2 to 0.4 mm thick and 1 to 2 mm long. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 86 (Infringement Analysis and Chart). PopSockets’ expert, Mr. Kemnitzer, inspected a Shenzhen VVI Electronic accused product and verified that its accordion is formed of polyester-based thermoplastic polyurethane elastomer. *Id.* Using a digital micrometer, Mr. Kemnitzer inspected and measured the wall thicknesses of the accordion. *Id.* Mr. Kemnitzer determined that the walls of the Shenzhen VVI Electronic accused product measured 1.5 to 1.6 mm thick and were 3.4 to 3.9 mm long. *Id.* The flexural hinges measured 0.2 to 0.39 mm thick by approximately 1.4 to 2.0 mm long. *Id.* Inasmuch as the Shenzhen VVI Electronic accused product includes hinges capable of flexing as the accordion moves, the Shenzhen VVI Electronic accused product includes “flexural hinges,” as that claim term has been construed as discussed above for claim 10.

* * *

It is therefore determined that PopSockets has established by substantial, reliable, and probative evidence that the accused products of respondent Shenzhen VVI Electronic infringe asserted apparatus claims 9, 10, 11, and 12 of the ‘031 patent.

d. Shenzhen Yright Technology Co., Ltd.

In support of the pending motion, PopSockets has submitted the Declaration of

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Ronald Kemnitzer with attached claim charts to show that the accused products of respondent Shenzhen Yright Technology Co., Ltd. (“Yright”) infringe asserted apparatus claims 9, 10, 11, and 12 of the ‘031 patent. In addition, PopSockets cites to its complaint and exhibits thereto, including a physical exhibit and infringement chart. As discussed below, the Yright accused products practice each and every limitation of claims 9-12.

Claim 9

A Yright accused product is shown below.



See Complaint Ex. 16 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 89 (Infringement Analysis and Chart); Complaint Ex. 35 (Physical Exhibit); Complaint Ex. E (Infringement Chart).

For claim 9, as shown above, each of the claim 9 elements [a]-[c], and the claim 9 [preamble] to the extent that it is limiting, are found in the Yright accused product, as purchased for importation and imported into the United States. *See* Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 89 (Infringement Analysis and Chart). As shown above, portion

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[a] of the Yright accused product includes a securing element for attaching the socket to the back of a portable media player or portable media player case. *Id.* In addition, portion [b] of the Yright accused product includes an accordion forming a tapered shape connected to the securing element. *Id.* Finally, portion [c] of the Yright accused product includes a foot disposed at the distal end of the accordion. *Id.*

The Yright accused product extends outward generally from the portable media player, as shown above, and also retracts back toward the portable media player by collapsing generally along its axis, as shown below:



See Complaint Ex. 16 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 89 (Infringement Analysis and Chart).

The Yright accused product attaches to a portable media player or to a portable media player case as shown in the image from Yright's product packaging or website, reproduced below.

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See Complaint Ex. 16 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 89 (Infringement Analysis and Chart).

This is further shown in the below image, depicting a Yright accused product as attached by PopSockets' expert, Rondald Kemnitzer, to his portable media player (*e.g.*, an Apple iPhone):



See Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 89 (Infringement Analysis and Chart).

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Applying the construction for “portable media player,” the iPhone in the above image is “a portable device capable of playing media, such as a smartphone, tablet, or MP3 player” inasmuch as it is a smartphone capable of playing media, and, therefore is a “portable media player” as identified in the ‘031 patent claims. *See also* Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 89 (Infringement Analysis and Chart).

Claim 10

For claim 10, the accordion element of the Yright accused product includes rigid walls interspersed with flexural hinges. This is shown, for example, for claim 9, element [b], above. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 89 (Infringement Analysis and Chart). Applying the construction for “flexural hinges,” the Yright accused product in the above image, for claim 9, element [b] includes “hinges capable of flexing as the accordion moves” inasmuch as the hinges of the Yright accused product flex as the accordion of the Yright accused product moves, and, therefore the Yright accused product includes “flexural hinges” as identified in the ‘031 patent claims. *Id.*

Claim 11

For claim 11, the tapered shape of the Yright accused product includes a cone shape as constructed and is arranged such that the walls fold generally parallel to the axis of the accordion when the accordion is collapsed. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 89 (Infringement Analysis and Chart). This is shown, for example, for claim 9, element [b], above. *Id.*

Claim 12

For claim 12, the accordion of the Yright accused product is formed of polyester-

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based thermoplastic polyurethane elastomer, the walls are about 1 to 2 mm thick and 2 to 4 mm long, and the flexural hinges are about 0.2 to 0.4 mm thick and 1 to 2 mm long. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 89 (Infringement Analysis and Chart). PopSockets’ expert, Mr. Kemnitzer, inspected a Yright accused product and verified that its accordion is formed of polyester-based thermoplastic polyurethane elastomer. *Id.* Using a digital micrometer, Mr. Kemnitzer inspected and measured the wall thicknesses of the accordion. *Id.* Mr. Kemnitzer determined that the walls of the Yright accused product measured 1.2 to 1.4 mm thick and were 3.1 to 3.8 mm long. *Id.* The flexural hinges measured 0.3 to 0.4 mm thick by approximately 1.7 to 2.0 mm long. *Id.* Inasmuch as the Yright accused product includes hinges capable of flexing as the accordion moves, the Yright accused product includes “flexural hinges,” as that claim term has been construed as discussed above for claim 10.

* * *

It is therefore determined that PopSockets has established by substantial, reliable, and probative evidence that the accused products of respondent Yright infringe asserted apparatus claims 9, 10, 11, and 12 of the ‘031 patent.

e. Hangzhou Hangkai Technology Co., Ltd.

In support of the pending motion, PopSockets has submitted the Declaration of Ronald Kemnitzer with attached claim charts to show that the accused products of respondent Hangzhou Hangkai Technology Co., Ltd. (“Hangkai”) infringe asserted apparatus claims 9, 10, 11, and 12 of the ‘031 patent. In addition, PopSockets cites to its

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complaint and exhibits thereto, including a physical exhibit and infringement chart. As discussed below, the Hangkai accused products practice each and every limitation of claims 9-12.

Claim 9

A Hangkai accused product is shown below.



See Complaint Ex. 17 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 92 (Infringement Analysis and Chart); Complaint Ex. 36 (Physical Exhibit); Complaint Ex. F (Infringement Chart).

For claim 9, as shown above, each of the claim 9 elements [a]-[c], and the claim 9 [preamble] to the extent that it is limiting, are found in the Hangkai accused product, as purchased for importation and imported into the United States. See Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 92 (Infringement Analysis and Chart). As shown above, portion [a] of the Hangkai accused product includes a securing element for attaching the socket to

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the back of a portable media player or portable media player case. *Id.* In addition, portion [b] of the Hangkai accused product includes an accordion forming a tapered shape connected to the securing element. *Id.* Finally, portion [c] of the Hangkai accused product includes a foot disposed at the distal end of the accordion. *Id.*

The Hangkai accused product extends outward generally from the portable media player, as shown above, and also retracts back toward the portable media player by collapsing generally along its axis, as shown below:



See Complaint Ex. 17 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 92 (Infringement Analysis and Chart).

The Hangkai accused product attaches to a portable media player or to a portable media player case as shown in the image from Hangkai's product packaging or website, reproduced below.

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See Complaint Ex. 17 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 92 (Infringement Analysis and Chart).

This is further shown in the below image, depicting a Hangkai accused product as attached by PopSockets' expert, Rondald Kemnitzer, to his portable media player (*e.g.*, an Apple iPhone):



See Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 92 (Infringement Analysis and Chart).

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Applying the construction for “portable media player,” the iPhone in the above image is “a portable device capable of playing media, such as a smartphone, tablet, or MP3 player” inasmuch as it is a smartphone capable of playing media, and, therefore is a “portable media player” as identified in the ‘031 patent claims. *See also* Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 92 (Infringement Analysis and Chart).

Claim 10

For claim 10, the accordion element of the Hangkai accused product includes rigid walls interspersed with flexural hinges. This is shown, for example, for claim 9, element [b], above. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 92 (Infringement Analysis and Chart). Applying the construction for “flexural hinges,” the Hangkai accused product in the above image, for claim 9, element [b] includes “hinges capable of flexing as the accordion moves” inasmuch as the hinges of the Hangkai accused product flex as the accordion of the Hangkai accused product moves, and, therefore the Hangkai accused product includes “flexural hinges” as identified in the ‘031 patent claims. *Id.*

Claim 11

For claim 11, the tapered shape of the Hangkai accused product includes a cone shape as constructed and is arranged such that the walls fold generally parallel to the axis of the accordion when the accordion is collapsed. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 92 (Infringement Analysis and Chart). This is shown, for example, for claim 9, element [b], above. *Id.*

Claim 12

For claim 12, the accordion of the Hangkai accused product is formed of polyester-based thermoplastic polyurethane elastomer, the walls are about 1 to 2 mm thick and 2 to 4 mm long, and the flexural hinges are about 0.2 to 0.4 mm thick and 1 to 2 mm long. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 92 (Infringement Analysis and Chart). PopSockets’ expert, Mr. Kemnitzer, inspected a Hangkai accused product and verified that its accordion is formed of polyester-based thermoplastic polyurethane elastomer. *Id.* Using a digital micrometer, Mr. Kemnitzer inspected and measured the wall thicknesses of the accordion. *Id.* Mr. Kemnitzer determined that the walls of the Hangkai accused product measured 1.3 to 1.5 mm thick and were 3.3 to 4.0 mm long. *Id.* The flexural hinges measured 0.3 to 0.4 mm thick by approximately 1.3 to 1.7 mm long. *Id.* Inasmuch as the Hangkai accused product includes hinges capable of flexing as the accordion moves, the Hangkai accused product includes “flexural hinges,” as that claim term has been construed as discussed above for claim 10.

* * *

It is therefore determined that PopSockets has established by substantial, reliable, and probative evidence that the accused products of respondent Hangkai infringe asserted apparatus claims 9, 10, 11, and 12 of the ‘031 patent.

f. Shenzhen Kinsen Technology Co., Limited

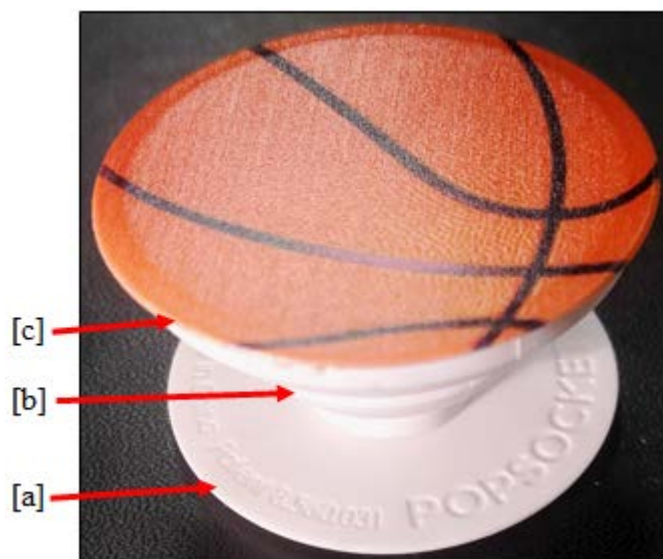
In support of the pending motion, PopSockets has submitted the Declaration of Ronald Kemnitzer with attached claim charts to show that the accused products of

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respondent Shenzhen Kinsen Technology Co., Limited (“Kinsen”) infringe asserted apparatus claims 9, 10, 11, and 12 of the ‘031 patent. In addition, PopSockets cites to its complaint and exhibits thereto, including a physical exhibit and infringement chart. As discussed below, the Kinsen accused products practice each and every limitation of claims 9-12.

Claim 9

A Kinsen accused product is shown below.



See Complaint Ex. 18 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 95 (Infringement Analysis and Chart); Complaint Ex. 37 (Physical Exhibit); Complaint Ex. G (Infringement Chart).

For claim 9, as shown above, each of the claim 9 elements [a]-[c], and the claim 9 [preamble] to the extent that it is limiting, are found in the Kinsen accused product, as purchased for importation and imported into the United States. See Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 95 (Infringement Analysis and Chart). As shown above, portion

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[a] of the Kinsen accused product includes a securing element for attaching the socket to the back of a portable media player or portable media player case. *Id.* In addition, portion [b] of the Kinsen accused product includes an accordion forming a tapered shape connected to the securing element. *Id.* Finally, portion [c] of the Kinsen accused product includes a foot disposed at the distal end of the accordion. *Id.*

The Kinsen accused product extends outward generally from the portable media player, as shown above, and also retracts back toward the portable media player by collapsing generally along its axis, as shown below:



See Complaint Ex. 18 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 95 (Infringement Analysis and Chart).

The Kinsen accused product attaches to a portable media player or to a portable media player case as shown in the image from Kinsen's product packaging or website, reproduced below.

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See Complaint Ex. 18 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 95 (Infringement Analysis and Chart).

