

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

In the Matter of

**CERTAIN ELECTRIC SKIN CARE
DEVICES, BRUSHES AND CHARGERS
THEREFOR, AND KITS CONTAINING
SAME**

Investigation No. 337-TA-959

LIMITED EXCLUSION ORDER

The United States International Trade Commission (“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 by respondents Beauty Tech, Inc. of Coral Gables, Florida; Flageoli Classic Limited of Las Vegas, Nevada; Our Family Jewels, Inc. (“Our Family Jewels”) of Denver, Colorado; Serious Skin Care, Inc. of Carson City, Nevada; and Shanghai Anzikang Electric Co., Ltd. (“Anzikang”) of Shanghai, China (collectively, “Respondents”) of certain electric skin care devices, brushes and chargers therefor, and kits containing same that infringe the claim of United States Patent No. D523,809 (“the D’809”). In addition, the Commission has found the Our Family Jewels and Anzikang Respondents in default pursuant to section 337(g) and 19 C.F.R. § 210.16 for failing to respond to the Notice of Investigation and a Complaint that alleged a violation of section 337 with respect to the importation into the United States or sale of certain electric skin care devices, brushes and chargers therefor, and kits containing same infringing one or more of the Clarisonic Device Trade Dress or Clarisonic Charging Station Trade Dress. The elements of the

Clarisonic Device Trade Dress are set forth in Exhibit 1 to this order.

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, public interest, and bonding. The Commission has determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry of covered electric skin care devices, brushes or chargers therefor, or kits containing same, manufactured abroad by or on behalf of, or imported by or on behalf of, Respondents, as specified in items 1 – 3 below, or any of their affiliated companies, parents, subsidiaries, licensees, or other related business entities, or their successors or assigns.

The Commission has also determined that the public interest factors enumerated in 19 § 1337(d) do not preclude the issuance of the limited 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 electric skin care devices, brushes and chargers therefor, and kits containing same that are subject to this Order.

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

1. Electric skin care devices, brushes or chargers therefor, or kits containing same that are covered by the claim of the D'809 patent and that are manufactured abroad by or on behalf of, or imported by or on behalf of, Respondents, or any of their affiliated companies, parents, subsidiaries, licensees, or other related business entities, or their successors or assigns, are excluded from entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for

consumption, for the remaining term of the patent, except under license of the patent owner or as provided by law.

2. Electric skin care devices, brushes or chargers therefor, or kits containing same that are covered by one or more of the Clarisonic Device Trade Dress or Clarisonic Charging Station Trade Dress and that are manufactured abroad by or on behalf of, or imported by or on behalf of, Our Family Jewels or Anzikang Respondents, or any of their affiliated companies, parents, subsidiaries, licensees, or other related business entities, or their successors or assigns, are excluded from entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, until the relevant Clarisonic Device Trade Dress or Clarisonic Charging Station Trade Dress has been abandoned or rendered invalid or unenforceable.
3. For the purpose of assisting U.S. Customs and Border Protection (“CBP”) in the enforcement of this Order, and without in any way limiting the scope of the Order, the Commission has attached to this Order as Exhibit 1 copies of photographs of the Clarisonic Plus and Clarisonic Pro products and charging stations that feature the Clarisonic Device Trade Dress and Clarisonic Charging Station Trade Dress, and a description of the Trade Dress.
4. Notwithstanding paragraph 1 or 2 of this Order, the aforesaid electric skin care

devices, brushes or chargers therefor, or kits containing same are entitled to entry into the United States for consumption, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption under bond in the amount of one hundred (100) percent of the entered value of such products pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended (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 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.

5. At the discretion of CBP and pursuant to the procedures it establishes, persons seeking to import electric skin care devices, brushes or chargers therefor, or kits containing same 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 or 2 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 to substantiate the certification.
6. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to electric skin care devices, brushes or chargers therefor, or kits

containing same 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.

7. Complainant Pacific Bioscience Laboratories, Inc. shall file a written statement with the Commission, made under oath, each year on the anniversary of the issuance of this Order stating whether Pacific Bioscience Laboratories, Inc. continues to use each of the aforesaid trade dress in commerce in the United States in connection with electric skin care devices, brushes and chargers therefor, and kits containing same, whether any of the aforesaid trademarks has been abandoned or rendered invalid or unenforceable, and whether Pacific Bioscience Laboratories, Inc. continues to satisfy the industry and injury requirements of Section 337(a)(1)(A).
8. 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).
9. The Commission Secretary shall serve copies of this Order upon each party of record in this investigation and upon U.S. Customs and Border Protection.
10. Notice of this Order shall be published in the Federal Register.

By order of the Commission.

