

In the Matter of

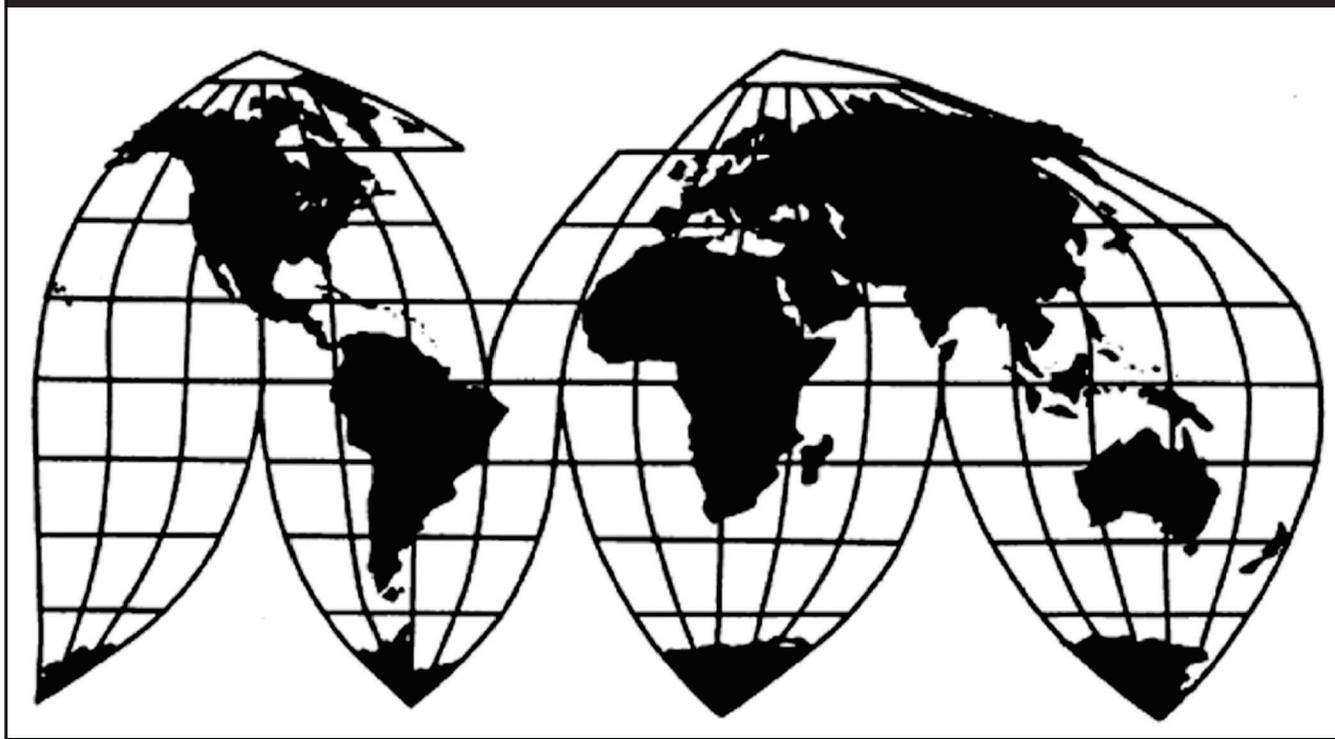
**CERTAIN HEIGHT-ADJUSTABLE DESK
PLATFORMS AND COMPONENTS
THEREOF**

337-TA-1125

Publication 5081

June 2020

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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Washington, DC 20436**

U.S. International Trade Commission

Washington, DC 20436
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In the Matter of

CERTAIN HEIGHT-ADJUSTABLE DESK PLATFORMS AND COMPONENTS THEREOF

337-TA-1125



UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN HEIGHT-ADJUSTABLE
DESK PLATFORMS AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1125

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

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to issue: (1) a general exclusion order (“GEO”) prohibiting the unlicensed importation of platforms that sit on an existing desk or work surface and can be adjusted to different heights that infringe one or more of claims 1-2, 4, and 10-11 of U.S. Patent No. 9,113,703 (“the ’703 patent”); claims 11, 16, 18, and 22-26 of U.S. Patent No. 9,277,809 (“the ’809 patent”); claims 1, 4-5, 11-12, 26, and 33-36 of U.S. Patent No. 9,554,644 (“the ’644 patent”); and claims 20-21 and 40-50 of U.S. Patent No. 9,924,793 (“the ’793 patent”); and (2) cease and desist orders (“CDO”) against certain respondents that had not participated in the above-captioned investigation. The investigation is terminated in its entirety.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2392. 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 Information System (“EDIS”) (<https://edis.usitc.gov>). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On July 30, 2018, the Commission instituted this investigation based on a complaint and supplements thereto filed on behalf of Varidesk LLC (“Varidesk”) of Coppell, Texas. 83 FR 36621 (July 30, 2018). 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 height-adjustable desk platforms and components thereof by reason of infringement of one or more claims of the '703, the '809, the '644, and the '793 patents. *Id.* The complaint further alleges that an industry in the United States exists as required by section 337. *Id.*

The Commission's notice of investigation named thirty-one respondents: (1) Albeit LLC of San Francisco, California ("Albeit"); (2) ATC Supply LLC of Plainfield, Illinois ("ATC Supply"); (3) Shenzhen Atc Network Scienology CO., LTD. of Guangdong, China ("Shenzhen ATC"); (4) Best Choice Products of Ontario, California ("Best Choice"); (5) Huizhou Chang He Home Supplies Co., Ltd. of Guangdong, China ("Chang He"); (6) Dakota Trading, Inc. of Emerson, New Jersey ("Dakota"); (7) Designa Inc. of Guangdong, China ("Designa"); (8) Designa Group, Inc. of El Dorado Hills, California ("Designa Group"); (9) Eureka LLC of El Dorado Hills, California ("Eureka"); (10) LaMountain International Group LLC of Elk Grove, California ("LaMountain"); (11) Amazon Import Inc. of El Monte, California ("Amazon Imports"); (12) Hangzhou Grandix Electronics Co., Ltd. of Zhejiang, China ("Grandix"); (13) Ningbo GYL International Trading Co., Ltd. of Zhejiang, China ("Ningbo GYL"); (14) Knape & Vogt Manufacturing Co. of Grand Rapids, Michigan ("Knape & Vogt"); (15) JV Products Inc. of Milpitas, California ("JV Products"); (16) Vanson Distributing, Inc. of Milpitas, California ("Vanson Distributing"); (17) Vanson Group, Inc. of Milpitas, California ("Vanson Group"); (18) S.P. Richards Co. DBA Lorell of Smyrna, Georgia ("Lorell"); (19) Nantong Jon Ergonomic Office Co., Ltd. of Jiangsu, China ("Nanotong Jon"); (20) Jiangsu Omni Industrial Co., Ltd. of Jiangsu, China ("Jiangsu Omni"); (21) OmniMax USA, LLC of Anna, Texas ("OmniMax USA"); (22) Haining Orizeal Import and Export Co., Ltd. of Zhejiang, China ("Haining Orizeal"); (23) Qidong Vision Mounts Manufacturing Co., Ltd. of Jiangsu, China ("Vision Mounts"); (24) Hangzhou KeXiang Keji Youxiangongsi of Hangzhou, China ("Hangzhou KeXiang"); (25) Smugdesk, LLC of La Puente, California ("Smugdesk"); (26) Venditio Group, LLC of Elkton, Florida ("Venditio"); (27) Versa Products Inc. of Los Angeles, California ("Versa"); (28) Victor Technology, LLC of Bolingbrook, Illinois ("Victor"); (29) CKnapp Sales, Inc. DBA Vivo of Goodfield, Illinois ("Vivo"); (30) Wuhu Xingdian Industrial Co., Ltd. of Anhui, China ("Wuhu Xingdian"); and (31) Wuppessen, Inc. of Ontario, California ("Wuppessen"). *Id.* The Office of Unfair Import Investigations ("OUII") was also named as a party in this investigation. *Id.*

During the course of the investigation, Varidesk settled with the following respondents: Venditio, Jiangsu Omni, OmniMax USA, Knape & Vogt, Wuppessen, Victor, Versa, Designa, Designa Group, Eureka, Chang He, Vision Mounts, Vivo, Nanotong Jon, Best Choice, Grandix, Hangzhou KeXiang, Lorell, and Dakota. Order No. 7, *unreviewed*, Notice (Sept. 18, 2018); Order No. 11, *unreviewed*, Notice (Sept. 25, 2018); Order No. 12, *unreviewed*, Notice (Oct. 4, 2018); Order No. 13, *unreviewed*, Notice (Oct. 4, 2018); Order No. 16, *unreviewed*, Notice (Nov. 9, 2018); Order No. 18, *unreviewed*, Notice (Nov. 29, 2018); Order No. 20, *unreviewed*, Notice (Feb. 21, 2019); Order No. 23, *unreviewed*, Notice (Mar. 12, 2019); Order No. 25, *unreviewed*, Notice (Apr. 5, 2019); Order No. 31, *unreviewed*, Notice (May 16, 2019). In addition, the investigation terminated as to LaMountain based on a consent order stipulation. Order No. 15, *unreviewed*, Notice (Oct. 22, 2018). The investigation has also previously terminated as to certain claims of each asserted patent. Order No. 30, *unreviewed*, Notice (May 13, 2019).

On April 11, 2019, Varidesk moved for summary determination of a violation of section 337 as to the remaining eleven respondents, who were served with a copy of the complaint, but had not filed a response or participated in the investigation. On April 24, 2019, Varidesk filed a supplement to the motion. The remaining respondents (collectively, “the Non-Participating Respondents”) are: (1) Albeit, (2) ATC Supply, (3) Shenzhen ATC, (4) Amazon Imports, (5) Ningbo GYL, (6) JV Products, (7) Vanson Distributing, (8) Vanson Group, (9) Haining Orizeal, (10) Smugdesk, and (11) Wuhu Xingdian. On April 26, 2019, OUII filed a response supporting Varidesk’s motion in substantial part.

On September 13, 2019, the presiding administrative law judge (“ALJ”) issued an initial determination (“ID”) (Order No. 33), and a recommended determination (“RD”) on remedy and bonding. The ID granted the motion in part. Specifically, the ALJ found, *inter alia*, (1) that Varidesk established the importation requirement as to each Non-Participating Respondent, except for Haining Orizeal; (2) that Varidesk established infringement as to all accused products and all remaining asserted claims (claims 1-2, 4, and 10-11 of the ’703 patent; claims 11, 16, 18, and 22-26 of the ’809 patent; claims 1, 4-5, 11-12, 26, and 33-36 of the ’644 patent; and claims 20-21 and 40-50 of the ’793 patent); and (3) that Varidesk satisfied the domestic industry requirement for each asserted patent. In addition, the ALJ recommended that the Commission issue a general exclusion order and impose a 100 percent bond during the period of Presidential review. The ALJ also recommended that the Commission not issue cease and desist orders directed to the Non-Participating Respondents.

On October 29, 2019, the Commission determined not to review the ID. 84 FR 59417 (Nov. 4, 2019). The Commission’s determination resulted in finding a violation of section 337 as to Albeit, ATC Supply, Shenzhen ATC, Amazon Imports, Ningbo GYL, JV Products, Vanson Distributing, Vanson Group, Smugdesk, and Wuhu Xingdian, but not as to Haining Orizeal. *See id.* The Commission also requested written submissions on remedy, the public interest, and bonding. *See id.* On November 13, 2019, Varidesk and OUII submitted their briefs on remedy, the public interest, and bonding. Varidesk further filed a response brief on November 20, 2019.

The Commission has determined that the appropriate remedy in this investigation is: (1) a GEO prohibiting the unlicensed importation of platforms that sit on an existing desk or work surface and can be adjusted to different heights that infringe one or more of claims 1-2, 4, and 10-11 of the ’703 patent; claims 11, 16, 18, and 22-26 of the ’809 patent; claims 1, 4-5, 11-12, 26, and 33-36 of the ’644 patent; and claims 20-21 and 40-50 of the ’793 patent; and (2) CDOs prohibiting respondents Albeit, ATC Supply, Amazon Import, JV Products, Vanson Distributing, Vanson Group, and Smugdesk from further importing, selling, and distributing infringing products in the United States. (Chairman Johanson and Commissioner Stayin dissent with respect to the Commission’s determination to issue CDOs in this investigation.) The Commission has also determined that the public interest factors enumerated in paragraphs 337(d)(1) and (f)(1), 19 U.S.C. 1337(d)(1) and (f)(1), do not preclude issuance of these remedial orders. Finally, the Commission has determined that the bond during the period of Presidential review pursuant to 19 U.S.C. 1337(j) shall be in the amount of 100 percent of the entered value of the imported articles. The Commission’s order was delivered to the President and to the United States Trade Representative on the day of its issuance. The investigation is hereby terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and 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: January 22, 2020

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served by hand upon the Commission Investigative Attorney, **Andrew Beverina, Esq.**, and the following parties as indicated, on **January 22, 2020**.



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

On Behalf of Complainants Varidesk LLC :

Adam R. Hess, Esq.
SQUIRE PATTON BOGGS
2550 M Street, NW
Washington D.C. 20037

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

Respondents:

Albeit LLC
1351 Broadway St.
San Francisco, CA 94109

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

ATC Supply LLC
12604 Canterbury Dr.
Plainfield, IL 60585-3000

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

Shenzhen Atc Network Scienology Co., Ltd.
Room 1902, Zian Business Building,
The Xinan Second Road, Baoan District
Shenzhen, Guangdong 518000 China

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

Amazon Import Inc.
9910 Baldwin Place
El Monte, CA 91731

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

**CERTAIN HEIGHT-ADJUSTED DESK PLATFORMS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1125

Certificate of Service – Page 2

Ningbo GYL International Trading Co., Ltd.
Mingbin Road 228
Luoto Area
Zhenhai 315202, Ningbo, Zhejian, China

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

JV Products Inc.
1825 Houret Ct.
Milpitas, CA 95035

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

Vanson Distributing, Inc.
1825 Houret Ct.
Milpitas, CA 95035

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

Vanson Group, Inc.
1825 Houret Ct.
Milpitas, CA 95035

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

Haining Orizeal Import and Export Co., Ltd.
4th Floor, Building B, Jinhui Plaza
No.486, South Hai Chang Road
Haining 314400, China

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

Smugdesk, LLC
14839 Proctor Avenue, Suite D
La Puente, CA 91746

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

Wuhu Xingdian Industrial Co., Ltd.
No. 168 Xici 5th Rd.
Mechanical Industrial Zone
Wuhu, Anhui, China

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

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

In the Matter of

**CERTAIN HEIGHT-ADJUSTABLE
DESK PLATFORMS AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1125

GENERAL EXCLUSION ORDER

The Commission has determined that there is a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the unlawful importation, sale for importation, or sale within the United States after importation of certain height-adjustable desk platforms and components thereof that infringe one or more of claims 1-2, 4, and 10-11 of U.S. Patent No. 9,113,703 (“the ’703 patent”); claims 11, 16, 18, and 22-26 of U.S. Patent No. 9,277,809 (“the ’809 patent”); claims 1, 4-5, 11-12, 26, and 33-36 of U.S. Patent No. 9,554,644 (“the ’644 patent”); and claims 20-21 and 40-50 of U.S. Patent No. 9,924,793 (“the ’793 patent”).

Having reviewed the record in this investigation, including the written submissions of the parties, 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 exclusion order limited to products of named persons because there is a pattern of violation of section 337 and it is difficult to identify the source of infringing products. Accordingly, the Commission has determined to issue a general exclusion order prohibiting the unlicensed importation of infringing platforms that sit on an existing desk or work surface and can be adjusted to different heights.

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

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

1. Platforms that sit on an existing desk or work surface and can be adjusted to different heights that infringe one or more of claims 1-2, 4, and 10-11 of the '703 patent; claims 11, 16, 18, and 22-26 of the '809 patent; claims 1, 4-5, 11-12, 26, and 33-36 of the '644 patent; and claims 20-21 and 40-50 of the '793 patent ("covered articles") are excluded from entry into the United States for consumption, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, for the remaining terms of the patents, except under license of the patent owner or as provided by law.
2. Notwithstanding paragraph 1 of this Order, covered articles are entitled to entry into the United States for consumption, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, under a bond in the amount of one hundred (100) percent of entered value of the products pursuant to subsection (j) of section 337 (19 U.S.C. § 1337(j)), and the Presidential Memorandum for the United States Trade Representative of July 21, 2005 (70 *Fed Reg.* 43251), from the day after this Order is received by the United States Trade Representative and until such time as the United States Trade Representative notifies the Commission that this Order is approved or disapproved but, in any event, not later than sixty (60) days after the date of

receipt of this Order. All entries of covered articles made pursuant to this paragraph are to be reported to U.S. Customs and Border Protection (“CBP”), in advance of the date of the entry, pursuant to procedures CBP establishes.

3. At the discretion of CBP and pursuant to procedures it establishes, persons seeking to import covered articles 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 covered articles that are imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.
5. The Commission may modify this Order in accordance with the procedures described in section 210.76 of the Commission’s Rules of Practice and Procedure (19 C.F.R. § 210.76).
6. The Commission Secretary shall serve copies of this Order upon each party of record in this investigation and upon 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". The signature is stylized and cursive.

Lisa R. Barton
Secretary to the Commission

Issued: January 22, 2020

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, **Andrew Beverina, Esq.**, and the following parties as indicated, on **January 22, 2020**.



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

On Behalf of Complainants Varidesk LLC :

Adam R. Hess, Esq.
SQUIRE PATTON BOGGS
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CERTAIN HEIGHT-ADJUSTED DESK PLATFORMS AND COMPONENTS THEREOF

Inv. No. 337-TA-1125

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Vanson Group, Inc.
1825 Houret Ct.
Milpitas, CA 95035

- Via Hand Delivery
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- Other: _____

Haining Orizeal Import and Export Co., Ltd.
4th Floor, Building B, Jinhui Plaza
No.486, South Hai Chang Road
Haining 314400, China

- Via Hand Delivery
- Via Express Delivery
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Smugdesk, LLC
14839 Proctor Avenue, Suite D
La Puente, CA 91746

- Via Hand Delivery
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Wuhu Xingdian Industrial Co., Ltd.
No. 168 Xici 5th Rd.
Mechanical Industrial Zone
Wuhu, Anhui, China

- Via Hand Delivery
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- Other: _____

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

In the Matter of

**CERTAIN HEIGHT-ADJUSTABLE
DESK PLATFORMS AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1125

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT Respondent Smugdesk, LLC cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, transferring (except for exportation), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of desk platforms that sit on an existing desk or work surface and can be adjusted to different heights that infringe one or more of claims 1, 2, 4, 10, and 11 of U.S. Patent No. 9,113,703 (the “’703 patent”); claims 11, 16, 18, and 22-26 of U.S. Patent No. 9,277,809 (the “’809 patent”); claims 1, 4, 5, 11, 12, 26, and 33-36 of U.S. Patent No. 9,554,644 (the “’644 patent”); and claims 20, 21, and 40-50 of U.S. Patent No. 9,924,793 (the “’793 patent”) (“Asserted Patents”) in violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

I. Definitions

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Varidesk LLC of Coppell, Texas.
- (C) “Respondent” shall mean Smugdesk, LLC of La Puente, California.

- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority-owned or controlled subsidiaries, successors, or assigns.
- (E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.
- (F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.
- (G) The term “covered products” shall mean desk platforms that sit on an existing desk or work surface and can be adjusted to different heights that infringe one or more of claims 1, 2, 4, 10, and 11 of the ’703 patent; claims 11, 16, 18, and 22-26 of the ’809 patent; claims 1, 4, 5, 11, 12, 26, and 33-36 of the ’644 patent; and claims 20, 21, and 40-50 of the ’793 patent. Covered products shall not include articles for which a provision of law or license avoids liability for infringement.

II. Applicability

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

III. Conduct Prohibited

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

- (A) import or sell for importation into the United States covered products;

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

IV. Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if:

- (A) in a written instrument, the owner of the Asserted Patents licenses or authorizes such specific conduct; or
- (B) such specific conduct is related to the importation or sale of covered products by or for the United States.

V. Reporting

For purposes of this requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. The first report required under this section shall cover the period from the date of issuance of this order through December 31, 2020. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

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

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

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to subsection 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-1125") in a prominent place on the cover pages and/or the first page. (See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainant's counsel.¹

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

VI. Record-Keeping and Inspection

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

¹ Complainant must file a letter with the Secretary identifying the attorney to receive reports and bond information associated with this order. The designated attorney must be on the protective order entered in the investigation.

the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

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

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

- (A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;
- (B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII(A) of this order, a copy of the Order upon each successor; and
- (C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the expiration dates of the Asserted Patents.

VIII. Confidentiality

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

IX. Enforcement

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

X. Modification

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

XI. Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative,

as delegated by the President (70 *Fed. Reg.* 43,251 (Jul. 21, 2005)), subject to Respondent posting of a bond in the amount of one hundred (100) percent of the entered value of the covered products. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this Order are subject to the entry bond set forth in the exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainant in connection with the issuance of temporary exclusion orders. (*See* 19 C.F.R. § 210.68). The bond and any accompanying documentation are to be provided to and approved by the Commission prior to the commencement of conduct that is otherwise prohibited by Section III of this Order. Upon the Secretary's acceptance of the bond, (a) the Secretary will serve an acceptance letter on all parties, and (b) Respondent must serve a copy of the bond and any accompanying documentation on Complainant's counsel.²

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

The bond is to be released in the event the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved (or

² *See* note 1 above.

not disapproved) by the United States Trade Representative, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.

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: January 22, 2020

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, **Andrew Beverina, Esq.**, and the following parties as indicated, on **January 22, 2020**.



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

On Behalf of Complainants Varidesk LLC :

Adam R. Hess, Esq.
SQUIRE PATTON BOGGS
2550 M Street, NW
Washington D.C. 20037

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

Respondents:

Albeit LLC
1351 Broadway St.
San Francisco, CA 94109

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

ATC Supply LLC
12604 Canterbury Dr.
Plainfield, IL 60585-3000

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

Shenzhen Atc Network Scienology Co., Ltd.
Room 1902, Zian Business Building,
The Xinan Second Road, Baoan District
Shenzhen, Guangdong 518000 China

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

Amazon Import Inc.
9910 Baldwin Place
El Monte, CA 91731

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

**CERTAIN HEIGHT-ADJUSTED DESK PLATFORMS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1125

Certificate of Service – Page 2

Ningbo GYL International Trading Co., Ltd.
Mingbin Road 228
Luoto Area
Zhenhai 315202, Ningbo, Zhejian, China

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

JV Products Inc.
1825 Houret Ct.
Milpitas, CA 95035

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

Vanson Distributing, Inc.
1825 Houret Ct.
Milpitas, CA 95035

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

Vanson Group, Inc.
1825 Houret Ct.
Milpitas, CA 95035

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

Haining Orizeal Import and Export Co., Ltd.
4th Floor, Building B, Jinhui Plaza
No.486, South Hai Chang Road
Haining 314400, China

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

Smugdesk, LLC
14839 Proctor Avenue, Suite D
La Puente, CA 91746

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

Wuhu Xingdian Industrial Co., Ltd.
No. 168 Xici 5th Rd.
Mechanical Industrial Zone
Wuhu, Anhui, China

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

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN HEIGHT-ADJUSTABLE
DESK PLATFORMS AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1125

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT Respondents JV Products Inc., Vanson Distributing, Inc., and Vanson Group, Inc. cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, transferring (except for exportation), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of desk platforms that sit on an existing desk or work surface and can be adjusted to different heights that infringe one or more of claims 1, 2, 4, 10, and 11 of U.S. Patent No. 9,113,703 (the “703 patent”); claims 11, 16, 18, and 22-26 of U.S. Patent No. 9,277,809 (the “809 patent”); claims 1, 4, 5, 11, 12, 26, and 33-36 of U.S. Patent No. 9,554,644 (the “644 patent”); and claims 20, 21, and 40-50 of U.S. Patent No. 9,924,793 (the “793 patent”) (“Asserted Patents”) in violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

I. Definitions

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Varidesk LLC of Coppell, Texas.

- (C) “Respondents” shall mean JV Products Inc., Vanson Distributing, Inc., and Vanson Group, Inc., all of Milpitas, California.
- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondents or its majority-owned or controlled subsidiaries, successors, or assigns.
- (E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.
- (F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.
- (G) The term “covered products” shall mean desk platforms that sit on an existing desk or work surface and can be adjusted to different heights that infringe one or more of claims 1, 2, 4, 10, and 11 of the ’703 patent; claims 11, 16, 18, and 22-26 of the ’809 patent; claims 1, 4, 5, 11, 12, 26, and 33-36 of the ’644 patent; and claims 20, 21, and 40-50 of the ’793 patent. Covered products shall not include articles for which a provision of law or license avoids liability for infringement.

II. Applicability

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

III. Conduct Prohibited

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

For the remaining term of the Assertive Patents, Respondents shall not:

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

IV. Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if:

- (A) in a written instrument, the owner of the Asserted Patents licenses or authorizes such specific conduct; or
- (B) such specific conduct is related to the importation or sale of covered products by or for the United States.

V. Reporting

For purposes of this requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. The first report required under this section shall cover the period from the date of issuance of this order through December 31, 2020. This reporting requirement shall continue in force until such time as Respondents have truthfully

reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondents shall report to the Commission (a) the quantity in units and the value in dollars of covered products that it has (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondents must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to subsection 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-1125") in a prominent place on the cover pages and/or the first page. (*See Handbook for Electronic Filing Procedures*, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondents desire to submit a document to the Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainant's counsel.¹

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

¹ Complainant must file a letter with the Secretary identifying the attorney to receive reports and bond information associated with this order. The designated attorney must be on the protective order entered in the investigation.

VI. Record-Keeping and Inspection

- (A) For the purpose of securing compliance with this Order, Respondents shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.
- (B) For the purposes of determining or securing compliance with this Order and for no other purpose, subject to any privilege recognized by the federal courts of the United States, and upon reasonable written notice by the Commission or its staff, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in Respondents' principal offices during office hours, and in the presence of counsel or other representatives if Respondents so choose, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, in detail and in summary form, that must be retained under subparagraph VI(A) of this Order.

VII. Service of Cease and Desist Order

Respondents are ordered and directed to:

- (A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;
- (B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII(A) of this order, a copy of the Order upon each successor; and

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

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the expiration dates of the Asserted Patents.