This is further shown in the below image, depicting a Kinsen accused product as attached by PopSockets' expert, Rondald Kemnitzer, to his portable media player (*e.g.*, an Apple iPhone):



See Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 95 (Infringement Analysis and Chart).

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Applying the construction for “portable media player,” the iPhone in the above image is “a portable device capable of playing media, such as a smartphone, tablet, or MP3 player” inasmuch as it is a smartphone capable of playing media, and, therefore is a “portable media player” as identified in the ‘031 patent claims. *See also* Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 95 (Infringement Analysis and Chart).

Claim 10

For claim 10, the accordion element of the Kinsen accused product includes rigid walls interspersed with flexural hinges. This is shown, for example, for claim 9, element [b], above. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 95 (Infringement Analysis and Chart). Applying the construction for “flexural hinges,” the Kinsen accused product in the above image, for claim 9, element [b] includes “hinges capable of flexing as the accordion moves” inasmuch as the hinges of the Kinsen accused product flex as the accordion of the Kinsen accused product moves, and, therefore the Kinsen accused product includes “flexural hinges” as identified in the ‘031 patent claims. *Id.*

Claim 11

For claim 11, the tapered shape of the Kinsen accused product includes a cone shape as constructed and is arranged such that the walls fold generally parallel to the axis of the accordion when the accordion is collapsed. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 95 (Infringement Analysis and Chart). This is shown, for example, for claim 9, element [b], above. *Id.*

Claim 12

For claim 12, the accordion of the Kinsen accused product is formed of polyester-

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based thermoplastic polyurethane elastomer, the walls are about 1 to 2 mm thick and 2 to 4 mm long, and the flexural hinges are about 0.2 to 0.4 mm thick and 1 to 2 mm long. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 95 (Infringement Analysis and Chart). PopSockets’ expert, Mr. Kemnitzer, inspected a Kinsen accused product and verified that its accordion is formed of polyester-based thermoplastic polyurethane elastomer. *Id.* Using a digital micrometer, Mr. Kemnitzer inspected and measured the wall thicknesses of the accordion. *Id.* Mr. Kemnitzer determined that the walls of the Kinsen accused product measured 1.4 to 1.6 mm thick and were 3.4 to 3.9 mm long. *Id.* The flexural hinges measured 0.2 to 0.4 mm thick by approximately 1.1 to 1.8 mm long. *Id.* Inasmuch as the Kinsen accused product includes hinges capable of flexing as the accordion moves, the Kinsen accused product includes “flexural hinges,” as that claim term has been construed as discussed above for claim 10.

* * *

It is therefore determined that PopSockets has established by substantial, reliable, and probative evidence that the accused products of respondent Kinsen infringe asserted apparatus claims 9, 10, 11, and 12 of the ‘031 patent.

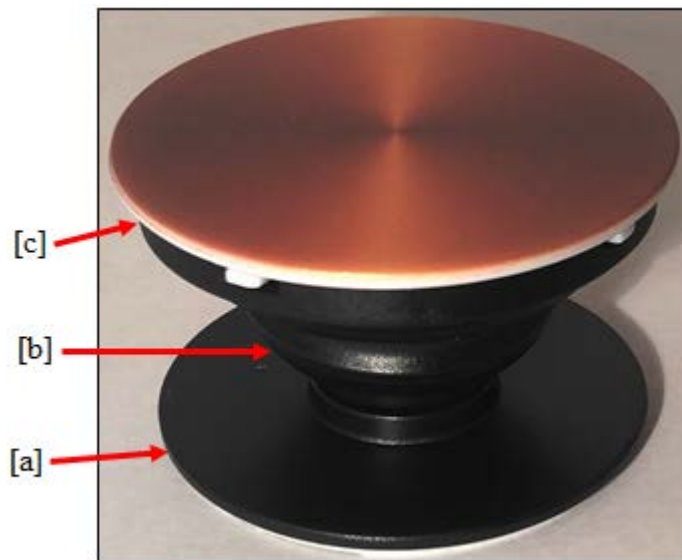
g. Shenzhen Enruize Technology Co., Ltd.

In support of the pending motion, PopSockets has submitted the Declaration of Ronald Kemnitzer with attached claim charts to show that the accused products of respondent Shenzhen Enruize Technology Co., Ltd. (“Enruize”) infringe asserted apparatus claims 9, 10, 11, and 12 of the ‘031 patent. In addition, PopSockets cites to its

complaint and exhibits thereto, including a physical exhibit and infringement chart. As discussed below, the Enruize accused products practice each and every limitation of claims 9-12.

Claim 9

An Enruize accused product is shown below.



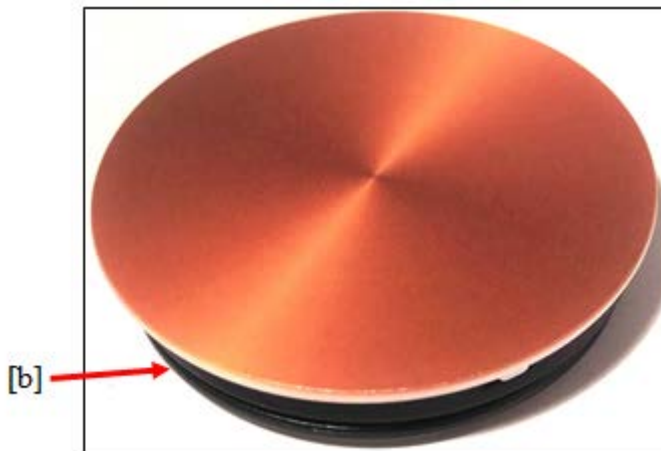
See Complaint Ex. 19 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 98 (Infringement Analysis and Chart); Complaint Ex. 38 (Physical Exhibit); Complaint Ex. H (Infringement Chart).

For claim 9, as shown above, each of the claim 9 elements [a]-[c], and the claim 9 [preamble] to the extent that it is limiting, are found in the Enruize accused product, as purchased for importation and imported into the United States. *See* Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 98 (Infringement Analysis and Chart). As shown above, portion [a] of the Enruize accused product includes a securing element for attaching the socket to

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the back of a portable media player or portable media player case. *Id.* In addition, portion [b] of the Enruize accused product includes an accordion forming a tapered shape connected to the securing element. *Id.* Finally, portion [c] of the Enruize accused product includes a foot disposed at the distal end of the accordion. *Id.*

The Enruize accused product extends outward generally from the portable media player, as shown above, and also retracts back toward the portable media player by collapsing generally along its axis, as shown below:



See Complaint Ex. 19 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 98 (Infringement Analysis and Chart).

The Enruize accused product attaches to a portable media player or to a portable media player case as shown in the image from Enruize's product packaging or website, reproduced below.

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See Complaint Ex. 19 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 98 (Infringement Analysis and Chart).

This is further shown in the below image, depicting an Enruize accused product as attached by PopSockets’ expert, Rondald Kemnitzer, to his portable media player (*e.g.*, an Apple iPhone):



See Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 98 (Infringement Analysis and Chart).

Applying the construction for “portable media player,” the iPhone in the above image is “a portable device capable of playing media, such as a smartphone, tablet, or

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MP3 player” inasmuch as it is a smartphone capable of playing media, and, therefore is a “portable media player” as identified in the ‘031 patent claims. *See also* Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 98 (Infringement Analysis and Chart).

Claim 10

For claim 10, the accordion element of the Enruize accused product includes rigid walls interspersed with flexural hinges. This is shown, for example, for claim 9, element [b], above. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 98 (Infringement Analysis and Chart). Applying the construction for “flexural hinges,” the Enruize accused product in the above image, for claim 9, element [b] includes “hinges capable of flexing as the accordion moves” inasmuch as the hinges of the Enruize accused product flex as the accordion of the Enruize accused product moves, and, therefore the Enruize accused product includes “flexural hinges” as identified in the ‘031 patent claims. *Id.*

Claim 11

For claim 11, the tapered shape of the Enruize accused product includes a cone shape as constructed and is arranged such that the walls fold generally parallel to the axis of the accordion when the accordion is collapsed. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 98 (Infringement Analysis and Chart). This is shown, for example, for claim 9, element [b], above. *Id.*

Claim 12

For claim 12, the accordion of the Enruize accused product is formed of polyester-based thermoplastic polyurethane elastomer, the walls are about 1 to 2 mm thick and 2 to 4 mm long, and the flexural hinges are about 0.2 to 0.4 mm thick and 1 to 2

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mm long. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 98 (Infringement Analysis and Chart). PopSockets’ expert, Mr. Kemnitzer, inspected an Enruize accused product and verified that its accordion is formed of polyester-based thermoplastic polyurethane elastomer. *Id.* Using a digital micrometer, Mr. Kemnitzer inspected and measured the wall thicknesses of the accordion. *Id.* Mr. Kemnitzer determined that the walls of the Enruize accused product measured 1.2 to 1.4 mm thick and were 3.4 to 3.6 mm long. *Id.* The flexural hinges measured 0.2 to 0.3 mm thick by approximately 1.8 to 2.0 mm long. *Id.* Inasmuch as the Enruize accused product includes hinges capable of flexing as the accordion moves, the Enruize accused product includes “flexural hinges,” as that claim term has been construed as discussed above for claim 10.

* * *

It is therefore determined that PopSockets has established by substantial, reliable, and probative evidence that the accused products of respondent Enruize infringe asserted apparatus claims 9, 10, 11, and 12 of the ‘031 patent.

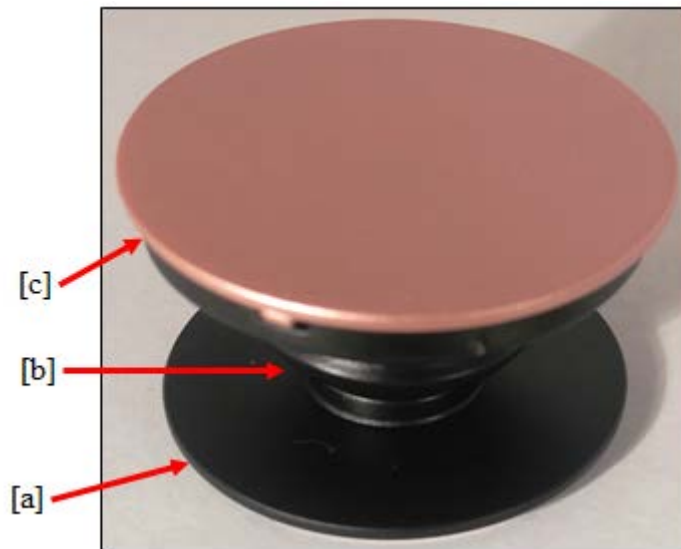
h. Shenzhen Showerstar Industrial Co., Ltd.

In support of the pending motion, PopSockets has submitted the Declaration of Ronald Kemnitzer with attached claim charts to show that the accused products of respondent Shenzhen Showerstar Industrial Co., Ltd. (“Showerstar”) infringe asserted apparatus claims 9, 10, 11, and 12 of the ‘031 patent. In addition, PopSockets cites to its complaint and exhibits thereto, including a physical exhibit and infringement chart. As discussed below, the Showerstar accused products practice each and every limitation of

claims 9-12.

Claim 9

A Showerstar accused product is shown below.



See Complaint Ex. 20 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 101 (Infringement Analysis and Chart); Complaint Ex. 39 (Physical Exhibit); Complaint Ex. I (Infringement Chart).

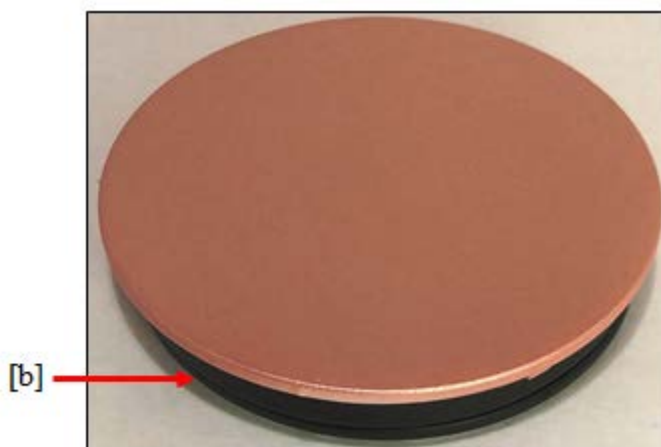
For claim 9, as shown above, each of the claim 9 elements [a]-[c], and the claim 9 [preamble] to the extent that it is limiting, are found in the Showerstar accused product, as purchased for importation and imported into the United States. See Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 101 (Infringement Analysis and Chart). As shown above, portion [a] of the Showerstar accused product includes a securing element for attaching the socket to the back of a portable media player or portable media player case. *Id.* In addition, portion [b] of the Showerstar accused product includes an accordion forming a tapered shape connected to the securing element. *Id.* Finally, portion [c] of the

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Showerstar accused product includes a foot disposed at the distal end of the accordion.