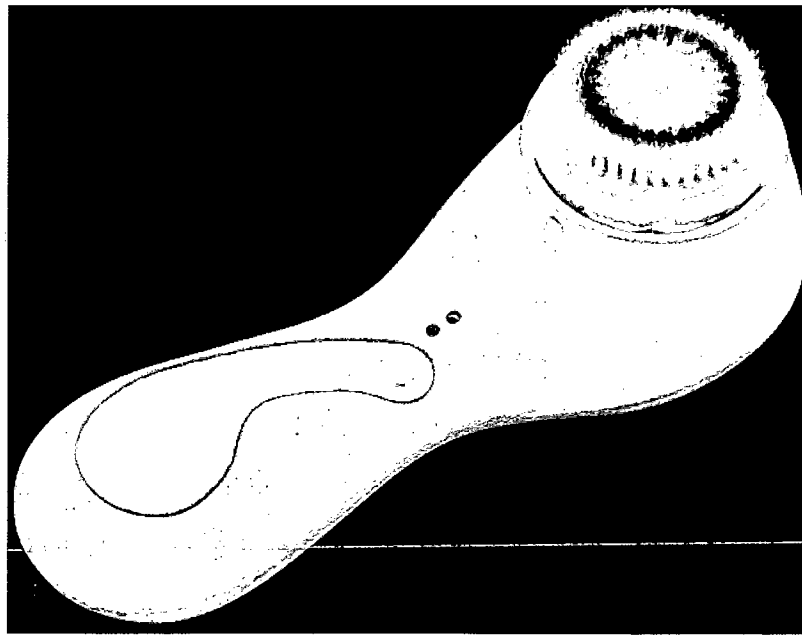
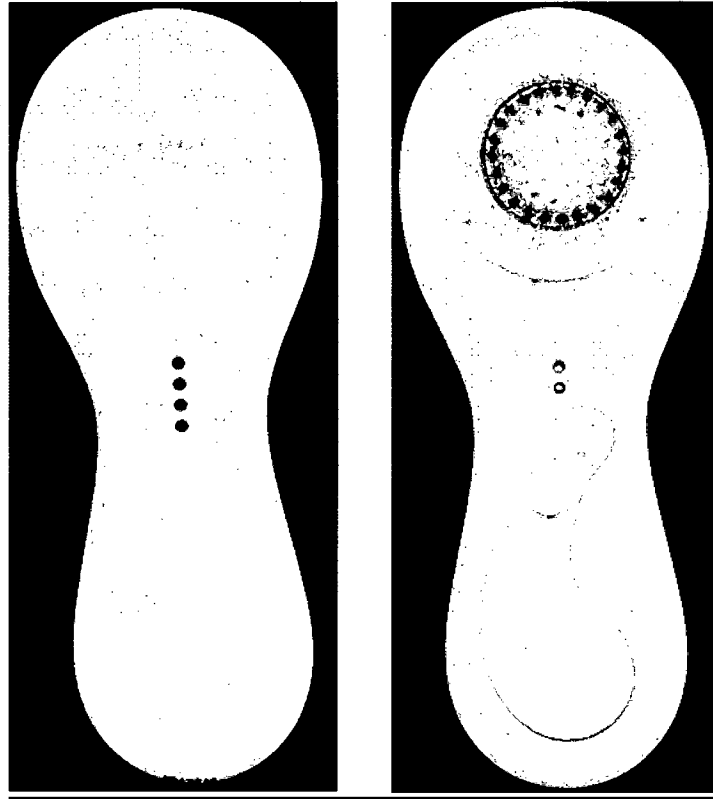


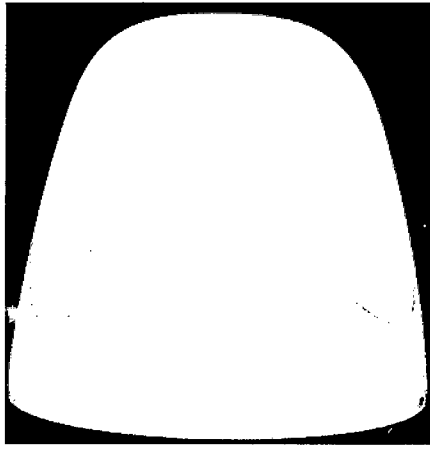
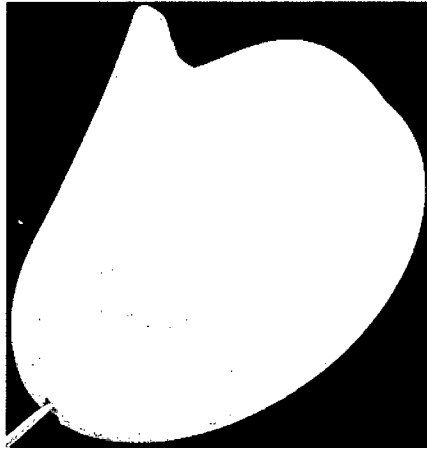
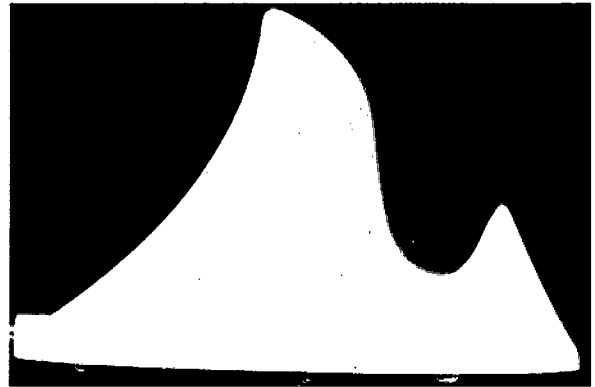
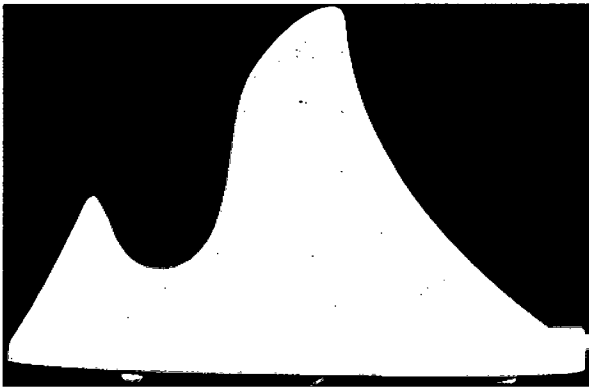
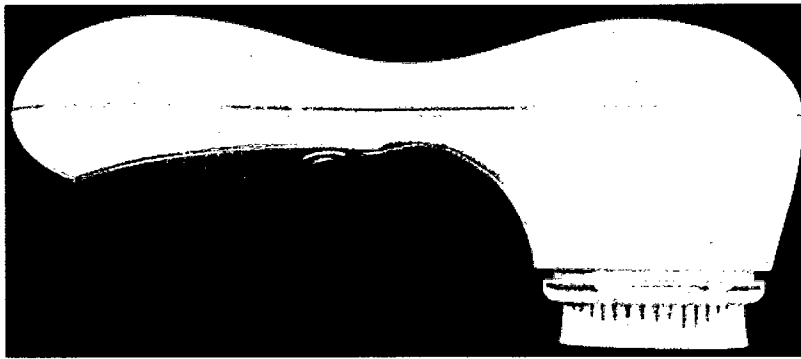
Lisa R. Barton
Secretary to the Commission