VIII. Confidentiality

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

IX. Enforcement

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

X. Modification

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

XI. Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative, as delegated by the President (70 *Fed. Reg.* 43,251 (Jul. 21, 2005)), subject to Respondents posting of a bond in the amount of one hundred (100) percent of the entered value of the covered products. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this Order are subject to the entry bond set forth in the exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainant in connection with the issuance of temporary exclusion orders. (*See* 19 C.F.R. § 210.68). The bond and any accompanying documentation are to be provided to and approved by the Commission prior to the commencement of conduct that is otherwise prohibited by Section III of this Order. Upon the Secretary's acceptance of the bond, (a) the Secretary will serve an acceptance letter on all parties, and (b) Respondents must serve a copy of the bond and any accompanying documentation on Complainant's counsel.²

The bond is to be forfeited in the event that the United States Trade Representative approves this Order (or does not disapprove it within the review period), unless (i) the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondents on appeal, or (ii) Respondents export or destroy the

² *See* note 1 above.

products subject to this bond and provide certification to that effect that is satisfactory to the Commission.

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

By order of the Commission.

A handwritten signature in black ink, appearing to read "Lisa R. Barton".

Lisa R. Barton
Secretary to the Commission

Issued: January 22, 2020

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, **Andrew Beverina, Esq.**, and the following parties as indicated, on **January 22, 2020**.



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

On Behalf of Complainants Varidesk LLC :

Adam R. Hess, Esq.
SQUIRE PATTON BOGGS
2550 M Street, NW
Washington D.C. 20037

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

Respondents:

Albeit LLC
1351 Broadway St.
San Francisco, CA 94109

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

ATC Supply LLC
12604 Canterbury Dr.
Plainfield, IL 60585-3000

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

Shenzhen Atc Network Scienology Co., Ltd.
Room 1902, Zian Business Building,
The Xinan Second Road, Baoan District
Shenzhen, Guangdong 518000 China

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

Amazon Import Inc.
9910 Baldwin Place
El Monte, CA 91731

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

CERTAIN HEIGHT-ADJUSTED DESK PLATFORMS AND COMPONENTS THEREOF

Inv. No. 337-TA-1125

Certificate of Service – Page 2

Ningbo GYL International Trading Co., Ltd.
Mingbin Road 228
Luoto Area
Zhenhai 315202, Ningbo, Zhejian, China

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

JV Products Inc.
1825 Houret Ct.
Milpitas, CA 95035

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

Vanson Distributing, Inc.
1825 Houret Ct.
Milpitas, CA 95035

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

Vanson Group, Inc.
1825 Houret Ct.
Milpitas, CA 95035

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

Haining Orizeal Import and Export Co., Ltd.
4th Floor, Building B, Jinhui Plaza
No.486, South Hai Chang Road
Haining 314400, China

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

Smugdesk, LLC
14839 Proctor Avenue, Suite D
La Puente, CA 91746

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

Wuhu Xingdian Industrial Co., Ltd.
No. 168 Xici 5th Rd.
Mechanical Industrial Zone
Wuhu, Anhui, China

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

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

In the Matter of

**CERTAIN HEIGHT-ADJUSTABLE
DESK PLATFORMS AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1125

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT Respondent ATC Supply LLC cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, transferring (except for exportation), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of desk platforms that sit on an existing desk or work surface and can be adjusted to different heights that infringe one or more of claims 1, 2, 4, 10, and 11 of U.S. Patent No. 9,113,703 (the “703 patent”); claims 11, 16, 18, and 22-26 of U.S. Patent No. 9,277,809 (the “809 patent”); claims 1, 4, 5, 11, 12, 26, and 33-36 of U.S. Patent No. 9,554,644 (the “644 patent”); and claims 20, 21, and 40-50 of U.S. Patent No. 9,924,793 (the “793 patent”) (“Asserted Patents”) in violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

I. Definitions

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Varidesk LLC of Coppell, Texas.
- (C) “Respondent” shall mean ATC Supply LLC of Plainfield, Illinois.

- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority-owned or controlled subsidiaries, successors, or assigns.
- (E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.
- (F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.
- (G) The term “covered products” shall mean desk platforms that sit on an existing desk or work surface and can be adjusted to different heights that infringe one or more of claims 1, 2, 4, 10, and 11 of the ’703 patent; claims 11, 16, 18, and 22-26 of the ’809 patent; claims 1, 4, 5, 11, 12, 26, and 33-36 of the ’644 patent; and claims 20, 21, and 40-50 of the ’793 patent. Covered products shall not include articles for which a provision of law or license avoids liability for infringement.

II. Applicability

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

III. Conduct Prohibited

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

- (A) import or sell for importation into the United States covered products;

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

IV. Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if:

- (A) in a written instrument, the owner of the Asserted Patents licenses or authorizes such specific conduct; or
- (B) such specific conduct is related to the importation or sale of covered products by or for the United States.

V. Reporting

For purposes of this requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. The first report required under this section shall cover the period from the date of issuance of this order through December 31, 2020. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

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

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

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to subsection 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-1125") in a prominent place on the cover pages and/or the first page. (*See Handbook for Electronic Filing Procedures*, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainant's counsel.¹

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

VI. Record-Keeping and Inspection

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

¹ Complainant must file a letter with the Secretary identifying the attorney to receive reports and bond information associated with this order. The designated attorney must be on the protective order entered in the investigation.

the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

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

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

- (A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;
- (B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII(A) of this order, a copy of the Order upon each successor; and
- (C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the expiration dates of the Asserted Patents.

VIII. Confidentiality

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

IX. Enforcement

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

X. Modification

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

XI. Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative,

as delegated by the President (70 *Fed. Reg.* 43,251 (Jul. 21, 2005)), subject to Respondent posting of a bond in the amount of one hundred (100) percent of the entered value of the covered products. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this Order are subject to the entry bond set forth in the exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainant in connection with the issuance of temporary exclusion orders. (*See* 19 C.F.R. § 210.68). The bond and any accompanying documentation are to be provided to and approved by the Commission prior to the commencement of conduct that is otherwise prohibited by Section III of this Order. Upon the Secretary's acceptance of the bond, (a) the Secretary will serve an acceptance letter on all parties, and (b) Respondent must serve a copy of the bond and any accompanying documentation on Complainant's counsel.²

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

The bond is to be released in the event the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved (or

² *See* note 1 above.

not disapproved) by the United States Trade Representative, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.

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: January 22, 2020

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, **Andrew Beverina, Esq.**, and the following parties as indicated, on **January 22, 2020**.



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

On Behalf of Complainants Varidesk LLC :

Adam R. Hess, Esq.
SQUIRE PATTON BOGGS
2550 M Street, NW
Washington D.C. 20037

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

Respondents:

Albeit LLC
1351 Broadway St.
San Francisco, CA 94109

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

ATC Supply LLC
12604 Canterbury Dr.
Plainfield, IL 60585-3000

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

Shenzhen Atc Network Scienology Co., Ltd.
Room 1902, Zian Business Building,
The Xinan Second Road, Baoan District
Shenzhen, Guangdong 518000 China

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

Amazon Import Inc.
9910 Baldwin Place
El Monte, CA 91731

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

CERTAIN HEIGHT-ADJUSTED DESK PLATFORMS AND COMPONENTS THEREOF

Inv. No. 337-TA-1125

Certificate of Service – Page 2

Ningbo GYL International Trading Co., Ltd.
Mingbin Road 228
Luoto Area
Zhenhai 315202, Ningbo, Zhejian, China

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

JV Products Inc.
1825 Houret Ct.
Milpitas, CA 95035

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

Vanson Distributing, Inc.
1825 Houret Ct.
Milpitas, CA 95035

- Via Hand Delivery
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Vanson Group, Inc.
1825 Houret Ct.
Milpitas, CA 95035

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

Haining Orizeal Import and Export Co., Ltd.
4th Floor, Building B, Jinhui Plaza
No.486, South Hai Chang Road
Haining 314400, China

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

Smugdesk, LLC
14839 Proctor Avenue, Suite D
La Puente, CA 91746

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

Wuhu Xingdian Industrial Co., Ltd.
No. 168 Xici 5th Rd.
Mechanical Industrial Zone
Wuhu, Anhui, China

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

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

In the Matter of

**CERTAIN HEIGHT-ADJUSTABLE
DESK PLATFORMS AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1125

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT Respondent Amazon Import Inc. cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, transferring (except for exportation), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of desk platforms that sit on an existing desk or work surface and can be adjusted to different heights that infringe one or more of claims 1, 2, 4, 10, and 11 of U.S. Patent No. 9,113,703 (the “703 patent”); claims 11, 16, 18, and 22-26 of U.S. Patent No. 9,277,809 (the “809 patent”); claims 1, 4, 5, 11, 12, 26, and 33-36 of U.S. Patent No. 9,554,644 (the “644 patent”); and claims 20, 21, and 40-50 of U.S. Patent No. 9,924,793 (the “793 patent”) (“Asserted Patents”) in violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

I. Definitions

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Varidesk LLC of Coppell, Texas.
- (C) “Respondent” shall mean Amazon Import Inc. of El Monte, California.

- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority-owned or controlled subsidiaries, successors, or assigns.
- (E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.
- (F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.
- (G) The term “covered products” shall mean desk platforms that sit on an existing desk or work surface and can be adjusted to different heights that infringe one or more of claims 1, 2, 4, 10, and 11 of the ’703 patent; claims 11, 16, 18, and 22-26 of the ’809 patent; claims 1, 4, 5, 11, 12, 26, and 33-36 of the ’644 patent; and claims 20, 21, and 40-50 of the ’793 patent. Covered products shall not include articles for which a provision of law or license avoids liability for infringement.

II. Applicability

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

III. Conduct Prohibited

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

- (A) import or sell for importation into the United States covered products;

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

IV. Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if:

- (A) in a written instrument, the owner of the Asserted Patents licenses or authorizes such specific conduct; or
- (B) such specific conduct is related to the importation or sale of covered products by or for the United States.

V. Reporting

For purposes of this requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. The first report required under this section shall cover the period from the date of issuance of this order through December 31, 2020. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

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

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

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to subsection 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-1125") in a prominent place on the cover pages and/or the first page. (*See Handbook for Electronic Filing Procedures*, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainant's counsel.¹

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

VI. Record-Keeping and Inspection

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

¹ Complainant must file a letter with the Secretary identifying the attorney to receive reports and bond information associated with this order. The designated attorney must be on the protective order entered in the investigation.

the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

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

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

- (A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;
- (B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII(A) of this order, a copy of the Order upon each successor; and
- (C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the expiration dates of the Asserted Patents.

VIII. Confidentiality

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

IX. Enforcement

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

X. Modification

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

XI. Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative,

as delegated by the President (70 *Fed. Reg.* 43,251 (Jul. 21, 2005)), subject to Respondent posting of a bond in the amount of one hundred (100) percent of the entered value of the covered products. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this Order are subject to the entry bond set forth in the exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainant in connection with the issuance of temporary exclusion orders. (*See* 19 C.F.R. § 210.68). The bond and any accompanying documentation are to be provided to and approved by the Commission prior to the commencement of conduct that is otherwise prohibited by Section III of this Order. Upon the Secretary's acceptance of the bond, (a) the Secretary will serve an acceptance letter on all parties, and (b) Respondent must serve a copy of the bond and any accompanying documentation on Complainant's counsel.²

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

The bond is to be released in the event the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved (or

² *See* note 1 above.

not disapproved) by the United States Trade Representative, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton'.

Lisa R. Barton
Secretary to the Commission

Issued: January 22, 2020

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, **Andrew Beverina, Esq.**, and the following parties as indicated, on **January 22, 2020**.



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

On Behalf of Complainants Varidesk LLC :

Adam R. Hess, Esq.
SQUIRE PATTON BOGGS
2550 M Street, NW
Washington D.C. 20037

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

Respondents:

Albeit LLC
1351 Broadway St.
San Francisco, CA 94109

- Via Hand Delivery
- Via Express Delivery
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- Other: _____

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12604 Canterbury Dr.
Plainfield, IL 60585-3000

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- Via Express Delivery
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9910 Baldwin Place
El Monte, CA 91731

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CERTAIN HEIGHT-ADJUSTED DESK PLATFORMS AND COMPONENTS THEREOF

Inv. No. 337-TA-1125

Certificate of Service – Page 2

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Haining Orizeal Import and Export Co., Ltd.
4th Floor, Building B, Jinhui Plaza
No.486, South Hai Chang Road
Haining 314400, China

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Smugdesk, LLC
14839 Proctor Avenue, Suite D
La Puente, CA 91746

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

Wuhu Xingdian Industrial Co., Ltd.
No. 168 Xici 5th Rd.
Mechanical Industrial Zone
Wuhu, Anhui, China

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

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

In the Matter of

**CERTAIN HEIGHT-ADJUSTABLE
DESK PLATFORMS AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1125

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT Respondent Albeit LLC cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, transferring (except for exportation), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of desk platforms that sit on an existing desk or work surface and can be adjusted to different heights that infringe one or more of claims 1, 2, 4, 10, and 11 of U.S. Patent No. 9,113,703 (the “703 patent”); claims 11, 16, 18, and 22-26 of U.S. Patent No. 9,277,809 (the “809 patent”); claims 1, 4, 5, 11, 12, 26, and 33-36 of U.S. Patent No. 9,554,644 (the “644 patent”); and claims 20, 21, and 40-50 of U.S. Patent No. 9,924,793 (the “793 patent”) (“Asserted Patents”) in violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

I. Definitions

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Varidesk LLC of Coppell, Texas.
- (C) “Respondent” shall mean Albeit LLC of San Francisco, California.

- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority-owned or controlled subsidiaries, successors, or assigns.
- (E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.
- (F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.
- (G) The term “covered products” shall mean desk platforms that sit on an existing desk or work surface and can be adjusted to different heights that infringe one or more of claims 1, 2, 4, 10, and 11 of the ’703 patent; claims 11, 16, 18, and 22-26 of the ’809 patent; claims 1, 4, 5, 11, 12, 26, and 33-36 of the ’644 patent; and claims 20, 21, and 40-50 of the ’793 patent. Covered products shall not include articles for which a provision of law or license avoids liability for infringement.

II. Applicability

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

III. Conduct Prohibited

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

- (A) import or sell for importation into the United States covered products;

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

IV. Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if:

- (A) in a written instrument, the owner of the Asserted Patents licenses or authorizes such specific conduct; or
- (B) such specific conduct is related to the importation or sale of covered products by or for the United States.

V. Reporting

For purposes of this requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. The first report required under this section shall cover the period from the date of issuance of this order through December 31, 2020. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

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

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

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to subsection 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-1125") in a prominent place on the cover pages and/or the first page. (*See Handbook for Electronic Filing Procedures*, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainant's counsel.¹

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

VI. Record-Keeping and Inspection

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

¹ Complainant must file a letter with the Secretary identifying the attorney to receive reports and bond information associated with this order. The designated attorney must be on the protective order entered in the investigation.

the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

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

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

- (A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;
- (B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII(A) of this order, a copy of the Order upon each successor; and
- (C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the expiration dates of the Asserted Patents.

VIII. Confidentiality

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

IX. Enforcement

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

X. Modification

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

XI. Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative,

as delegated by the President (70 *Fed. Reg.* 43,251 (Jul. 21, 2005)), subject to Respondent posting of a bond in the amount of one hundred (100) percent of the entered value of the covered products. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this Order are subject to the entry bond set forth in the exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainant in connection with the issuance of temporary exclusion orders. (*See* 19 C.F.R. § 210.68). The bond and any accompanying documentation are to be provided to and approved by the Commission prior to the commencement of conduct that is otherwise prohibited by Section III of this Order. Upon the Secretary's acceptance of the bond, (a) the Secretary will serve an acceptance letter on all parties, and (b) Respondent must serve a copy of the bond and any accompanying documentation on Complainant's counsel.²

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

The bond is to be released in the event the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved (or

² *See* note 1 above.

not disapproved) by the United States Trade Representative, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.

A handwritten signature in black ink, appearing to read "Lisa R. Barton".

Lisa R. Barton
Secretary to the Commission

Issued: January 22, 2020

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, **Andrew Beverina, Esq.**, and the following parties as indicated, on **January 22, 2020**.



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

On Behalf of Complainants Varidesk LLC :

Adam R. Hess, Esq.
SQUIRE PATTON BOGGS
2550 M Street, NW
Washington D.C. 20037

- Via Hand Delivery
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Respondents:

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**CERTAIN HEIGHT-ADJUSTED DESK PLATFORMS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1125

Certificate of Service – Page 2

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PUBLIC VERSION

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

In the Matter of

**CERTAIN HEIGHT-ADJUSTABLE
DESK PLATFORMS AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1125

COMMISSION OPINION

This investigation is before the Commission on a final determination on remedy, the public interest, and bonding. On September 13, 2019, the presiding administrative law judge (“ALJ”) issued Order No. 33, a combined initial determination (“ID”) and recommended determination (“RD”). The ID found a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“section 337”), by ten respondents that had not participated in the investigation. *See* 84 *Fed. Reg.* 59416-417 (Nov. 4, 2019). On October 29, 2019, the Commission determined not to review the ID and requested written submissions on remedy, the public interest, and bonding. *Id.*

Upon consideration of the submissions received, the Commission has determined that the appropriate form of relief is: (1) a general exclusion order (“GEO”) prohibiting the unlicensed importation of certain platforms that sit on an existing desk or work surface and can be adjusted to different heights that infringe one or more of claims 1-2, 4, and 10-11 of U.S. Patent No. 9,113,703 (“the ’703 patent”); claims 11, 16, 18, and 22-26 of U.S. Patent No. 9,277,809 (“the ’809 patent”); claims 1, 4-5, 11-12, 26, and 33-36 of U.S. Patent No. 9,554,644 (“the ’644 patent”); and claims 20-21 and 40-50 of U.S. Patent No. 9,924,793 (“the ’793 patent”); and (2) cease and desist orders (“CDO”) against certain domestic respondents that did not participate in

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the investigation. The Commission finds that the public interest does not preclude issuance of these remedial orders. *See* 19 U.S.C. §§ 1337(d)(1), (f)(1). The Commission sets a bond in the amount of 100 percent of the entered value of the infringing articles imported during the period of Presidential review.

I. **BACKGROUND**

On July 30, 2018, the Commission instituted this investigation based on a complaint and supplements thereto filed on behalf of Varidesk LLC of Coppell, Texas (“Varidesk”). 83 *Fed. Reg.* 36621 (July 30, 2018). The complaint alleged violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain height-adjustable desk platforms and components thereof by reason of infringement of certain claims of the ’703, the ’809, the ’644, and the ’793 patents. *Id.* The complaint further alleged that an industry in the United States exists as required by section 337.

The Commission’s notice of investigation named thirty-one respondents: (1) Albeit LLC of San Francisco, California (“Albeit”); (2) ATC Supply LLC of Plainfield, Illinois (“ATC Supply”); (3) Shenzhen Atc Network Scienology CO., LTD. of Guangdong, China (“Shenzhen ATC”); (4) Best Choice Products of Ontario, California (“Best Choice”); (5) Huizhou Chang He Home Supplies Co., Ltd. of Guangdong, China (“Chang He”); (6) Dakota Trading, Inc. of Emerson, New Jersey (“Dakota”); (7) Designa Inc. of Guangdong, China (“Designa”); (8) Designa Group, Inc. of El Dorado Hills, California (“Designa Group”); (9) Eureka LLC of El Dorado Hills, California (“Eureka”); (10) LaMountain International Group LLC of Elk Grove, California (“LaMountain”); (11) Amazon Import Inc. of El Monte, California (“Amazon Import”); (12) Hangzhou Grandix Electronics Co., Ltd. of Zhejiang, China (“Grandix”); (13) Ningbo GYL International Trading Co., Ltd. of Zhejiang, China (“Ningbo GYL”);

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(14) Knappe & Vogt Manufacturing Co. of Grand Rapids, Michigan (“Knappe & Vogt”); (15) JV Products Inc. of Milpitas, California (“JV Products”); (16) Vanson Distributing, Inc. of Milpitas, California (“Vanson Distributing”); (17) Vanson Group, Inc. of Milpitas, California (“Vanson Group”); (18) S.P. Richards Co. DBA Lorell of Smyrna, Georgia (“Lorell”); (19) Nantong Jon Ergonomic Office Co., Ltd. of Jiangsu, China (“Nantong Jon”); (20) Jiangsu Omni Industrial Co., Ltd. of Jiangsu, China (“Jiangsu Omni”); (21) OmniMax USA, LLC of Anna, Texas (“OmniMax USA”); (22) Haining Orizeal Import and Export Co., Ltd. of Zhejiang, China (“Haining Orizeal”); (23) Qidong Vision Mounts Manufacturing Co., Ltd. of Jiangsu, China (“Vision Mounts”); (24) Hangzhou KeXiang Keji Youxiangongsi of Hangzhou, China (“Hangzhou KeXiang”); (25) Smugdesk, LLC of La Puente, California (“Smugdesk”); (26) Venditio Group, LLC of Elkton, Florida (“Venditio”); (27) Versa Products Inc. of Los Angeles, California (“Versa”); (28) Victor Technology, LLC of Bolingbrook, Illinois (“Victor”); (29) CKnapp Sales, Inc. DBA Vivo of Goodfield, Illinois (“Vivo”); (30) Wuhu Xingdian Industrial Co., Ltd. of Anhui, China (“Wuhu Xingdian”); and (31) Wuppessen, Inc. of Ontario, California (“Wuppessen”). *Id.* The Office of Unfair Import Investigations (“OUII”) was also named as a party in this investigation. *Id.*

During the course of the investigation, Varidesk settled with the following respondents: Venditio, Jiangsu Omni, OmniMax USA, Knappe & Vogt, Wuppessen, Victor, Versa, Designa, Designa Group, Eureka, Chang He, Vision Mounts, Vivo, Nantong Jon, Best Choice, Grandix, Hangzhou KeXiang, Lorell, and Dakota. Order No. 7, *unreviewed*, Notice (Sept. 18, 2018); Order No. 11, *unreviewed*, Notice (Sept. 25, 2018); Order No. 12, *unreviewed*, Notice (Oct. 4, 2018); Order No. 13, *unreviewed*, Notice (Oct. 4, 2018); Order No. 16, *unreviewed*, Notice (Nov. 9, 2018); Order No. 18, *unreviewed*, Notice (Nov. 29, 2018); Order No. 20, *unreviewed*, Notice

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(Feb. 21, 2019); Order No. 23, *unreviewed*, Notice (Mar. 12, 2019); Order No. 25, *unreviewed*, Notice (Apr. 5, 2019); Order No. 31, *unreviewed*, Notice (May 16, 2019). In addition, the investigation terminated as to LaMountain based on a consent order stipulation and the issuance of a consent order. Order No. 15, *unreviewed*, Notice (Oct. 22, 2018).

The remaining eleven respondents, who were served with a copy of the complaint and the notice of investigation, did not file a response or participate in the investigation. These respondents are (1) Albeit, (2) ATC Supply, (3) Shenzhen ATC, (4) Amazon Imports, (5) Ningbo GYL, (6) JV Products, (7) Vanson Distributing, (8) Vanson Group, (9) Haining Orizeal, (10) Smugdesk, and (11) Wuhu Xingdian (collectively, “Non-Participating Respondents”). Complainant did not file a motion requesting that these respondents be found in default pursuant to Rule 210.16.

This investigation was also terminated as to claims 3 and 6-9 of the ’703 patent; claims 1-3, 5-10, 12-15, 17, and 27-28 of the ’809 patent; claims 2-3, 6-10, 13-15, 19, 21-23, 25, and 28-32 of the ’644 patent; and claims 1-11 and 22-39 of the ’793 patent. Order No. 30, *unreviewed*, Notice (May 13, 2019). The remaining asserted claims in this investigation are claims 1-2, 4, and 10-11 of the ’703 patent; claims 11, 16, 18, and 22-26 of the ’809 patent; claims 1, 4-5, 11-12, 26, and 33-36 of the ’644 patent; and claims 20-21 and 40-50 of the ’793 patent (“the Asserted Claims”).

On December 10, 2018, the ALJ held a *Markman* hearing. At the time of the *Markman* hearing, Dakota was the only remaining participating respondent.¹ Order No. 27, at 1, n.1.

¹ As noted above, Varidesk later settled with Dakota. Order No. 31, *unreviewed*, Notice (May 16, 2019).

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On April 1, 2019, the ALJ issued a Markman Order (Order No. 27) construing the disputed claims.

On April 11, 2019, Varidesk moved for summary determination of a violation of section 337 by the Non-Participating Respondents.² On April 24, 2019, Varidesk filed a supplement to the motion.³ Varidesk's motion requested a GEO and CDOs against the Non-Participating Respondents. *See Mot.* at 2.

On April 26, 2019, OUII filed a response supporting Varidesk's motion in substantial part. OUII supported the motion as to all Non-Participating Respondents except for Haining Orizeal. More specifically, OUII believed that Varidesk had (1) satisfied the importation requirement as to each Non-Participating Respondent, except for Haining Orizeal; (2) shown that the Accused Products⁴ infringe the Asserted Claims; and (3) satisfied the domestic industry requirement for each asserted patent. OUII also supported Varidesk's request for a GEO and the imposition of a bond during the period of Presidential review of 100 percent of the entered value of infringing products. However, OUII did not believe that CDOs are appropriate because Varidesk failed to provide evidence to show that the Non-Participating Respondents have commercially significant inventories and instead relied upon inferring inventories based on the default standard. *See OUII Response to Mot.* at 89.⁵

² Complainant's Motion for Summary Determination Against the Non-Participating Respondents, EDIS Doc ID 672843 (Apr. 11, 2019) ("Mot.").

³ Supplemental Support for Complainant's Motion for Summary Determination Against the Non-Participating Respondents, EDIS Doc ID 674049 (Apr. 24, 2019).

⁴ The "Accused Products" are the Halter ED-258, HeroDesk, ANNT Lumsing Standing Desk, Fezibo Standing Desk Converter, Fezibo Height Adjustable Standing Desk, Logix Desk Stand Up Desk, and the Smugdesk Standing Desk. *See ID* at 10-11.

⁵ Notwithstanding OUII's statement in its response to the summary determination motion that Varidesk submitted no evidence of inventories, OUII stated in its remedy submission to the

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On September 13, 2019, the ALJ granted in part Varidesk's motion for summary determination of a violation of section 337 by the Non-Participating Respondents.

See Order No. 33 at 1-34. The ALJ found, *inter alia*, that Varidesk had (1) satisfied the importation requirement as to each Non-Participating Respondent, except for Haining Orizeal; (2) shown that the Accused Products infringe the Asserted Claims; and (3) satisfied the domestic industry requirement for each asserted patent. No party petitioned for review of the ID.

Also, on September 13, 2019, the ALJ issued his recommended determination on remedy and bonding. *See* Order No. 33 at 34-42. In particular, the RD recommended that the Commission issue a GEO and impose a bond during the period of Presidential review of 100 percent of the entered value of infringing products. The RD also recommended that the Commission not issue CDOs in the event a violation of section 337 is found because Varidesk did not present evidence of any domestic inventory.