Id.

The Showerstar accused product extends outward generally from the portable media player, as shown above, and also retracts back toward the portable media player by collapsing generally along its axis, as shown below:



See Complaint Ex. 20 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 101 (Infringement Analysis and Chart).

The Showerstar accused product attaches to a portable media player or to a portable media player case as shown in the image from Showerstar's product packaging or website, reproduced below.

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See Complaint Ex. 20 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 101 (Infringement Analysis and Chart).

This is further shown in the below image, depicting a Showerstar accused product as attached by PopSockets' expert, Rondald Kemnitzer, to his portable media player (*e.g.*, an Apple iPhone):



See Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 101 (Infringement Analysis and Chart).

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Applying the construction for “portable media player,” the iPhone in the above image is “a portable device capable of playing media, such as a smartphone, tablet, or MP3 player” inasmuch as it is a smartphone capable of playing media, and, therefore is a “portable media player” as identified in the ‘031 patent claims. *See also* Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 101 (Infringement Analysis and Chart).

Claim 10

For claim 10, the accordion element of the Showerstar accused product includes rigid walls interspersed with flexural hinges. This is shown, for example, for claim 9, element [b], above. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 101 (Infringement Analysis and Chart). Applying the construction for “flexural hinges,” the Showerstar accused product in the above image, for claim 9, element [b] includes “hinges capable of flexing as the accordion moves” inasmuch as the hinges of the Showerstar accused product flex as the accordion of the Showerstar accused product moves, and, therefore the Showerstar accused product includes “flexural hinges” as identified in the ‘031 patent claims. *Id.*

Claim 11

For claim 11, the tapered shape of the Showerstar accused product includes a cone shape as constructed and is arranged such that the walls fold generally parallel to the axis of the accordion when the accordion is collapsed. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 101 (Infringement Analysis and Chart). This is shown, for example, for claim 9, element [b], above. *Id.*

Claim 12

For claim 12, the accordion of the Showerstar accused product is formed of polyester-based thermoplastic polyurethane elastomer, the walls are about 1 to 2 mm thick and 2 to 4 mm long, and the flexural hinges are about 0.2 to 0.4 mm thick and 1 to 2 mm long. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 101 (Infringement Analysis and Chart). PopSockets’ expert, Mr. Kemnitzer, inspected a Showerstar accused product and verified that its accordion is formed of polyester-based thermoplastic polyurethane elastomer. *Id.* Using a digital micrometer, Mr. Kemnitzer inspected and measured the wall thicknesses of the accordion. *Id.* Mr. Kemnitzer determined that the walls of the Showerstar accused product measured 1.1 to 1.4 mm thick and were 3.2 to 3.9 mm long. *Id.* The flexural hinges measured 0.2 to 0.3 mm thick by approximately 1.7 to 1.8 mm long. *Id.* Inasmuch as the Showerstar accused product includes hinges capable of flexing as the accordion moves, the Showerstar accused product includes “flexural hinges,” as that claim term has been construed as discussed above for claim 10.

* * *

It is therefore determined that PopSockets has established by substantial, reliable, and probative evidence that the accused products of respondent Showerstar infringe asserted apparatus claims 9, 10, 11, and 12 of the ‘031 patent.

i. Shenzhen Lamye Technology Co., Ltd.

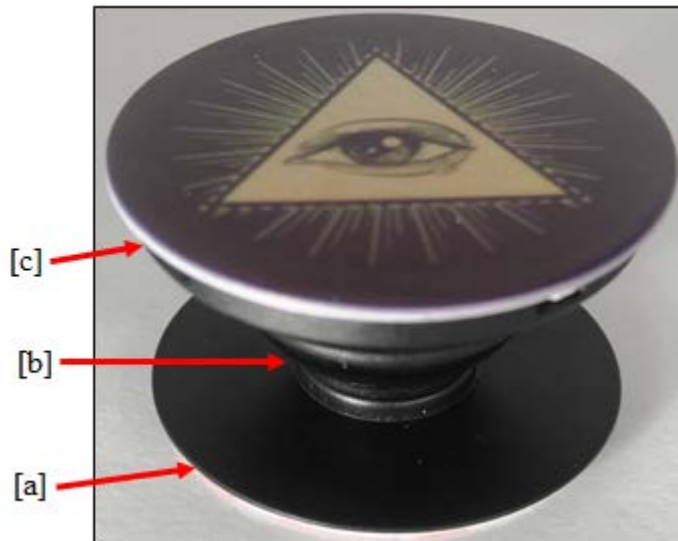
In support of the pending motion, PopSockets has submitted the Declaration of

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Ronald Kemnitzer with attached claim charts to show that the accused products of respondent Shenzhen Lamy Technology Co., Ltd. (“Lamy”) infringe asserted apparatus claims 9, 10, 11, and 12 of the ‘031 patent. In addition, PopSockets cites to its complaint and exhibits thereto, including a physical exhibit and infringement chart. As discussed below, the Lamy accused products practice each and every limitation of claims 9-12.

Claim 9

A Lamy accused product is shown below.



See Complaint Ex. 21 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 104 (Infringement Analysis and Chart); Complaint Ex. 40 (Physical Exhibit); Complaint Ex. J (Infringement Chart).

For claim 9, as shown above, each of the claim 9 elements [a]-[c], and the claim 9 [preamble] to the extent that it is limiting, are found in the Lamy accused product, as purchased for importation and imported into the United States. See Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 104 (Infringement Analysis and Chart). As shown above, portion

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[a] of the Lamye accused product includes a securing element for attaching the socket to the back of a portable media player or portable media player case. *Id.* In addition, portion [b] of the Lamye accused product includes an accordion forming a tapered shape connected to the securing element. *Id.* Finally, portion [c] of the Lamye accused product includes a foot disposed at the distal end of the accordion. *Id.*

The Lamye accused product extends outward generally from the portable media player, as shown above, and also retracts back toward the portable media player by collapsing generally along its axis, as shown below:



See Complaint Ex. 21 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 104 (Infringement Analysis and Chart).

The Lamye accused product attaches to a portable media player or to a portable media player case as shown in the image from Lamye's product packaging or website, reproduced below.

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See Complaint Ex. 21 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 104 (Infringement Analysis and Chart).

This is further shown in the below image, depicting a Lamye accused product as attached by PopSockets' expert, Rondald Kemnitzer, to his portable media player (*e.g.*, an Apple iPhone):



See Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 104 (Infringement Analysis and Chart).

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Applying the construction for “portable media player,” the iPhone in the above image is “a portable device capable of playing media, such as a smartphone, tablet, or MP3 player” inasmuch as it is a smartphone capable of playing media, and, therefore is a “portable media player” as identified in the ‘031 patent claims. *See also* Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 104 (Infringement Analysis and Chart).

Claim 10

For claim 10, the accordion element of the Lamye accused product includes rigid walls interspersed with flexural hinges. This is shown, for example, for claim 9, element [b], above. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 104 (Infringement Analysis and Chart). Applying the construction for “flexural hinges,” the Lamye accused product in the above image, for claim 9, element [b] includes “hinges capable of flexing as the accordion moves” inasmuch as the hinges of the Lamye accused product flex as the accordion of the Lamye accused product moves, and, therefore the Lamye accused product includes “flexural hinges” as identified in the ‘031 patent claims. *Id.*

Claim 11

For claim 11, the tapered shape of the Lamye accused product includes a cone shape as constructed and is arranged such that the walls fold generally parallel to the axis of the accordion when the accordion is collapsed. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 104 (Infringement Analysis and Chart). This is shown, for example, for claim 9, element [b], above. *Id.*

Claim 12

For claim 12, the accordion of the Lamye accused product is formed of polyester-

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based thermoplastic polyurethane elastomer, the walls are about 1 to 2 mm thick and 2 to 4 mm long, and the flexural hinges are about 0.2 to 0.4 mm thick and 1 to 2 mm long. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 104 (Infringement Analysis and Chart). PopSockets’ expert, Mr. Kemnitzer, inspected a Lamye accused product and verified that its accordion is formed of polyester-based thermoplastic polyurethane elastomer. *Id.* Using a digital micrometer, Mr. Kemnitzer inspected and measured the wall thicknesses of the accordion. *Id.* Mr. Kemnitzer determined that the walls of the Lamye accused product measured 1.3 to 1.4 mm thick and were 3.2 to 3.9 mm long. *Id.* The flexural hinges measured 0.2 to 0.3 mm thick by approximately 1.5 to 2.0 mm long. *Id.* Inasmuch as the Lamye accused product includes hinges capable of flexing as the accordion moves, the Lamye accused product includes “flexural hinges,” as that claim term has been construed as discussed above for claim 10.

* * *

It is therefore determined that PopSockets has established by substantial, reliable, and probative evidence that the accused products of respondent Lamye infringe asserted apparatus claims 9, 10, 11, and 12 of the ‘031 patent.

j. Jiangmen Besnovo Electronics Co., Ltd.

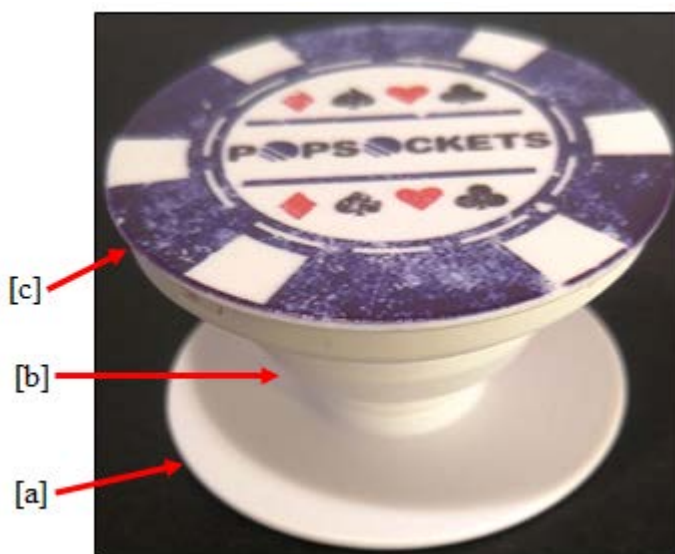
In support of the pending motion, PopSockets has submitted the Declaration of Ronald Kemnitzer with attached claim charts to show that the accused products of respondent Jiangmen Besnovo Electronics Co., Ltd. (“Besnovo”) infringe asserted apparatus claims 9, 10, 11, and 12 of the ‘031 patent. In addition, PopSockets cites to its

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complaint and exhibits thereto, including a physical exhibit and infringement chart. As discussed below, the Besnovo accused products practice each and every limitation of claims 9-12.

Claim 9

A Besnovo accused product is shown below.



See Complaint Ex. 22 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 107 (Infringement Analysis and Chart); Complaint Ex. 41 (Physical Exhibit); Complaint Ex. K (Infringement Chart).

For claim 9, as shown above, each of the claim 9 elements [a]-[c], and the claim 9 [preamble] to the extent that it is limiting, are found in the Besnovo accused product, as purchased for importation and imported into the United States. See Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 107 (Infringement Analysis and Chart). As shown above, portion [a] of the Besnovo accused product includes a securing element for attaching the socket

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to the back of a portable media player or portable media player case. *Id.* In addition, portion [b] of the Besnovo accused product includes an accordion forming a tapered shape connected to the securing element. *Id.* Finally, portion [c] of the Besnovo accused product includes a foot disposed at the distal end of the accordion. *Id.*

The Besnovo accused product extends outward generally from the portable media player, as shown above, and also retracts back toward the portable media player by collapsing generally along its axis, as shown below:



See Complaint Ex. 22 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 107 (Infringement Analysis and Chart).

The Besnovo accused product attaches to a portable media player or to a portable media player case as shown in the image from Besnovo's product packaging or website, reproduced below.

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See Complaint Ex. 22 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 107 (Infringement Analysis and Chart).

This is further shown in the below image, depicting a Besnovo accused product as attached by PopSockets’ expert, Rondald Kemnitzer, to his portable media player (*e.g.*, an Apple iPhone):



See Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 107 (Infringement Analysis and Chart).

Applying the construction for “portable media player,” the iPhone in the above image is “a portable device capable of playing media, such as a smartphone, tablet, or MP3 player” inasmuch as it is a smartphone capable of playing media, and, therefore is a

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“portable media player” as identified in the ‘031 patent claims. *See also* Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 107 (Infringement Analysis and Chart).