Issued: February 6, 2017

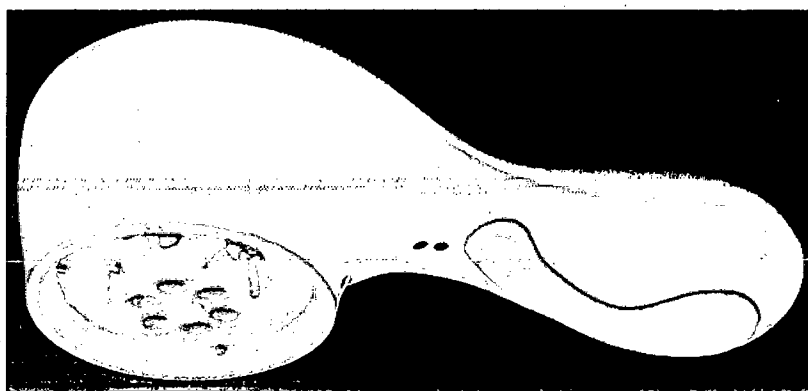
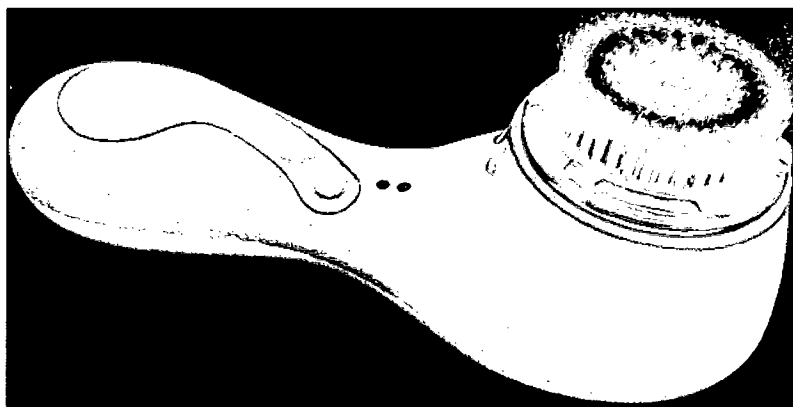
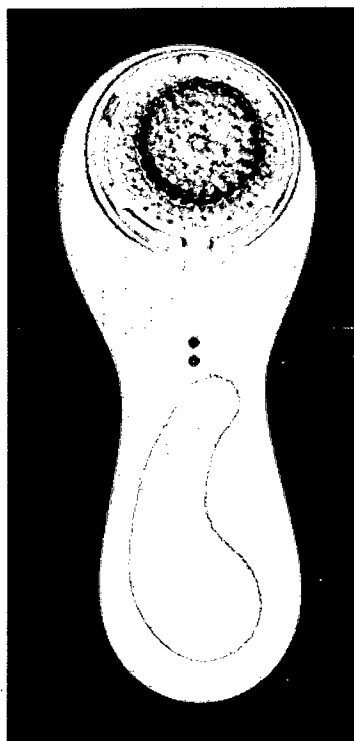
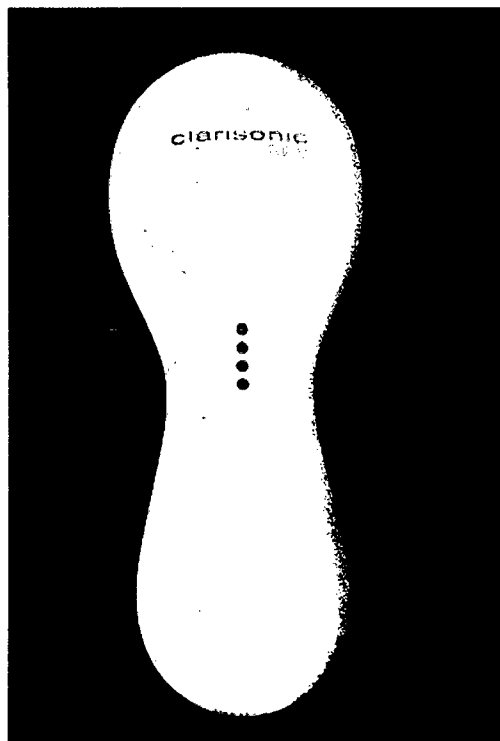
Exhibit 1

