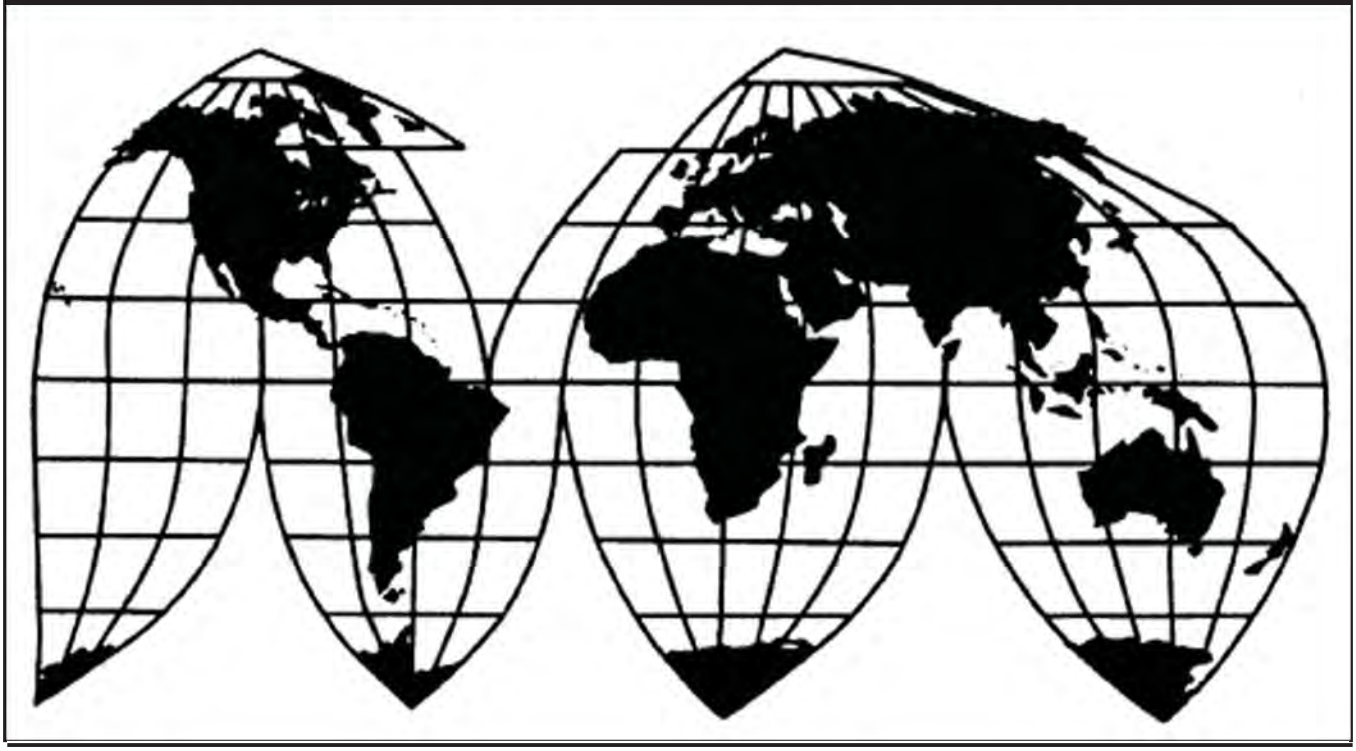
In the Matter of

CERTAIN CASES FOR PORTABLE ELECTRONIC DEVICES

337-TA-861/867 (Consolidated)

Publication 4857 **November 2018**

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

COMMISSIONERS

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Dean Pinkert, Commissioner
David Johanson, Commissioner
Meredith Broadbent, Commissioner

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Washington, DC 20436

U.S. International Trade Commission

Washington, DC 20436
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In the Matter of

CERTAIN CASES FOR PORTABLE ELECTRONIC DEVICES

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Publication 4857

November 2018

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of CERTAIN CASES FOR PORTABLE ELECTRONIC DEVICES	Investigation Nos. 337-TA-867/861 (Consolidated)

ISSUANCE OF GENERAL EXCLUSION ORDER; TERMINATION OF 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 a general exclusion order ("GEO") in this investigation. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted Inv. No. 337-TA-861 on November 16, 2012, based on a complaint filed by Speculative Product Design, LLC of Mountain View, California ("Speck"). 77 *Fed. Reg.* 68828 (Nov. 16, 2012). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain cases for portable electronic devices by reason of infringement of various claims of United States Patent No. 8,204,561 ("the '561 patent"). The complaint named several respondents.