Claim 10

For claim 10, the accordion element of the Besnovo accused product includes rigid walls interspersed with flexural hinges. This is shown, for example, for claim 9, element [b], above. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 107 (Infringement Analysis and Chart). Applying the construction for “flexural hinges,” the Besnovo accused product in the above image, for claim 9, element [b] includes “hinges capable of flexing as the accordion moves” inasmuch as the hinges of the Besnovo accused product flex as the accordion of the Besnovo accused product moves, and, therefore the Besnovo accused product includes “flexural hinges” as identified in the ‘031 patent claims. *Id.*

Claim 11

For claim 11, the tapered shape of the Besnovo accused product includes a cone shape as constructed and is arranged such that the walls fold generally parallel to the axis of the accordion when the accordion is collapsed. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 107 (Infringement Analysis and Chart). This is shown, for example, for claim 9, element [b], above. *Id.*

Claim 12

For claim 12, the accordion of the Besnovo accused product is formed of polyester-based thermoplastic polyurethane elastomer, the walls are about 1 to 2 mm thick and 2 to 4 mm long, and the flexural hinges are about 0.2 to 0.4 mm thick and 1 to 2

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mm long. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 107 (Infringement Analysis and Chart). PopSockets’ expert, Mr. Kemnitzer, inspected a Besnovo accused product and verified that its accordion is formed of polyester-based thermoplastic polyurethane elastomer. *Id.* Using a digital micrometer, Mr. Kemnitzer inspected and measured the wall thicknesses of the accordion. *Id.* Mr. Kemnitzer determined that the walls of the Besnovo accused product measured 1.5 to 1.6 mm thick and were 2.8 to 3.9 mm long. *Id.* The flexural hinges measured 0.3 to 0.4 mm thick by approximately 1.2 to 1.9 mm long. *Id.* Inasmuch as the Besnovo accused product includes hinges capable of flexing as the accordion moves, the Besnovo accused product includes “flexural hinges,” as that claim term has been construed as discussed above for claim 10.

* * *

It is therefore determined that PopSockets has established by substantial, reliable, and probative evidence that the accused products of respondent Besnovo infringe asserted apparatus claims 9, 10, 11, and 12 of the ‘031 patent.

k. Shenzhen Belking Electronic Co., Ltd.

In support of the pending motion, PopSockets has submitted the Declaration of Ronald Kemnitzer with attached claim charts to show that the accused products of respondent Shenzhen Belking Electronic Co., Ltd. (“Belking”) infringe asserted apparatus claims 9, 10, 11, and 12 of the ‘031 patent. In addition, PopSockets cites to its complaint and exhibits thereto, including a physical exhibit and infringement chart. As discussed below, the Belking accused products practice each and every limitation of

claims 9-12.

Claim 9

A Belking accused product is shown below.



See Complaint Ex. 23 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 110 (Infringement Analysis and Chart); Complaint Ex. 42 (Physical Exhibit); Complaint Ex. L (Infringement Chart).

For claim 9, as shown above, each of the claim 9 elements [a]-[c], and the claim 9 [preamble] to the extent that it is limiting, are found in the Belking accused product, as purchased for importation and imported into the United States. See Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 110 (Infringement Analysis and Chart). As shown above, portion [a] of the Belking accused product includes a securing element for attaching the socket to the back of a portable media player or portable media player case. *Id.* In addition, portion [b] of the Belking accused product includes an accordion forming a tapered shape

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connected to the securing element. *Id.* Finally, portion [c] of the Belking accused product includes a foot disposed at the distal end of the accordion. *Id.*

The Belking accused product extends outward generally from the portable media player, as shown above, and also retracts back toward the portable media player by collapsing generally along its axis, as shown below:



See Complaint Ex. 23 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 110 (Infringement Analysis and Chart).

The Belking accused product attaches to a portable media player or to a portable media player case as shown in the image from Belking's product packaging or website, reproduced below.



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See Complaint Ex. 23 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 110 (Infringement Analysis and Chart).

This is further shown in the below image, depicting a Belking accused product as attached by PopSockets’ expert, Rondald Kemnitzer, to his portable media player (*e.g.*, an Apple iPhone):



See Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 110 (Infringement Analysis and Chart).

Applying the construction for “portable media player,” the iPhone in the above image is “a portable device capable of playing media, such as a smartphone, tablet, or MP3 player” inasmuch as it is a smartphone capable of playing media, and, therefore is a “portable media player” as identified in the ‘031 patent claims. *See also* Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 110 (Infringement Analysis and Chart).

Claim 10

For claim 10, the accordion element of the Belking accused product includes rigid walls interspersed with flexural hinges. This is shown, for example, for claim 9, element [b], above. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 110 (Infringement

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Analysis and Chart). Applying the construction for “flexural hinges,” the Belking accused product in the above image, for claim 9, element [b] includes “hinges capable of flexing as the accordion moves” inasmuch as the hinges of the Belking accused product flex as the accordion of the Belking accused product moves, and, therefore the Belking accused product includes “flexural hinges” as identified in the ‘031 patent claims. *Id.*

Claim 11

For claim 11, the tapered shape of the Belking accused product includes a cone shape as constructed and is arranged such that the walls fold generally parallel to the axis of the accordion when the accordion is collapsed. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 110 (Infringement Analysis and Chart). This is shown, for example, for claim 9, element [b], above. *Id.*

Claim 12

For claim 12, the accordion of the Belking accused product is formed of polyester-based thermoplastic polyurethane elastomer, the walls are about 1 to 2 mm thick and 2 to 4 mm long, and the flexural hinges are about 0.2 to 0.4 mm thick and 1 to 2 mm long. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 110 (Infringement Analysis and Chart). PopSockets’ expert, Mr. Kemnitzer, inspected a Belking accused product and verified that its accordion is formed of polyester-based thermoplastic polyurethane elastomer. *Id.* Using a digital micrometer, Mr. Kemnitzer inspected and measured the wall thicknesses of the accordion. *Id.* Mr. Kemnitzer determined that the walls of the Belking accused product measured 1.3 to 1.5 mm thick and were 2.8 to 4.0 mm long. *Id.* The flexural hinges measured 0.2 to 0.4 mm thick by approximately 1.7 to

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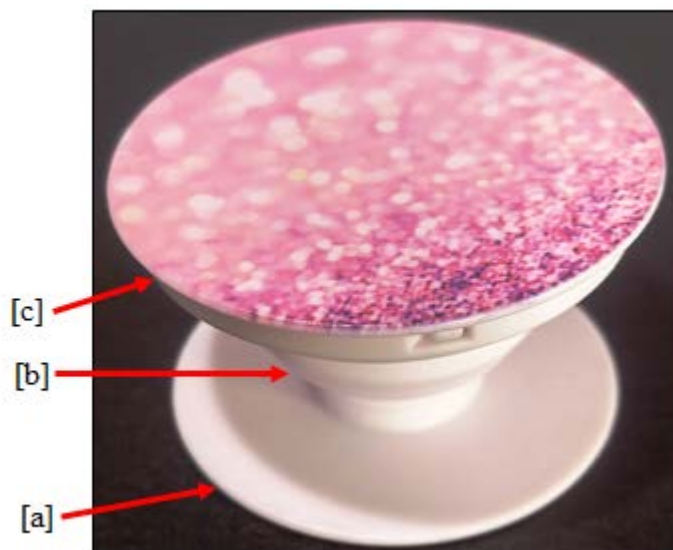
1.9 mm long. *Id.* Inasmuch as the Belking accused product includes hinges capable of flexing as the accordion moves, the Belking accused product includes “flexural hinges,” as that claim term has been construed as discussed above for claim 10.

I. Yiwu Wentou Import & Export Co., Ltd.

In support of the pending motion, PopSockets has submitted the Declaration of Ronald Kemnitzer with attached claim charts to show that the accused products of respondent Yiwu Wentou Import & Export Co., Ltd. (“Wentou”) infringe asserted apparatus claims 9, 10, and 11 of the ‘031 patent. In addition, PopSockets cites to its complaint and exhibits thereto, including a physical exhibit and infringement chart. As discussed below, the Wentou accused products practice each and every limitation of claims 9-11.

Claim 9

A Wentou accused product is shown below.

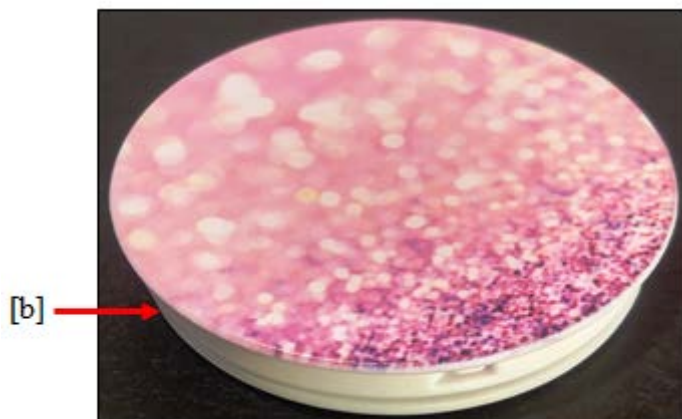


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See Complaint Ex. 24 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 113 (Infringement Analysis and Chart); Complaint Ex. 43 (Physical Exhibit); Complaint Ex. M (Infringement Chart).

For claim 9, as shown above, each of the claim 9 elements [a]-[c], and the claim 9 [preamble] to the extent that it is limiting, are found in the Wentou accused product, as purchased for importation and imported into the United States. See Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 113 (Infringement Analysis and Chart). As shown above, portion [a] of the Wentou accused product includes a securing element for attaching the socket to the back of a portable media player or portable media player case. *Id.* In addition, portion [b] of the Wentou accused product includes an accordion forming a tapered shape connected to the securing element. *Id.* Finally, portion [c] of the Wentou accused product includes a foot disposed at the distal end of the accordion. *Id.*

The Wentou accused product extends outward generally from the portable media player, as shown above, and also retracts back toward the portable media player by collapsing generally along its axis, as shown below:



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See Complaint Ex. 24 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 113 (Infringement Analysis and Chart).

The Wentou accused product attaches to a portable media player or to a portable media player case as shown in the image from Wentou’s product packaging or website, reproduced below.



See Complaint Ex. 24 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 113 (Infringement Analysis and Chart).

Applying the construction for “portable media player,” the iPhone in the above image is “a portable device capable of playing media, such as a smartphone, tablet, or MP3 player” inasmuch as it is a smartphone capable of playing media, and, therefore is a “portable media player” as identified in the ‘031 patent claims. *See also* Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 113 (Infringement Analysis and Chart).

Claim 10

For claim 10, the accordion element of the Wentou accused product includes rigid walls interspersed with flexural hinges. This is shown, for example, for claim 9, element [b], above. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 113 (Infringement

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Analysis and Chart). Applying the construction for “flexural hinges,” the Wentou accused product in the above image, for claim 9, element [b] includes “hinges capable of flexing as the accordion moves” inasmuch as the hinges of the Wentou accused product flex as the accordion of the Wentou accused product moves, and, therefore the Wentou accused product includes “flexural hinges” as identified in the ‘031 patent claims. *Id.*

Claim 11

For claim 11, the tapered shape of the Wentou accused product includes a cone shape as constructed and is arranged such that the walls fold generally parallel to the axis of the accordion when the accordion is collapsed. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 113 (Infringement Analysis and Chart). This is shown, for example, for claim 9, element [b], above. *Id.*

* * *

It is therefore determined that PopSockets has established by substantial, reliable, and probative evidence that the accused products of respondent Wentou infringe asserted apparatus claims 9, 10, and 11 of the ‘031 patent.

m. Shenzhen CEX Electronic Co., Limited

In support of the pending motion, PopSockets has submitted the Declaration of Ronald Kemnitzer with attached claim charts to show that the accused products of respondent Shenzhen CEX Electronic Co., Limited (“CEX”) infringe asserted apparatus claims 9, 10, 11, and 12 of the ‘031 patent. In addition, PopSockets cites to its complaint and exhibits thereto, including a physical exhibit and infringement chart. As discussed

below, the CEX accused products practice each and every limitation of claims 9-12.

Claim 9

A CEX accused product is shown below.



See Complaint Ex. 25 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 116 (Infringement Analysis and Chart); Complaint Ex. 44 (Physical Exhibit); Complaint Ex. N (Infringement Chart).

For claim 9, as shown above, each of the claim 9 elements [a]-[c], and the claim 9 [preamble] to the extent that it is limiting, are found in the CEX accused product, as purchased for importation and imported into the United States. See Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 116 (Infringement Analysis and Chart). As shown above, portion [a] of the CEX accused product includes a securing element for attaching the socket to the back of a portable media player or portable media player case. *Id.* In addition, portion [b] of the CEX accused product includes an accordion forming a tapered shape

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connected to the securing element. *Id.* Finally, portion [c] of the CEX accused product includes a foot disposed at the distal end of the accordion. *Id.*

The CEX accused product extends outward generally from the portable media player, as shown above, and also retracts back toward the portable media player by collapsing generally along its axis, as shown below:



See Complaint Ex. 25 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 116 (Infringement Analysis and Chart).

The CEX accused product attaches to a portable media player or to a portable media player case as shown in the image from CEX's product packaging or website, reproduced below.

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See Complaint Ex. 25 (evidence of unfair sale and importation); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 116 (Infringement Analysis and Chart).

This is further shown in the below image, depicting a CEX accused product as attached by PopSockets' expert, Rondald Kemnitzer, to his portable media player (*e.g.*, an Apple iPhone):



See Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 116 (Infringement Analysis and Chart).