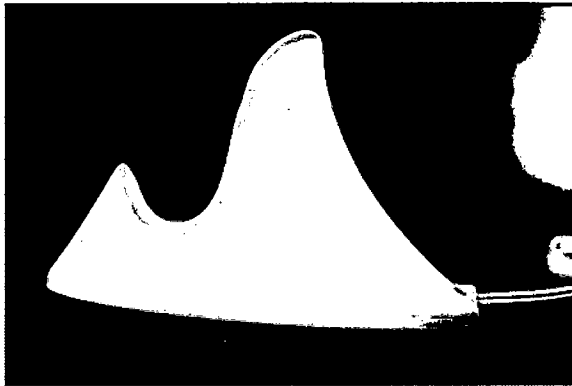
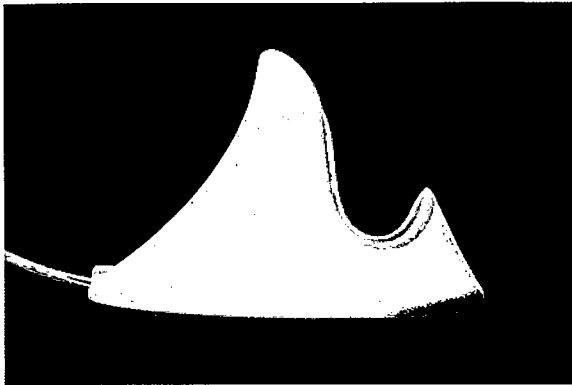
Clarisonic Plus Product and Charging Station

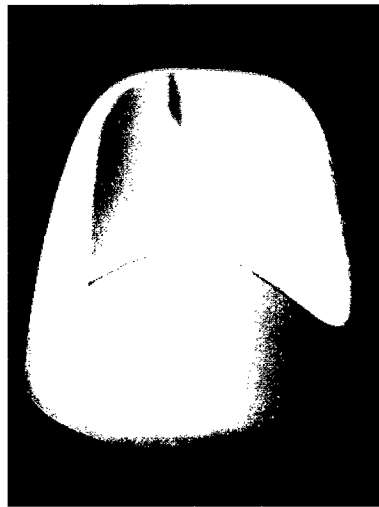
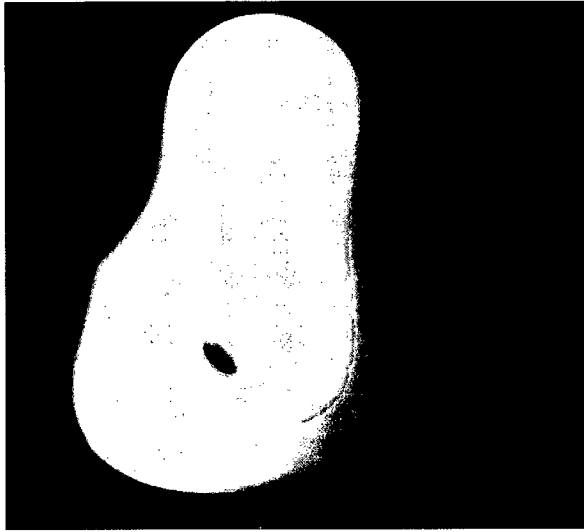




Clarisonic Pro Product and Charging Station







The elements of the Clarisonic Device Trade Dress are as follows:

The hourglass shape of the Clarisonic Plus and Clarisonic Pro products; shape of the head unit; identical molded arcs on each side of the head unit; a droplet (or "teardrop") shaped pad of contrasting texture on the front of the device; one or more control buttons located towards the top of the droplet, inside its perimeter; two round lights ("dots") located just above the droplet on the front of the device; four round lights ("dots") centered on the narrowest part of the back of the device; location of the Clarisonic Plus or Clarisonic Pro name at the widest part of the back of the device; contrasting-color ring of bristles located within the bristles on the brush head; the shape and contour of the ring surrounding the brush head, with alternating protrusions and indentations; and the brush cap, with six large holes spaced evenly on the face, around the perimeter of the cap.