On October 29, 2019, the Commission determined not to review the ID. 84 *Fed. Reg.* 59417. The Commission's determination resulted in a finding of no violation as to Haining Orizeal, and a violation as to ten Non-Participating Respondents: (1) Albeit; (2) ATC Supply; (3) Shenzhen ATC; (4) Amazon Import; (5) Ningbo GYL; (6) JV Products; (7) Vanson Distributing; (8) Vanson Group; (9) Smugdesk; and (10) Wuhu Xingdian (collectively, "Respondents-In-Violation"). *See id.* The Commission also requested written submissions on remedy, the public interest, and bonding. *See id.*

Commission that "there is information in the record that could inferentially establish a commercially significant inventory for the domestic non-participating respondents." Response of the Office of Unfair Import Investigations to the Commission's Request for Written Submissions on Remedy, the Public Interest, and Bonding, at 10, EDIS Doc ID 694216 (Nov. 13, 2019) ("IASub"). OUII's response details that record evidence, which Varidesk presented in its summary determination motion as to each domestic Non-Participating Respondent. *See id.* at 13-18.

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On November 13, 2019, Varidesk and OUII submitted their briefs on remedy, the public interest, and bonding.⁶ On November 20, 2019, Varidesk submitted its reply brief on remedy, the public interest, and bonding.⁷ No other submissions were filed in response to the Notice.

II. DISCUSSION

As explained below, the Commission finds that the statutory requirements for a general exclusion from entry of infringing articles under paragraph 337(d)(2), 19 U.S.C. § 1337(d)(2), are met in this investigation. The Commission also finds support for issuing CDOs against the domestic Respondents-In-Violation but not the foreign Respondents-In-Violation. *See* 19 U.S.C. § 1337(f)(1). The Commission also finds that the public interest factors enumerated in paragraphs 337(d)(1) and (f)(1), 19 U.S.C. §§ 1337(d)(1), (f)(1), do not warrant denying relief. Accordingly, the Commission determines that the appropriate remedy in this investigation is: (1) a GEO prohibiting the unlicensed entry of certain platforms that sit on an existing desk or work surface and can be adjusted to different heights that infringe one or more of claims 1-2, 4, and 10-11 of the '703 patent; claims 11, 16, 18, and 22-26 of the '809 patent; claims 1, 4-5, 11-12, 26, and 33-36 of the '644 patent; and claims 20-21 and 40-50 of the '793 patent; and (2) CDOs directed against domestic Respondents Albeit, ATC Supply, Amazon Import, JV Products, Vanson Distributing, Vanson Group, and Smugdesk. The Commission further determines that the bond during the period of Presidential review pursuant to 19 U.S.C. § 1337(j) shall be in the amount of 100 percent of the entered value of the imported articles.

⁶ *See* Complainant Varidesk LLC's Submission on Remedy, the Public Interest, and Bonding, EDIS Doc ID 694170 (Nov. 13, 2019) ("CSub").

⁷ *See* Complainant Varidesk LLC's Reply Submission on Remedy, the Public Interest, and Bonding, EDIS Doc ID 695115 (Nov. 20, 2019) ("CReply").

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A. General Exclusion Order

Paragraph 337(d)(2) provides that “[t]he 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.” 19 U.S.C. § 1337(d)(2); *see also* 19 C.F.R. § 210.50(c).

The RD found that the evidence of record supports issuing a GEO. *See* RD at 35-38. With respect to subparagraph 337(d)(2)(A), the RD found that the “evidence adduced by Varidesk establishes that a GEO is necessary to prevent circumvention of an order limited to the products of named respondents.” *Id.* at 36. In particular, the RD found that “some of the Non-Participating Respondents obscure the sources of the Accused Products.” *Id.* For example, the RD explained that “Varidesk presented evidence of manufacturers who use the same image of a height-adjustable desk to sell products by different manufacturers.” *Id.* (citing Mot. Exs. 107-108). Moreover, the RD found there is also “evidence that internet-based sellers of height-adjustable desk platforms hide the source of infringing products by providing little or no physical contact information.” *Id.* (citing Mot. Exs. 105-106). The RD further found that “[m]any sellers also do not indicate the origin of their products on the shipping boxes, making it difficult to determine the source of the goods.” *Id.* (citing Mot. Ex. 46). Still further, the RD found that “some sellers ‘hijack’ other webpages to sell their products.” *Id.* For example, the RD explained that “Varidesk provided a printout from an amazon.com page for the Varidesk 49900 desk.” *Id.* (citing Mot. Ex. 104). However, the RD noted that “[o]n that page there is a link stating ‘[t]here is a newer model of this item,’ but the link is to a desk made by another

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company.” *Id.* (citing Mot. Ex. 104). Finally, the RD noted that “[t]here is also evidence that companies sell the same products under different product names, through different sellers, and provide no information on the origin of the product.” *Id.* (citing Mem. at 38; Mot. Exs. 25, 110-113).

With respect to subparagraph 337(d)(2)(B), the RD found that “[t]his is the fourth investigation to focus on Varidesk’s height-adjustable desks.” *Id.* at 37. The RD noted that in this investigation, thirty-one respondents were named, and the previous investigations named an additional thirteen respondents. *Id.* (citing Complaint; Inv. No. 337-TA-970 Complaint (EDIS Doc. ID 566554); Inv. No. 337-TA-992 Complaint (EDIS Doc. ID 576595); Inv. No. 337-TA-1054 Complaint (EDIS Doc. ID 607089)). The RD found this evidence of importation by forty-four respondents supports a finding that there is a pattern of violation. *Id.* (citing *Certain Coaxial Cable Connectors and Components Thereof and Products Containing Same*, Inv. No. 337-TA-650, Comm’n Op. at 58 (Mar. 31, 2010)). In addition, the RD found that “the ease of selling under multiple names and models supports a finding that there is a pattern of violation.” *Id.* (citing Mot. Exs. 25, 105-106, 110-113; see *Certain Cases for Portable Electronic Devices*, Inv. No. 337-TA-867/861, Comm’n Op. at 9 (July 10, 2014)).

In response to the Commission’s October 29, 2019 Notice, both Varidesk and OUII support the RD’s recommendation for the issuance of a GEO. See CSub at 16-20; IASub at 8. With regard to subparagraph 337(d)(2)(A), Varidesk explains that the Non-Participating Respondents are Chinese manufacturers and domestic re-sellers. CSub at 17. According to Varidesk, “[n]umerous entities are capable of shifting, at minimal expense, a substantial amount of their production to manufacture infringing height-adjustable desk platforms and components thereof for importation into the United States.” *Id.* (citing Mot. Statement of Undisputed

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Material Facts (“SOF”) ¶73). Varidesk explains that “[w]hen offered for sale and sold via the Internet, different sellers will use the same images of height-adjustable desk platforms to sell products of different manufacturers, in an effort to obfuscate the source of the product.” *Id.* (citing Mot. SOF ¶72; Mot. Exs. 107-108). Varidesk avers that “other internet sellers of height-adjustable desk platforms attempt to hide the source of infringing products by providing little or no physical contact information on their websites.” *Id.* (citing Mot. SOF ¶73; Exs. 105-106). Moreover, Varidesk avers that “[s]ellers do not always indicate the origin of their products on the shipping boxes, obscuring the source.” *Id.* (citing, *e.g.* Mot. Ex. 46). Further, Varidesk explains that “the websites of the manufacturers shift over time, and products appear and disappear seemingly at random, making it impossible to identify their products.” *Id.* at 17-18. Still further, Varidesk asserts “some sources ‘hijack’ Complainant’s Amazon.com webpages and falsely identify themselves as selling newer models of Complainant’s products.” *Id.* at 18 (Mot. Ex. 104). In addition, according to Varidesk, “some entities, such as Terminated Respondent Vision Mounts, sell the same products under different brands, through different resellers, without any indication of the origin of the products.” *Id.* (Compare Mot. Ex. 110 at 6-9 with Mot. Exs. 25, 111-113). Finally, Varidesk explains that “different Chinese suppliers appear to manufacture and sell the identical products.” *Id.* (Compare Mot. Ex. 25 with Mot. Exs. 114 at 18-76; 115 at 5-8; and 91).

With regard to subparagraph 337(d)(2)(B), in addition to the evidence discussed above, Varidesk also points to evidence of a clear pattern of violation of section 337. In particular, Varidesk explains that it has been forced to initiate three prior ITC investigations to protect its patent rights. *Id.* Varidesk asserts that the “industry for adjustable-height desk platforms is particularly susceptible to repeated violations of Section 337 because virtually all sales are made

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via the internet, which makes it difficult to both identify and locate manufacturers and sellers.” *Id.* at 19. Finally, Varidesk asserts that “business conditions suggest that foreign manufacturers may attempt to enter the United States with infringing products” because of the “established and growing demand in the United States for height-adjustable desk platforms” and the “comparatively low barrier to entry into the market.” *Id.* at 20.

Based on the record and the parties’ submissions, the Commission has determined to issue a GEO pursuant to 19 U.S.C. § 1337(d)(2). As discussed below, a GEO is necessary to prevent circumvention of an LEO, there is a pattern of violation, and it is difficult to identify the source of the infringing products.

1. High likelihood of circumvention

The record evidence shows difficulty in identifying the source of the infringing articles. For example, Varidesk presented evidence of manufacturers who use the same image of a height-adjustable desk to sell products by different manufacturers. RD at 36 (citing Mot. Exs. 107-108). Varidesk attached exhibits showing what appear to be the same product being sold under different names, through different sellers, and providing no information on the origin of the product. Mot. Exs. 25, 110-113. Given the multitude of foreign entities providing the same infringing goods, it is difficult to identify which entities are the actual source of the products.

The record evidence also demonstrates that companies utilizing ecommerce channels hide the source of infringing products by providing little or no physical contact information. RD at 36 (citing Mot. Exs. 105-106). Many sellers also do not indicate the origin of their products on the shipping boxes, making it difficult to determine the source of the goods. Mot. Ex. 46. In addition, the evidence shows that some sellers “hijack” other webpages, including those of Varidesk, to sell their products. RD at 36 (citing Mot. Ex. 104).

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The Commission has found the threat of circumvention sufficient to issue a GEO in investigations with similar facts. *See Certain LED Lighting Devices and Components Thereof*, Inv. No. 337-TA-1107, Comm'n Op. at 6-7 (Sep. 11, 2019); *Certain Cases for Portable Elec. Devices*, 337-TA-867/861, Comm. Op. at 9-10 (July 10, 2014); *Certain Toner Cartridges and Components Thereof*, Inv. No. 337-TA 918, Comm'n Op. at 6-8 (Oct. 1, 2015).

2. Widespread pattern of violation

The record evidence also establishes a widespread pattern of infringement. The present investigation named thirty-one (31) respondents and is the fourth investigation regarding Varidesk's patented height-adjustable desks. RD at 37. The previous three investigations, which involved one or more of the same patents asserted in the present investigation, named a total of thirteen (13) other respondents. The Commission has considered past investigations when evaluating a pattern of violation. *See Certain Inkjet Ink Supplies*, Inv. No. 337-TA-691, Comm'n Op. at 12 (Jan. 28, 2011) (“[w]ith respect to ‘pattern of violation,’ this is not the first section 337 investigation relating to ink cartridges”).

In addition to the evidence discussed above—including the fact that most sales are completed online and that manufacturers market and sell products under different names with little or no indication of origin—the ease of selling under multiple names and models also supports finding that there is a pattern of violation and a difficulty of identifying the source of infringing products. *See* RD at 37. Indeed, all of the named respondents in this investigation sold infringing products via the Internet. SOF ¶¶ 63-71. By conducting transactions through online marketplaces, such as Amazon.com and Alibaba.com, suppliers of infringing products are able to hide their identities. The Commission has found in other investigations that numerous online sales of infringing imported goods can support a pattern of violation of section 337. *See*

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Certain Loom Kits for Creating Linked Articles (“Loom Kits”), Inv. No. 337-TA-923, Comm’n Op., 2015 WL 5000874 at *9 (June 26, 2015).

3. Conclusion

Based on the evidence discussed above, the Commission finds the record evidence supports the issuance of a GEO prohibiting the unlicensed importation of certain platforms that sit on an existing desk or work surface and can be adjusted to different heights that infringe one or more of the Asserted Claims.

B. Cease and Desist Orders

The RD recommended that CDOs against the Non-Participating Respondents are not warranted. *See* RD at 38-40. In particular, the RD agreed with OUII that Varidesk did not provide evidence of significant domestic inventory. *Id.* at 39. The RD also agreed with OUII that Varidesk incorrectly argued that the facts of the complaint should be presumed true and that the Commission should infer a significant inventory based on the default standard even though no finding of default was requested in this investigation. *Id.* at 39-40. Therefore, the RD recommended that the Commission not issue CDOs against the Non-Participating Respondents. *Id.* at 40.

In their initial submissions to the Commission on remedy, both Varidesk and OUII changed their respective positions on CDOs compared to what they advocated before the ALJ. Before the ALJ, Varidesk requested CDOs against each of the Non-Participating Respondents in its motion for summary determination on violation. Varidesk’s motion included evidence from which significant domestic operations and U.S. inventories by the domestic Non-Participating Respondents may be inferred as discussed below. Before the Commission, Varidesk initially stated that it was not seeking a CDO against any respondent and did not challenge the RD’s

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recommendation.. See Mot. at 32; CSub at 13 n.4 and 15. In its reply submission, Varidesk renewed its request for CDOs against the domestic Non-Participating Respondents and not the foreign Non-Participating Respondents, stating that it joined OUII in requesting the CDOs. CReply at 2.

OUII did not support the issuance of CDOs against the Non-Participating Respondents before the ALJ. See RD at 34. However, in its submission to the Commission, OUII supported issuing CDOs against the domestic Non-Participating Respondents (*i.e.*, Albeit, ATC Supply, Amazon Import, JV Products, Vanson Distributing, Vanson Group, and Smugdesk) but not the foreign Non-Participating Respondents (*e.g.*, Shenzhen ATC and Ningbo GYL). IASub at 13-23.

The Commission has authority to issue a CDO directed to entities found to violate section 337, ordering them to cease and desist from engaging in the unfair methods or acts involved, under two paragraphs of section 337: paragraphs 337(f)(1) and 337(g)(1). The Commission has generally issued CDOs when, with respect to the imported infringing products, respondents maintain commercially significant inventories in the United States or have significant domestic operations that could undercut the remedy provided by an exclusion order. See, *e.g.*, *Certain Table Saws Incorporating Active Injury Mitigation Technology & Components Thereof*, Inv. No. 337-TA-965, Comm'n Op. at 4-6 (Feb. 1, 2017); *Certain Protective Cases & Components Thereof*, Inv. No. 337-TA-780, USITC Pub. No. 4405, Comm'n Op. at 28 (Nov. 19, 2012) (citing *Certain Laser Bar Code Scanners & Scan Engines, Components Thereof & Prods. Containing Same*, Inv. No. 337-TA-551, Comm'n Op. at 22 (June 24, 2007)). Complainants bear the burden on this issue. "A complainant seeking a cease and desist order must demonstrate, based on the record, that this remedy is necessary to address the violation found in

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the investigation so as to not undercut the relief provided by the exclusion order.” *Table Saws*, Comm’n Op. at 5 (citing *Certain Integrated Repeaters, Switches, Transceivers, & Prods. Containing Same*, Inv. No. 337-TA-435, USITC Pub. No. 3547 (Oct. 2002), Comm’n Op. at 27 (Aug. 16, 2002); *see also* H.R. REP. No. 100-40, at 160 (1987)).

In the case of named respondents in the United States who have been found in default or who have not participated in the investigation, the Commission has inferred commercially significant domestic inventories or significant domestic operations with respect to the infringing articles. *See, e.g., Certain Earpiece Devices and Components Thereof (“Earpiece Devices”)*, Inv. No. 337-TA-1121, Comm’n Op. at 41-42 (Nov. 8, 2019); *Certain Hand Dryers and Housing for Hand Dryers*, Inv. No. 337-TA-1015, Comm’n Op. at 24 (Oct. 30, 2017); *Certain Mobile Device Holders and Components Thereof (“Mobile Device Holders”)*, Inv. No. 337-TA-1028, Comm’n Op. at 27 (Mar. 22, 2018); *Certain Agricultural Tractors, Lawn Tractors, Riding Lawnmowers, and Components Thereof*, Inv. No. 337-TA-486, Comm’n Op. at 18 (Aug. 19, 2003); *Certain Rare-Earth Magnets and Magnetic Materials and Articles Containing Same (“Rare-Earth Magnets”)*, Inv. No. 337-TA-413, USITC Pub. No. 3307, Comm’n Op. at 17-18 (May 2000).

Here, the prerequisites of paragraph 337(g)(1) are not satisfied because the Non-Participating Respondents have not been formally found in default. *See Earpiece Devices*, Inv. No. 337-TA-1121, Comm’n Op. at 40. Therefore, as the RD correctly notes (at page 38), paragraph 337(f)(1) is the proper statutory provision for the Commission’s authority in issuing a CDO in this investigation. *See* 19 U.S.C. § 1337(f)(1) (“In addition to, or in lieu of, taking action under subsection (d) . . . the Commission may issue . . . an order . . . to cease and desist).

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The Commission, however, diverges from the RD's rationale for declining to infer commercially significant inventories on the part of the Non-Participating Respondents because they had not been found in default. *See* RD at 39-40. The RD's recommendation, which credited OUII's argument and reviewed the authorities Varidesk cited, focused on Commission Rule 210.16, which governs defaulted respondents. *See id.*; *see also* 19 C.F.R. § 210.16.

In the case of named respondents in the United States who failed to participate in an investigation, however, the Commission has also inferred significant inventories or domestic operations under Commission Rule 210.17 as a basis for issuing CDOs. *See* 19 C.F.R. § 210.17. (providing that the ALJ or the Commission may “draw adverse inferences and to issue findings of fact, [and] conclusions of law,” that are adverse to the party who fails to act); *Earpiece Devices*, Inv. No. 337-TA-1121, Comm'n Op. at 41-42 (inferring that defaulting and non-participating domestic respondents maintain inventory in the United States based on sales completed through Amazon, and issuing CDOs based on those inferences); *Rare-Earth Magnets*, Inv. No. 337-TA-413, Comm'n Op. at 17-18 (drawing an adverse inference of commercially significant U.S. inventories pursuant to Commission Rule 210.17 and issuing a CDO against a respondent that did not participate at the hearing nor file any posthearing submissions). Just as in cases involving respondents in default, discovery may be difficult, if not impossible, to obtain from non-participating parties, and hence there would be limited facts available in the record. *See Mobile Device Holders*, Inv. No. 337-TA-1028, Comm'n Op. at 23-24; *Rare-Earth Magnets*, Inv. No. 337-TA-413, Comm'n Op. at 18; *see also Certain Electrical Connectors and Products Containing Same*, Inv. No. 337-TA-374, USITC Pub. No. 2981, Comm'n Op. at 17 (Jul. 1996) (finding it appropriate to infer the existence of commercially significant domestic inventories where a respondent failed to provide evidence to the contrary). Thus, due to the domestic

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presence and lack of participation in the investigation, the Commission has found it appropriate in such cases to draw certain inferences from the record evidence in favor of a complainant in order to grant the complainant’s request for relief in the form of a CDO. *See id.*; *Earpiece Devices*, Inv. No. 337-TA-1121, Comm’n Op. at 41-42.

Here, the record evidence supports inferring commercially significant inventories and domestic operations as to the seven domestic Non-Participating Respondents as shown in the table below.⁸

Domestic Respondent-In-Violation	Evidence of Commercially Significant Inventory or Domestic Operations	Citation to Evidence
Albeit	Imports and sells in the United States infringing article under the name HeroDesk on Amazon.com. The desk is available for two-day shipping from an Amazon facility.	McIntyre Aff, ¶ 15; Mot. Exs. 11, 12.
ATC Supply	Imports and sells in the United States infringing article under the name ANNT Lumsing on Amazon.com. The desk is available for two-day shipping from an Amazon facility.	McIntyre Aff, ¶ 17; Mot. Exs. 16, 19, 20.
Amazon Import	Imports and sells in the United States infringing article under the name FEZIBO on Amazon.com. The desk is available for two-day shipping from an Amazon facility.	McIntyre Aff, ¶ 19; Mot. Exs. 22-25.

⁸ In Commissioner Schmidlein’s view, the inventory of record and the Non-Participating Respondents’ domestic operations (*e.g.*, sales activities) provide a basis for issuing the requested CDOs, regardless of their commercial significance. *See Certain Industrial Automation Sys. And Components Thereof Including Control Sys., Controllers, Visualization Hardware, Motion and Motor Control Sys., Networking Equipment, Safety Devices, and Power Supplies*, Inv. No. 337-TA-1074, Dissenting Views of Commissioner Schmidlein at 4 (Apr. 8, 2019) (EDIS Doc. ID No. 672456) (“it is unnecessary for the Commission to have to infer the existence of a commercially significant U.S. inventory in order to issue the CDOs[.]”); *Earpiece Devices*, Inv. No. 337-TA-1121, Comm’n Op. at 44 n.15 (“Commissioner Schmidlein has found that the presence of some infringing domestic inventory or domestic operations, regardless of commercial significance, provides a basis to issue a CDO.”).

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<p>JV Products, Vanson Distributing, and Vanson Group⁹</p>	<p>Imports and sells in the United States infringing article under the name Logix on internet sites including Amazon.com, Groupon.com, and ebay.com. The desk is available for two-day shipping from an Amazon facility.</p>	<p>McIntyre Aff, ¶ 22; Mot. Exs. 42, 44-46.</p>
<p>Smugdesk</p>	<p>Imports and sells in the United States infringing article under the name ANNT Lumsing desk on Amazon.com. The desk is available for three-day shipping from an Amazon facility.</p>	<p>McIntyre Aff, ¶ 25; Mot. Exs. 49-50.</p>

As noted above, Varidesk shifted positions with respect to CDOs. Before the ALJ, Varidesk requested CDOs. Its motion included the evidence referenced in the Table herein. Before the Commission, Varidesk initially indicated it did not request this remedy, but in its reply submission, it renewed its CDO request citing the evidence it presented before the ALJ. The Commission may decline to issue CDOs after a complainant withdraws its request for such orders. *See Certain Composite Aerogel Insulation Materials and Methods for Manufacturing the Same (“Aerogel Insulation”)*, Inv. No. 337-TA-1003, Comm’n Op. at 1-2, 61 (Feb. 22, 2018), *aff’d* 936 F.3d 1353 (Fed. Cir. 2019) (finding the appropriate remedy for violation of section 337 is a limited exclusion order after complainant withdrew its request for a CDO before the ALJ); *Certain Miniature Plug-In Blade Fuses (“Blade Fuses”)*, Inv. No. 337-TA-114, USITC Pub. No. 1337, Comm’n Op. at 3 n.7 and 41 n.203 (Jan. 1, 1983) (finding the appropriate remedy for violation of section 337 is a GEO and that CDOs were “unnecessary” based on complainant’s withdrawal of its request for a CDO before the Commission and due to a lack of evidentiary support). Parties are to state their positions on remedy in their initial submissions pursuant to the Commission’s Federal Register notice requesting briefing on remedy, in order to ensure that

⁹ The evidence shows that all three companies are related, located at the same address in the United States and under common ownership. ID at 20; Mot. Exs. 32-41.

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other parties have an opportunity to present their views in response to the remedy request. But here, the domestic Respondents-In-Violation have not participated in any aspect of this investigation and in particular did not challenge Complainant Varidesk's request for CDOs before the ALJ or OUII's recommendation in support of CDOs in its initial submission to the Commission. Nor did Varidesk dispute the record support for CDOs. Thus, domestic Respondents-In-Violation had numerous opportunities to argue against CDOs. Declining to issue the CDOs would allow the domestic Respondents-In-Violation to liquidate, with impunity, their infringing inventory to the detriment of Varidesk. Given these particular circumstances, and in view of Commission Rule 210.17 and the record evidence showing that CDOs are appropriate in this case, the Commission determines to issue CDOs against the domestic Respondents-In-Violation.¹⁰

¹⁰ Commissioner Stayin and Chairman Johanson would not issue CDOs in this investigation. Both Varidesk and OUII changed their respective positions on CDOs in their submissions to the Commission on remedy. Despite requesting CDOs against each of the Non-Participating Respondents in its motion for summary determination on violation before the ALJ; before the Commission, Varidesk explicitly states that it is not seeking a CDO against any respondent and expressly chose not to challenge the RD's recommendation that the Commission should not issue CDOs against any of the Non-Participating Respondents in its initial submission. Mot. at 32; CSub at 13 n.4 and 15 ("Varidesk confirms that it is not currently seeking a CDO against any respondents."). However, in its submission to the Commission, OUII supported issuing CDOs against the domestic Non-Participating Respondents. CReply at 2. But Commission precedent remains clear that Varidesk, not OUII, bears the burden on this issue. Thus, Commissioner Stayin and Chairman Johanson would decline to issue CDOs in this investigation because Varidesk has withdrawn its request for such orders. See CSub at 13 n.4 and 15; *Aerogel Insulation*, Inv. No. 337-TA-1003, Comm'n Op. at 1-2, 61, *aff'd* 936 F.3d 1353 (Fed. Cir. 2019) (finding the appropriate remedy for violation of section 337 is a limited exclusion order after complainant withdrew its request for a CDO before the ALJ); *Blade Fuses*, Inv. No. 337-TA-114, Comm'n Op. at 3 n.7 and 41 n.203 (finding the appropriate remedy for violation of section 337 is a GEO after complainant withdrew its request for a CDO before the Commission). Varidesk's attempt to adopt OUII's submission does not (and cannot) reinstate Varidesk's request for the CDOs. The issuance of CDOs in this investigation creates a precedent allowing a complainant to waive arguments at the Commission level, yet still prevail on the same waived argument it belatedly attempts to resurrect. This precedent encourages parties to shift and hide their arguments both before the ALJ and the Commission and creates

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With respect to the foreign Non-Participating Respondents, the Commission notes that Varidesk did not request CDOs against the three foreign Respondents-In-Violation in its initial or reply submissions. Thus, the Commission determines to issue CDOs against the domestic Respondents-In-Violation but not the foreign Respondents-In-Violation. *See* 19 U.S.C. § 1337(f)(1).

C. Public Interest

Before issuing any remedial order, the Commission must “consider[] the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers.” *See, e.g.*, 19 U.S.C. § 1337(d)(1). “[T]he statute does not require the Commission to determine that a remedial order would advance the public interest factors but rather requires the Commission to consider whether issuance of such an order will adversely affect the public interest factors.” *Loom Kits*, Inv. No. 337-TA-923, Comm’n Op., 2015 WL 5000874, at *9 (citation omitted).