Applying the construction for “portable media player,” the iPhone in the above image is “a portable device capable of playing media, such as a smartphone, tablet, or MP3 player” inasmuch as it is a smartphone capable of playing media, and, therefore is a

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“portable media player” as identified in the ‘031 patent claims. *See also* Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 116 (Infringement Analysis and Chart).

Claim 10

For claim 10, the accordion element of the CEX accused product includes rigid walls interspersed with flexural hinges. This is shown, for example, for claim 9, element [b], above. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 116 (Infringement Analysis and Chart). Applying the construction for “flexural hinges,” the CEX accused product in the above image, for claim 9, element [b] includes “hinges capable of flexing as the accordion moves” inasmuch as the hinges of the CEX accused product flex as the accordion of the CEX accused product moves, and, therefore the CEX accused product includes “flexural hinges” as identified in the ‘031 patent claims. *Id.*

Claim 11

For claim 11, the tapered shape of the CEX accused product includes a cone shape as constructed and is arranged such that the walls fold generally parallel to the axis of the accordion when the accordion is collapsed. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 116 (Infringement Analysis and Chart). This is shown, for example, for claim 9, element [b], above. *Id.*

Claim 12

For claim 12, the accordion of the CEX accused product is formed of polyester-based thermoplastic polyurethane elastomer, the walls are about 1 to 2 mm thick and 2 to 4 mm long, and the flexural hinges are about 0.2 to 0.4 mm thick and 1 to 2 mm long. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 116 (Infringement Analysis and

Chart). PopSockets' expert, Mr. Kemnitzer, inspected a CEX accused product and verified that its accordion is formed of polyester-based thermoplastic polyurethane elastomer. *Id.* Using a digital micrometer, Mr. Kemnitzer inspected and measured the wall thicknesses of the accordion. *Id.* Mr. Kemnitzer determined that the walls of the CEX accused product measured 1.3 to 1.5 mm thick and were 2.6 to 3.7 mm long. *Id.* The flexural hinges measured 0.2 to 0.4 mm thick by approximately 1.7 to 1.9 mm long. *Id.* Inasmuch as the CEX accused product includes hinges capable of flexing as the accordion moves, the CEX accused product includes "flexural hinges," as that claim term has been construed as discussed above for claim 10.

* * *

It is therefore determined that PopSockets has established by substantial, reliable, and probative evidence that the accused products of respondent CEX infringe asserted apparatus claims 9, 10, 11, and 12 of the '031 patent.

5. Infringement Analysis of Method Claims

a. Direct Infringement

Under 35 U.S.C. §271(a), direct infringement consists of making, using, offering to sell, or selling a patented invention without consent of the patent owner. The complainant in a section 337 investigation bears the burden of proving infringement of the asserted patent claims by a "preponderance of the evidence." *Certain Flooring Products*, Inv. No. 337-TA-443, Comm'n Notice of Final Determination of No Violation

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of Section 337, 2002 WL 448690, at *59, (Mar. 22, 2002); *Enercon GmbH v. Int'l Trade Comm'n*, 151 F.3d 1376 (Fed. Cir. 1998).

With respect to the asserted method claims 16 and 17, PopSockets argues that each defaulting respondent directly infringes (under 35 U.S.C § 271(a)) and that each defaulting respondent induces infringement (under § 271(b)) of those claims by each defaulting respondent's users or customers. *See* Mem. at 24. Mr. Kemnitzer opines that the process by which he attached a sample of each defaulting respondents' accused products to his portable media player (an Apple iPhone) demonstrates that each method step of claims 16 and 17 was performed.

However, Mr. Kemnitzer does not provide any evidence of direct infringement in the United States by the defaulting respondents themselves. Thus, PopSockets has not demonstrated that each defaulting respondent itself infringes by practicing the steps covered by the method claims. *See, e.g., Lucent Technologies, Inc. v. Gateway, Inc.*, 580 F.3d 1301, 1317 (Fed. Cir. 2009) (Microsoft cannot be a direct infringer of method claims because direct “[i]nfringement only occurs when someone performs the [claimed] method using a computer running the necessary software. Thus, Microsoft can only be liable for infringement of [the method claims] as a contributor and/or an inducer.”).

Therefore, PopSockets has not established that each defaulting respondent directly infringes method claims 16 and 17 of the '031 patent.

b. Indirect Infringement: Induced Infringement

Section 271(b) of the Patent Act provides: “Whoever actively induces infringement of a patent shall be liable as an infringer.” 35 U.S.C. § 271(b).

“To prevail on a claim of induced infringement, in addition to inducement by the

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defendant, the patentee must also show that the asserted patent was directly infringed.”

Epcon Gas Sys. v. Bauer Compressors, Inc., 279 F.3d 1022, 1033 (Fed. Cir. 2002).

Further, “[s]ection 271(b) covers active inducement of infringement, which typically includes acts that intentionally cause, urge, encourage, or aid another to directly infringe a patent.” *Arris Group v. British Telecomm. PLC*, 639 F.3d 1368, 1379 n.13 (Fed. Cir. 2011).

To establish that each defaulting respondent induces infringement under § 271(b) of the asserted method claims, PopSockets must establish direct infringement by someone (*e.g.*, a non-party purchaser of the product),⁶ and that each defaulting respondent had “knowledge that the induced acts constitute patent infringement.” *Commil USA, LLC v. Cisco Systems, Inc.*, 135 S.Ct. 1920, 1927 (2015) (citing *Global Tech Appliances, Inc. et al. v. SEB S.A.*, 131 S.Ct. 2060, 2068 (2011)); *Certain Beverage Brewing Capsules, Components Thereof, and Products Containing the Same*, Inv. No. 337-TA-929, Comm’n Op., at 18 (Pub. Version) (April 6, 2016) (“*Beverage Brewing*”). That is, “[s]ection 271(b) requires that the defendant ‘actively induced infringement,’” and “[t]hat language requires intent to ‘bring about the desired result,’ which is infringement.” *Id.* at 1928 (citing *Global Tech* 131 S.Ct. at 2065); 35 U.S.C. § 271(b). As stated by the Commission, “[s]uch active inducement requires that the respondent have both knowledge of the patent and knowledge that the induced acts constitute infringement.” *Beverage Brewing*, Inv. No. 337-TA-929, Comm’n Op., at 18.

The evidence shows that PopSockets’ expert Mr. Kemnitzer performed the

⁶ See *Limelight Networks, Inc. v. Akamai Technologies, Inc.*, 134 S.Ct. 2111, 2117 (2014).

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claimed method steps, thus demonstrating that a “user” practiced the claimed method in the United States. Inasmuch as the accused products are widely sold, there is also circumstantial evidence that non-parties have practiced the claimed method. Thus, PopSockets provided evidence of the direct infringement by another needed to show indirect infringement.

With respect to “knowledge of the asserted patent” requirement, PopSockets argues that each defaulting respondent had knowledge of the ‘031 patent at least as early as the time they were served with notice of the complaint in this Investigation. *See* Mem. at 24. The Commission has held that service of a section 337 complaint provides knowledge of the asserted patent. *See Beverage Brewing*, Inv. No. 337-TA-929, Comm’n Op., at 19. Therefore, PopSockets’ complaint satisfies the “knowledge of the patent requirement” for induced infringement.

The remaining issue is whether the defaulting respondents actively induced infringement. PopSockets argues that images on each defaulting respondents’ product packaging induce others to infringe method claims 16 and 17. *See, e.g.*, Mem. at 29-30; Mem. Ex. 2 (Kemnitzer Decl.), ¶ 77 (claims 16, 17). These images on the products’ packaging are minimal, and it has not been shown that they sufficiently instruct a user to practice the method steps of claims 16 and 17. Therefore, this evidence is insufficient to establish that the defaulting respondents intended that the method claims 16 and 17 would be infringed by the use of their respective accused products.

* * *

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For the reasons discussed above, the evidence does not support a finding of infringement of the asserted method claims 16 and 17. Accordingly, PopSockets is not entitled to a summary determination of direct infringement or induced infringement of asserted method claims 16 and 17 of the '031 patent by any of the defaulting respondents.

C. Validity

The patents at issue 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). The Staff states that “[a]lthough PopSockets did not address validity in its Motion, the Staff presumes—and does not challenge—the validity of the '031 Patent.” Staff Resp. at 24. No party has challenged the validity or enforceability of any of the patents at issue. Thus, there is no issue of material fact as to the validity or enforceability of the asserted patents. *See Lannom Mfg. Co., Inc. v. International Trade Comm’n*, 799 F.2d 1572, 1580 (Fed. Cir. 1986) (Commission did not have authority to redetermine patent validity when no defense of invalidity had been raised).

D. Domestic Industry (Technical Prong)

In a section 337 investigation, the complainant has the burden of proving the existence (or establishment) of a domestic industry relating to articles protected by the patent-at-issue. 19 U.S.C. § 1337(a)(2). For a patent-based claim, the domestic industry requirement consists of a technical prong and an economic prong. *See, e.g., Certain Variable Speed Wind Turbines & Components Thereof*, Inv. No. 337-TA-376, Comm’n Op. at 14-17, USITC Pub. No. 3003 (Nov. 1996) (“*Wind Turbines*”). The complainant

bears the burden of establishing that both prongs have been satisfied. *See, e.g., Certain Concealed Cabinet Hinges & Mounting Plates*, Inv. No. 337-TA-289, 1990 WL 710375, Comm’n Op. at 22 (Jan. 8, 1990).

With regard to the technical prong, the requirement is satisfied here for each patent at issue if the domestic industry products are shown to practice at least one claim of the asserted patent. *Wind Turbines* at 15; *Certain Point of Sale Terminals & Components Thereof*, Inv. No. 337-TA-524, Order No. 40 at 17-18 (Apr. 11, 2005) (“The test for claim coverage for the purposes of the domestic industry requirement is the same as that for infringement.”).

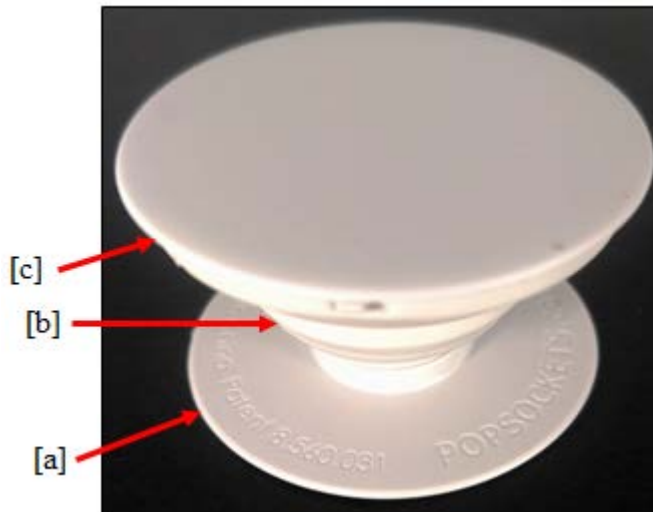
1. Apparatus Claims

The PopSockets product, as covered by the ‘031 patent and described below, practices asserted claims 9-12.⁷ This is supported by PopSockets’ complaint and exhibits thereto, including a physical exhibit and domestic industry chart, and by the analysis of PopSockets’ expert, Ronald Kemnitzer. *See* Complaint Ex. 45 (Physical Exhibit); Complaint Ex. 7 (Technical Domestic Industry Chart); Mem. Ex. 2 (Kemnitzer Decl.) at ¶¶ 59-62 (Analysis and Claim Charts).

⁷ The Staff agrees. The Staff argues that “PopSockets’ domestic industry products satisfy the technical prong of the domestic industry requirement.” Staff Resp. at 57.

Claim 9

The PopSockets product, as depicted below, practices each and every limitation of claims 9-12 of the '031 patent.

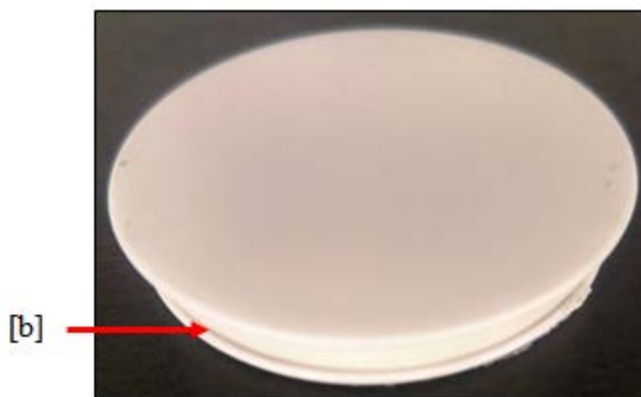


See Complaint Ex. 6 (Photographs and images of a representative PopSockets product); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 61 (Analysis and Chart).