The elements of the Clarisonic Charging Station Trade Dress are as follows:

The boot-last shape of the Clarisonic Plus and Clarisonic Pro products; front plane of product extending forward in exaggerated proportion; and cradle for product dramatically higher in front than in back.

**UNITED STATES INTERNATIONAL TRADE
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**CERTAIN ELECTRIC SKIN CARE
DEVICES, BRUSHES AND CHARGERS
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SAME**

Investigation No. 337-TA-959

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT Shanghai Anzikang Electric Co., Ltd., of 168 Ji Xin Road, Building 3, Room 401, Minhang District, Shanghai, China, cease and desist from conducting any of the following activities in the United States, including via the internet: importing, selling, offering for sale, marketing, advertising, distributing, transferring (except for exportation), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of electric skin care devices, brushes or chargers therefor, or kits containing same that are covered by one or more of claims 1, 4-6, 16, 22, 31, 33, 39-41, 42, 44-46, and 49 of United States Patent No. 7,320,691 ("the '691 patent"); claims 1, 2, 4, 5, and 7-15 of United States Patent No. 7,386, 906 ("the '906 patent"); the claim of United States Patent No. D'523,809 ("the D'809 patent"); and bear the Clarisonic Device Trade Dress or Clarisonic Charging Station Trade Dress or any trade dress confusingly similar thereto or that are otherwise misleading as to source, origin or sponsorship, 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 Pacific Biosciences Laboratories, Inc. of Redmond, Washington.
- (C) “Respondent” shall mean Shanghai Anzikang Electric Co., Ltd., of 168 Ji Xin Road, Building 3, Room 401, Minhang District, Shanghai, China.
- (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 electric skin care devices, brushes or chargers therefor, or kits containing same of Respondent that are covered by one or more of claims 1, 4-6, 16, 22, 31, 33, 39-41, 42, 44-46, and 49 of the ’691 patent; claims 1, 2, 4, 5, and 7-15 of the ’906 patent; the claim of the D’809 patent; and bear the Clarisonic Device Trade Dress or Clarisonic Charging Station Trade Dress or any trade dress confusingly similar thereto or that are otherwise misleading as to source, origin or sponsorship. The elements of the

Clarisonic Device Trade Dress are set forth in Exhibit 1 to this order.

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 relevant one or more of the '691 patent, the '906 patent, and the D'809 patent, and until the relevant Clarisonic Device Trade Dress or Clarisonic Charging Station Trade Dress has been abandoned or rendered invalid or unenforceable, Respondent shall not:

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

IV. Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited

by the terms of this Order shall be permitted if, in a written instrument, the owner of the relevant '691 patent, '906 patent, D'809 patent, Clarisonic Device Trade Dress, and/or Clarisonic Charging Station Trade Dress licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V. Reporting

For purposes of this requirement, the reporting periods shall commence on 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, 2016. 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 section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-959") 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 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

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.

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 latest expiration date of the '691 patent, '906 patent, and the D'809 patent and until Clarisonic Device Trade Dress and Clarisonic Charging Station Trade Dress have been abandoned or rendered invalid or unenforceable.

VIII. Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to section VI of this order should be made in accordance with section 201.6 of the

Commission's Rules of Practice and Procedure (19 C.F.R. § 201.6). For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX. Enforcement

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

X. Modification

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

XI. Bonding

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

not subject to this bond provision.

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

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

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

² *See* Footnote 1.

By Order of the Commission.