OUII and Varidesk submit that “the public interest will not be adversely affected by the issuance of the recommended remedy in this Investigation.” IASub at 2; *see* CSub at 21-22. As noted by Varidesk and OUII, the Accused Products in this case—height-adjustable desk platforms that infringe Varidesk’s Asserted Patents—are not the type of articles that raise significant public health and welfare concerns. IASub at 11-12; CSub at 21-22 (“The Accused Products . . . are not necessary to fulfill any health, safety, or welfare needs, such as medical devices, pharmaceuticals, or military hardware important to national security and defense.”).

uncertainty for existing and future litigants before the Commission. We note that nothing prevents Varidesk from later seeking CDOs if the GEO alone proves unsatisfactory.

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Moreover, Varidesk asserts that it could easily replace the market for the Accused Products should they be excluded and that it has the capacity to do so. CSub at 22. Varidesk states that non-infringing and licensed height-adjustable desk platforms are provided by numerous other companies, including the Respondents that have settled with Varidesk. *Id.* In view of the availability of Varidesk's height-adjustable desks, OUII argues that "there is no evidence that the proposed remedial orders would be expected to have a significant impact on either competitive conditions in the United States or U.S. consumers." IASub at 12. Finally, OUII states that "the products sold by non-participating parties are manufactured abroad and so a remedial order would not impact competitive conditions in the United States or U.S. consumers." *Id.* Varidesk submits that its requested relief, therefore, would have a negligible impact on U.S. consumers. CSub at 22. In addition, Varidesk argues that a remedial order is unlikely to cause an increase in customer cost because Varidesk already sells at a price point above the Accused Products. *Id.*

The record in this investigation contains no evidence that a GEO or CDO would adversely affect 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. *See* 19 U.S.C. §§ 1337(d)(1), (f)(1). The Commission requested submissions from the public with respect to the public interest, but no third party responded to the Commission's Notice. *See* 84 *Fed. Reg.* 59417-418 (Nov. 4, 2019). In addition, Varidesk has a domestic industry and it and its licensees can readily replace the products at issue with their own product. Thus, based on the record of this investigation, the Commission determines that the public interest does not preclude the issuance of a GEO and CDOs.

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D. Bonding

During the 60-day period of Presidential review under 19 U.S.C. § 1337(j), “articles directed to be excluded from entry under subsection (d) . . . shall . . . be entitled to entry under bond prescribed by the Secretary in an amount determined by the Commission to be sufficient to protect the complainant from any injury.” *See* 19 U.S.C. § 1337(j)(3). “The Commission typically sets the bond based on the price differential between the imported infringing product and the domestic industry article or based on a reasonable royalty. However, where the available pricing or royalty information is inadequate due to the default of the respondent, the bond may be set at one hundred (100) percent of the entered value of the infringing product.” *Loom Kits*, Inv. No. 337-TA-923, Comm’n Op., 2015 WL 5000874, at *11 (citations omitted).

The RD recommended that the bond amount be set at 100 percent of the entered value of the accused products during the period of Presidential review in the event a violation of section 337 is found. RD at 42. OUII and Varidesk agreed that the bond should be set at 100 percent. IASub at 2; CSub at 24. Varidesk explains that “[a]lthough an appropriate bond could be calculated based on the difference between the average manufacturers’ suggested retail price for the Varidesk domestic industry products and the Respondents’ infringing products, since the Non-Participating Respondents did not participate in this Investigation and, therefore, provided no discovery relating to pricing or royalty information, such a calculation would be necessarily imprecise.” CSub at 24. Further, Varidesk argues that the “Accused Products are sold at various prices and likely differ depending on customer and volume purchased.” *Id.* Therefore, Varidesk argues “inasmuch as no reliable price differentiation can be determined, the Commission should set a bond rate at 100% of the entered value of the infringing products,” as recommended by the ALJ. *Id.*

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Based on the record evidence, the Commission has determined to set the bond at 100 percent of the entered value of the infringing products during the period of Presidential review. Here, Respondents-In-Violation chose not to participate in this investigation and provided no discovery relating to pricing. As noted by Varidesk, the record shows the sales of imported infringing products were made online at various price points and quantities, making the calculation of an average price differential difficult. The Commission has set the bond at 100 percent in similar circumstances. *See Loom Kits*, Inv. No. 337-TA-923, Comm'n Op., 2015 WL 5000874, at *12 (setting the bond at 100 percent where “the record [] shows that a large number of infringing loom kits are sold on the Internet at different prices,” “the defaulting respondents in th[e] investigation provided no discovery, including discovery about pricing,” and “[t]he record [] lacks a reliable comparison of the price of the domestic industry products to the price of the infringing products”). Accordingly, the Commission finds the appropriate bond amount is 100 percent of the entered value of the accused products.

III. CONCLUSION

For the foregoing reasons, the Commission issues a GEO prohibiting the unlicensed importation of certain platforms that sit on an existing desk or work surface and can be adjusted to different heights that infringe one or more of claims 1-2, 4, and 10-11 of the '703 patent; claims 11, 16, 18, and 22-26 of the '809 patent; claims 1, 4-5, 11-12, 26, and 33-36 of the '644 patent; and claims 20-21 and 40-50 of the '793 patent, and CDOs against Respondents Albeit, ATC Supply, Amazon Import, JV Products, Vanson Distributing, Vanson Group, and Smugdesk. The Commission finds that the public interest does not preclude issuance of these remedial orders. The Commission sets the bond during the period of Presidential review at 100 percent of the entered value of the infringing products.

PUBLIC VERSION

By order of the Commission.

A handwritten signature in black ink, appearing to read "Lisa R. Barton". The signature is stylized and cursive.

Lisa R. Barton
Secretary to the Commission

Issued: February 7, 2020

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **Commission Opinion** has been served by hand upon the Commission Investigative Attorney, **Andrew Beverina, Esq.**, and the following parties as indicated, on **February 7, 2020**.



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

On Behalf of Complainants Varidesk LLC :

Adam R. Hess, Esq.
SQUIRE PATTON BOGGS
2550 M Street, NW
Washington D.C. 20037

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

Respondents:

Albeit LLC
1351 Broadway St.
San Francisco, CA 94109

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

ATC Supply LLC
12604 Canterbury Dr.
Plainfield, IL 60585-3000

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

Shenzhen Atc Network Scienology Co., Ltd.
Room 1902, Zian Business Building,
The Xinan Second Road, Baoan District
Shenzhen, Guangdong 518000 China

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

Amazon Import Inc.
9910 Baldwin Place
El Monte, CA 91731

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

**CERTAIN HEIGHT-ADJUSTED DESK PLATFORMS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1125

Certificate of Service – Page 2

Ningbo GYL International Trading Co., Ltd.
Mingbin Road 228
Luoto Area
Zhenhai 315202, Ningbo, Zhejiang, China

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

JV Products Inc.
1825 Houret Ct.
Milpitas, CA 95035

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

Vanson Distributing, Inc.
1825 Houret Ct.
Milpitas, CA 95035

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

Vanson Group, Inc.
1825 Houret Ct.
Milpitas, CA 95035

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

Haining Orizeal Import and Export Co., Ltd.
4th Floor, Building B, Jinhui Plaza
No.486, South Hai Chang Road
Haining 314400, China

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

Smugdesk, LLC
14839 Proctor Avenue, Suite D
La Puente, CA 91746

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

Wuhu Xingdian Industrial Co., Ltd.
No. 168 Xici 5th Rd.
Mechanical Industrial Zone
Wuhu, Anhui, China

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

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN HEIGHT-ADJUSTABLE
DESK PLATFORMS AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1125

**NOTICE OF COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL
DETERMINATION GRANTING IN PART A MOTION FOR SUMMARY
DETERMINATION; SCHEDULE FOR FILING WRITTEN SUBMISSIONS 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 (“Commission”) has determined not to review the presiding administrative law judge’s (“ALJ”) initial determination (“ID”) (Order No. 33) granting in part a summary determination on violation of section 337 by certain non-participating respondents in the above-captioned investigation. The Commission is requesting briefing from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Ronald A. Traud, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-3427. 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 Information System (“EDIS”) (<https://edis.usitc.gov>). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On July 30, 2018, the Commission instituted this investigation based on a complaint and supplements thereto filed on behalf of Varidesk LLC of Coppell, Texas (“Varidesk”). 83 FR 36621 (July 30, 2018). 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 height-adjustable desk platforms and components thereof by reason of

infringement of one or more claims of U.S. Patent Nos. 9,113,703 (“the ’703 patent”); 9,277,809 (“the ’809 patent”); 9,554,644 (“the ’644 patent”); and 9,924,793 (“the ’793 patent”). *Id.* The complaint further alleges that an industry in the United States exists as required by section 337. *Id.*

The Commission’s notice of investigation named thirty-one respondents: (1) Albeit LLC of San Francisco, California (“Albeit”); (2) ATC Supply LLC of Plainfield, Illinois (“ATC Supply”); (3) Shenzhen Atc Network Scienology CO., LTD. of Guangdong, China (“Shenzhen ATC”); (4) Best Choice Products of Ontario, California (“Best Choice”); (5) Huizhou Chang He Home Supplies Co., Ltd. of Guangdong, China (“Chang He”); (6) Dakota Trading, Inc. of Emerson, New Jersey (“Dakota”); (7) Designa Inc. of Guangdong, China (“Designa”); (8) Designa Group, Inc. of El Dorado Hills, California (“Designa Group”); (9) Eureka LLC of El Dorado Hills, California (“Eureka”); (10) LaMountain International Group LLC of Elk Grove, California (“LaMountain”); (11) Amazon Import Inc. of El Monte, California (“Amazon Imports”); (12) Hangzhou Grandix Electronics Co., Ltd. of Zhejiang, China (“Grandix”); (13) Ningbo GYL International Trading Co., Ltd. of Zhejiang, China (“Ningbo GYL”); (14) Knape & Vogt Manufacturing Co. of Grand Rapids, Michigan (“Knape & Vogt”); (15) JV Products Inc. of Milpitas, California (“JV Products”); (16) Vanson Distributing, Inc. of Milpitas, California (“Vanson Distributing”); (17) Vanson Group, Inc. of Milpitas, California (“Vanson Group”); (18) S.P. Richards Co. DBA Lorell of Smyrna, Georgia (“Lorell”); (19) Nantong Jon Ergonomic Office Co., Ltd. of Jiangsu, China (“Nantong Jon”); (20) Jiangsu Omni Industrial Co., Ltd. of Jiangsu, China (“Jiangsu Omni”); (21) OmniMax USA, LLC of Anna, Texas (“OmniMax USA”); (22) Haining Orizeal Import and Export Co., Ltd. of Zhejiang, China (“Haining Orizeal”); (23) Qidong Vision Mounts Manufacturing Co., Ltd. of Jiangsu, China (“Vision Mounts”); (24) Hangzhou KeXiang Keji Youxiangongsi of Hangzhou, China (“Hangzhou KeXiang”); (25) Smugdesk, LLC of La Puente, California (“Smugdesk”); (26) Venditio Group, LLC of Elkton, Florida (“Venditio”); (27) Versa Products Inc. of Los Angeles, California (“Versa”); (28) Victor Technology, LLC of Bolingbrook, Illinois (“Victor”); (29) CKnapp Sales, Inc. DBA Vivo of Goodfield, Illinois (“Vivo”); (30) Wuhu Xingdian Industrial Co., Ltd. of Anhui, China (“Wuhu Xingdian”); and (31) Wuppessen, Inc. of Ontario, California (“Wuppessen”). *Id.* The Office of Unfair Import Investigations (“OUII”) was also named as a party in this investigation. *Id.*

During the course of the investigation, Varidesk settled with the following respondents: Venditio, Jiangsu Omni, OmniMax USA, Knape & Vogt, Wuppessen, Victor, Versa, Designa, Designa Group, Eureka, Chang He, Vision Mounts, Vivo, Nantong Jon, Best Choice, Grandix, Hangzhou KeXiang, Lorell, and Dakota. Order No. 7, *unreviewed*, Notice (Sept. 18, 2018); Order No. 11, *unreviewed*, Notice (Sept. 25, 2018); Order No. 12, *unreviewed*, Notice (Oct. 4, 2018); Order No. 13, *unreviewed*, Notice (Oct. 4, 2018); Order No. 16, *unreviewed*, Notice (Nov. 9, 2018); Order No. 18, *unreviewed*, Notice (Nov. 29, 2018); Order No. 20, *unreviewed*, Notice (Feb. 21, 2019); Order No. 23, *unreviewed*, Notice (Mar. 12, 2019); Order No. 25, *unreviewed*, Notice (Apr. 5, 2019); Order No. 31, *unreviewed*, Notice (May 16, 2019). In addition, the investigation terminated as to LaMountain based on a consent order stipulation. Order No. 15, *unreviewed*, Notice (Oct. 22, 2018). The investigation has also previously terminated as to certain claims of each asserted patent. Order No. 30, *unreviewed*, Notice (May 13, 2019).

On April 11, 2019, Varidesk moved for summary determination of a violation of section 337 as to the remaining eleven respondents, who were served with a copy of the complaint, but have not filed a response or participated in the investigation. On April 24, 2019, Varidesk filed a supplement to the motion. The remaining respondents (collectively, “the Non-Participating Respondents”) are (1) Albeit, (2) ATC Supply, (3) Shenzhen ATC, (4) Amazon Imports, (5) Ningbo GYL, (6) JV Products, (7) Vanson Distributing, (8) Vanson Group, (9) Haining Orizeal, (10) Smugdesk, and (11) Wuhu Xingdian. On April 26, 2019, OUII filed a response supporting Varidesk’s motion in substantial part.

On September 13, 2019, the ALJ issued Order No. 33, the subject ID, and his Recommended Determination (“RD”) on remedy and bonding. The ID grants the motion in part. Specifically, the ALJ found, *inter alia*, (1) that Varidesk established the importation requirement as to each Non-Participating Respondent, except for Haining Orizeal; (2) that Varidesk established infringement as to all accused products and all remaining asserted claims (claims 1–2, 4, and 10–11 of the ’703 patent; claims 11, 16, 18, and 22–26 of the ’809 patent; claims 1, 4–5, 11–12, 26, and 33–36 of the ’644 patent; and claims 20–21 and 40–50 of the ’793 patent); and (3) that Varidesk satisfied the domestic industry requirement for each asserted patents. In addition, the ALJ recommended that the Commission issue a general exclusion order and impose a 100 percent bond during the period of Presidential review. The ALJ also recommended the Commission not issue cease and desist orders directed to the Non-Participating Respondents.

Having examined the record in this investigation, including the ID, the Commission has determined not to review the ID. Thus, the Commission has determined that there is a violation of section 337 as to Albeit, ATC Supply, Shenzhen ATC, Amazon Imports, Ningbo GYL, JV Products, Vanson Distributing, Vanson Group, Smugdesk, and Wuhu Xingdian, but not as to Haining Orizeal.

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, Comm’n Op. at 7–10 (December 1994). In addition, if a party seeks issuance of any cease and desist orders, the written submissions should address that request 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 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, 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.
3. Please discuss any other basis upon which the Commission could enter a cease and desist order.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005. 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

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

Complainant and OUII are requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the date that the patents expire and the HTSUS numbers under which the accused products are imported. Complainant is further requested to supply the names of known importers of the products at issue in this investigation. The written submissions and proposed remedial orders must be filed no later than close of business on **November 13, 2019**. Reply submissions must be filed no later than the close of business on **November 20, 2019**. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to Commission Rule 210.4(f), CFR 210.4(f). Submissions should refer to the investigation number ("Inv. No. 337-TA-1125") 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_electronic_filing.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted-non-confidential version of the document must also be filed simultaneously with any confidential filing. 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, solely for cybersecurity purposes (all contract personnel will sign appropriate nondisclosure agreements). 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 CFR part 210).

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: October 29, 2019

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served by hand upon the Commission Investigative Attorney, **Andrew Beverina, Esq.**, and the following parties as indicated, on **October 30, 2019**.



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

On Behalf of Complainants Varidesk LLC :

Adam R. Hess, Esq.
VENABLE LLP
600 Massachusetts Avenue, NW
Washington, DC 20001

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

Respondents:

Albeit LLC
1351 Broadway St.
San Francisco, CA 94109

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

ATC Supply LLC
12604 Canterbury Dr.
Plainfield, IL 60585-3000

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

Shenzhen Atc Network Scienology Co., Ltd.
Room 1902, Zian Business Building,
The Xinan Second Road, Baoan District
Shenzhen, Guangdong 518000 China

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

Amazon Import Inc.
9910 Baldwin Place
El Monte, CA 91731

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

CERTAIN HEIGHT-ADJUSTED DESK PLATFORMS AND COMPONENTS THEREOF

Inv. No. 337-TA-1125

Certificate of Service – Page 2

Ningbo GYL International Trading Co., Ltd.
Mingbin Road 228
Luoto Area
Zhenhai 315202, Ningbo, Zhejian, China

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

JV Products Inc.
1825 Houret Ct.
Milpitas, CA 95035

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

Vanson Distributing, Inc.
1825 Houret Ct.
Milpitas, CA 95035

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

Vanson Group, Inc.
1825 Houret Ct.
Milpitas, CA 95035

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

Haining Orizeal Import and Export Co., Ltd.
4th Floor, Building B, Jinhui Plaza
No.486, South Hai Chang Road
Haining 314400, China

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

Smugdesk, LLC
14839 Proctor Avenue, Suite D
La Puente, CA 91746

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

Wuhu Xingdian Industrial Co., Ltd.
No. 168 Xici 5th Rd.
Mechanical Industrial Zone
Wuhu, Anhui, China

- 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 HEIGHT-ADJUSTABLE
DESK PLATFORMS AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1125

**ORDER NO. 33: INITIAL DETERMINATION GRANTING IN PART
COMPLAINANT'S MOTION FOR SUMMARY
DETERMINATION THAT A VIOLATION OF SECTION 337 HAS
OCCURRED AND RECOMMENDED DETERMINATION ON
REMEDY AND BONDING**

(September 13, 2019)

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I. INTRODUCTION

A. Institution of the Investigation and Procedural History

By publication of a notice in the *Federal Register* on July 30, 2018, 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 products identified in paragraph (2) by reason of infringement of one or more of claims 1-4 and 6-11 of the '703 patent [U.S. Patent No. 9,113,703]; claims 1-3, 5-18, and 22-28 of the '809 patent [U.S. Patent No. 9,277,809]; claims 1-15, 19, 21-23, 25-26, and 28-36 of the '644 patent [U.S. Patent No. 9,554,644]; and claims 1-11 and 20-50 of the '793 patent [U.S. Patent No. 9,924,793]; and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

83 Fed. Reg. 36621 (July 20, 2018).

The Commission named as complainant Varidesk LLC (“Varidesk” or “Complainant”).

Id.

The Commission named the following companies as respondents: Albeit LLC (“Albeit”); ATC Supply LLC (“ATC Supply”); Shenzhen ATC Network Scienology Co., Ltd. (“Shenzhen ATC”); Best Choice Products (“Best Choice”); Huizhou Chang He Home Supplies Co., Ltd. (“Chang He”); Dakota Trading, Inc. (“Dakota”); Designa Inc. (“Designa”); Designa Group, Inc. (“Designa Group”); Eureka LLC (“Eureka”); LaMountain International Group LLC (“LaMountain”); Amazon Imports Inc. (“Amazon Imports”); Hangzhou Grandix Electronics Co., Ltd. (“Grandix”); Ningbo GYL International Trading Co., Ltd. (“Ningbo GYL”); Knappe & Vogt Manufacturing Co. (“Knappe & Vogt”); JV Products Inc. (“JV Products”); Vanson Distributing, Inc. (“Vanson Distributing”); Vanson Group, Inc. (“Vanson Group”); S.P. Richards Co. d/b/a

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Lorell (“Lorell”); Nantong Jon Ergonomic Office Co., Ltd. (“Nantong Jon”); Jiangsu Omni Industrial Co., Ltd. (“Jiangsu Omni”); OmniMax USA, LLC (“OmniMax USA”); Haining Orizeal Import and Export Co., Ltd. (“Haining Orizeal”); Qidong Vision Mounts Manufacturing Co., Ltd. (“Vision Mounts”); Hangzhou KeXiang Keji Youxiangong (“Hangzhou KeXiang”); Smugdesk, LLC (“Smugdesk”); Venditio Group, LLC (“Venditio”); Versa Products Inc. (“Versa”); Victor Technology, LLC (“Victor”); CKnapp Sales, Inc. d/b/a Vivo (“Vivo”); Wuhu Xingdian Industrial Co., Ltd. (“Wuhu Xingdian”); and Wuppessen, Inc. (“Wuppessen”). *Id.*

The Office of Unfair Import Investigations (“Staff”) was also named as a party to this investigation. *Id.*

Order No. 9 issued on September 6, 2018, and set the target date for this investigation at 16 months, to December 2, 2019. Due to a lapse in appropriations leading to a 35-day shutdown of operations, the target date was subsequently extended by six weeks to January 13, 2020, thereby making the final initial determination (“ID”) on violation due no later than September 13, 2019. Order No. 24 (Feb. 21, 2019), *unreviewed*, Notice (March 11, 2019).

On August 16, 2018, Varidesk and Venditio filed a joint motion to terminate the investigation as to Venditio. EDIS Doc. ID 653221. An ID granting the motion issued on August 28, 2018. Order No. 7, *unreviewed*, Notice (Sept. 18, 2018).

On August 16, 2018, Varidesk, Jiangsu Omni, and OmniMax USA filed a joint motion to terminate the investigation as to Jiangsu Omni and OmniMax based on a settlement agreement. EDIS Doc. ID 654228. An ID granting the motion issued on September 10, 2018. Order No. 11, *unreviewed*, Notice (Sept. 25, 2018).

On September 5, 2018, Varidesk and Knape & Vogt filed a joint motion to terminate the investigation as to Knape & Vogt based on a settlement agreement. EDIS Doc. ID 654939. An

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ID granting the motion issued on September 20, 2018. Order No. 12, *unreviewed*, Notice (Oct. 4, 2018).

Also on September 5, 2018, Varidesk and LaMountain filed a joint motion to terminate the investigation as to LaMountain based on a consent order stipulation. EDIS Doc. ID 654941. An ID granting the motion issued on September 24, 2018. Order No. 13, *unreviewed*, Notice (Oct. 4, 2018).

On September 19, 2018, Varidesk and Wuppessen filed a joint motion to terminate the investigation as to Wuppessen based on a settlement agreement. EDIS Doc. ID 656225. An ID granting the motion issued on October 2, 2018. Order No. 15, *unreviewed*, Notice (Oct. 22, 2018).

On September 26, 2018, Varidesk and Victor filed a joint motion to terminate the investigation as to Victor based on a settlement agreement. EDIS Doc. ID 656993. An ID granting the motion issued on October 17, 2018. Order No. 16, *unreviewed*, Notice (Oct. 22, 2018).

On October 19, 2018, Varidesk and Versa filed a joint motion to terminate the investigation as to Versa based on a settlement agreement. EDIS Doc. ID 659346. An ID granting the motion issued on November 1, 2018. Order No. 18, *unreviewed*, Notice (Nov. 29, 2018).

On December 12, 2018, Varidesk and Designa, Designa Group, and Eureka filed a joint motion to terminate the investigation as to Designa, Designa Group, and Eureka based on a settlement agreement. EDIS Doc. ID 663762. An ID granting the motion issued on January 29, 2019. Order No. 20, *unreviewed*, Notice (Feb. 21, 2019).

PUBLIC VERSION

On February 4, 2019, Varidesk and Chang He filed a joint motion to terminate the investigation as to Chang He based on a settlement agreement. EDIS Doc. ID 665843. An ID granting the motion issued on March 6, 2019. Order No. 23, *unreviewed*, Notice (Mar. 12, 2019).

On February 19, 2019, Varidesk and respondents Vision Mounts, Vivo, Nantong Jon, Best Choice, Grandix, Hangzhou KeXiang, and Lorell filed a joint motion to terminate the investigation as to those respondents based on a settlement agreement. EDIS Doc. ID 667549. An ID granting the motion issued on March 6, 2019. Order No. 25, *unreviewed*, Notice (Apr. 5, 2019).

On April 19, 2019, Varidesk and Dakota filed a joint motion to terminate the investigation as to Dakota based on a settlement agreement. EDIS Doc. ID 673599. An ID granting the motion issued on April 30, 2019. Order No. 30, *unreviewed*, Notice (May 16, 2019).¹

The parties submitted claim construction briefs addressing certain terms in the asserted patents and participated in a one-day *Markman* hearing on December 10, 2018. The parties filed a notice on March 7, 2019, informing the administrative law judge that the term “member” no longer needed to be construed due to withdrawal of all asserted claims in which that term appears. EDIS Doc. ID 669341. Order No. 27 construing the disputed claims issued on April 1, 2019.

¹ The respondents remaining in this investigation are the following: Albeit, ATC Supply, Shenzhen ATC, Amazon Imports, Ningbo GYL, JV Products, Vanson Distributing, Vanson Group, Haining Orizeal, Smugdesk, and Wuhu Xingdian (collectively, “Non-Participating Respondents”). All named respondents were served with a copy of the complaint, but none of the Non-Participating Respondents filed a response or participated in the investigation. *See* 19 C.F.R. § 210.16(a)(4); *see also* Staff Resp. at 4 n.7.

PUBLIC VERSION

On April 11, 2019, Varidesk filed a motion seeking termination of this investigation as to the following claims based on withdrawal of the complaint:

- U.S. Patent No. 9,113,703: claims 3 and 6-9;
- U.S. Patent No. 9,277,809: claims 1-3, 5-10, 12-15, 17, and 27-28;
- U.S. Patent No. 9,554,644: claims 2, 3, 6-10, 13-15, 19, 21-23, 25, and 28-32; and
- U.S. Patent No. 9,924,793: claims 1-11 and 22-39.

EDIS Doc. ID 672774. An ID granting the motion issued on April 24, 2019. Order No. 30, *unreviewed*, Notice (May 13, 2019).²

B. The Pending Motion for Summary Determination

On April 11, 2019, Varidesk filed the pending Motion for Summary Determination Against the Non-Participating Respondents (“Mot.”), an accompanying memorandum (“Mem.”), and a statement of undisputed material facts in support thereof (“SOF”). Motion Docket No. 1125-028. Varidesk subsequently filed a supplement (“Suppl.”) (EDIS Doc. ID 674049) to its motion.