For claim 9, as shown above, each of the claim 9 elements [a]-[c], and the claim 9 [preamble] to the extent that it is limiting, are found in the PopSockets product. See Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 77 (Infringement Analysis and Chart). As shown above, portion [a] of the PopSockets product includes a securing element for attaching the socket to the back of a portable media player or portable media player case. *Id.* In addition, portion [b] of the PopSockets product includes an accordion forming a tapered shape connected to the securing element. *Id.* Finally, portion [c] of the PopSockets product includes a foot disposed at the distal end of the accordion. *Id.*

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The PopSockets product extends outward generally from the portable media player, as shown above, and also retracts back toward the portable media player by collapsing generally along its axis, as shown below:



See Complaint Ex. 6 (Photographs and images of a representative PopSockets product); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 61 (Analysis and Chart).

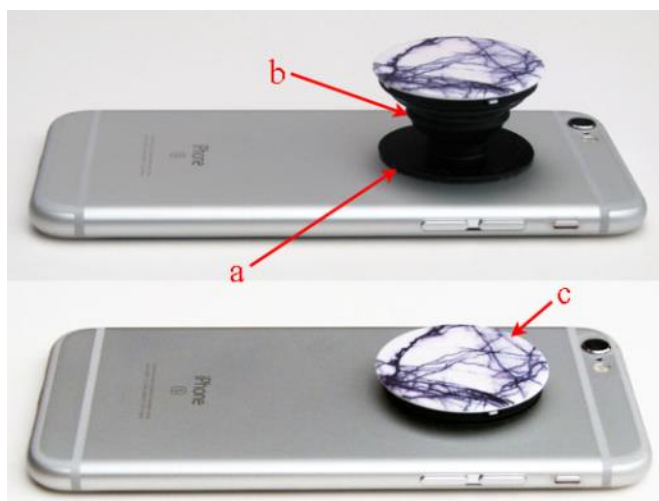
The PopSockets product attaches to a portable media player or to a portable media player case as shown in the image from PopSockets' product packaging or website, reproduced below.



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See Complaint Ex. 6 (Photographs and images of a representative PopSockets product); Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 61 (Analysis and Chart).

This is further shown in the below image, depicting a PopSockets product as attached by PopSockets’ expert, Rondald Kemnitzer, to his portable media player (*e.g.*, an Apple iPhone):



See Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 63 (Analysis and Chart).

Applying the construction for “portable media player,” the iPhone in the above image is “a portable device capable of playing media, such as a smartphone, tablet, or MP3 player” inasmuch as it is a smartphone capable of playing media, and, therefore is a “portable media player” as identified in the ‘031 patent claims. *See also* Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 61 (Analysis and Chart).

Claim 10

For claim 10, the accordion element of the PopSockets product includes rigid

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walls interspersed with flexural hinges. This is shown, for example, for claim 9, element [b], above. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 62 (Analysis and Chart). Applying the construction for “flexural hinges,” the PopSockets product in the above image, for claim 9, element [b] includes “hinges capable of flexing as the accordion moves” inasmuch as the hinges of the PopSockets product flex as the accordion of the PopSockets product moves, and, therefore the PopSockets product includes “flexural hinges” as identified in the ‘031 patent claims. *Id.*

Claim 11

For claim 11, the tapered shape of the PopSockets product includes a cone shape as constructed and is arranged such that the walls fold generally parallel to the axis of the accordion when the accordion is collapsed. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 62 (Analysis and Chart). This is shown, for example, for claim 9, element [b], above. *Id.*

Claim 12

For claim 12, the accordion of the PopSockets product is formed of polyester-based thermoplastic polyurethane elastomer, the walls are about 1 to 2 mm thick and 2 to 4 mm long, and the flexural hinges are about 0.2 to 0.4 mm thick and 1 to 2 mm long. *See* Kemnitzer Ex. K; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 62 (Analysis and Chart). PopSockets’ expert, Mr. Kemnitzer, inspected a PopSockets product and verified that its accordion is formed of polyester-based thermoplastic polyurethane elastomer. *Id.* Using a digital micrometer, Mr. Kemnitzer inspected and measured the wall thicknesses of the accordion. *Id.* Mr. Kemnitzer determined that the walls of the PopSockets product

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measured 1.1 mm to 1.4 mm thick and were 3.4 to 3.9 mm long. *Id.* The flexural hinges measured 0.2 mm to 0.3 mm thick by 1.0 mm to 1.5 mm long. *Id.* Inasmuch as the PopSockets product includes hinges capable of flexing as the accordion moves, the PopSockets product includes “flexural hinges,” as that claim term has been construed as discussed above for claim 10.

* * *

It is therefore determined that PopSockets has established by substantial, reliable, and probative evidence that its products practice asserted apparatus claims 9, 10, 11, and 12 of the ‘031 patent.

2. Method Claims

PopSockets argues that it practices method claims 16 and 17, arguing that it practices those method claims or encourage others to practice to those claims. *See* Mem. at 117, 120-22. An analysis of the method claims is unnecessary inasmuch as the administrative law judge has determined, as discussed above, that PopSockets’ products practice apparatus claims 9-12. *See Certain Computers and Computer Peripheral Devices, and Components Thereof, and Products Containing Same*, Inv. No. 337-TA-841, Comm’n Op. at 26 (Jan. 9, 2014) (The technical prong of the domestic industry requirement is satisfied when it is determined that the complainant practices at least one claim of each patent at issue). Nonetheless, PopSockets presented uncontroverted evidence showing that its expert Mr. Kemnitzer performed the required steps of method claims 16 and 17 using a PopSockets product. *See* Mem. at 120-22.

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E. Domestic Industry (Economic Prong)

PopSockets argues that it satisfies the economic prong of the domestic industry requirement under 19 U.S.C. § 1337(a)(3)(A), (B) and (C) with respect to the '031 patent by its investments related to PopSockets' domestic industry products.

PopSockets argues that it “has made significant investments in its facilities, plant, and equipment, significant employment of labor and capital, and substantial investments in its exploitation of the '031 Patent in the United States, including engineering, research and development, technical and customer support, and marketing, or licensing[, and] these investments are all tied to the '031 Patent.” Mem. at 110. PopSockets submitted a declaration from its Chief Executive Officer and Managing Director, David B. Barnett. *See* Mem. Ex. 10 (Supp. Barnett Decl.) at ¶ 1.⁸ Mr. Barnett is also one of the named inventors of the '031 patent. *Id.* at ¶ 3.

The evidence shows that PopSockets is a limited liability company organized under the laws of Colorado with its corporate headquarters and principal place of business at 3033 Sterling Circle, Boulder, Colorado 80301. *See* Mem. at 105; Complaint, ¶ 5. The evidence shows that the inventions of the '031 patent were developed in Boulder, Colorado. *See* Mem. Ex. 10 (Supp. Barnett Decl.) at ¶ 3. The evidence demonstrates that PopSockets employs [] individuals at its Boulder location, and that these employees perform various jobs attributable to PopSockets' domestic industry products, including engineering, product development, product assembly, supply chain and operation management, marketing, sales, customer service, and administration. *See* Mem. Ex. 10 (Supp. Barnett Decl.) at ¶ 4. PopSockets products covered by the '031

⁸ Mr. Barnett submitted a declaration to the complaint, as confidential Exhibit 30.

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patent are “manufactured in China and then shipped to PopSockets locations in the United States for product assembly, supply chain and operation management, marketing, sales and customer service as described above.” *Id.* at ¶ 22. Although not explicitly stated in PopSockets’ motion, it does not appear that PopSockets owns the manufacturing facility in China, inasmuch as Mr. Barnett indicated that no rents, salaries and/or other payments, investments, and costs from 2014 to 2017 were attributable to foreign locations. *Id.* at ¶¶ 4-7.

The record evidence shows that PopSockets sells an optional mounting accessory that receives a PopSockets domestic industry product, allowing it to be mounted, for example, on an automobile dashboard. *Id.* at ¶ 15. PopSockets acknowledges that this mounting accessory is not covered by the ‘031 patent and is not a domestic industry product. *See* Mem. at 113. From 2014 to July 2017, the combined U.S. sales for these products (domestic industry products and mounts) totaled approximately []. *See* Mem. Ex. 10 (Supp. Barnett Decl.) at ¶ 18 and Table 10. Of that amount, approximately [] (*i.e.*, [] of total sales) was for the PopSockets’ domestic industry products. *Id.* The remaining approximately [] ([] of total sales) was for the related PopSockets’ mounting accessory. *Id.* Thus, not counting the mounting accessory, [] of PopSockets’ revenue from 2014 to July 2017 is attributable to U.S. sales of the PopSockets products protected by the ‘031 patent. *See* Mem. at 114. Therefore, it is appropriate to apply a sales-based allocation of [] for investments in plant and equipment, labor and capital, and the exploitation of the ‘031 patent including engineering, research and development, or licensing.

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Plant and Equipment

PopSockets maintains a [] square foot facility at its headquarters in Boulder, Colorado, which houses [] employees. *See* Mem. Ex. 10 (Supp. Barnett Decl.) at ¶ 4. The facility is used by PopSockets employees to perform various jobs relating to PopSockets products covered by the '031 patent, including engineering, product development, product assembly, supply chain and operation management, marketing, sales, customer service, and administration. *See id.* From 2014 through July 2017, PopSockets spent approximately [] in rent on its Boulder, Colorado facility, with approximately [] of that spent in 2017. *See id.* (Table 1).

The evidence shows that from 2014 through July 2017, PopSockets spent approximately [] in capital investments in fixtures and furniture used by employees at the facility, and in computer software and equipment used for the design, engineering, operations, and management associated with the PopSockets products covered by the '031 patent, with approximately [] of that spent in 2017. *See* Ex. 10 (Supp. Barnett Decl.) at ¶ 3 and Table 3.

Applying the sales-based allocation of [] to those expenditures, the evidence shows that from 2014 through July 2017, PopSockets spent (1) approximately [] in rent on its Boulder, Colorado facility allocable to the domestic industry products, with approximately [] of that spent in 2017; and (2) approximately [] in capital investments in fixtures and furniture used by employees at the facility, and in computer software and equipment used for the design, engineering, operations, and management associated with the PopSockets domestic industry products, with approximately [] of that spent in 2017.

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PopSockets' investments in plant and equipment discussed above are significant. PopSockets' domestic industry products were designed solely in the United States, and all of the individuals involved in the design, engineering, operations, and management associated with the PopSockets' domestic industry products are located in Boulder. *See* Ex. 10 (Supp. Barnett Decl.) at ¶ 3. Thus, given that PopSockets' domestic industry products would not exist without these investments, under the required contextual analysis, PopSockets' plant and equipment investments are significant.

Accordingly, there is no dispute as to any material fact that PopSockets satisfies the economic prong of the domestic industry requirement under 19 U.S.C. § 1337(a)(3)(A).

Labor and Capital

As discussed above, PopSockets employs [] individuals at its facility in Boulder Colorado. *See* Ex. 10 (Supp. Barnett Decl.) at ¶ 4. These employees are involved in the engineering, research, development, operations, marketing, sales, service, and assembly of PopSockets products. *See id.* For example, as of March 2017, the evidence shows that PopSockets' employees have assembled, packed, and/or shipped approximately [

] PopSockets products covered by the '031 patent. *See* Mem. Ex. 10 (Supp. Barnett Decl.) at ¶ 11 and Table 5.⁹ From 2014 through July 2017, PopSockets paid

⁹ In addition, the evidence shows that PopSockets' employees create and print designs for the top surface of the PopSockets products in Boulder, Colorado, and in Seattle, Washington—as of March 2017, approximately [] top surface designs have been printed in Boulder, Colorado, and approximately [] top surface designs have been printed in Seattle, Washington. *See id.* at ¶ 13 and Table 7.

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approximately [] to its employees in the United States, with approximately [] of that spent in 2017. *See id.* at ¶ 5 and Table 2.

PopSockets maintains multiple vendor relationships with U.S. companies that perform various services related to the PopSockets products covered by the '031 patent. *See Mem.* at 112. For example, the evidence shows that from 2014 to through July 2017, PopSockets paid []

[] covered by the '031 patent, with approximately [] of that spent in 2017. *See id.*; *Mem. Ex. 10 (Supp. Barnett Decl.)* at ¶ 12 and Table 6. In addition, from 2014 through July 2017, PopSockets paid its vendor Amazon.com, Inc., of Seattle, Washington, approximately [] in marketing costs for marketing the PopSockets product protected by the '031 patent [], with approximately [] of that amount spent in 2017. *See Mem. Ex. 10 (Supp. Barnett Decl.)* at ¶ 19 and Table 11.