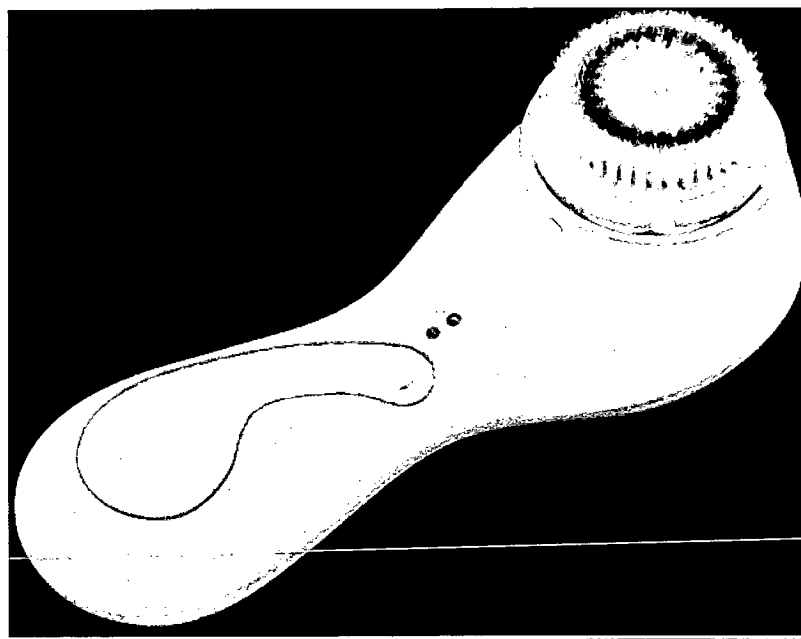
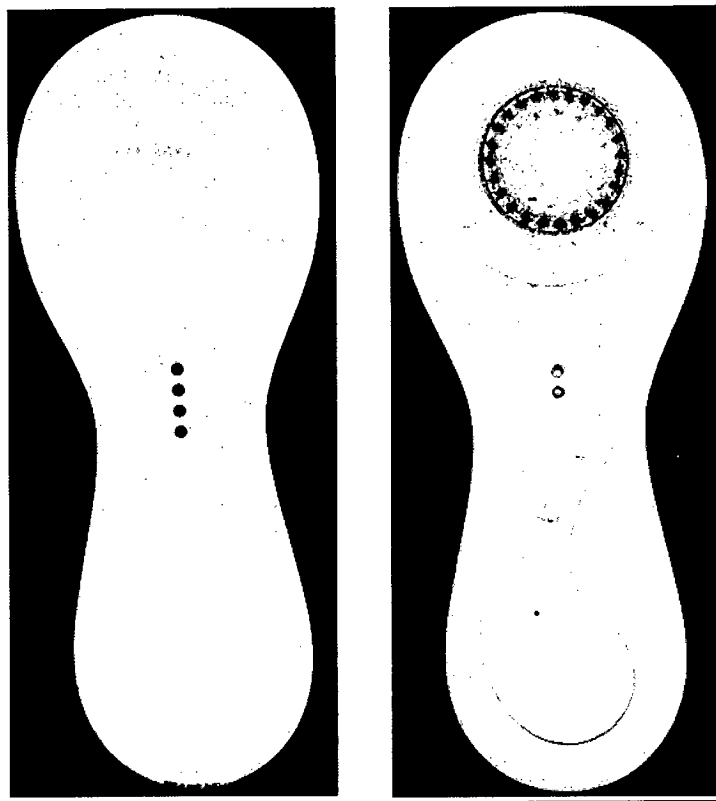
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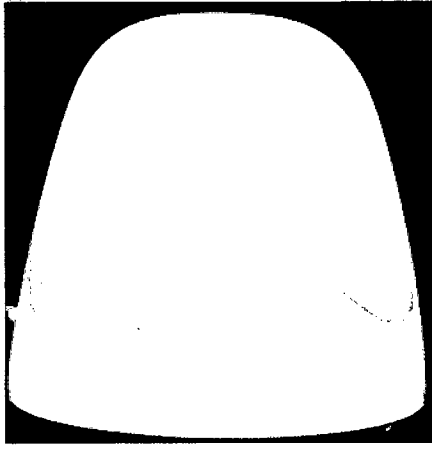
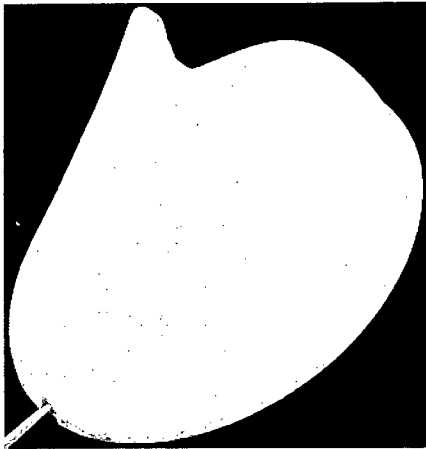
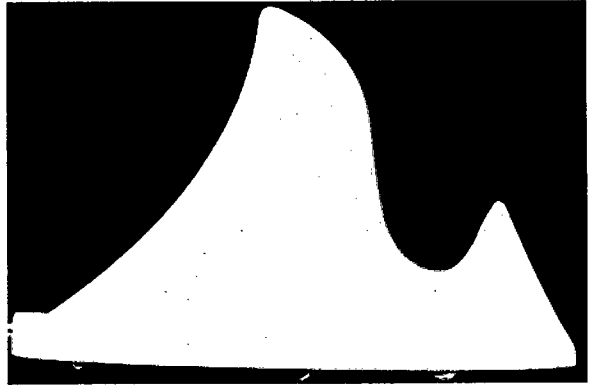
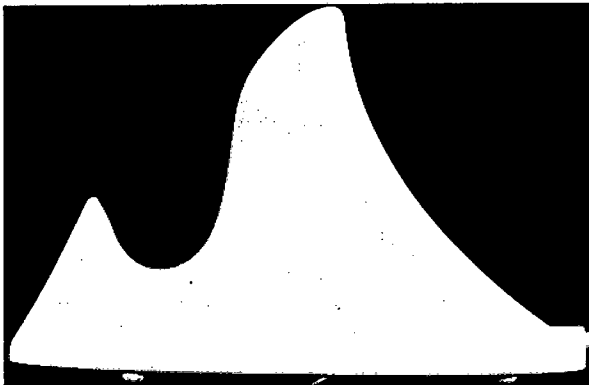