With the pending motion, Varidesk seeks the following:

(1) an initial determination that [the Non-Participating Respondents] have violated Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, through their importation into the United States, sale for importation, and/or sale within the United States after importation of certain height-adjustable desk platforms and components thereof (collectively, “Accused Products”), that infringe one or more of four U.S. patents owned by Varidesk . . . ;

² The following claims remain asserted in this investigation: claims 1, 2, 4, 10, and 11 of the ’703 patent; claims 11, 16, 18, and 22-26 of the ’809 patent; claims 1, 4, 5, 11, 12, 26, and 33-36 of the ’644 patent; and claims 20, 21, 40-44, and 45-50 of the ’793 patent. The ’703, ’809, ’644, and ’793 patents will collectively be referred to as the “Asserted Patents.”

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(2) an initial determination that Varidesk has satisfied both the technical and economic prongs of the domestic industry requirement of 19 U.S.C. § 1337(a)(3); and

(3) a determination recommending that the Commission issue a general exclusion order pursuant to 19 U.S.C. § 1337(d)(2) (and in no event less than a limited exclusion order against the Non-Participating Respondents under 19 U.S.C. § 1337(d)(1)); issue cease and desist orders pursuant to 19 U.S.C. § 1337(f)(1) directed to the Non-Participating Respondents; and set the bond during the Presidential review period at 100 percent of the entered value of the Accused Products.

Mot. at 1-2.

None of the Non-Participating Respondents filed a response to the pending motion for summary determination.³

The Staff filed a response (“Staff Resp.”) supporting the requested relief for the most part. The Staff did not agree that a violation of section 337 should be found as to respondent Haining Orizeal, or that cease and desist orders should be issued as to the Non-Participating Respondents in the event a violation of section 337 is found.

C. The Private Parties

1. Complainant Varidesk

Varidesk is a Texas limited liability corporation having its headquarters at 1221 South Belt Line Road, #500, Coppell, Texas 75019. Mem. at 1. Varidesk is in the business of designing and manufacturing height-adjustable desks. *See id.* Varidesk is the owner by assignment of the four patents asserted in this investigation. Mot. Ex. 1 (“703 patent”); Mot. Ex. 2 (“809 patent”); Mot. Ex. 3 (“644 patent”); Mot. Ex. 4 (“793 patent”).

³ Varidesk mailed service copies of the pending motion to the Non-Participating Respondents on April 24, 2019. EDIS Doc. ID 674099 (Amended Certificate of Service).

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2. Respondent Albeit

Albeit is a limited liability company organized and existing under the laws of California with a principal place of business at 1351 Broadway Street, San Francisco, California 94109. Complaint at 7. Albeit imports into the United States and/or sells within the United States after importation height-adjustable desk platforms and components thereof under the name “HeroDesk.” *Id.* The desks are manufactured by, among others, Grandix and Wuhu Xingdian. *Id.*

3. Respondents ATC Supply and Shenzhen ATC

ATC Supply is a limited liability company organized and existing under the laws of Illinois with a principal place of business at 12604 Canterbury Drive, Plainfield, Illinois 60585. Complaint at 7. Shenzhen ATC is a company organized and existing under the laws of the People’s Republic of China. *Id.* at 8. Varidesk alleges that the two companies are related and under common ownership and/or control. *Id.* These companies import and/or sell after importation within the United States desks labeled ANNT Lumsing. *Id.*

4. Respondent Amazon Import

Amazon Import is a company organized and existing under the laws of California with a principal place of business at 9910 Baldwin Place, El Monte, California 31731. Complaint at 12. Amazon Import imports and/or sells within the United States after importation height-adjustable desks labeled “Fezibo.” *Id.* at 12-13.

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5. Respondent Ningbo GYL

Ningbo GYL⁴ is a company organized and existing under the laws of the People's Republic of China with a principal place of business at Mingbin Road 228, Luoto Area, Zhenhai 31502, Ningbo, Zhejiang, China. Complaint at 14; July 18, 2018 Supplement to Complaint at 2. Ningbo GYL imports into the United States and/or sells and markets to others for importation into the United States height-adjustable desks. *Id.*

6. Respondents JV Products, Vanson Distributing, and Vanson Group

JV Products, Vanson Distributing, and Vanson Group are companies organized and existing under the laws of California. All three companies have a principal place of business at 1825 Houret Court, Milpitas, California 95035. Complaint at 15. The companies are alleged to be related companies under common ownership and control. *Id.* They import and/or sell within the United States after importation certain height-adjustable desk platforms and components thereof under the brand name Logix. *Id.* at 16.

7. Respondent Haining Orizeal

Haining Orizeal is a company organized and existing under the laws of the People's Republic of China, with its principal place of business and headquarters at 4th Floor, Building B, Jinhui Plaza No.486, South Hai Chang Road, Haining 314400. Complaint at 18. Haining Orizeal manufactures and/or sells height-adjustable desk platforms and components thereof. *Id.* at 18-19.

⁴ Ningbo GYL did not file a response to the complaint and has not participated in this investigation. Lisa Lee, President of Ningbo GYL, did send an October 16, 2018, email to the Staff stating that Ningbo GYL has "no desire or resources to fight an expensive legal contest . . ." EDIS Doc. ID 659283. She also stated her belief that the elements of the height-adjustable desks are known. *Id.*

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8. Respondent Smugdesk

Smugdesk is a company organized and existing under the laws of Colorado with a principal place of business at 14839 Proctor Ave, Suite D, La Puente, California 91746.

Complaint at 20; July 2, 2018 Supplement to Complaint at 1. Smugdesk sells within the United States after importation certain height-adjustable desk platforms and components thereof under the brand name Smugdesk. Complaint at 20.

9. Respondent Wuhu Xingdian

Wuhu Xingdian is a company organized and existing under the laws of the People's Republic of China, with its principal place of business and headquarters at No. 168, Xici 5th Road, Mechanical Industrial Zone, Wuhu, Anhui, China 241100. Complaint at 22; July 18, 2018 Supplement to Complaint at 3. Wuhu Xingdian imports into the United States and/or sells to others for importation into the United States certain height-adjustable desk platforms and components thereof. Complaint at 22.

D. The Asserted Patents

1. The '703 Patent

The '703 patent is titled "Adjustable Desk Platform" and issued on August 25, 2015, from an application filed on August 29, 2013. The '703 patent claims priority to provisional application no. 61/651,101 filed on May 24, 2012. Daniel Flaherty is listed as the named inventor, and Varidesk owns the patent by assignment. Mot. Ex. 1.

2. The '809 Patent

The '809 patent is titled "Adjustable Desk Platform" and issued on March 8, 2016, from an application filed on May 18, 2015. The '809 patent claims priority to provisional application no. 61/651,101 filed on May 24, 2012. Daniel G. Flaherty, David Patton, and Sheng Chien

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Wang are listed as the named inventors, and Varidesk owns the patent by assignment. Mot.

Ex. 2.

3. The '644 Patent

The '644 patent is titled "Adjustable Desk Platform" and issued on January 31, 2017, from an application filed on February 3, 2016. The '644 patent claims priority to provisional application no. 61/651,101 filed on May 24, 2012. Daniel G. Flaherty, David Patton, and Sheng Chien Wang are listed as the named inventors, and Varidesk owns the patent by assignment.

Mot. Ex. 3.

4. The '793 Patent

The '793 patent is titled "Adjustable Desk Platform" and issued on March 27, 2018, from an application filed on December 14, 2016. The '793 patent claims priority to provisional application no. 61/651,101 filed on May 24, 2012. Daniel G. Flaherty, David Patton, and Sheng C. Wang are listed as the named inventors, and Varidesk owns the patent by assignment. Mot.

Ex. 4.

E. The Accused Products

Varidesk alleges that the following products infringe the asserted claims of the Asserted Patents:

Product	Respondent(s)
Halter ED-258	Ningbo GYL
HeroDesk	Albeit Wuhu Xingdian
ANNT Lumsing Standing Desk	ATC Supply Shenzhen ATC Haining Orizeal

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Product	Respondent(s)
Fezibo Standing Desk Converter	Amazon Import Haining Orizeal
Fezibo Height Adjustable Standing Desk	Amazon Import Haining Orizeal
Logix Desk Stand Up Desk	JV Products Vanson Distributing Vanson Group Wuhu Xingdian
Smugdesk Standing Desk	Smugdesk

See Mem. at 8; Babcock Aff. at 3.

II. JURISDICTION

No party has contested the Commission's subject matter jurisdiction over this investigation. Section 337 of the Tariff Act prohibits the importation into the United States, the sale for importation into the United States, or the sale within the United States after importation by the owner, importer, or consignee of articles that infringe a valid and enforceable patent, if an industry in the United States relating to the articles protected by the patent exists or is in the process of being established. 19 U.S.C. §§ 1337(a)(1)-(2). Varidesk's complaint states a cause of action under section 337. It is therefore found that the Commission has jurisdiction over the subject matter of this investigation.

No party has contested the Commission's *in rem* jurisdiction over the accused products. Accordingly, it is found that the Commission has *in rem* jurisdiction over all products accused under the asserted claims of the Asserted Patents.

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No party has contested the Commission's personal jurisdiction over it. In particular, the Non-Participating Respondents have all been given notice of this investigation at least through service of the complaint and notice of investigation, as well as through service of the pending motion for summary determination. It is therefore found that the Commission has personal jurisdiction over all parties.

III. GENERAL PRINCIPLES OF APPLICABLE LAW

A. Summary Determination

Commission Rule 210.18(b) provides that a summary determination may be granted "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). *See, e.g., Amgen Inc. v. Int'l Trade Comm'n*, 565 F.3d 846, 849 (Fed. Cir. 2009); *Hazani v. Int'l Trade Comm'n*, 126 F.3d 1473, 1476 (Fed. Cir. 1997); *Certain Tool Handles, Tool Holders, Tool Sets, and Components Therefor*, Inv. No. 337-TA-483, 2003 WL 21463001, Order No. 14 (June 20, 2003) ("The moving party has the burden of demonstrating that there is no genuine issue of material fact and that it is entitled to summary determination as a matter of law[.]") (unreviewed initial determination).

"Issues of fact are genuine only 'if the evidence is such that a reasonable [fact finder] could return a verdict for the nonmoving party.'" *Crown Operations Int'l, Ltd. v. Solutia Inc.*, 289 F.3d 1367, 1375 (Fed. Cir. 2002) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). The evidence "must be viewed in the light most favorable to the party opposing the motion, with doubts resolved in favor of the nonmovant." *Id.* at 1375 (internal citations omitted). The trier of fact should "assure itself that there is no reasonable version of the facts, on

PUBLIC VERSION

the summary judgment record, whereby the nonmovant could prevail, recognizing that the purpose of summary judgment is not to deprive a litigant of a fair hearing, but to avoid an unnecessary trial.” *EMI Group N. Am., Inc. v. Intel Corp.*, 157 F.3d 887, 891 (Fed. Cir. 1998). “In other words, ‘summary judgment is authorized when it is quite clear what the truth is,’ and the law requires judgment in favor of the movant based upon facts not in genuine dispute.”

Paragon Podiatry Lab., Inc. v. KLM Labs., Inc., 984 F.2d 1182, 1185 (Fed. Cir. 1993) (internal citations omitted); see also *Certain Dynamic Random Access Memory Devices and Products Containing Same*, Inv. No. 337-TA-595, Order No. 14 at 8-9 (Dec. 6, 2007).

B. Importation

A violation of section 337(a)(1)(B) requires “importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee[.]” 19 U.S.C. § 1337(a)(1)(B). “[I]mportation and infringement are separate and independent requirements of Section 337” *Certain Absorbent Garments*, Inv. No. 337-TA-508, Order No. 16 at 4 (Aug. 20, 2004). A single importation of an accused product is sufficient to satisfy the importation requirement of section 337. *Certain DC-DC Controllers and Products Containing Same*, Inv. No. 337-TA-698, Order No. 29 at 3 (June 18, 2010).

C. Infringement

It is a violation of section 337 for a respondent to engage in “[t]he importation into the United States, the sale for importation, or the sale within the United States after importation . . . of articles that – (i) infringe a valid and enforceable United States patent[.]” 19 U.S.C. § 1337(a)(1)(B). 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

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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.⁵ *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).

If the accused product does not literally infringe the patent claim, infringement might be found under the doctrine of equivalents. “Under this doctrine, a product or process that does not literally infringe upon the express terms of a patent claim may nonetheless be found to infringe if there is ‘equivalence’ between the elements of the accused product or process and the claimed elements of the patented invention.” *Warner-Jenkinson Co., Inc. v. Hilton Davis Chemical Co.*, 520 U.S. 17, 21 (1997) (citing *Graver Tank & Mfg. Co. v. Linde Air Products Co.*, 339 U.S. 605, 609 (1950)). “The determination of equivalence should be applied as an objective inquiry on an element-by-element basis.”⁶ *Id.* at 40.

⁵ 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).

⁶ “Infringement, whether literal or under the doctrine of equivalents, is a question of fact.” *Absolute Software, Inc. v. Stealth Signal, Inc.*, 659 F.3d 1121, 1130 (Fed. Cir. 2011).

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D. Validity

A patent is presumed valid, and overcoming that presumption requires clear and convincing evidence. 35 U.S.C. § 282; *Microsoft Corp. v. i4i Ltd. Partnership*, 131 S. Ct. 2238, 2242 (2011).

E. Domestic Industry

In patent-based proceedings under section 337, a complainant bears the burden of establishing that an industry “relating to the articles protected by the patent . . . exists or is in the process of being established” in the United States. 19 U.S.C. § 1337(a)(2); *see also Certain Network Controllers and Products Containing Same*, Inv. No. 337-TA-531, Order No. 13 at 3-4 (July 6, 2005). Under Commission precedent, this requirement of section 337 is known as the “domestic industry requirement” and consists of a “technical prong” and an “economic prong.”

The technical prong requires that the complainant practice the patents-in-suit in the United States. *Crocs, Inc. v. Int’l Trade Comm’n*, 598 F.3d 1294, 1306-07 (Fed. Cir. 2010). The test for determining whether the technical prong is met through the practice of the patent “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).

The economic prong requires that the complainant have, with respect to the products protected by patent: (a) significant investment in plant and equipment; (b) significant employment of labor or capital; or (c) substantial investment in exploitation of the patent(s), including engineering, research and development, or licensing activities. 19 U.S.C. § 1337(a)(3).

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IV. VALIDITY

The Asserted Patents are presumed valid as a matter of law. 35 U.S.C. § 282. This presumption of validity may be overcome only by “clear and convincing evidence.” *Pfizer, Inc. v. Apotex, Inc.*, 480 F.3d 1348, 1359 (Fed. Cir. 2007).

In support of the pending motion for summary determination, Varidesk argues:

The Non-Participating Respondents never articulated any invalidity defenses or arguments in response to Complainant’s claims of infringement of the Asserted Patents, resulting in waiver of any such defense. *See* 19 C.F.R. §§ 210.16(b)(4) and 210.17. . . .

Since the Non-Participating Respondents never provided an invalidity defense, there is no present dispute or genuine 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 re-determine patent validity when no defense of invalidity had been raised). Therefore, the Asserted Patents should be found valid on summary determination.

Mem. at 17, 18.

The Staff “presumes—and does not challenge—the validity of the Asserted Patents. . . . The Non-Participating Respondents have not provided any invalidity arguments and so there is no issue of disputed material fact relating to the validity of Varidesk’s Asserted Patents.” Staff Resp. at 36.

Inasmuch as none of the Non-Participating Respondents has challenged the validity or enforceability of any of the Asserted Patents, it is determined that there is no issue of material fact as to the validity or enforceability of the Asserted Patents.

V. VIOLATIONS OF SECTION 337

Varidesk has provided evidence showing that the Non-Participating Respondents, with the exception of Haining Orizeal, have violated section 337. The exhibits accompanying the pending motion show sale for importation, importation, and/or sale after importation into the

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United States of the Accused Products by the Non-Participating Respondents. *See* Mem. at 18-20; Mot. Exs. 10-50, 52.

An affidavit accompanying the pending motion compares the Accused Products to the asserted claims of the Asserted Patents. *See* Mem. at 25-29; Babcock Aff. Other affidavits accompanying the pending motion set forth the domestic investments made by Varidesk, along with allocations of those investments to products that practice the Asserted Patents. *See* Mem. at 29-32; Storey Aff.; Patton Aff. Furthermore, Varidesk has provided an affidavit from an expert witness stating that Varidesk's investments are quantitatively and qualitatively significant to the domestic industry analysis. *See* Mem. at 29-32; Seth Aff. An affidavit comparing the claims of the Asserted Patents with Varidesk's domestic industry products was also filed with the pending motion. *See* Mem. at 29-32; Babcock Aff.

Such evidence leaves no genuine issue of material fact regarding the Non-Participating Respondents' importation, sale for importation, and/or sale after importation of infringing Accused Products, thereby making summary determination appropriate as a matter of law. *See* 19 C.F.R. §§ 210.18(b) and 210.16(c)(2).

A. Importation

Varidesk submitted exhibits showing importation of an Accused Product from each of the Non-Participating Respondents with the exception of Haining Orizeal.

1. Albeit

Varidesk submitted exhibits and affidavits showing that Albeit imports and/or sells within the United States after importation height-adjustable desk platforms under the brand name "HeroDesk." This evidence includes evidence that Wuhu Xingdian makes height-adjustable desk platforms it refers to as "workstations." Mot. Ex. 14.

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Importation records submitted by Varidesk show that a container of “[w]orkstation[s]” was shipped from Wuhu Xingdian in China to Albeit in the United States. Mot. Ex. 10; Mot. Ex. 12 at 23. Representatives of Varidesk then purchased two HeroDesks from Albeit following issuance of all the Asserted Patents. *See* Mem. at 19; Mot Ex. 12; McIntyre Aff. ¶¶ 15-16.

Although there is no direct evidence that the HeroDesks purchased by Varidesk were imported from China, such as markings showing the country of origin on the packaging or product, there is substantial circumstantial evidence that the HeroDesks were made in China, imported into the United States, and then sold by Albeit.

It is therefore determined that Varidesk has established that the importation requirement of section 337 has been satisfied with respect to Albeit.

2. ATC Supply and Shenzhen ATC

Varidesk submitted exhibits showing that ATC Supply and Shenzhen ATC import and/or sell within the United States height-adjustable desk platforms under the brand name “ANNT Lumsing.” Mem. at 19; McIntyre Aff. ¶¶17-18. Varidesk also provided evidence that the two companies are a common enterprise. The Accused Product is called “ANNT Lumsing,” the trademark for ANNT is held by ATC Supply, and the trademark “Lumsing” is held by Shenzhen ATC. Mot. Ex. 17 (ANNT trademark); Mot. Ex. 18 (Lumsing trademark); McIntyre Aff. ¶ 17.

Representatives of Varidesk purchased two ANNT Lumsing Standing Desks that were delivered in the United States. Mot. Ex. 20. The shipping container states that the desks were made in China. *Id.* at 8-9.

It is therefore determined that Varidesk has established that the importation requirement of section 337 has been satisfied with respect to ATC Supply and Shenzhen ATC.

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3. Amazon Import

Varidesk provided evidence that Amazon Import imports and/or sells within the United States after importation height-adjustable desks under the brand name “Fezibo.” Mem. at 19; McIntyre Aff. ¶¶19-20.

The evidence includes importation records showing shipment of desks marked “FEZIBO” from Ningbo, China to Amazon Import in the United States. Mot. Ex. 22; McIntyre Aff. ¶ 19. Representatives of Varidesk ordered two Fezibo Standing Desk Converters and two Fezibo Height Adjustable Standing Desks. Mem. at 19. The desk packaging for both models states that they were “Made in China.” Mot. Ex. 23 at 10; Mot. Ex. 24 at 11.

It is therefore determined that Varidesk has established that the importation requirement of section 337 has been satisfied with respect to Amazon Import.

4. Ningbo GYL

Representatives of Varidesk ordered two Halter ED-258 desks from participating respondent Dakota. Mem. at 19; Ex. 52. Dakota holds the trademark on “Halter” for, among other goods, office desks and computer furniture. *See* Complaint Ex. 15E.3. The evidence shows that Ningbo GYL offers for sale a height-adjustable desk with model number ED-258. Mot. Ex. 30. The evidence further shows that Ningbo GYL shipped to Dakota goods described as “Elevating Desktop.” Mot. Ex. 31. The desks received by Varidesk are labeled “Halter Elevating Desktop.” Mot. Ex. 52.

It is therefore determined that Varidesk has established that the importation requirement of section 337 has been satisfied with respect to Ningbo GYL.

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5. JV Products, Vanson Distributing, and Vanson Group

Varidesk provided evidence that JV Products, Vanson Distributing, and Vanson Group are related companies under common ownership. Mem. at 20; McIntyre Aff. ¶ 22. Not only do the three companies share an address, Van Bui is listed as CEO, Secretary, and CFO for Vanson Distributing and Vanson Group and as CFO of JV Products. Mot. Ex. 37 (Vanson Distributing); Mot. Ex. 40 (Vanson Group); Mot. Ex. 34 (JV Products); McIntyre Aff. ¶ 22.

Varidesk also presented evidence that the companies sell a height-adjustable desk under the name “Logix.” For example, the Logix website states: “Logix Desk is a product of Logix Gear, a JV Products Inc. company.”⁷ Mot. Ex. 42 at 6/6. The amazon.com page for the Logix Desk states it is sold by Vanson Group. Mot. Ex. 44 at 4/9. The evidence shows that the Logix Desks are made in China. For example, shipping records show that Wuhu Xingdian shipped a container with “Sit stand computer desk” to Vanson Distributing. Mot. Ex. 45. A Groupon page also states that the Logix desks are made in China. Mot. Ex. 44. A representative of Varidesk ordered two Logix desks that were delivered to Washington, DC. Mem. at 20; McIntyre Aff. ¶ 22; Mot. Ex. 46.

It is therefore determined that Varidesk has established that the importation requirement of section 337 has been satisfied with respect to JV Products, Vanson Distributing, and Vanson Group.

6. Haining Orizeal

The evidence submitted by Varidesk includes affidavits and exhibits showing that Haining Orizeal makes height-adjustable desks, and that desks marketed under the “ANNT

⁷ The “Logix” trademark is owned by Vanson Group, further establishing that the companies are related. See Mot. Ex. 43.

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Lumsing” and “Fezibo” brand names are imported into the United States. *See, e.g.*, McIntyre Aff. ¶ 24; Patton Aff. ¶¶ 21-22; Mot. Exs. 17-24. The evidence fails to show, however, that the Haining Orizeal desks are the same desks that are imported under those trade names. The shipping information for the ANNT Lumsing and Fezibo desks does not list Haining Orizeal as the shipper. Instead, logistics companies are listed as the shipper. *See* Mot. Exs. 19 and 22.

It is therefore determined that Varidesk has not established that the importation requirement of section 337 has been satisfied with respect to Haining Orizeal.

7. Smugdesk

Varidesk provided evidence that Smugdesk imports and/or sells after importation height-adjustable desks. In particular, representatives of Varidesk ordered two Smugdesk Standing Desk Converters. Mem. at 20; McIntyre Aff. ¶ 25. When the desks arrived in Washington, DC, the box said Made in China. McIntyre Aff. ¶ 25; Mot. Ex. 50.

It is therefore determined that Varidesk has established that the importation requirement of section 337 has been satisfied with respect to Smugdesk.

B. Infringement

As discussed further below, Varidesk has submitted evidence showing that the Non-Participating Respondents each infringe the asserted claims of the Asserted Patents. Mr. James B. Babcock, Varidesk’s technical expert, evaluated each of the Accused Products at issue⁸ and submitted an affidavit in support of the pending motion.

The Non-Participating Respondents have not articulated any noninfringement defenses or arguments in response to Varidesk’s claims of infringement of the Asserted Patents, resulting in

⁸ Mr. Babcock’s infringement analysis was performed pursuant to the claim constructions adopted by the undersigned in Order No. 27. *See* Mem. at 24.

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waiver of any such defense. *See* 19 C.F.R. §§ 210.16(b)(4) and 210.17. As a result, no issues of material fact remain with respect to infringement of the Asserted Patents by the Non-Participating Respondents.

1. The '703 Patent

Varidesk accuses the following Accused Products and Non-Participating Respondents of infringing the '703 patent:

Product	Respondent(s)	Claims
Halter ED-258	Ningbo GYL	1, 2, 4, 10, 11
Fezibo Standing Desk Converter	Amazon Import Haining Orizeal	1, 2, 4, 10, 11
Logix Desk Stand Up Desk	JV Products Vanson Distributing Vanson Group Wuhu Xingdian	1, 2, 4, 10, 11

Babcock Aff. ¶¶ 25, 36-37; Babcock Exs. G, P, V.

Mr. Babcock provided a limitation-by-limitation analysis comparing each of the Accused Products to each of the asserted claims. Mr. Babcock attached exhibits to his affidavit for each of the Accused Products.

The claim chart attached to Mr. Babcock's affidavit as Exhibit G demonstrates that the Accused Products sold for importation by Ningbo GYL literally meet each limitation of and infringe claims 1, 2, 4, 10, and 11 of the '703 patent. *See also* Babcock Aff. ¶ 36.

The claim chart attached to Mr. Babcock's Affidavit as Exhibit P demonstrates that the Fezibo Standing Desk Converter imported, sold for importation, or sold after importation by

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Amazon Import⁹ literally infringes claims 1, 2, 4, 10, and 11 of the '703 patent. *See also* Babcock Aff. ¶ 37.

The claim chart attached to Mr. Babcock's Affidavit as Exhibit V demonstrates that the Logix Desk Stand Up Desk imported, sold for importation, or sold after importation by JV Products, Vanson Distributing, Vanson Group, and Wuhu Xingdian literally infringes claims 1, 2, 4, 10, and 11 of the '703 patent. *See also* Babcock Aff. ¶ 37.

It is therefore determined that Varidesk has established that the Accused Products listed in the chart above infringe claims 1, 2, 4, 10, and 11 of the '703 patent.

2. The '809 Patent

Varidesk accuses the following Accused Products and Non-Participating Respondents of infringing the '809 patent:

Product	Respondent(s)	Claims
Halter ED-258	Ningbo GYL	22-26
HeroDesk	Albeit Wuhu Xingdian	11, 16, 18
Fezibo Standing Desk Converter	Amazon Import Haining Orizeal	22-26
Logix Desk Stand Up Desk	JV Products Vanson Distributing Vanson Group Wuhu Xingdian	22-26

⁹ Varidesk alleges that the Fezibo Standing Desk Converter is imported, sold for importation, or sold after importation by Haining Orizeal. *See* Babcock Aff. ¶ 37. However, as discussed above in the section addressing importation, it has not been established that Haining Orizeal imports or sells for importation any Accused Product.

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Product	Respondent(s)	Claims
Smugdesk Standing Desk	Smugdesk	11, 16, 18

Babcock Aff. ¶¶ 25, 36-37; Babcock Exs. H, K, Q, W, Z.