The Commission instituted Inv. No. 337-TA-867 on January 31, 2013, based on a complaint filed by Speck. 78 *Fed. Reg.* 6834 (Jan. 31, 2013). That complaint also alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of

certain cases for portable electronic devices by reason of infringement of various claims of the '561 patent. The complaint named several additional respondents. On January 31, 2013, the Commission consolidated the two investigations. *Id.*

All of the respondents that participated in the investigation were terminated from the investigation. Specifically, respondents JWIN Electronics Corp., d/b/a iLuv of Port Washington, New York and Fellowes, Inc. of Itasca, Illinois were terminated from the investigation based upon settlement agreements. Respondents Project Horizon, Inc., d/b/a/ InMotion Entertainment of Jacksonville, Florida and En Jinn Industrial Co., Ltd. of New Taipei City, Taiwan were terminated from the investigation based upon consent order stipulations. Respondents Superior Communications, Inc. of Irwindale, California and Shengda Huanqiu Shijie of Shenzhen, China were terminated from the investigation based upon withdrawal of allegations pertaining to them from the complaint. Respondent Jie Sheng Technology of Tainan City, Taiwan was terminated from the investigation based upon amendment to the complaint and notice of investigation. Respondent Body Glove International, LLC of Redondo Beach, California was terminated from the investigation based upon a finding that it had committed no acts in violation of section 337.

The following respondents were found in default: Anbess Electronics Co. Ltd. of Shenzhen, China; ROCON Digital Technology Corp. of Shenzhen, China; Trait Technology (Shenzhen) Co., Ltd. of Shenzhen, China; Hongkong Wexun Ltd. of Guangdong, China; SW-Box.com (*aka* Cellphonezone Limited) of Sheung Wan, Hong Kong; and Global Digital Star Industry, Ltd. of Shenzhen City, China. Accordingly, the only parties remaining active in this investigation are Speck and the Commission investigative attorney ("IA").

On August 19, 2013, Speck filed a motion for summary determination that it has satisfied the domestic industry requirement under sections 337(a)(3)(A), (B), and (C) (not including licensing). On August 19, 2013, the IA filed a response in support of Speck's motion that it has satisfied the domestic industry requirement under section 337(a)(3)(C). On September 10, 2013, the ALJ issued an ID (Order No 15) granting Speck's motion in part. Specifically, the ALJ found that Speck established a domestic industry for the '561 patent under section 337(a)(3)(C). On October 23, 2013, the Commission determined not to review the ID.

On September 30, 2013, the ALJ granted a motion by Speck to terminate the investigation as to claims 1-3, 6-8, 10, and 12-16 of the '561 patent. On November 11, 2013, the Commission determined not to review. Thus, claims 4, 5, 9, and 11 remain pending in the investigation.

On November 15, 2013, Speck filed a motion for summary determination of violation with respect to the defaulting respondents. On November 26, 2013, the IA filed a response in support of Speck's motion. On February 21, 2014, the presiding ALJ issued his final initial determination on violation and recommendation on remedy ("ID/RD"), Order No. 28, granting the motion. The ALJ recommended issuance of a general exclusion order and the imposition of a bond of 100 percent of entered value during the period of Presidential review. On April 8, 2014, the Commission issued notice of its determination not to review the ALJ's final determination on violation. 79 *Fed. Reg.* 20228-30 (Apr. 11, 2014).