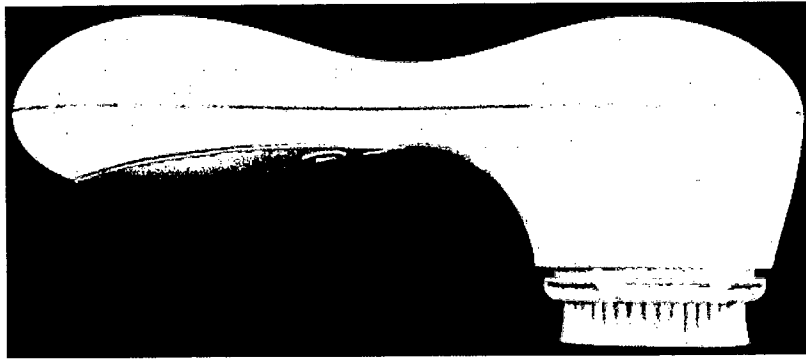
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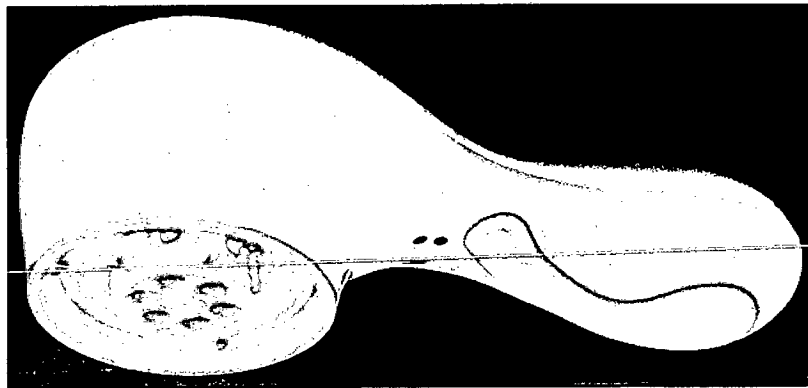
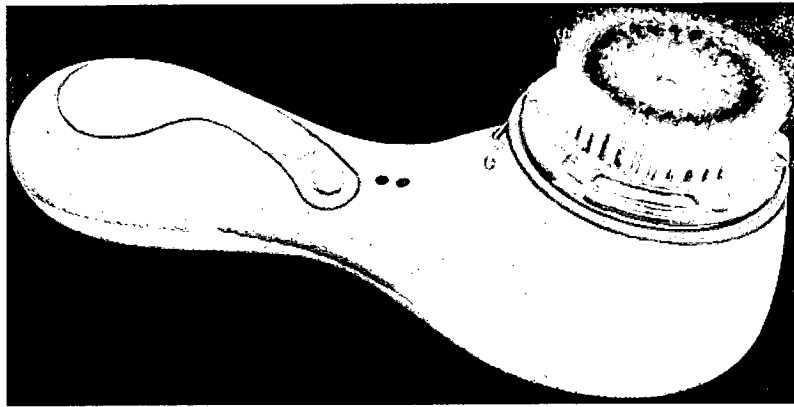
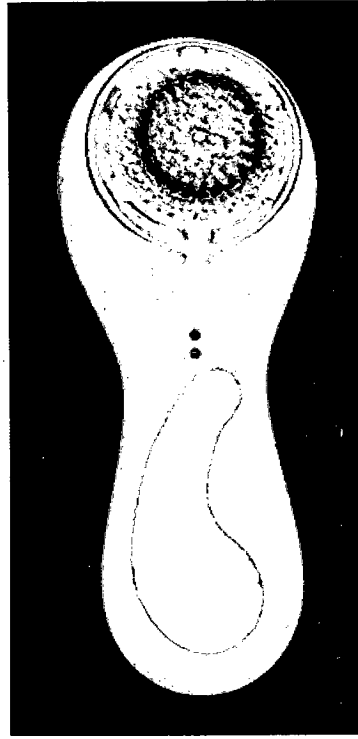
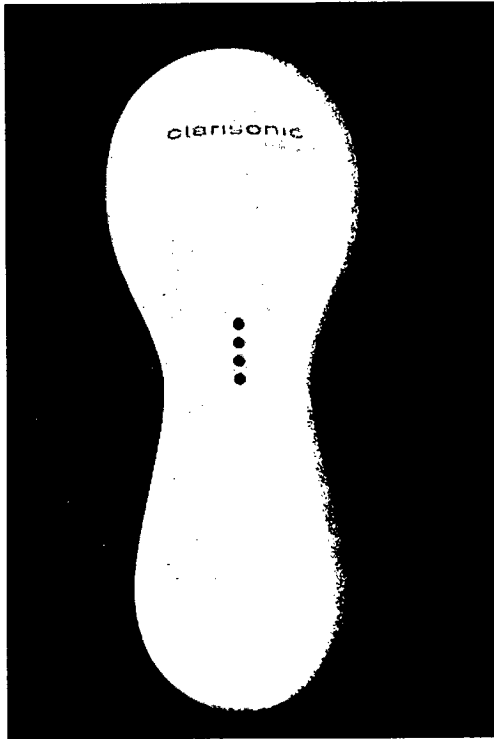
Exhibit 1