Mr. Babcock provided a limitation-by-limitation analysis comparing each of the Accused Products to each of the asserted claims. Mr. Babcock attached exhibits to his affidavit for each of the Accused Products.

The claim chart provided as Exhibit H to the Babcock Affidavit demonstrates how the Accused Products sold for importation by Ningbo GYL literally meet each limitation of and infringe claims 22-26 of the '809 patent. *See also* Babcock Aff. ¶ 36.

The claim chart provided as Exhibit K to the Babcock Affidavit demonstrates how the HeroDesk imported, sold for importation, or sold after importation by Albeit and Wuhu Xingdian literally infringes claims 11, 16, and 18 of the '809 patent. *See also* Babcock Aff. ¶ 37.

The claim chart provided as Exhibit Q to the Babcock Affidavit demonstrates how the Fezibo Standing Desk Converter imported, sold for importation, or sold after importation by Amazon Import¹⁰ literally infringes claims 22-26 of the '809 patent. *See also* Babcock Aff. ¶ 37.

The claim chart provided as Exhibit W to the Babcock Affidavit demonstrates how the Logix Desk Stand Up Desk imported, sold for importation, or sold after importation by JV Products, Vanson Distributing, Vanson Group, and Wuhu Xingdian literally infringes claims 22-26 of the '809 patent. *See also* Babcock Aff. ¶ 37.

¹⁰ Varidesk alleges that the Fezibo Standing Desk Converter is imported, sold for importation, or sold after importation by Haining Orizeal. *See* Babcock Aff. ¶ 37. However, as discussed above in the section addressing importation, it has not been established that Haining Orizeal imports or sells for importation any Accused Product.

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The claim chart provided as Exhibit Z to the Babcock Affidavit demonstrates how the Smugdesk Standing Desk Converter imported, sold for importation, or sold after importation by Smugdesk literally infringes claims 11, 16, and 18 of the '809 patent. *See also* Babcock Aff.

¶ 37.

It is therefore determined that Varidesk has established that the Accused Products listed in the chart above infringe the asserted claims of the '809 patent.

3. The '644 Patent

Varidesk accuses the following Accused Products and Non-Participating Respondents of infringing the '644 patent:

Product	Respondent(s)	Claims
Halter ED-258	Ningbo GYL	1, 4, 5, 12, 33-36
HeroDesk	Albeit Wuhu Xingdian	1, 4, 33-36
ANNT Lumsing Standing Desk	ATC Supply Shenzhen ATC Haining Orizeal	33-36
Fezibo Standing Desk Converter	Amazon Import Haining Orizeal	1, 4, 5, 11, 12, 26, 33-36
Fezibo Height Adjustable Standing Desk	Amazon Import Haining Orizeal	33-36
Logix Desk Stand Up Desk	JV Products Vanson Distributing Vanson Group Wuhu Xingdian	1, 4, 5, 11, 12, 26, 33-36
Smugdesk Standing Desk	Smugdesk	1, 4, 11, 12, 26, 33-36

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Babcock Aff. ¶¶ 25, 36-37; Babcock Exs. I, L, N, R, T, X, ZA.

Mr. Babcock provided a limitation-by-limitation analysis comparing each of the Accused Products to each of the asserted claims. Mr. Babcock attached exhibits to his affidavit for each of the Accused Products.

The claim chart provided as Exhibit I to the Babcock Affidavit demonstrates how the Accused Products sold for importation by Ningbo GYL literally meet each limitation and infringe claims 1, 4, 5, 12, and 33-36 of the '644 patent. *See also* Babcock Aff. ¶ 36.

The claim chart provided as Exhibit L to the Babcock Affidavit demonstrates how the HeroDesk imported, sold for importation, or sold after importation by Albeit and Wuhu Xingdian literally infringes claims 1, 4, and 33-36 of the '644 patent. *See also* Babcock Aff. ¶ 37.

The claim chart provided as Exhibit N to the Babcock Affidavit demonstrates how the ANNT Lumsing Standing Desk imported, sold for importation, or sold after importation by ATC Supply and Shenzhen ATC¹¹ literally infringes claims 33-36 of the '644 patent. *See also* Babcock Aff. ¶ 37.

The claim charts provided as Exhibits R and T to the Babcock Affidavit demonstrate how the Fezibo Standing Desk Converter and Fezibo Height Adjustable Standing Desk imported, sold for importation, or sold after importation by Amazon Import¹² literally infringe claims 1, 4, 5, 11, 12, 26, and 33-36 of the '644 patent. *See also* Babcock Aff. ¶ 37.

¹¹ Varidesk alleges that the ANNT Lumsing Standing Desk is imported, sold for importation, or sold after importation by Haining Orizeal. *See* Babcock Aff. ¶ 37. However, as discussed above in the section addressing importation, it has not been established that Haining Orizeal imports or sells for importation any Accused Product.

¹² Varidesk alleges that the Fezibo Standing Desk Converter and Fezibo Height Adjustable Standing Desk are imported, sold for importation, or sold after importation by Haining Orizeal.

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The claim chart provided as Exhibit X to the Babcock Affidavit demonstrates how the Logix Desk Stand Up Desk imported, sold for importation, or sold after importation by JV Products, Vanson Distributing, Vanson Group, and Wuhu Xingdian literally infringes claims 1, 4, 5, 11, 12, 26, and 33-36 of the '644 patent. *See also* Babcock Aff. ¶ 37.

The claim chart provided as Exhibit ZA to the Babcock Affidavit demonstrates how the Smugdesk Standing Desk Converter imported, sold for importation, or sold after importation by Smugdesk literally infringes claims 1, 4, 11, 12, 26, and 33-36 of the '644 patent. *See also* Babcock Aff. ¶ 37.

It is therefore determined that Varidesk has established that the Accused Products listed in the chart above infringe the asserted claims of the '644 patent.

4. The '793 Patent

Varidesk accuses the following Accused Products and Non-Participating Respondents of infringing the '793 patent:

Product	Respondent(s)	Claims
Halter ED-258	Ningbo GYL	20, 21, 45-50
HeroDesk	Albeit Wuhu Xingdian	20, 21, 40-44, 45-47, 49-50
ANNT Lumsing Standing Desk	ATC Supply Shenzhen ATC Haining Orizeal	40, 41, 44, 45
Fezibo Standing Desk Converter	Amazon Import Haining Orizeal	20, 40-44, 45-47, 49, 50

See Babcock Aff. ¶ 37. However, as discussed above in the section addressing importation, it has not been established that Haining Orizeal imports or sells for importation any Accused Product.

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Product	Respondent(s)	Claims
Fezibo Height Adjustable Standing Desk	Amazon Import Haining Orizeal	40-44, 45-47, 49, 50
Logix Desk Stand Up Desk	JV Products Vanson Distributing Vanson Group Wuhu Xingdian	20, 21, 40-44, 45-47, 49-50
Smugdesk Standing Desk	Smugdesk	20, 40-50

Babcock Aff. ¶¶25, 36-37; Babcock Exs. J, M, O, S, U, Y, Z.

Mr. Babcock provided a limitation-by-limitation analysis comparing each of the Accused Products to each of the asserted claims. Mr. Babcock attached exhibits to his affidavit for each of the Accused Products.

The claim chart provided as Exhibit J to the Babcock Affidavit demonstrates how the Accused Products sold for importation by Ningbo GYL literally meet each limitation of and infringe claims 20, 21, and 45-50 of the '793 patent. *See also* Babcock Aff. ¶ 36.

The claim chart provided as Exhibit M to the Babcock Affidavit demonstrates how the HeroDesk imported, sold for importation, or sold after importation by Albeit and Wuhu Xingdian literally infringes claims 20, 21, 40-44, 45-47, 49, and 50 of the '793 patent. *See also* Babcock Aff. ¶ 37.

The claim chart provided as Exhibit O demonstrates how the ANNT Lumsing Standing Desk imported, sold for importation, or sold after importation by ATC Supply and Shenzhen.

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ATC¹³ literally infringes claims 40, 41, 44, and 45 of the '793 patent. *See also* Babcock Aff.

¶ 37.

The claim charts provided as Exhibits S and U to the Babcock Affidavit demonstrate how the Fezibo Standing Desk Converter and Fezibo Height Adjustable Desk imported, sold for importation, or sold after importation by Amazon Import¹⁴ literally infringe claims 20, 40-44, 45-47, 49, and 50 of the '793 patent. *See also* Babcock Aff. ¶ 37.

The claim chart provided as Exhibit Y to the Babcock Affidavit demonstrates how the Logix Desk Stand Up Desk imported, sold for importation, or sold after importation by JV Products, Vanson Distributing, Vanson Group, and Wuhu Xingdian literally infringes claims 20, 21, 40-44, 45-47, 49, and 50 of the '793 patent. *See also* Babcock Aff. ¶ 37.

The claim chart provided as Exhibit ZB demonstrates how the Smugdesk Standing Desk Converter imported, sold for importation, or sold after importation by Smugdesk, LLC literally infringes claims 20 and 40-50 of the '793 patent. *See also* Babcock Aff. ¶ 37.

It is therefore determined that Varidesk has established that the Accused Products listed in the chart above infringe the asserted claims of the '793 patent.

¹³ Varidesk alleges that the ANNT Lumsing Standing Desk is imported, sold for importation, or sold after importation by Haining Orizeal. *See* Babcock Aff. ¶ 37. However, as discussed above in the section addressing importation, it has not been established that Haining Orizeal imports or sells for importation any Accused Product.

¹⁴ Varidesk alleges that the Fezibo Standing Desk Converter is imported, sold for importation, or sold after importation by Haining Orizeal. *See* Babcock Aff. ¶ 37. However, as discussed above in the section addressing importation, it has not been established that Haining Orizeal imports or sells for importation any Accused Product.

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VI. TECHNICAL PRONG OF THE DOMESTIC INDUSTRY REQUIREMENT

As discussed below, Varidesk has established that its products satisfy the technical prong of the domestic industry requirement.

Varidesk has identified the following products as practicing the Asserted Patents (collectively, "Domestic Industry Products"):

- VersaDesk Pro,
- Varidesk Pro 30™,
- Pro 36™,
- Pro 48™,
- Pro Plus 30™,
- Pro Plus 36™,
- Pro Plus 48™,
- Exec 40™,
- Exec 48™,
- Cube Corner 36™,
- Cube Corner 48™,
- Cube Plus 40™,
- Cube Plus 48™, and
- Laptop 30™.

Patton Aff. ¶ 5; Storey Aff ¶ 5; Babcock Aff. ¶ 8.

In support of its technical prong contentions, Varidesk submitted the affidavit and affidavit exhibits of James Babcock, who compared a Varidesk Domestic Industry Product to a

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claim of each of the Asserted Patents. Babcock Aff. ¶ 33; Babcock Exs. C-F. In particular, Mr. Babcock analyzed the Varidesk Pro Plus 36, which he states is representative of all Domestic Industry Products. Babcock Aff. ¶ 33; Patton Aff. ¶ 5 (“Each Domestic Industry Product has the same or similar base, linkage, locking, and work surface features.”).

These undisputed affidavits and exhibits support the finding that Varidesk’s Domestic Industry Products practice at least one claim of each of the Asserted Patents.

VII. ECONOMIC PRONG OF THE DOMESTIC INDUSTRY REQUIREMENT

As discussed below, Varidesk has proffered evidence showing that Varidesk satisfies the economic prong of the domestic industry requirement under sections 337(a)(3)(A) and (B). In particular, there is no dispute as to any material fact that Varidesk satisfies the economic prong with respect to each of the Asserted Patents.

In support of its economic prong argument, Varidesk submitted affidavits from David Patton, Director of Design at Varidesk; Craig Storey, CFO of Varidesk; and Dr. Pallavi Seth, Varidesk’s expert witness who provides her opinion that Varidesk satisfies the economic prong with investments of ██████████ from July 1, 2014, through May 31, 2018. *See* Mem. at 31; Patton Aff. ¶ 3; Storey Aff. ¶ 3; Seth Aff. ¶¶ 1-11, ¶ 59, Table 6. These investments are for plant and equipment and labor and capital relating to research and development (“R&D”), design, engineering and warranty and repair of the Domestic Industry Products. *See* Storey Aff. ¶¶ 10-12; Seth Aff. ¶¶ 32-33. Varidesk conducts all of its research and development, design and engineering in Texas. Storey Aff. ¶¶ 8-9; Patton Aff. ¶ 13; Seth Aff. ¶ 17.

The evidence shows that Varidesk is a privately held corporation headquartered in Coppell, Texas. Patton Aff. ¶¶ 5, 9; Seth Aff. ¶ 12. Varidesk designs, engineers, distributes, and sells height-adjustable (or “standing”) workplace desks and office accessories (such as floor

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mats designed to prevent fatigue when standing). Patton Aff. ¶¶ 5, 9; Seth Aff. ¶ 12. Varidesk was incorporated on June 18, 2014 and spun off from Gemmy Industries Corp. (“Gemmy Industries”) in July 1, 2014. Patton Aff. ¶ 7; Seth Aff. ¶13. Before the spin-off, Gemmy Industries was engaged in substantially the same domestic activities as Varidesk with respect to height-adjustable desks. Patton Aff. ¶ 7.

Varidesk has proffered evidence showing that, from July 1, 2014 through May 31, 2018, Varidesk invested approximately [REDACTED] in rent payments for its primary facilities used for research, development, design, and engineering, of which [REDACTED] is attributable to work on the Domestic Industry Products. Storey Aff. ¶¶ 8-9; Patton Aff. ¶ 13; Seth Aff. ¶ 40-43. Between July 1, 2016 and May 31, 2018, Varidesk invested [REDACTED] in utility expenses attributable to the Domestic Industry Products. Storey Aff. ¶ 10; Seth Aff. ¶ 44. From July 2014 through May 2018, Varidesk invested [REDACTED] in equipment expenses for R&D, engineering, and related work supporting the Domestic Industry Products. Storey Aff. ¶ 10; Seth Aff. ¶ 45. Between May 2015 and May 31, 2018, Varidesk invested [REDACTED] in labor, [REDACTED] of which is attributable to research, development, design, and engineering of the Domestic Industry Products. Storey Aff. ¶ 11; Seth Aff. ¶¶ 47-49. Between July 1, 2014 and May 31, 2018, Varidesk also invested [REDACTED] in outside R&D consultation services related to the Domestic Industry Products. Seth Aff. ¶ 50.

The evidence shows that these investments are both quantitatively and qualitatively significant. Specifically, Varidesk has spent approximately [REDACTED] on R&D and engineering-related expenses, which is quantitatively significant. *See* Seth Aff. at ¶ 59, Table 6. All of the investments in R&D for the Domestic Industry Products occurred in the United States. Seth Aff. at ¶ 55. These investments amount to about [REDACTED] of Varidesk’s R&D expenditures for

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2017, and nearly [REDACTED] of total R&D employee time was spent on the Domestic Industry Products between May 2015 and May 2018. *Id.* Sales of the Domestic Industry Products account for about [REDACTED] of domestic sales. These domestic sales account for about [REDACTED] of worldwide sales of Domestic Industry Products. *Id.* at ¶ 54. Furthermore, the investments have enabled Varidesk to make approximately [REDACTED] in U.S. Domestic Industry Product sales between July 2014 and May 2018. *Id.* at ¶ 56.

Accordingly, it is determined that the record evidence establishes that Varidesk satisfies the economic prong of the domestic industry requirement under sections 337(a)(3)(A) and (B).

VIII. CONCLUSIONS OF LAW

1. The Commission has subject matter, personal, and *in rem* jurisdiction in this investigation.
2. It has not been shown by clear and convincing evidence that any asserted claim of any asserted patent is invalid.
3. The Accused Products have been imported into the United States.
4. The importation requirement of section 337 has been satisfied with respect to respondents Albeit, ATC Supply, Shenzhen ATC, Amazon Import, Ningbo GYL, JV Products, Vanson Distributing, Vanson Group, and Smugdesk.
5. The importation requirement of section 337 has not been satisfied with respect to respondent Haining Orizeal.
6. The Accused Products infringe all asserted claims of the Asserted Patents.
7. The domestic industry requirement is satisfied as to all Asserted Patents.

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IX. INITIAL DETERMINATION

It is therefore the initial determination of the undersigned that a violation of section 337 (19 U.S.C. § 1337) has occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain height-adjustable desk platforms and components thereof with respect to asserted claims 1, 2, 4, 10, and 11 of the '703 patent; asserted claims 11, 16, 18, and 22-26 of the '809 patent; claims 1, 4, 5, 11, 12, 26, and 33-36 of the '644 patent; and claims 20, 21, 40-44, and 45-50 of the '793 patent.

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

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.

X. RECOMMENDED DETERMINATION ON REMEDY AND BONDING

Pursuant to the notice of investigation, 83 Fed. Reg. 36621 (July 20, 2018), this is the recommended determination in *Certain Height-Adjustable Desk Platforms and Components Thereof*, United States International Trade Commission Investigation No. 337-TA-1125.

Varidesk has requested that, along with a finding of violation, a recommended remedy in the form of a general exclusion order ("GEO") and cease and desist orders ("CDO") against each of the Non-Participating Respondents, with a bond in the amount of 100% during the Presidential review period. Mem. at 32-33. The Staff supports Varidesk's request as to the GEO and bond, but does not support Varidesk's request for CDOs. Staff Resp. at 84.

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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) (“*Certain Cigarettes*”). 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 Electronic Paper Towel Dispensing Devices and Components Thereof*, Inv. No. 337-TA-718, Recommended Determination at 7-8 & n.9-10 (July 12, 2011); *Certain Coaxial Cable Connectors and Components Thereof and Products Containing Same*, Inv. No. 337-TA-650, Comm’n Op. at 59 (April 14, 2010).

1. Circumvention of Limited Exclusion Orders

In prior cases, the Commission has considered a number of factors and market conditions in determining the likelihood of circumvention of a limited exclusion order (“LEO”). In *Toner Cartridges*, for example, the Commission found circumvention of an LEO likely because of the use of “various practices including . . . (i) replication of operations; (ii) sourcing imported accused products from domestic suppliers outside the reach of an LEO; (iii) facilitating circumvention through Internet operations; (iv) masking of identities and product sources; and

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(v) use of unmarked, generic, and/or reseller-branded packaging.” *Certain Toner Cartridges and Components Thereof*, Inv. No. 337-TA-918, Comm’n Op. at 9 (Oct. 1, 2015) (“*Toner Cartridges*”). These factors are also present in this investigation.

The evidence adduced by Varidesk establishes that a GEO is necessary to prevent circumvention of an order limited to the products of named respondents. In particular, some of the Non-Participating Respondents obscure the sources of the Accused Products. For example, Varidesk presented evidence of manufacturers who use the same image of a height-adjustable desk to sell products by different manufacturers. *See* Mot. Exs. 107-108.

There is also evidence that internet-based sellers of height-adjustable desk platforms hide the source of infringing products by providing little or no physical contact information. Mot. Exs. 105-106. Many sellers also do not indicate the origin of their products on the shipping boxes, making it difficult to determine the source of the goods. Mot. Ex. 46. In addition, some sellers “hijack” other webpages to sell their products. For example, Varidesk provided a printout from an amazon.com page for the Varidesk 49900 desk. Mot. Ex. 104. On that page there is a link stating “[t]here is a newer model of this item,” but the link is to a desk made by another company. *Id.* (highlighted portion).

There is also evidence that companies sell the same products under different product names, through different sellers, and provide no information on the origin of the product. Exhibits to the pending motion show what appear to be the same desk sold under a number of names with no information about the origin of the desks. Mem. at 38; Mot. Exs. 25, 110-113.

This evidence establishes that a GEO is necessary to prevent circumvention of a limited exclusion order issued against only the named respondents.

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2. **Pattern of Importation and Identification of the Source of Infringing Goods**

This is the fourth investigation to focus on Varidesk's height-adjustable desks. In this investigation, thirty-one respondents were named. *See* Complaint. The previous investigations named an additional thirteen respondents. *See* Inv. No. 337-TA-970 Complaint (EDIS Doc. ID 566554); Inv. No. 337-TA-992 Complaint (EDIS Doc. ID 576595); Inv. No. 337-TA-1054 Complaint (EDIS Doc. ID 607089). The Commission has considered past investigations when evaluating a pattern of violation. *See Certain Inkjet Ink Supplies*, Inv. No. 337-TA-691, Comm'n Op. at 12 (Jan. 28, 2011) (“[w]ith respect to ‘pattern of violation,’ this is not the first section 337 investigation relating to ink cartridges”).

In total, Varidesk has already identified forty-four respondents as allegedly violating section 337 by infringing Varidesk's height-adjustable desk patents. This evidence of importation by respondents also supports a finding that there is a pattern of violation. *See Certain Coaxial Cable Connectors and Components Thereof and Products Containing Same*, Inv. No. 337-TA-650, Comm'n Op. at 58 (Mar. 31, 2010).

As discussed above, most of these sales are over the internet, making it difficult to identify the source of the desks. Manufacturers market and sell products under a number of different names with little or no indication of their origin. *See* Mot. Exs. 25, 105-106, 110-113. The ease of selling under multiple names and models supports a finding that there is a pattern of violation. *See Certain Cases for Portable Electronic Devices*, Inv. No. 337-TA-867/861, Comm'n Op. at 9 (Jul 10, 2014).

Inasmuch as Varidesk has adduced undisputed evidence demonstrating that it is difficult, if not impossible, to ascertain the source of infringing products entering the United States, and

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that there is a pattern of such importation, it is recommended that in the event the Commission finds a violation of section 337, the appropriate remedy is a GEO that encompasses the infringing products.

B. Cease and Desist Orders

Under section 337(f)(1), the Commission can issue a cease and desist order “[i]n addition to, or in lieu of [an exclusion order, against] any person violating this section, or believed to be violating this section . . . directing such person to cease and desist from engaging in the unfair methods or acts involved.” 19 U.S.C. § 1337(f)(1). The Commission generally issues cease and desist orders directed to a domestic respondent when the respondent has a commercially significant inventory of infringing products in the United States that could be sold so as to undercut the remedy provided by an exclusion order. *Certain Crystalline Cefadroxil Monohydrate*, Inv. No. 337-TA-293, Comm’n Op. at 37-42, USITC Pub. No. 2391 (June 1991). Defaulting domestic respondents are presumed to have commercially significant U.S. inventories. *Certain Video Game Systems, Accessories, and Components Thereof*, Inv. No. 337-TA-473, Comm’n Op. at 2 (Dec. 24, 2002) (“*Video Game Systems*”). The Commission has also issued cease and desist orders against foreign respondents where the foreign respondent’s domestic distributor maintains a commercially significant inventory in the United States. *See, e.g., Certain Toner Cartridges and Components Thereof*, Inv. No. 337-TA-740, Comm’n Op. at 7-8 (Oct. 5, 2011) (issuing GEO); *Certain Abrasive Products Made Using a Process for Powder Preforms, and Products Containing Same*, Inv. No. 337-TA-449, Comm’n Op., 2002 WL 31093610, at *4 (May 9, 2002).

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With respect to a CDO, Varidesk argues:

Cease and desist orders are necessary to target conduct by the Non-Participating Respondents, which include online activities that effectively occur within the United States and, therefore, cannot be reached by a general exclusion order. . . . Although a [general exclusion order (“GEO”)] will be able to abate some of the shipments of infringing products to the United States, a CDO is necessary to stop the substantial and persistent online infringing activities of these respondents using online marketplaces like Alibaba, Amazon and eBay. A CDO would further serve to deter the behavior of Respondents who would otherwise fall outside the reach of a GEO. Here, the Non-Participating Respondents’ activities occur almost entirely online. SOF ¶ 63. . . .

Because the Non-Participating Respondents did not participate in this Investigation and, therefore, provided no discovery, it is difficult to ascertain their respective inventories of infringing imported products located in the United States. Nevertheless, Varidesk has provided sufficient evidence for the Commission to either infer or conclude that “commercially significant” inventories of imported, infringing products are in the possession of each of the Non-Participating Respondents or related entities in the United States or, at the very least, each of the Non-Participating Respondents are engaged in significant commercial business operations in the United States. *See* SOF ¶¶ 54-59, 63-71.

Mem. at 34, 35 (footnote omitted).

The Staff argues that the issuance of cease and desist orders against the Non-Participating Respondents is not appropriate based on the circumstances of this investigation:

Varidesk seeks CDOs against all Non-Participating Respondents, because it argues that all facts in the Complaint are deemed to be true. Memo at 34. But that standard applies to defaulting Respondents, and no finding of default was requested in this investigation.

Varidesk has not provided evidence of significant inventories in the United States, instead incorrectly arguing that the facts of the Complaint should be assumed true and that “the Commission should infer a significant inventory of infringing products in the U.S.” based on the default standard. Memo at 34-35.

Because Varidesk has not provided any evidence of inventory in the United States, the record does not support the issuance of a CDO against any of the Respondents. *See Certain Industrial Automation Systems and Components Thereof Including Control Systems, Controllers, Visualization Hardware,*

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Motion and Motor Control Systems, Networking Equipment, Safety Devices, and Power Supplies, Inv. No. 337-TA-1074, Comm'n Op. at 9-10 (April 24, 2019) (not issuing CDO in the absence of evidence of sales from US inventories).

Staff Resp. at 89.

The lack of evidence regarding domestic inventories of the Accused Products is not surprising, inasmuch as all Non-Participating Respondents have failed to appear and did not participate in discovery. Although Varidesk argues that commercially significant domestic inventories on the part of the Non-Participating Respondents should be inferred, the undersigned declines to do so. The investigations to which Varidesk cites in support of its argument, *Certain Arrowheads with Deploying Blades & Components Thereof & Packaging Therefor*, Inv. No. 337-TA-997, and *Certain Electric Skin Care Devices, Brushes and Chargers Therefore, and Kits Containing the Same*, Inv. No. 337-TA-959, involved respondents found to be in default. Here, as noted by the Staff in its brief, the Non-Participating Respondents have not been found in default.

Therefore, it is not recommended that the Commission issue cease and desist orders against the Non-Participating Respondents in the event a violation of section 337 is found.

C. Bond

Pursuant to 19 U.S.C. § 1337(j)(3), the administrative law judge and the Commission must determine the amount of bond to be required of a respondent during the Presidential review period. The purpose of the bond is to protect the complainant from any injury. *See* 19 C.F.R. §§ 210.42(a)(1)(ii), 210.50(a)(3). When reliable price information is available, the Commission has often set the bond at the price differential between the domestic product and the imported, infringing product. *See Certain Microsphere Adhesives, Processes for Making Same, and*

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Products Containing Same, Including Self-Stick Repositionable Notes, Inv. No. 337-TA-366, Comm'n Op. at 24 (1995) (“*Certain Microsphere Adhesives*”). In other cases, such as when “a reliable price differential cannot be obtained,” the Commission has required a 100 percent bond. *See, e.g., Certain Toner Cartridges and Components Thereof*, Inv. No. 337-TA-740, Comm'n Op. at 11 (Oct. 5, 2011) (citing *Certain Cigarettes and Packaging Thereof*, Inv. No. 337-TA-643, Comm'n Op. at 30 (Oct. 1, 2009)).