The Commission has determined that the appropriate form of relief is a GEO under 19 U.S.C. § 1337(d)(2), prohibiting the unlicensed entry of cases for portable electronic devices covered by one or more claims 4, 5, 9, and 11 of U.S. Patent No. 8,204,561 ("the '561 patent").

The Commission has further determined that the public interest factors enumerated in section 337(d)(1) (19 U.S.C. §§ 1337(d)(1)) do not preclude issuance of the GEO. The Commission has determined that the bond for temporary importation during the period of Presidential review (19 U.S.C. § 1337(j)) shall be in the amount of 100 percent of the entered value of the imported articles that are subject to the order. The Commission's orders were delivered to the President and the United States Trade Representative on the day of their issuance.

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

By order of the Commission.

Lisa R. Barton
Secretary to the Commission

Issued: June 20, 2014

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of **CERTAIN CASES FOR PORTABLE ELECTRONIC DEVICES**	**Investigation Nos. 337-TA-861/867 (Consolidated)**

GENERAL EXCLUSION ORDER

The Commission has determined that there is a violation of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), in the unlawful importation and sale of certain cases for portable electronic devices thereof covered by one or more claims 4, 5, 9, and 11 of U.S. Patent No. 8,204,561 ("the '561 patent") asserted in this investigation.

Having reviewed the record of 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 order from entry for consumption is necessary, and accordingly, the Commission has determined to issue a general exclusion order prohibiting the unlicensed importation of infringing cases for portable electronic devices ("covered products").

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

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

1. Cases for portable electronic devices covered by one or more of claims 4, 5, 9, and 11 of the '561 patent are excluded from entry into the United States for consumption, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, for the remaining term of the patent, except under license of the patent owner or as provided by law.

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

3. At the discretion of U.S. Customs and Border Protection ("CBP") and pursuant to procedures that it establishes, persons seeking to import cases for portable electronic devices 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 cases for portable electronic devices imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.

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

6. The Commission Secretary shall serve copies of this Order upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and U.S. Customs and Border Protection.

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

By order of the Commission.

Lisa R. Barton
Secretary to the Commission

Issued: June 20, 2014

CERTAIN DEVICES WITH SECURE COMMUNICATION CAP ABILITIES, COMWONENTSTHEREOF,AND PRODUCTS CONTAINING THE SAME **337-TA-867/861**

CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **Notice** has been served by hand upon John Shinn, Esq., and the following parties as indicated, on June 20, 2014.

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

On Behalf of Complainant Speculative Product Design, LLC:

Christian E. Samay, Esq.
SNR DENTON US LLP
101 John F. Kennedy Pkwy, Suite 410
Short Hills, NJ 07078

( ) Via Hand Delivery
( ) Via Express Mail
(x) Via First Class Mail
( ) Other: _____

Respondents:

Anbess Electronices Co. Ltd.
1F, Block B, Building 4
Cui Feng hao Yuan
ShuiJing, BuJi, LongGang,
Shenzhen, GC, 518112, China

( ) Via Hand Delivery
( ) Via Express Mail
(x) Via First Class Mail
( ) Other: _____

ROCON Digital Technology Corp. Block 15, Fumin Industrial Zone Shenzhen, China 518111	( ) Via Hand Delivery ( ) Via Express Mail (x) Via First Class Mail ( ) Other: _____
SW-Box.com (a/k/a Cellphonezone Limited) Flat A, 15/F Hillier Comm.Bldg, 65-67 Bonham Strand East Sheung Wan, Hong Kong	( ) Via Hand Delivery ( ) Via Express Mail (x) Via First Class Mail ( ) Other: _____
Trait Technology (Shenzhen) Co., Limited (d/b/a Trait-Tech) 416 - 419RM, 305# Sufa Building Huafa North Road, Futian District Shenzhen, China 518031	( ) Via Hand Delivery ( ) Via Express Mail (x) Via First Class Mail ( ) Other: _____
Hongkong Wexun Ltd, Wexun Tech (Hong Kong) Co., Ltd Block 15, Fumin Industrial Zone Pinghu Commuinty Office Longgang District	( ) Via Hand Delivery ( ) Via Express Mail (x) Via First Class Mail ( ) Other: _____
Guangdong, China 518111 Global Digital Star Industry, Ltd. 22F, Hong Ling Building Hong Ling South Road Futian District Shenzhen City 518112, China	( ) Via Hand Delivery ( ) Via Express Mail (x) Via First Class Mail ( ) Other: _____