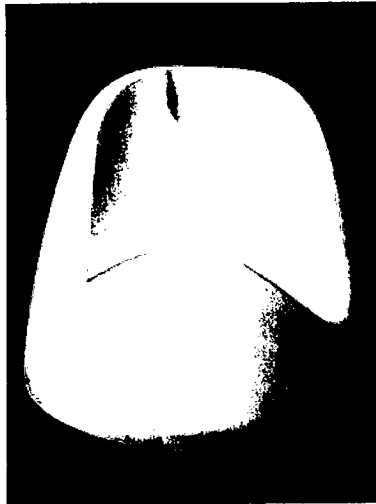
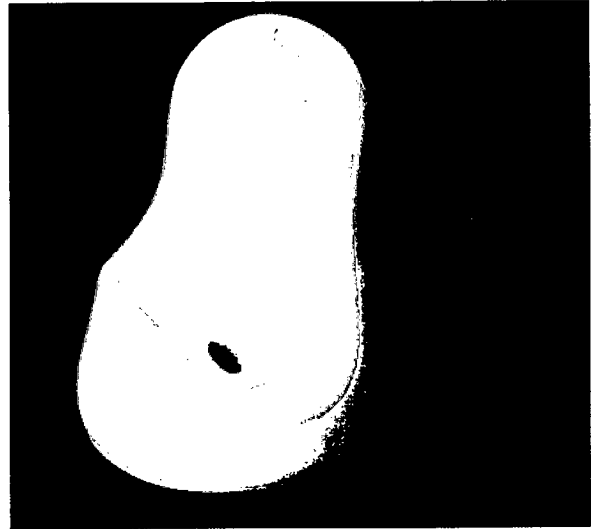
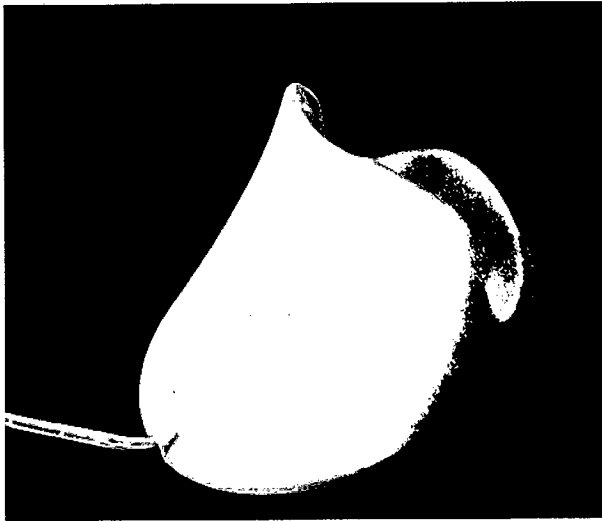
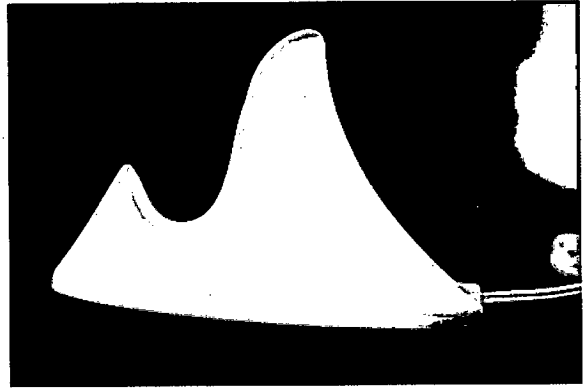
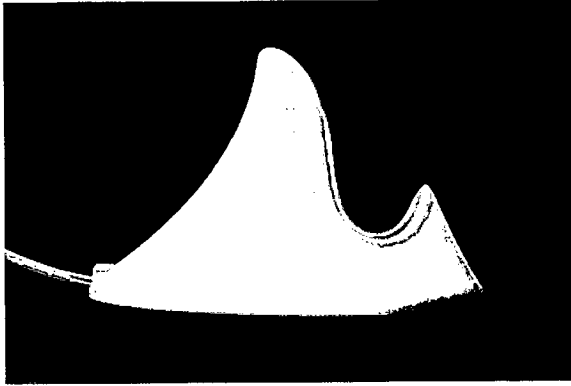
Clarisonic Plus Product and Charging Station





Clarisonic Pro Product and Charging Station





The elements of the Clarisonic Device Trade Dress are as follows:

The hourglass shape of the Clarisonic Plus and Clarisonic Pro products; shape of the head unit; identical molded arcs on each side of the head unit; a droplet (or "teardrop") shaped pad of contrasting texture on the front of the device; one or more control buttons located towards the top of the droplet, inside its perimeter; two round lights ("dots") located just above the droplet on the front of the device; four round lights ("dots") centered on the narrowest part of the back of the device; location of the Clarisonic Plus or Clarisonic Pro name at the widest part of the back of the device; contrasting-color ring of bristles located within the bristles on the brush head; the shape and contour of the ring surrounding the brush head, with alternating protrusions and indentations; and the brush cap, with six large holes spaced evenly on the face, around the perimeter of the cap.

The elements of the Clarisonic Charging Station Trade Dress are as follows:

The boot-last shape of the Clarisonic Plus and Clarisonic Pro products; front plane of product extending forward in exaggerated proportion; and cradle for product dramatically higher in front than in back.