With respect to the appropriate amount of bond, Varidesk argues:

[A] bond set at 100% of the entered value of the infringing products would be appropriate to mitigate harm to Varidesk during the Presidential review period. Although an appropriate bond could be calculated based on the difference between the average manufacturers' suggested retail price for the Varidesk domestic industry products and the Respondents' infringing products, since the Non-Participating Respondents did not participate in this Investigation and, therefore, provided no discovery relating to pricing or royalty information, such a calculation would be necessarily imprecise. Further, the infringing imported products are sold at various prices and likely differ depending on customer and volume purchased.

Mem. at 43-44.

The Staff agrees with Varidesk's proposal of a 100 percent bond:

In the Staff's view, the evidentiary record lacks sufficiently reliable information as to price levels for the Non-Participating Respondents' adjustable-height desk platforms in the United States or appropriate royalty rates. This lack of information is due to the fact that these respondents elected not to participate in this investigation. There is also no evidence of relevant royalty rates. . . . Given the state of the evidentiary record, and the fact that all of the affected Respondents have defaulted rather than provide further discovery, the Staff agrees that Varidesk's request for a bond of 100 percent of the entered value of infringing height-adjustable desk platforms and components thereof is appropriate in the circumstances of this investigation. This amount should be sufficient to prevent any harm to Varidesk during the period of Presidential review.

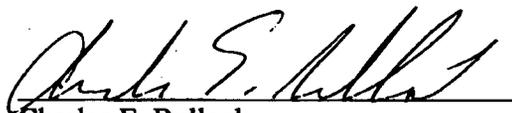
Staff Resp. at 90-91.

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In view of the fact that the Non-Participating Respondents are not in default, it is the recommended determination of the undersigned that the bond amount should be set at 100 percent of the entered value of the accused products during the Presidential review period in the event a violation of section 337 is found.

XI. ORDER

To expedite service of the public version, each party is hereby ordered to file with the Commission Secretary no later than September 25, 2019, 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. 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.



Charles E. Bullock
Chief Administrative Law Judge

**CERTAIN HEIGHT-ADJUSTABLE DESK PLATFORMS
AND COMPONENTS THEREOF**

INV. NO. 337-TA-1125

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **INITIAL DETERMINATION Order No. 33** has been served by hand upon the Commission Investigative Attorney, **Andrew Beverina, Esq.** and the following parties as indicated, on

OCT 09 2019



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

FOR COMPLAINANT VARIDESK LLC	
Adam R. Hess, Esq. VENABLE LLP 600 Massachusetts Avenue, NW Washington, DC 20001	<input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____
FOR RESPONDENT ALBEIT LLC	
1351 Broadway Street San Francisco, CA 94109	<input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____
FOR RESPONDENT ATC SUPPLY LLC	
12604 Canterbury Drive Plainfield, IL 60585-3000	<input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____

**CERTAIN HEIGHT-ADJUSTABLE DESK PLATFORMS
AND COMPONENTS THEREOF**

INV. NO. 337-TA-1125

FOR RESPONDENT SHENZHEN ATC NETWORK SCIENOLOGY CO., LTD	
Room 1902, Zian Business Building The Xinan Second Road Baoan District Shenzhen, 518000 Guangdong China	<input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____
FOR RESPONDENT AMAZON IMPORT INC.	
9910 Baldwin Place El Monte, CA 91731	<input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____
FOR RESPONDENT NINGBO GYL INTERNATIONAL TRADING CO., LTD.	
228 Mingbin Road Luoto Area, Zhenhai Ningbo, 315202 Zhejiang China	<input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____
FOR RESPONDENT JV PRODUCTS INC.	
1825 Houret Court Milpitas, CA 95035	<input checked="" type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____
FOR RESPONDENT VANSON DISTRIBUTING, INC.	
1825 Houret Court Milpitas, CA 95035	<input checked="" type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____

**CERTAIN HEIGHT-ADJUSTABLE DESK PLATFORMS
AND COMPONENTS THEREOF**

INV. NO. 337-TA-1125

FOR RESPONDENT VANSON GROUP, INC.	
1825 Houret Court Milpitas, CA 95035	<input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____
FOR RESPONDENT HAINING ORIZEAL IMPORT AND EXPORT CO., LTD.	
4th Floor, Building B, Jinhui Plaza No. 486 South Hai Chang Road Haining, 314400 Zhejiang China	<input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____
FOR RESPONDENT SMUGDESK, LLC	
14839 Proctor Avenue, Suite D La Puente, CA 91746	<input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____
FOR RESPONDENT WUHU XINGDIAN INDUSTRIAL CO., LTD	
No. 168 Xici 5th Road Mechanical Industrial Zone Wuhu, 241100 Anhui China	<input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____

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

In the Matter of

**CERTAIN HEIGHT-ADJUSTABLE
DESK PLATFORMS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1125

ORDER NO. 27: CONSTRUING TERMS OF THE ASSERTED PATENTS

(April 1, 2019)

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I. INTRODUCTION

The Commission instituted this investigation to determine whether certain height-adjustable desk platforms and components thereof infringe U.S. Patent Nos. 9,113,703 (“the ’703 patent”), 9,277,809 (“the ’809 patent”), 9,554,644 (“the ’644 patent”), and 9,924,793 (“the ’793 patent”). *See* 83 Fed. Reg. 36621 (July 30, 2018). As set forth in the Notice of Investigation, the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is “a desk platform that sits on an existing desk or work surface and can be adjusted to different heights.” *Id.*

The complainant is Varidesk LLC (“Varidesk” or “Complainant”) of Coppell, Texas. *Id.* The named respondents participating in the *Markman* process are Best Choice Products, Dakota Products Inc., Hangzhou Grandix Electronics Co. Ltd., Huizhou Chang He Home Supplies Co., Ltd., S.P. Richards Co. dba Lorell, Nantong Jon Ergonomic Office Co., Ltd., Qidong Vision Mounts Manufacturing Co., Ltd., and Cknapp Sales Inc. dba Vivo (collectively, “Participating Respondents” or “Respondents”).¹ *See id.*; Notice Regarding Claim Construction at 1 n.1 (EDIS Doc. No. 669341) (Mar. 7, 2019). The Office of Unfair Import Investigations (“Staff”) is also a party to this investigation. *Id.*

A *Markman* hearing was held December 10, 2018 regarding the interpretation of certain claims of the patents at issue. The parties filed initial and reply claim construction briefs,²

¹ As of the date of this order, all Participating Respondents have settled except Dakota Trading, Inc. (“Dakota”).

² The Staff elected to file an initial brief only, and did not file a reply brief.

wherein each party offered its construction for the claim terms in dispute, along with support for its proposed interpretation. The parties also submitted a Joint Claim Construction Chart.³

II. IN GENERAL

The claim terms construed in this Order are done so for the purposes of this section 337 investigation. Those terms not in dispute need not be construed. *See Vanderlande Indus. Nederland BV v. Int'l Trade Comm'n*, 366 F.3d 1311, 1323 (Fed. Cir. 2004) (noting that the administrative law judge need only construe disputed claim terms).

III. RELEVANT LAW

“An infringement analysis entails two steps. The first step is determining the meaning and scope of the patent claims asserted to be infringed. The second step is comparing the properly construed claims to the device accused of infringing.” *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed. Cir. 1995) (*en banc*) (internal citations omitted), *aff'd*, 517 U.S. 370 (1996). Claim construction is a “matter of law exclusively for the court.” *Id.* at 970-71. “The construction of claims is simply a way of elaborating the normally terse claim language in order to understand and explain, but not to change, the scope of the claims.” *Embrex, Inc. v. Serv. Eng'g Corp.*, 216 F.3d 1343, 1347 (Fed. Cir. 2000).

³ For convenience, the briefs and chart submitted by the parties shall be referred to as:

CMIB	Complainant's Initial <i>Markman</i> Brief
CMRB	Complainant's Reply <i>Markman</i> Brief
RMIB	Respondents' (Corrected) Initial <i>Markman</i> Brief
RMRB	Respondents' Reply <i>Markman</i> Brief
SMIB	Staff's Initial <i>Markman</i> Brief
JC	Joint Proposed Claim Construction Chart

Claim construction focuses on the intrinsic evidence, which consists of the claims themselves, the specification, and the prosecution history. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (*en banc*); *see also Markman*, 52 F.3d at 979. As the Federal Circuit in *Phillips* explained, courts must analyze each of these components to determine the “ordinary and customary meaning of a claim term” as understood by a person of ordinary skill in art at the time of the invention. 415 F.3d at 1313. “Such intrinsic evidence is the most significant source of the legally operative meaning of disputed claim language.” *Bell Atl. Network Servs., Inc. v. Covad Commc’ns Grp., Inc.*, 262 F.3d 1258, 1267 (Fed. Cir. 2001).

“It is a ‘bedrock principle’ of patent law that ‘the claims of a patent define the invention to which the patentee is entitled the right to exclude.’” *Phillips*, 415 F.3d at 1312 (quoting *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1115 (Fed. Cir. 2004)). “Quite apart from the written description and the prosecution history, the claims themselves provide substantial guidance as to the meaning of particular claims terms.” *Id.* at 1314; *see also Interactive Gift Express, Inc. v. Compuserve Inc.*, 256 F.3d 1323, 1331 (Fed. Cir. 2001) (“In construing claims, the analytical focus must begin and remain centered on the language of the claims themselves, for it is that language that the patentee chose to use to ‘particularly point [] out and distinctly claim [] the subject matter which the patentee regards as his invention.’”). The context in which a term is used in an asserted claim can be “highly instructive.” *Phillips*, 415 F.3d at 1314. Additionally, other claims in the same patent, asserted or unasserted, may also provide guidance as to the meaning of a claim term. *Id.*

The specification “is always highly relevant to the claim construction analysis. Usually it is dispositive; it is the single best guide to the meaning of a disputed term.” *Phillips*, 415 F.3d at 1315 (quoting *Vitronics Corp. v. Conceptoronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)).

“[T]he specification may reveal a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess. In such cases, the inventor’s lexicography governs.” *Id.* at 1316. “In other cases, the specification may reveal an intentional disclaimer, or disavowal, of claim scope by the inventor.” *Id.* As a general rule, however, the particular examples or embodiments discussed in the specification are not to be read into the claims as limitations. *Id.* at 1323. In the end, “[t]he construction that stays true to the claim language and most naturally aligns with the patent’s description of the invention will be . . . the correct construction.” *Id.* at 1316 (quoting *Renishaw PLC v. Marposs Societa’ per Azioni*, 158 F.3d 1243, 1250 (Fed. Cir. 1998)).

In addition to the claims and the specification, the prosecution history should be examined, if in evidence. *Phillips*, 415 F.3d at 1317; *see also Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 913 (Fed. Cir. 2004). The prosecution history can “often inform the meaning of the claim language by demonstrating how the inventor understood the invention and whether the inventor limited the invention in the course of prosecution, making the claim scope narrower than it would otherwise be.” *Phillips*, 415 F.3d at 1317; *see also Chimie v. PPG Indus. Inc.*, 402 F.3d 1371, 1384 (Fed. Cir. 2005) (“The purpose of consulting the prosecution history in construing a claim is to exclude any interpretation that was disclaimed during prosecution.”).

When the intrinsic evidence does not establish the meaning of a claim, then extrinsic evidence (*i.e.*, all evidence external to the patent and the prosecution history, including dictionaries, inventor testimony, expert testimony, and learned treatises) may be considered. *Phillips*, 415 F.3d at 1317. Extrinsic evidence is generally viewed as less reliable than the patent itself and its prosecution history in determining how to define claim terms. *Id.* at 1317. “The court may receive extrinsic evidence to educate itself about the invention and the relevant

technology, but the court may not use extrinsic evidence to arrive at a claim construction that is clearly at odds with the construction mandated by the intrinsic evidence.” *Elkay Mfg. Co. v. Ebco Mfg. Co.*, 192 F.3d 973, 977 (Fed. Cir. 1999).

If, after a review of the intrinsic and extrinsic evidence, a claim term remains ambiguous, the claim should be construed so as to maintain its validity. *Phillips*, 415 F.3d at 1327. Claims, however, cannot be judicially rewritten in order to fulfill the axiom of preserving their validity. *See Rhine v. Casio, Inc.*, 183 F.3d 1342, 1345 (Fed. Cir. 1999). Thus, “if the only claim construction that is consistent with the claim’s language and the written description renders the claim invalid, then the axiom does not apply and the claim is simply invalid.” *Id.*

A claim must also be definite. Specifically, “[t]he specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.” 35 U.S.C. § 112, ¶ 2. The Supreme Court has held that § 112, ¶ 2 requires “that a patent’s claims, viewed in light of the specification and prosecution history inform those skilled in the art about the scope of the invention with reasonable certainty.” *Nautilus, Inc. v. Biosig Instruments, Inc.*, 134 S. Ct. 2120 at 2129 (2014). A claim is required to “provide objective boundaries for those of skill in the art,” and a claim term is indefinite if it “might mean several different things and no informed and confident choice is among the contending definitions.” *Interval Licensing LLC v. AOL, Inc.*, 766 F.3d 1364, 1371 (Fed. Cir. 2014). A patent claim that is indefinite is invalid. 35 U.S.C. § 282(b)(3)(A).

IV. LEVEL OF ORDINARY SKILL IN THE ART

Varidesk takes the position that “[t]he disputed terms should be construed in accordance with their ordinary and customary meanings,” and that the level of ordinary skill in the art therefore does not affect the construction of any of the disputed terms. *See* CMIB at 16.

Nevertheless, Varidesk submits that “a person of ordinary skill in the relevant art will have at least two or more years of college-level coursework in mechanical engineering or industrial design, plus awareness or appreciation of ergonomic issues, which may be gained for example through one to two years of work experience in ergonomics or industrial design.” *Id.* at 16.

Respondents did not propose a level of ordinary skill in the art for the asserted patents. *See* SMIB at 5.

The Staff has adopted Varidesk’s proposed level of ordinary skill for purposes of the claim construction analysis. *See* SMIB at 5.

The undersigned finds that Varidesk’s proposal best reflects the level of skill in the art at the time of the asserted patents. Accordingly, it is found that one of ordinary skill in the art would have had have at least two or more years of college-level coursework in mechanical engineering or industrial design, plus awareness or appreciation of ergonomic issues, which may be gained for example through one to two years of work experience in ergonomics or industrial design.

V. THE ASSERTED PATENTS

A. U.S. Patent No. 9,113,703

Asserted U.S. Patent No. 9,113,703 is titled, “Adjustable Desk Platform.” The ’703 patent issued on August 25, 2015, and the named inventor is Daniel Flaherty. Varidesk asserts claims 1-4 and 6-11 of the ’703 patent. 83 Fed. Reg. 36621 (July 30, 2018). Claim 1 is an independent claim. *See* ’703 patent.

B. U.S. Patent No. 9,277,809

Asserted U.S. Patent No. 9,277,809 is titled, “Adjustable Desk Platform.” The ’809 patent issued on March 8, 2016, and the named inventors are Daniel G. Flaherty, David Patton,

and Sheng Chien Wang. Varidesk asserts claims 1-3, 5-18, and 22-28 of the '809 patent. 83 Fed. Reg. 36621 (July 30, 2018). Claims 1, 11, and 22 are independent claims. *See* '809 patent.

C. U.S. Patent No. 9,554,644

Asserted U.S. Patent No. 9,554,644 is titled, "Adjustable Desk Platform." The '644 patent issued on January 31, 2017, and the named inventors are Daniel G. Flaherty, David Patton, and Sheng Chien Wang. Varidesk asserts claims 1-15, 19, 21-23, 25-26, and 28-36 of the '644 patent. 83 Fed. Reg. 36621 (July 30, 2018). Claims 1, 13, 21, 26, 29, and 33 are independent claims. *See* '644 patent.

D. U.S. Patent No. 9,924,793

Asserted U.S. Patent No. 9,924,793 is titled, "Adjustable Desk Platform." The '793 patent issued on March 27, 2018, and the named inventors are Daniel G. Flaherty, David Patton, and Sheng C. Wang. Varidesk asserts claims 1-11 and 20-50 of the '793 patent. 83 Fed. Reg. 36621 (July 30, 2018). Claims 1, 20, 22, 32, 40, and 45 are independent claims.

VI. CONSTRUCTION OF AGREED-UPON CLAIM TERMS

The parties have agreed to the following constructions:

Claim Term(s)	Relevant Claims	Parties' Agreed Construction
<p>"mounting brackets <i>extending below</i> the upper platform" /</p> <p>"mounting brackets <i>extending upward</i> from the base"</p>	<p>'703 patent: claim 1</p> <p>'809 patent: claim 22</p> <p>'644 patent: claims 14, 26, 29, 34</p> <p>'793 patent: claim 32</p>	<p>"mounting brackets attached to and projecting below the upper platform" /</p> <p>"mounting brackets attached to and projecting upward from the base"</p>

Claim Term(s)	Relevant Claims	Parties' Agreed Construction
<p>“a first handle <i>connected to</i> the lower surface of the upper platform” /</p> <p>“a first handle <i>mounted to</i> the lower surface of the upper platform” /</p> <p>“the first handle . . . pivotally <i>connected to</i> the lower surface of the upper platform” /</p> <p>“the first handle is . . . pivotally <i>connected to</i> the lower surface of the upper platform”</p>	<p>'703 patent: claim 1</p> <p>'809 patent: claim 22</p> <p>'793 patent: claims 32, 40, 45</p>	<p>These phrases should be construed consistently such that the handle is <i>secured to</i> the lower surface of the upper platform</p>

JC at 2. The undersigned hereby adopts the parties' proposed constructions for the terms set forth above and shall construe them according to their agreed-to definitions.

VII. CONSTRUCTION OF DISPUTED CLAIM TERMS

A. “base”

Several disputed claim terms relate to the “base” of the adjustable desk. The parties have addressed these terms together and agree that the terms should be construed to mean the same thing. *See* CMIB at 18; RMIB at 19; SMIB at 6. The following chart sets forth the claim terms at issue, as well as the parties' proposed constructions:

Disputed “Base” Terms		
<ul style="list-style-type: none"> • “a base located beneath the upper platform, the base defining a bottom surface without legs that is adapted to sit on an existing desk” (’703 Patent, claim 1) • “a base located beneath the upper platform, the base having a bottom that is adapted to sit on an existing desk” (’809 Patent, claims 1, 11, and 22; ’793 Patent, claim 32) • “a base located beneath the upper platform, the base defining a bottom that is adapted to sit on an existing desk” (’644 Patent, claims 1, 13, 26, 29, and 33; ’793 Patent, claims 20, 40, and 45) 		
Complainant’s Construction	Respondents’ Construction	Staff’s Construction
<p>Plain and ordinary meaning: “a base located beneath the upper platform, the base defining a bottom surface without legs that is adapted to sit on an existing desk”</p> <p>Varidesk does not believe that this phrase needs construction, but if the ALJ determines that this term should be construed, the Staff’s proposed construction is acceptable to Varidesk.</p>	<p>“a lower platform or work surface beneath the upper platform that is adapted to sit on an existing desk”</p>	<p>Plain and ordinary meaning: “a structure, having a bottom surface, which forms the base of an adjustable desk platform assembly”</p>

JC at 3.

The dispute among the parties centers on whether or not the claimed “base” is limited to a “platform.” Varidesk and the Staff argue that the plain and ordinary meaning of “base” does not so limit, whereas Respondents argue that Provisional Application No. 1/651,101 (“the ’101 application”), to which each of the asserted patents claims priority, limits the construction of “base” to a platform. *See* RMIB at 19-25. As discussed in more detail below, however, Respondents’ argument is not persuasive.

The '101 provisional application was filed on May 24, 2012 and disclosed “an adjustable desktop platform.” '101 provisional application at [0001]. Of particular importance to the claim term at issue is the passage stating that the “adjustable desktop platform includes a base platform intended to set on an existing worker’s desk.” *Id.* at [0017]. Figure 5 of the '101 provisional application shows the various parts of the desk, including the “base platform.” *Id.* at Fig. 5.

The asserted patents incorporate the '101 provisional application by reference, making the provisional “effectively part of” the specifications of the asserted patents. *Trustees of Columbia Univ. in the City of N.Y. v. Symantec Corp.*, 811 F.3d 1359, 1365-66 (Fed. Cir. 2016) (quoting *Advanced Display Sys., Inc. v. Kent State Univ.*, 212 F.3d 1272, 1282 (Fed Cir. 2000)). Respondents argue this means that the platform configuration of the '101 provisional application is incorporated by reference such that any other type of base is not supported by the '101 provisional application. *See* RMIB at 19-25. Yet, the '101 provisional application does not limit the claimed bases to platforms only. In particular, the '101 provisional application uses the term “base platform,” a term not used in the child patents, which instead use the term “lower platform” in the specification and claim a “base” rather than a “base platform.” *See, e.g.*, '703 patent at 3:13 (lower platform), claim 1 (base).

The specification of the '101 provisional application teaches that the “base platform” is what sits on the existing desk. '101 provisional application at [0017]. “Base platform” is a compound term wherein “base” modifies “platform,” meaning that the base can be, but does not have to be, a platform. This interpretation of “base platform” is confirmed by claim 1 of the '101 provisional application, which distinguishes the base from the platform by claiming “a base having a lower platform.” *Id.* at claim 1. If, as Respondents argue, the lower platform of the

asserted patents were the claimed base, then claim 1 of the '101 provisional application would read “a base having a base,” which is an unreasonable interpretation.

Turning now to the asserted patents, the claim language and specification demonstrate that the claimed “base” is not limited to a platform. For instance, the claims of the asserted patents do not require a base that must be a platform, but instead use broader language:

- “[A] base located beneath the upper platform, the base defining a bottom surface without legs that is adapted to sit on an existing desk.” ’703 patent at claim 1.
- “[A] base located beneath the upper platform, the base having a bottom that is adapted to sit on an existing desk.” ’809 patent at claim 1.
- “[A] base located beneath the upper platform, the base defining a bottom that is adapted to sit on an existing desk.” ’644 and ’793 patents at claim 1.

This choice of claim language provides guidance as to the meaning of the term at issue, and in no way suggests that the claimed base is limited to a platform.

Moreover, the specifications of the asserted patents disclose an adjustable work desk with “lower platform 20.” *See, e.g.*, ’703 patent at 3:13; ’809 patent at 4:11; ’644 patent at 4:24; ’793 patent at 4:24. Although lower platform 20 is the element that Respondents argue must be the base, the specifications and drawings disclose embodiments wherein lower platform 20 does not rest on the desk, as is required for the “base.” In these embodiments, counterweights 22 are beneath the bottom surface of the lower platform, and thus the counterweights comprise the base resting on the desk. *See* ’703 patent at 3:44-46; ’809 patent at 4:43-45; ’644 patent at 4:56-58; *see also, e.g.*, ’703 patent Figs. 2, 14 (showing counterweights 22 beneath platform 20).

Therefore, the intrinsic evidence demonstrates that the claimed “base” is not limited to a platform. *See Vitronics*, 90 F.3d at 1583 (holding a claim construction that excludes a preferred embodiment “is rarely, if ever, correct”).

In sum, the claims, specifications, drawings, and prosecution history of the asserted patents confirm that, although a platform can be the claimed base, it does not have to be the base. Accordingly, it is the determination of the undersigned that the claim term “base” should be construed to mean “*a structure, having a bottom surface, which forms the base of an adjustable desk platform assembly,*” which is a construction that reflects the plain and ordinary meaning of the term and that comports with the intrinsic evidence.

B. “parallel”

Two disputed claim terms relate to “parallel” movement of the claimed upper platform with respect to the base. The parties have addressed these terms together and agree the terms can be construed to mean the same thing. *See JC* at 4. The following chart sets forth the claim terms at issue, as well as the parties’ proposed constructions:

Disputed “Parallel” Movement Terms
<ul style="list-style-type: none">• “the first and second sets of arms adapted to move the upper platform substantially in parallel with the base” (’703 Patent, claim 1; ’809 Patent, claim 22; ’793 Patent, claim 32)• “wherein the first and second sets of arms are adapted for movement of the upper platform substantially in parallel with the base” (’809 Patent, claims 1 and 11; ’644 Patent, claims 1, 13, 26, 29, and 33; ’793 Patent, claims 20, 40, and 45)

Complainant's Construction	Respondents' Construction	Staff's Construction
<p>Plain and ordinary meaning: "the first and second sets of arms adapted to move the upper platform substantially in parallel with the base"</p> <p>Varidesk does not believe that this phrase needs construction, but if the ALJ determines that this term should be construed, the Staff's proposed construction is acceptable to Varidesk.</p>	<p>"wherein the first and second sets of arms are adapted for movement of the upper platform in the horizontal plane (or in the X direction) while the upper platform remains substantially parallel to the base"</p>	<p>Plain and ordinary meaning: "the first and second sets of arms are capable of moving the upper platform substantially in parallel with the base"</p>

JC at 4.

The dispute among the parties centers on whether or not "parallel" requires movement on the horizontal plane. Parallel is a well-known term, and construction of this term therefore requires "little more than the application of the widely accepted meaning of commonly understood words." *See Phillips*, 415 F.3d at 1314. The constructions proposed by Varidesk and the Staff for the disputed terms reflect the commonly understood meaning of "parallel," whereas Respondents' proposed construction attempts to re-define "parallel." Yet, Respondents do not identify evidence showing that the patentee acted as his own lexicographer in re-defining "parallel." *See Vitronics*, 90 F.3d at 1582. Moreover, Respondents' proposed construction improperly imports limitations into the claim and renders superfluous several dependent claims of the asserted patents.

As an initial matter, Respondents' argument in favor of their proposed construction relies, at least in part, on an assumption that the patentee re-defined the term "parallel" to mean something other than its customary meaning. *See Resp. IMB* at 26-35. The term "parallel" has a

well-known definition, for example, “extending in the same direction, everywhere equidistant, and not meeting.” *See* Staff Resp. Ex. 1 (Webster’s Collegiate Dictionary, 840 (10th Ed. 2002)). Respondent’s proposed construction adds a lateral movement requirement to the term parallel, but there is no evidence in the file history or specification that the inventor intended to re-define “parallel.”