[], such as Target Stores, Wal-Mart, and others, approximately []

[]. *See id.* at ¶ 20. For 2017, this amounts to over [] dollars in additional expenditures in the United States attributable to PopSockets' products covered by the '031 patent. *Id.*

The evidence shows that from 2014 through July 2017, PopSockets paid approximately [] to website hosting services and/or website developers for hosting, developing, and maintaining the PopSockets.com website, of which approximately [] was for services in the United States, with approximately [] of those U.S. expenditures being spent in 2017. *See Mem. Ex. 10 (Supp.*

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Barnett Decl.) at ¶ 21 and Table 12. PopSockets uses the PopSockets.com website to market and sell its products protected by the '031 patent. *Id.*

As discussed above, from 2014 through July 2017, PopSockets spent approximately [] in capital investments in fixtures and furniture used by employees at the facility, and in computer software and equipment used for the design, engineering, operations, and management associated with the PopSockets protected by the '031 patent, with approximately [] of that amount spent in 2017. *See* Ex. 10 (Supp. Barnett Decl.) at ¶ 3 and Table 3.

In summary, the evidence shows that: (1) PopSockets' total labor cost from 2014 through July 2017 is approximately [] to its employees in the United States, with approximately [] of that spent in 2017; (2) PopSockets' total costs to outside vendors ([] and Amazon.com) from 2014 through July 2017 for various services related to the PopSockets products is [], with approximately [] of that spent in 2017; (3) PopSockets' total costs to physical retail stores in 2017 is approximately []; (4) PopSockets' U.S. expenditures for website hosting services and/or website developers fees from 2014 through 2017 are approximately [], with approximately [] of those expenditures spent in 2017; and (5) PopSockets' capital expenditures from 2014 through July 2017 in fixtures, furniture, computer software and equipment used by employees at its Boulder facility is approximately [], with [] of that spent in 2017. Based on items (1) through (5) above, PopSockets' total labor and capital expenditures from 2014 through July 2017 were approximately [], with [] of that spent in 2017.

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Applying the sales-based allocation of [] to those expenditures, the evidence shows that from 2014 through July 2017, PopSockets' labor and capital expenditures from 2014 through July 2017 are approximately [], with [] of that spent in 2017. Certain of these investments relating to marketing, sales and distribution would not alone be sufficient to satisfy the economic prong. However, these investments in labor and capital as a whole are significant. Moreover, as noted above, the activities discussed above including the required product assembly takes place solely in the United States, making these investments significant.

Thus, the record evidence establishes that PopSockets has made significant investments in labor and capital with respect to the products protected by the '131 patent. There is no dispute as to any material fact that PopSockets satisfies the economic prong of the domestic industry requirement under 19 U.S.C. § 1337(a)(3)(B).

Exploitation of the '031 Patent

The technologies claimed in the '031 patent were invented and developed in the United States. *See* Mem. Ex. 10 (Supp. Barnett Decl.), ¶¶ 3-4. PopSockets argues: "From the conception and patenting of the PopSockets product, and the personnel used in the engineering, marketing, business, to the distribution departments employed by PopSockets to research and develop, produce, sell, and design the PopSockets products—all of these activities are conducted at PopSockets' headquarters in Boulder, Colorado." *See* Mem. at 113; Mem. Ex. 10 (Supp. Barnett Decl.), ¶ 4. The evidence shows that at the time of filing the complaint, PopSockets had invested, from 2014 through July 2017, approximately [] in research and development costs for designing, engineering, and testing various aspects of the PopSockets products protected by the '031 patent, with

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approximately [] of that spent in 2017. *See* Mem. Ex. 10 (Supp. Barnett Decl.) at ¶ 7 and Table 4.

These research and development costs are substantial. As discussed above, inasmuch as PopSockets' domestic industry products were designed and developed in the United States, and all of the individuals involved in the design, engineering, and testing associated with its domestic industry products are located in Colorado, its domestic industry products would not exist without them. Under the required contextual analysis, PopSockets' research and development costs are substantial.

Accordingly, there is no dispute as to any material fact, and it is found that PopSockets satisfies the economic prong of the domestic industry requirement under 19 U.S.C. § 1337(a)(3)(C).

V. Recommended Determination on Remedy and Bonding

The Commission has broad discretion in selecting the form of the remedy in a section 337 proceeding. *See Fuji Photo Film v. International Trade Comm'n*, 386 F.3d 1095, 1106-07 (Fed. Cir. 2004); *Certain Hydraulic Excavators and Components Thereof*, Inv. No. 337-TA-582, Comm'n Op. at 15 (Feb. 3, 2009), USITC Pub. No. 4115 (Dec. 2009). Where a violation is found, the Commission generally issues a limited exclusion order directed against products imported by persons found in violation of the statute. In certain circumstances, however, the Commission may issue a general exclusion order directed against all infringing products. 19 U.S.C. § 1337(d)(2).

PopSockets requests, along with a finding of violation, that the administrative law judge recommend a remedy in the form of a general exclusion order ("GEO") with respect to each of the asserted claims of the '031 patent. *See* Mem. at 123. PopSockets

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also requests that bond during the presidential review period be set at 100% of the value of the accused products. *Id.* The Staff supports PopSockets' request for a GEO, and PopSockets' request for a 100% bond. Staff Resp. at 58.

A. General Exclusion Order

A GEO is warranted when “a general exclusion from entry of articles is necessary to prevent circumvention of an exclusion order limited to products of named persons” or “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); 19 U.S.C. § 1337(d)(2)(B).

Satisfaction of either criterion is sufficient for imposition of a GEO. *Certain Cigarettes and Packaging Thereof*, Inv. No. 337-TA-643, Comm'n Op. at 24 (Oct. 1, 2009). The Commission “now focus[es] principally on the statutory language itself” when determining whether a GEO is warranted. *Certain Ground Fault Circuit Interrupters and Products Containing Same*, Inv. No. 337-TA-615, Comm'n Op. at 25 (Mar. 27, 2009). The Commission may look not only to the activities of active respondents, but also to those of non-respondents as well as respondents who have defaulted or been terminated from an investigation. *See, e.g., Certain Coaxial Cable Connectors and Components Thereof and Products Containing Same*, Inv. No. 337-TA-650, Comm'n Op. at 59 (Apr. 14, 2010).

The Commission has long recognized that it has the authority to issue a general exclusion order where, as here, all respondents have been found in default. *See, e.g., Certain Plastic Molding Machines With Control Systems Having Programmable Operator Interfaces Incorporating General Purpose Computers, and Components Thereof II*, Inv. No. 337-TA-462, Comm'n Opinion, 2003 WL 24011979 at *8 (April 2,

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2003) (The Commission made clear that Section 1337(g)(2) applied not only to situations in which all respondents were found in default, but also to situations where some respondents were in default and others were not.).

A GEO is warranted in this investigation both to prevent circumvention of an exclusion order limited to products of named entities, and because there is a pattern of violation of section 337 and it is difficult if not impossible to identify the source of infringing products, as discussed below.

In the event the Commission does not issue a GEO, the administrative law judge finds that the default determination is sufficient to establish a violation for the purpose of issuing limited exclusion orders directed to the defaulting respondents.¹⁰ *See* 19 C.F.R. § 210.16(c)(1).

1. Widespread Pattern of Violation

As discussed below, the evidence shows a widespread pattern of violation with respect to the '031 patent.

In addition to those 13 defaulting respondents named in this Investigation, PopSockets presented evidence that its investigations have uncovered a significant number of additional instances of unlawful sales of infringing products on online marketplaces such as Amazon and on Alibaba. *See* Mem. at 125; Mem. Ex. 3 (Monton

¹⁰ “After a respondent has been found in default by the Commission, the complainant may file with the Commission a declaration that it is seeking immediate entry of relief against the respondent in default. The facts alleged in the complaint will be presumed to be true with respect to the defaulting respondent. The Commission may issue an exclusion order, a cease and desist order, or both, affecting the defaulting respondent only after considering the effect of such order(s) upon the public [interest.]” 19 C.F.R. § 210.16(c)(1).

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Decl.) at ¶ 2-3. PopSockets presented evidence that manufacturers and sellers promote hundreds, if not thousands, of new infringing product online listings per day, where the products are listed for sale for importation into the United States or for sale in the United States after importation. Mem. at 127-218; Mem. Ex. 10 (Supp. Barnett Decl.) at ¶ 27, and Barnett Ex. 1. For example, PopSockets presented evidence that during a four day period leading up to the filing of the complaint, from March 20, 2017 to March 23, 2017, PopSockets, through its marketplace monitoring vendor, [REDACTED], identified approximately 4,500 new listings of infringing products, which is over 1,000 new listings per day. *Id.*

PopSockets tabulated and presented a chart, reproduced below, that represents what it calls a “here-today-gone-tomorrow, revolving door of infringing product listings,” with various new listings posted by manufacturers and/or sellers of collapsible sockets for mobile electronic devices on the Amazon website from a sample period from March 13 to March 20, 2017. This chart summarizes direct evidence of PopSockets’ targeted search for “popsocket blue nebula,” which represents a PopSockets’ product with the Blue Nebula decorative design, where a “✓” indicates that the product was available for purchase on the indicated date in 2017.

SAMPLE OF NEW INFRINGING SELLER LISTINGS (MARCH 13 – 20, 2017)						
Infringing Seller	March 13	March 14	March 15	March 17	March 20	Ships From Address
BLVD AP	✓	✓				Netherlands
Lidice Woods	✓	✓				Korea

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Mnzein Priops	✓					Japan
Natalia STORE		✓				Canada
Rengen		✓				Angola
Greenwood Darnell		✓				Canada
Del				✓		New Zealand
Yrf5ara HaSAm				✓		Japan
Tgwulie Whasit					✓	Tunisia
caroline lee					✓	Hong Kong
Ujnaott Mikaaa					✓	Malaysia

Mem. at 128. The Commission has found that such evidence of numerous online sales of infringing imported goods can demonstrate a pattern of violation of section 337. *See, e.g., Certain Loom Kits for Creating Linked Articles, Inv. No. 337-TA-923, Comm'n Op. at 14 (June 26, 2015) (citing Certain Cases for Portable Electronic Devices, Inv. No. 337-TA-867/861, Comm'n Op. at 10 (July 10, 2014)).*

PopSockets presented evidence that these additional entities, as well as the identified respondents, each have either copied or made approximate facsimiles of the PopSockets products, all of which mimic and infringe the inventive concepts and features of the PopSockets products and, in many cases, are near-identical replicas differentiated only by low quality materials and sub-standard manufacturing. *See* Mem. at 129; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 72.

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PopSockets argues that many of these entities either ceased, sometimes temporarily, selling infringing products before PopSockets filed the complaint in this action or started selling infringing products after PopSockets filed the complaint in this action. *See* Mem. at 129. PopSockets has presented evidence that despite its efforts to enforce its intellectual property by identifying and seeking removal and takedown of such product listings on Amazon.com, or other online channels, the overall number of listings has not decreased. *Id.*; Mem. Ex. 10 (Supp. Barnett Decl.) at ¶ 26 (detailing that PopSockets enforcement efforts include submitting hundreds of takedown requests per week for identified infringing listings across multiple online vendors). According to PopSockets, for those entities that have removed their product listings, either new entities have appeared, or the original entities may now be operating under different names and continuing to import infringing products into the United States. *See* Mem. at 129.

Thus, the evidence presented by PopSockets establishes a widespread availability of imported infringing collapsible sockets for mobile electronic devices in the United States.

2. Difficulty Identifying Sources of Infringing Products

As discussed below, in addition to the widespread pattern of violation evidenced above and by the defaulting respondents, the evidence establishes that it is difficult to identifying the source of the infringing products.

PopSockets presented evidence that manufacturers and sellers of infringing collapsible sockets for mobile electronic devices employ complex business arrangements, do business under more than one name, ship from multiple addresses, and/or form intricate arrays of confusingly similar affiliates, which makes it difficult, if not

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impossible, to determine the source of the infringing products. *See* Mem. at 125; Complaint Ex. 26 (Weber Decl.)¹¹ at ¶¶ 11-11 and 19-36. Specifically, as discussed above, PopSockets uncovered additional instances of unlawful sales of infringing products beside those from the 13 defaulting respondents. *See* Mem. at 125. PopSockets argues that while, in many instances, it successfully purchased and received such infringing products identifiable as illegal imports, *e.g.*, by Chinese shipping labels, etc., many of the received packages have intentionally or unintentionally illegible, confusing, contradictory, and often incomplete return addresses and, in some instances, no return addresses at all, making the specific infringers' identities a mystery. *Id.* PopSockets tabulated and presented specific examples from such packages, including photographs of their respective confusing, contradictory, and/or incomplete labels. *See* Mem. at 125-127; Mem. Ex. 3 (Monton Decl.), Exhs. 1-6.

In addition, PopSockets presented evidence that it is relatively easy for a manufacturer to change its name and business address to make it difficult to identify the source (and also to potentially circumventing an exclusion order). Specifically, PopSockets, relying on its expert Mr. Barnett, argues that the small size and portability of the products covered by the '031 patent make it easy for foreign manufacturers and distributors to transfer product, both physically and between sellers, and to thereby evade other enforcement efforts that might prevent infringing products from entering the United States. *See* Mem. at 130-131. For example, the accused products are small items of

¹¹ "Weber Decl." is the declaration of Timothy J. Weber, a paralegal at PopSockets' lawfirm, who was involved in ordering/receiving and inspecting accused products and associated packaging for PopSockets' complaint. Complaint, Ex. 2 (Weber Decl.) at ¶¶ 1, 2.