Respondents also argue that amendments made during prosecution of another patent in the same family, U.S. Patent No. 8,671,853 (“the ’853 patent”), means that “parallel” must have lateral movement, but this argument is not persuasive. *See* RMIB at 31-32. Specifically, the amendments cited by Respondents are unrelated to the limitation at issue here. The ’853 file history shows that the applicant amended two different limitations in separate Office Action responses: (1) the first added a limitation that the brackets, and not the upper platform, are parallel to the lower platform, and (2) the second added a limitation that the upper platform moves rearward. RMIB Ex. 16 (’853 file history) at Aug. 27, 2013 and Dec. 13, 2013. These amendments fail to support Respondents’ claim construction argument.

Respondents also argue that the “claims require an ‘upper platform’ coupled to a ‘base’ by sets of ‘pivot arms,’” but this argument is not persuasive. *See* RMIB at 26. As an initial matter, none of the asserted claims recites “pivot arms,” but rather merely “arms.” Respondents’ unwarranted addition of “pivot” to “arms” in the claims leads to their argument that this “structure necessitates a ‘four bar linkage’ . . .” *See id.* Yet, the claims do not require a four-bar linkage, and the fact that the exemplary embodiments use a certain type of pivot arm does not mean the invention is limited to those examples. In particular, the asserted patents specifically state that the invention is not limited to the preferred embodiments. *See* ’703 patent at 7:40-54; ’809 patent at 11:35-49; ’644 patent at 11:56-12:3; ’793 patent at 11:56-12:3; *cf. GLG Farms*

LLC v. Brandt Agricultural Products, Ltd., 2018 WL 3659058, at *3 (Fed. Cir. 2018) (limiting the claimed invention to an arrangement of parts described as “the present invention”).

Respondents’ attempt to re-define “parallel” to require horizontal or lateral movement also violates the doctrine of claim differentiation, which presumes that each claim is different in scope. *Comark Communications, Inc. v. Harris Corp.*, 156 F.3d 1182, 1187 (Fed. Cir. 1998). The presumption is especially strong where, as in this investigation, the “limitation that is sought to be ‘read into’ an independent claim already appears in a dependent claim.” *Liebel-Flarsheim*, 358 F.3d at 910 (Fed. Cir. 2004). For example, asserted independent claim 1 of the ’644 patent claims (in relevant part): “wherein the first and second sets of arms are adapted for movement of the upper platform substantially in parallel with the base between a raised position and a lowered position.” ’644 patent at claim 1. Claim 11, which depends from claim 1, adds the limitation “wherein *the upper platform moves laterally with respect to the base* when moved from the lowered position to the raised position.” *Id.* at claim 11 (emphasis added). If, as Respondents propose, “parallel” were defined to require horizontal or lateral movement, then claim 11 would be entirely superfluous.⁴

In sum, there is nothing in the claims, specification, or prosecution history requiring movement on the horizontal plane. Indeed, the doctrine of claim differentiation strongly suggests that there is *no* movement required on the horizontal plane. Therefore, it is determined that the “parallel” movement claim terms should be construed such that “*the first and second sets of*

⁴ Dependent claim 3 of the ’809 patent would likewise be rendered superfluous under Respondents’ proposed construction. Claim 1 of the ’809 patent recites language similar to that of claim 1 of the ’644 patent. Further, as with claim 11 of the ’644 patent, dependent claim 3 of the ’809 patent adds the limitation “wherein the upper platform moves laterally with respect to the base when moved from the lowered position to the raised position.” ’809 patent at claims 1 and 3.

arms are capable of moving the upper platform substantially in parallel with the base.” This construction is consistent with the common definition of “parallel,” and reflects the specific usage of the term in the patent specifications and claims.

C. “anchor”

The disputed claim term “anchor” is recited in claims 1 and 2 of the ’703 patent; claims 1, 12, 22, and 23 of the ’809 patent; claims 5 and 32 of the ’644 patent; and claim 34 of the ’793 patent. The parties’ proposed constructions are as follows:

Complainant’s Construction	Respondents’ Construction	Staff’s Construction
<p>Plain and ordinary meaning: “anchor”</p> <p>Varidesk does not believe that this term needs construction, but if the ALJ determines that this term should be construed, it should be construed according to a standard dictionary definition: “something that serves to hold an object firmly,” alternatively, the Staff’s proposed construction is acceptable to Varidesk.</p>	<p>“a peg or pin adapted to engage a perforation or hole in the lower mounting bracket and/or arm”</p>	<p>Plain and ordinary meaning: “a mechanical piece that holds an object in place”</p>

JC at 5.

The constructions proposed by Varidesk and the Staff are similar in that they encompass the concept of an anchor being something that holds something else in place. Respondents’ proposal, on the other hand, is overly restrictive and not supported by the intrinsic evidence.

In particular, the claim language itself does not specify that the claimed anchor must be a peg or a pin. Exemplary claim 1 of the '703 patent recites a “first anchor adapted to releasably lock the first set of arms” ’703 patent at claim 1. Although the claim language is broad enough to allow the anchor to be a peg or pin, the claim language does not limit the anchor to only a peg or pin.

As discussed above with respect to the parallel movement terms, the asserted patents expressly state that the invention is not limited to the embodiments. *See* ’703 patent at 7:40-54; ’809 patent at 11:35-49; ’644 patent at 11:56-12:3; ’793 patent at 11:56-12:3. Although the patents generally describe anchors as pins that interact with perforations, the ’703 patent—for example—also states that the “locking mechanism can comprise: a plurality of perforations” and “at least one anchor adapted to selectively engage at least one of the plurality of perforations.” ’703 patent at 2:2-8.

Yet, the term “anchor” as used in the context of the asserted patents is not boundless. The claimed anchor must, for example, be adapted to releasably lock a set of arms in place. *See* ’703 patent at claim 1. This language sets limits as to what the claimed anchor can be. It cannot be, for example, duct tape or a paperweight as argued by the Respondents, but it is also not limited specifically to a peg or a pin. *See* RMIB at 42.

In view of the intrinsic evidence and the arguments of the parties, it is determined that the term anchor should be construed to mean “*a mechanical piece that holds an object in place.*” This construction is consistent with the plain and ordinary meaning of “anchor,” and reflects the specific usage of the term in the patent specifications and claims. Further, this construction does not improperly limit the claimed anchor to the embodiments.

D. “locking mechanism”

The disputed claim term “locking mechanism” is recited in claims 1 and 11 of the '703 patent; claims 1, 12, 19, and 22 of the '809 patent; claims 4, 5, 15, 16, 26, 29, 32, and 33 of the '644 patent; and claims 20, 32, 33, 38, 40, and 42 of the '793 patent. The parties' proposed constructions are as follows:

Complainant's Construction	Respondents' Construction	Staff's Construction
<p>Plain and ordinary meaning: "locking mechanism"</p> <p>Not a means-plus-function claim limitation.</p> <p>Varidesk does not believe that this phrase needs construction, but if the ALJ determines that this term should be construed, the Staff's proposed construction is acceptable to Varidesk.</p>	<p>With regard to '703 Patent Claim 3; '644 Patent Claims 4, 15, 26-28, 29 and 33; '793 Patent Claims 20, 38, 40, and 42:</p> <p>Indefinite</p> <p style="text-align: center;">* * * * *</p> <p>With regard to '703 Patent Claim 1; '809 Patent Claims 1, 11 and 22; '644 Patent Claims 1 and 13; '793 Patent Claims 32 and 45:</p> <p>Interpret under 35 U.S.C. §112(6):</p> <p><u>Function</u>: releasably locking the upper platform in the raised position and in at least one intermediate position between the raised position and the lowered position</p> <p><u>Structure</u>: locking mechanism (40) illustrated in Figures 6, 8, and 9, including anchor (41), handle (42), linkage set (43), hole (111) of lower mounting bracket (11), spring (44), adapting piece (45), and perforations (311) of locking part (311) of main pivot arm (31).</p>	<p>"a structure to prevent movement"</p>

JC at 6-7.

Varidesk and the Staff propose constructions they contend reflect the plain and ordinary meaning of “locking mechanism,” whereas Respondents split the construction of the term into two usage categories: (1) instances in which Respondents allege “locking mechanism” is a means-plus-function term, and (2) instances in which they allege the term is indefinite. *See* RMIB at 44.

The term “locking mechanism” consists of ordinary words that are understood from reading the patent. *See e.g.*, ’703 patent at 1:59-2:10, 3:20-22, 4:9-50, 5:22-49, 5:63-6:3; *see also id.* at FIGS. 2, 3, 5, 6, 8, 9, 10. Therefore, it is determined that this claim term does not need construction insofar as the plain and ordinary meaning of the words should be applied when performing an infringement or validity analysis.⁵ Further, as discussed in more detail below, it is determined that the term “locking mechanism,” as used in the asserted patents, is neither in means-plus-function form nor indefinite.

1. Respondents’ Means-Plus-Function Argument

If a claim term does not use the term “means,” there is a rebuttable presumption that it is not a means-plus-function term. *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1349 (Fed. Cir. 2015) (*en banc*). To overcome this presumption, it must be shown that “the claim term fails to ‘recite sufficiently definite structure’ or else recites ‘function without reciting sufficient structure for performing that function.’” *Id.* (citations omitted).

A review of the claims at issue demonstrates they do not contain the term “means,” and thus the presumption that they are not means-plus-function terms applies. The next step in the

⁵ The Staff’s proposed construction of “a structure to prevent movement” restates the plain and ordinary meaning of “locking mechanism” and is not needed to “understand and explain” the scope of the claims. *See Embrex*, 216 F.3d at 1347.

analysis is to determine “whether the words of the claim are understood by persons of ordinary skill in the art to have a sufficiently definite meaning as the name for structure.” *Id.* (citations omitted).

Each of the claims at issue recites a “locking mechanism comprising . . .” various elements that expressly describe the structure of the locking mechanism. For example, claim 1 of the '703 patent recites (emphasis added):

1. An adjustable desk platform comprising:

an upper platform defining a first substantially planar work surface, and a lower surface opposite the work surface;

first and second lower mounting brackets extending below the upper platform, the first and second lower mounting brackets laterally spaced apart from one another;

a base located beneath the upper platform, the base defining a bottom surface without legs that is adapted to sit on an existing desk;

first and second upper mounting brackets extending upward from the base, the first and second upper mounting brackets laterally spaced apart from one another;

first and second sets of arms connecting the first and second lower mounting brackets to the first and second upper mounting brackets, respectively, the first and second sets of arms adapted to move the upper platform substantially in parallel with the base between a fully raised position and a fully lowered position; and

a first locking mechanism associated with the first set of arms, the first locking mechanism comprising:

a first anchor coupled to the first lower mounting bracket, the first anchor adapted to releasably lock the first set of arms in position with respect to the first lower mounting bracket, and

a first handle connected to the lower surface of the upper platform, the first handle user-operable to unlock the first set of arms to permit movement of the upper platform between the fully raised and the fully lowered positions.

'703 patent at claim 1. As demonstrated by this exemplary claim, the claims of the asserted patents are not, as Respondents argue, “drafted in the same format as a traditional means-plus-function limitation,” such that they “merely replace[] the term ‘means’ with ‘mechanism.’” *See* RMIB at 50.

In addition, the prosecution history of the asserted '809 patent further demonstrates that the asserted claims at issue are not drafted in means-plus-function format. In particular, the examiner rejected the original '809 claims for failure to recite sufficient structure to define how the locking mechanism functions. *See* CMIB Ex. 7 ('809 file history June 24, 2015 Office Action). The applicant overcame the rejection by adding structure and a description of how the anchors and handles interact. *See* CMIB Ex. 8 ('809 file history Sept. 22, 2015 Amendment). The amended claims were subsequently allowed, which confirms that they recite sufficient structure and that the limitations are not drafted in means-plus-function form.

Therefore, it has been shown that the structure expressly recited in the asserted claims would be “understood by persons of ordinary skill in the art to have a sufficiently definite meaning as the name for structure.” Accordingly, the undersigned finds that claim 1 of the '703 patent; claims 1, 11, and 22 of the '809 patent; claims 1 and 13 of the '644 patent; and claims 32 and 45 of the '793 patent are not drafted in means-plus-function format.

2. Respondents' Indefiniteness Argument

Respondents argue that claim 3 of the '703 patent; claims 4, 15-16, 26-28, 29-31, and 33 of the '644 patent; and claims 20, 38, 40 and 42 of the '793 patent are indefinite. *See* RMIB at 44; JC at 6. In essence, Respondents' indefiniteness argument is that the amendment made during prosecution of the '809 patent (discussed above with respect to means-plus-function claiming) did not cure the defects identified by the examiner. *See* RMIB at 45-46. The examiner,

however, determined that the amendment added sufficient structure to comply with 35 U.S.C. § 112, ¶ 2 and allowed the claims.

Taken as a whole, the intrinsic evidence does not support a finding that the term “locking mechanism” renders the claims invalid as indefinite. “[A] patent is invalid for indefiniteness if its claims, read in light of the specification delineating the patent, and the prosecution history, fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention.” *Nautilus*, 134 S. Ct. at 2124. Specifically, the claims themselves expressly recite structure relevant to the claimed “locking mechanism,” and the recited structure was a basis for allowance of the claims during patent prosecution.

Accordingly, the undersigned finds that claim 3 of the '703 patent; claims 4, 15-16, 26-28, 29-31, and 33 of the '644 patent; and claims 20, 38, 40 and 42 of the '793 patent are not indefinite. Moreover, as previously stated above, the term “locking mechanism” consists of ordinary words that are understood from reading the patent such that the claim term does not need construction, and the plain and ordinary meaning of these words should be applied when performing an infringement or validity analysis.

E. “releasably lock the [] set of arms in position with respect to the [] mounting bracket/upper platform”

Several disputed claim terms relate to releasably locking one component of the desk “with respect to” another component. The following chart sets forth the claim terms at issue, as well as the parties’ proposed constructions:

Disputed “With Respect to” Terms		
<ul style="list-style-type: none"> • “releasably lock the first set of arms in position with respect to the first lower mounting bracket” (’703 Patent, claim 1) • “releasably lock the second set of arms in position with respect to the second lower mounting bracket” (’703 Patent, claim 11) • “releasably lock the first set of arms in position with respect to the first mounting bracket” (’809 Patent, claim 22; ’793 Patent, claim 32) • “releasably lock the second set of arms in position with respect to the second mounting bracket” (’793 Patent, claims 33 and 38) • “releasably lock the first set of arms in position with respect to the upper platform” (’793 Patent, claim 40) 		
Complainant’s Construction	Respondents’ Construction	Staff’s Construction
<p>Plain and ordinary meaning: “releasably lock the [] set of arms in position with respect to the [] lower mounting bracket/upper platform”</p> <p>Varidesk does not believe that this phrase needs construction, but if the ALJ determines that this term should be construed, the Staff’s proposed construction is acceptable to Varidesk.</p>	<p>Indefinite</p> <p>Alternatively “releasably fix or secure the [first/second] set of arms to the [first/first lower/second] mounting bracket”</p> <p>“fixes or secures the [first/second] set of arms to the [first/second] mounting bracket”</p>	<p>“releasably lock the [first/second] set of arms in position relative to the [first/first lower/second] mounting bracket”</p> <p>“locks the [first/second] set of arms in position relative to the [first/second] mounting bracket”</p>

JC at 8.

The constructions proposed by Varidesk and the Staff are similar in that they encompass the idea of fixing a set of arms in a position *relative to* a second component, *i.e.*, the mounting bracket. Respondents’ proposal, on the other hand, would require that the set of arms be fixed *to* the mounting bracket.⁶ Respondents’ construction is not supported by the intrinsic evidence.

⁶ Respondents also allege that these claim terms are indefinite, but do not address this argument in either their initial brief or their reply brief. *See* JC at 8; RMIB at 54-57; RMRB at 37-43. In

Indeed, the claims themselves require only that the arms be locked “with respect to the . . . mounting bracket.” *See, e.g.*, ’703 patent at claim 1. Nothing in this language requires that the arms be connected to the mounting bracket itself. Moreover, although the specification teaches embodiments showing a connection between the arms and the mounting brackets, the specification does not exclude connecting the arms to an intermediate structure.

The prosecution history also does not require that the arms be secured or connected to the mounting bracket. Respondents argue that arguments made during prosecution define “with respect to” as “connected or secured,” but this argument is not persuasive. *See* RMIB at 57. Specifically, during prosecution of the ’703 patent the examiner rejected claim 1 over the prior art Peter patent and stated:

The patent to Peter teaches position, a locking mechanism associated with the set of pivot arms, the locking mechanism comprising a plurality of perforations (44) located in the primary pivot arm or the secondary pivot arm, a locking set (48, 49) fixed with respect to the upper platform or the lower platform, the locking set including at least one anchor adapted to selectively engage at least one of the plurality of perforations, and a handle (54) connected to the anchor by a linkage, the handle adapted to selectively move the anchor into engagement with at least one of the plurality of perforations.

RMIB Ex. 8 (’703 file history) at VDSK0000093. The inventor responded to this rejection by amending the claim and arguing:

Second, Peter does not disclose or render obvious “a first anchor coupled to the first lower mounting bracket, the first anchor adapted to releasably lock the first set of arms in position with respect to the first lower mounting bracket,” as recited by claim 1. The Office Action apparently aligns the locking rod 48 or 49 of Peter’s FIG. 5 with the claimed “anchor.” However, the Office Action acknowledges that Peter fails to disclose the claimed “lower mounting bracket.” (See Action at pg. 5.) Accordingly, Peter cannot disclose or suggest that the locking rod 48 or 49 is “coupled to [a] first lower

any event, the claims are not indefinite because they do not “fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention.” *Nautilus*, 134 S. Ct. at 2124.

mounting bracket,” as would be required by claim 1. Therefore, Peter does not disclose or render obvious “a first anchor coupled to the first lower mounting bracket, the first anchor adapted to releasably lock the first set of arms in position with respect to the first lower mounting bracket,” as recited by claim 1.

Id. at VDSK0000135.

Respondents argue that this Response proves that the inventor equated “with respect to” with being attached. RMIB at 57. Yet, a review of the Response demonstrates that this argument is flawed. The Response discusses a longer version of the claim limitation at issue, *i.e.*, “a first anchor coupled to the first lower mounting bracket, the first anchor adapted to *releasably lock the first set of arms in position with respect to the first lower mounting bracket.*” Only the second portion of this phrase (identified with italics above) is implicated in the claim construction dispute for this investigation.

In the Office Action, the examiner equated locking rods 48 and 49 of Peter with the anchor recited in the pending patent claims. As set forth in the then-pending claim 1, the anchor is “coupled to the first lower mounting bracket.” The Response to the Office Action takes the position that, because Peter does not disclose the lower mounting bracket, it cannot disclose a “locking rod 48 or 49 [anchor] is ‘coupled to [a] first lower mounting bracket,’ as would be required by claim 1.” Hence, the Response is only discussing the first part of the limitation, *i.e.*, because there is no anchor, there can be no anchor coupled to the lower mounting bracket as claimed. This portion of the Response has nothing to do with whether or not the arm is connected to the mounting bracket, which is the portion of the claim that is at issue in this investigation.

In sum, there is nothing in the claims, specification, or prosecution history requiring that the arm be connected to the mounting bracket. Although the arm could be thus connected, the claim is also broad enough, for example, to allow the arm to be connected to an intermediate

structure. Moreover, the claim terms at issue here consist of ordinary words that are understood from reading the asserted patent. Therefore, it is determined that these related claim terms do not need construction insofar as the plain and ordinary meaning of the words should be applied when performing an infringement or validity analysis.⁷

F. “member”

The disputed claim term “member” is recited in claims 32, 37, 38, 40, and 42 of the ’793 patent. Following the completion of the *Markman* hearing, Varidesk notified the undersigned that construction of this term is no longer necessary, inasmuch as Varidesk does not assert any of the above claims against Dakota. *See* Notice Regarding Claim Construction (EDIS Doc. No. 669341) (Mar. 7, 2019).

G. “lateral end”

Several disputed claim terms relate to a “lateral end” of the adjustable desk. The following chart sets forth the claim terms at issue, as well as the parties’ proposed constructions:

Disputed “Lateral End” Terms
<ul style="list-style-type: none">• “the first handle is located between the first set of arms and the first lateral end of the upper platform” (’793 Patent, claims 39, 41, and 43)• “the second handle is located between the second set of arms and the second lateral end of the upper platform” (’793 Patent, claims 39 and 43)• “the first handle is located between the first set of arms and a first edge of the upper platform” (’793 Patent, claim 45)• “the second handle is located between the second set of arms and a second edge of the upper platform” (’793 Patent, claim 46)

⁷ The Staff proposes a construction that replaces the claim language “with respect to” with “relative to,” but does not cite to evidence explaining why such a substitution is needed to “understand and explain” the scope of the claims. *See* SMIB at 26-30; *Embrex*, 216 F.3d at 1347.

Complainant's Construction	Respondents' Construction	Staff's Construction
<p>Plain and ordinary meaning: "the [] handle is located between the [] set of arms and the [] lateral end of the upper platform"</p> <p>Plain and ordinary meaning: "the [] handle is located between the [] set of arms and a [] edge of the upper platform"</p> <p>Varidesk does not believe that this phrase needs construction, but if the ALJ determines that this term should be construed, the Staff's proposed construction is acceptable to Varidesk.</p>	<p>Indefinite</p>	<p>Plain and ordinary meaning: "the first handle is located between the first set of arms and the first side end of the upper platform"</p>

JC at 10.

The primary dispute between the parties relates to whether or not these terms are indefinite. In particular, Varidesk and the Staff argue that the terms should take their plain and ordinary meaning, whereas Respondents argue that "first lateral edge" and "first lateral end" are indefinite. *See, e.g.*, RMIB at 62. Respondent's indefiniteness argument is not persuasive.

A review of the claim language and specification (including drawings) demonstrate what the patentee means by the term "first lateral end." For instance, dependent claim 39 provides:

The adjustable desk platform of claim 38, wherein:

the upper platform includes first and second lateral ends;

the first handle is located between the first set of arms and the first lateral end of the upper platform; and

the second handle is located between the second set of arms and the second lateral end of the upper platform.

'793 patent at claim 39. This claim first identifies two lateral ends. It then claims, in part, two handles: (1) the first located between the first set of arms and the first lateral end and (2) the second located between the second set of arms and the second lateral end. Any confusion about the arrangement of these handles is dispelled by the description in the specification and the accompanying drawings.

In the specification, the arm sets are identified as 30, and the handles are identified as 42. '793 patent at 4:23-26 (arms), 5:40-41 (handles). Figure 2 (reproduced below) shows two sets of handles (in green). The first set of handles is between the first arm (red) and the first lateral edge, and the second set of handles is between the second arm (partially obscured due to the perspective of the drawing) and the second lateral edge:

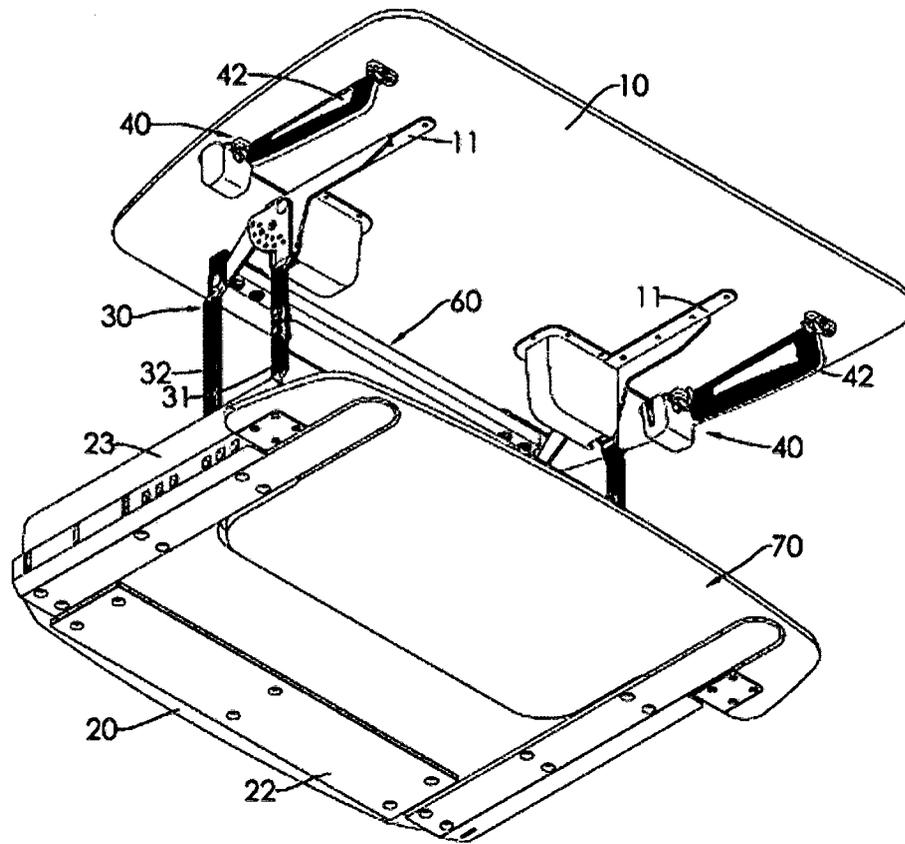


FIG. 2

'793 patent at Fig. 2 (annotated).

Respondents' indefiniteness argument is, in essence, that there is no way to tell which end is the claimed "first lateral end." See RMIB at 62. Yet, Figure 2 of the patent and the accompanying text of the specification describes the claimed arrangement the arms and handles, making clear which lateral edge is claimed. Accordingly, it is found that the term is not indefinite. See *Nautilus*, 134 S. Ct. at 2124 ("[A] patent is invalid for indefiniteness if its claims, read in light of the specification delineating the patent, and the prosecution history, fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention.").

Further, the claim terms at issue here consist of ordinary words that are understood from reading the asserted patent and referencing the figures. Therefore, it is determined that these related claim terms do not need construction insofar as the plain and ordinary meaning of the words should be applied when performing an infringement or validity analysis.

SO ORDERED.



Charles E. Bullock
Chief Administrative Law Judge

**CERTAIN HEIGHT-ADJUSTABLE DESK PLATFORMS
AND COMPONENTS THEREOF**

INV. NO. 337-TA-1125

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **Order No. 27** has been served by hand upon the Commission Investigative Attorney, **Andrew Beverina, Esq.** and the following parties as indicated, on **APR 01 2019**



Lisa R. Barton, Secretary
U.S. International Trade Commission
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AND COMPONENTS THEREOF**

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**CERTAIN HEIGHT-ADJUSTABLE DESK PLATFORMS
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FOR RESPONDENTS QIDONG VISION MOUNTS MANUFACTURING CO., LTD.; CKNAPP SALES, INC. DBA VIVO; NANTONG JON ERGONOMIC OFFICE CO., LTD.; HANGZHOU GRANDIX ELECTRONICS CO., LTD.; BEST CHOICE PRODUCTS; and HANGZHOU KEXIANG KEJI YOUXIANGONGSI	
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