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manufacture that can be easily replicated on portable machines that fit in a single room, using molds that can be inexpensively made, carried by hand, and therefore easily setup, packed up, relocated, and re-established, making a change in manufacturing location simple and fast. *See* Mem. at 130; Mem. Ex. 10 (Supp. Barnett Decl.), ¶¶ 22, 23 (photographs 1-3 of PopSockets' tools, molds, and locations thereof). PopSockets argues that this portability makes circumvention of specific types of enforcement, such as a limited exclusion order, easy, and inexpensive. *See* Mem. at 130; Mem. Ex. 10 (Supp. Barnett Decl.).

PopSockets also presented evidence that by conducting transactions through the Internet, on Alibaba.com or Amazon.com, for example, suppliers of infringing products are able to hide their identities and locations, often providing no more contact information than a company name. *See* Mem. at 129, 132; *Certain Toner Cartridges and Components Thereof*, Inv. No. 337-TA-740, Comm'n Op. at 6 (Nov. 19, 2012) (recognizing that the anonymity over the Internet increases the difficulty in identifying the sources of infringing products). PopSockets presented evidence of specific examples of its difficulties in identifying the source of the products at issue. In one example, a Chinese entity first identified itself on Alibaba.com as "Shenzhen Enruize Technology Co., Ltd.," and offered for sale the related accused products as identified in complaint Exhibit 19. *See* Mem. at 133. This entity then contacted PopSockets' representatives and identified itself as a different entity named "G&T Technology Co., Ltd." *Id.*; Complaint Ex. 26 (Weber Decl.) at ¶¶ 10-11. PopSockets, through counsel, ordered the collapsible sockets from the G&T Technology Co., Ltd./ Shenzhen Enruize Technology Co., Ltd. entity, which then shipped the product from a different Chinese address than that

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identified on its Alibaba webpage. *See* Mem. at 133; Complaint Ex. 26 (Weber Decl.) at ¶¶ 10-11.

PopSockets presented evidence of another example where it identified additional collapsible socket products offered on Alibaba.com for sale for importation into the United States by a Chinese entity named “Guangzhou Hansong Electric Technology Co., Ltd.” Mem. at 133; Complaint Ex. 26 (Weber Decl.) at ¶ 22. On or about March 2, 2017, PopSockets, through counsel, corresponded with a representative of Guangzhou Hansong Electric Technology Co., Ltd. to purchase the product. *Id.*; Complaint Ex. 26 (Weber Decl.) at ¶ 23. However, on or about March 6, 2017, only few days later after PopSockets’ correspondence, Guangzhou Hansong Electric Technology Co., Ltd.’s Alibaba webpage offering the collapsible sockets was no longer accessible, and Complainant’s representatives received a “Page Cannot be Located” error when attempting to order the products from the Guangzhou Hansong Electric Technology Co., Ltd.’s webpage. *See* Mem. at 134; Complaint Ex. 26 (Weber Decl.) at ¶ 24.

PopSockets argues that the record in this investigation provides further evidence of the difficulty of identifying and shutting down individual suppliers. First, one of the proposed respondents in this investigation—Shenzhen Chuanghui—could not be served by either the Commission (*see* EDIS Doc. ID 613301 (Returned Mail Processing Record - Shenzhen Chuanghui)) or PopSockets.¹² PopSockets argues that it is not clear whether Shenzhen Chuanghui has gone out of business entirely, or if it is simply operating under a different name. *See* Mem. at 134. Second, PopSockets presented evidence that some

¹² *See* also EDIS Doc. ID 619044 (Aug. 4, 2017) (PopSockets’ Motion to Withdraw the Complaint and Terminate the Investigation as to Respondent Shenzhen Changhui).

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sellers, including some respondents, sell infringing products using PopSockets' own photographs and product packaging. *Id.* at 135; Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 72.¹³ PopSockets tabulated and presented a table, including photographs of respondents' packaging, summarizing this evidence. *See* Mem. at 135-139 (citing Complaint, Exs. 6, 12, 16, 18, 19, and 20-25). This evidence suggests that it would be difficult to identify the source of the product even from the product's packaging. Third, PopSockets presented evidence that some foreign sellers, including some respondents, use the same product packaging but under different seller names. *See* Mem. at 139; *Compare, e.g.*, Complaint Ex. 14 (Evidence of Unfair Sale and Importation by Shenzhen Chuanghui Industry Co., Ltd.), with Complaint Ex. 22 (Evidence of Unfair Sale and Importation by Jiangmen Besnovo Electronics Co., Ltd.). PopSockets tabulated and presented a table, including photographs, summarizing this evidence. *See* Mem. at 140 (citing Complaint, Exs. 14, 22).

Accordingly, the evidence establishes difficulty in identifying the source of the infringing products.

3. Necessary to Prevent Circumvention

Under section 337(d)(2)(A), the Commission considers whether conditions are ripe for circumvention of a limited exclusion order. *See Certain Electronic Paper Towel Dispensing Devices and Components Thereof*, Inv. No. 337-TA-718, Comm'n Op. (Pub. Version), at 8, 16 (Jan. 20, 2012). In considering whether conditions are ripe for

¹³ *Compare also, e.g.*, Complaint, Ex. 5 (reproduction of webpages from Complainant's website at popsockets.com) and Ex. 6 (photographs and images of a representative PopSockets product), with Complaint, Exs. 12, 16, 18, 19, 20, 23, 24, and 25 (Evidence of Unfair Sale and Importation by certain Respondents).

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circumvention, the Commission has relied on “evidence [that] shows the following: (1) there is a strong demand for the [patented products]; (2) the importation and sale of infringing products can be extremely profitable...; (3) extensive domestic marketing and distribution networks already exist which allow foreign manufacturers to widely distribute infringing [products] throughout the United States...; (4) large online marketplaces ... have emerged which provide both foreign manufacturers and domestic retailers a dedicated, flexible way to sell to consumers; (5) it is difficult to identify the sources of infringing products because of the ability to package infringing [products] in unmarked, generic packaging, . . . and (6) manufacturers can easily evade a limited exclusion order by establishing shell offshore distribution companies with unclear ties to the original manufacturer.” *Certain Inkjet Ink Supplies & Components Thereof* (“*Inkjet Ink*”), Inv. No. 337-TA-730, Comm’n Op. (Pub. Version), at 4-5 (Feb. 24, 2012).

Accordingly, for the same reasons discussed above, the evidence presented by PopSockets establishes that a GEO is necessary to prevent circumvention of an order limited to the products of the named respondents.

4. Satisfaction of the Heightened Requirements of 19 U.S.C. § 1337(g)(2)

In addition to the requirements of section 337(d)(2) governing GEOs, section 337(g)(2) imposes a heightened requirement for issuance of a GEO in cases involving defaulting respondents. When respondents in an investigation are found in default, the Commission issues a GEO excluding all infringing goods regardless of source under subsection 337(g)(2) when three conditions are met:

(A) no person appears to contest an investigation concerning a violation of the provisions of this section,

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(B) such a violation is established by substantial, reliable, and probative evidence, and

(C) the requirements of subsection (d)(2) of this section are met.

19 U.S.C. § 1337(g)(2).

The additional requirements of section 337(g)(2) have been satisfied under the circumstances of this investigation. In particular, no person has appeared to contest the investigation. PopSockets argues that all the requirements under section 337(g)(2) have been satisfied in this investigation. *See* Mem. at 123. As PopSockets argues (i) none of the respondents have appeared to contest the allegations, or otherwise responded to the complaint and notice of investigation; (ii) all respondents that were served with the complaint have been found to be in default; and (iii) the requirement that a violation be established by substantial, reliable, and probative evidence will be satisfied by the granting of this motion for summary determination on the issues of domestic industry and violation. *See* Mem. at 123.

PopSockets argues that a general exclusion order is necessary to prevent the circumvention of an exclusion order limited to the named respondents and that there is a widespread pattern of infringement of the asserted patent from manufacturers and sellers of collapsible sockets for mobile electronic devices that employ complex business arrangements that make it difficult, if not impossible, to identify the source of infringing products. *See* Mem. at 124-40. PopSockets' argument is supported by a declaration from Bradley Monton, who was PopSockets' Vice President of Results from January 7, 2016 to February 9, 2017 ("Monton Decl."). *See* Mem. Ex. 3 (Monton Decl.) at ¶ 1.

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Inasmuch as the requirements of sections 337(d)(2) and 337(g)(2) are satisfied it is recommended that the Commission issue a GEO covering the asserted patent in the event it finds a violation of section 337 in this investigation.

B. Bonding

Pursuant to section 337(j)(3), the administrative law judge and the Commission must determine the amount of bond to be required of a respondent, during the 60-day Presidential review period following the issuance of permanent relief, in the event that the Commission determines to issue a remedy. The purpose of the bond is to protect the complainant from any injury. 19 U.S.C. § 1337(j)(3); 19 C.F.R. §§ 210.42(a)(1)(ii), 210.50(a)(3).

When reliable price information is available, the Commission has often set bond by eliminating the differential between the domestic product and the imported, infringing product. *Certain Microsphere Adhesives, Processes for Making Same, and Products Containing Same, Including Self-Stick Repositionable Notes*, Inv. No. 337-TA-366, Comm'n Op. at 24 (1995). In other cases, the Commission has turned to alternative approaches, especially when the level of a reasonable royalty rate could be ascertained. *Certain Integrated Circuit Telecommunication Chips and Products Containing Same, Including Dialing Apparatus*, Inv. No. 337-TA-337, Comm'n Op. at 41 (1995). A 100 percent bond has been required when no effective alternative existed. *Certain Flash Memory Circuits and Products Containing Same*, Inv. No. 337-TA-382, USITC Pub. No. 3046, Comm'n Op. at 26-27 (July 1997) (a 100% bond imposed when price comparison was not practical because the parties sold products at different levels of commerce, and

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the proposed royalty rate appeared to be *de minimis* and without adequate support in the record).

None of the respondents participated in this investigation, which prevented PopSockets from developing reliable pricing and royalty information. PopSockets' request for a bond of 100% of the entered value of infringing goods is appropriate under the circumstances of this investigation. This amount should be sufficient to prevent any harm to PopSockets during the period of Presidential review.

XIII. Initial Determination and Order

It is the initial determination of the administrative law judge that PopSockets' Motion No. 1056-5 for summary determination of violation of section 337 by the defaulting respondents is granted.

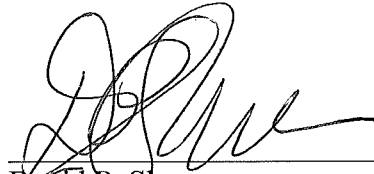
Pursuant to 19 C.F.R. § 210.42(h), this initial determination shall become the determination of the Commission unless a party files a petition for review of the initial determination pursuant to 19 C.F.R. § 210.43(a), or the Commission, pursuant to 19 C.F.R. § 210.44, orders on its own motion a review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

Further, it is recommended that the Commission issue a general exclusion order, and that a 100 percent bond be established for importation during the Presidential review period.

All issues delegated to the administrative law judge, pursuant to the notice of investigation, have been decided, with dispositions as to all respondents. Accordingly, this investigation is concluded in its entirety.

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To expedite service of the public version, each party is hereby ordered to file with the Commission Secretary no later than February 7, 2018, a copy of this initial and recommended determination with brackets to show any portion considered by the party (or its suppliers of information) to be confidential, accompanied by a list indicating each page on which such a bracket is to be found. At least one copy of such a filing shall be served upon the office of the undersigned, and the brackets shall be marked in red. If a party (and its suppliers of information) considers nothing in the initial determination to be confidential, and thus makes no request that any portion be redacted from the public version, then a statement to that effect shall be filed.¹⁴



David P. Shaw
Administrative Law Judge

Issued: January 31, 2018

¹⁴ Confidential business information (“CBI”) is defined in accordance with 19 C.F.R. § 201.6(a) and § 210.5(a). When redacting CBI or bracketing portions of documents to indicate CBI, a high level of care must be exercised in order to ensure that non-CBI portions are not redacted or indicated. Other than in extremely rare circumstances, block-redaction and block bracketing are prohibited. In most cases, redaction or bracketing of only discrete CBI words and phrases will be permitted.


**CERTAIN COLLAPSIBLE SOCKETS FOR MOBILE ELECTRONIC DEVICES AND
COMPONENTS THEREOF**

INV. NO. 337-TA-1056

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **Order No. 11 (Initial Determination and Recommended Determination)** has been served by hand upon the Commission Investigative Attorney, **Paul A. Gennari, Esq.**, and the following party as indicated, on

FEB 22 2018



Lisa R. Barton, Secretary
U.S. International Trade Commission
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() Via Hand Delivery
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() Via First Class Mail
() Other: _____