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of **CERTAIN CASES FOR PORTABLE ELECTRONIC DEVICES**	**Investigation Nos. 337-TA-867/861**

NOTICE OF COMMISSION DETERMINATION TO REVIEW AN INITIAL DETERMINATION FINDING CERTAIN RESPONDENTS IN DEFAULT; UPON REVIEW THE COMMISSION AFFIRMS THE ALJ'S DETERMINATION UNDER 19 C.F.R. § 210.16

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 8) finding the following respondents in default: Anbess Electronics Co. Ltd. of Shenzhen, China; Rocon Digital Technology Corp. of Shenzhen, China; SW-Box of Sheung Wan, Hong Kong; Trait Technology (Shenzhen) Co., Ltd. of Shenzhen, China; and Hongkong Wexun Ltd. of Guangdong, China (collectively, "Defaulting Respondents"). Upon review the Commission affirms the ALJ's determination under 19 C.F.R. § 210.16 for Defaulting Respondents' failure to respond to the complaint and notice of investigation.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted Inv. No. 337-TA-861 on November 16, 2012, based on a complaint filed by Speculative Product Design, LLC of Mountain View, California ("Speck"). 77 *Fed. Reg.* 68828 (Nov. 16, 2012). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain cases for portable electronic devices by reason of infringement of various claims of United States Patent No. 8,204,561. The complaint named several respondents, including Defaulting Respondents.

The Commission instituted Inv. No. 337-TA-867 on January 31, 2013, based on a complaint filed by Speck. 78 *Fed. Reg.* 6834 (Jan. 31, 2013). That complaint also alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain cases for portable electronic devices by reason of infringement of various claims of the '561 patent. The complaint named several respondents. On January 31, 2013, the Commission consolidated the two investigations. *Id.*

On January 15, 2013, Speck filed a motion for an order directing Defaulting Respondents to show cause why they should not be found in default for their failure to respond to the complaint and notice of investigation. Speck's motion requested issuing a default ID against those respondents who failed to show cause. On January 25, 2013, the Commission Investigative Attorney filed a response in support of the motion. No other responses to the motion were filed.

On February 21, 2013, the ALJ issued Order No. 5, ordering Defaulting Respondents to show by March 7, 2013, why they should not be found in default under 19 C.F.R. § 210.16 for their failure to respond to the complaint and notice of investigation. Defaulting Respondents did not respond to the show-cause order.

On April 2, 2013, the ALJ issued the subject ID, finding Defaulting Respondents in default under 19 C.F.R. § 210.16 for failing to respond to the complaint and notice of investigation. The ALJ also found Defaulting Respondents in default under 19 C.F.R. § 210.17 for, at least, failing to comply with Order Nos. 3 and 5.

The Commission has determined to review the ID. Upon review, the Commission has determined to affirm the ALJ's determination that Defaulting Respondents are in default under 19 C.F.R. § 210.16 for failure to respond to the complaint and notice of investigation. The Commission vacates the ALJ's reliance on 19 C.F.R. § 210.17, finding it unnecessary to rely on that provision.

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 section 210.42 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42).

By order of the Commission.

Lisa R. Barton
Acting Secretary to the Commission

Issued: May 1, 2013

CERTAIN CASES FOR PORTABLE ELECTRONIC DEVICES

Inv. No. 337-TA-861
Inv. No. 337-TA-867
(Consolidated)

CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **Notice** has been served upon **John Shin, Esq.**, the Commission Investigative Attorney, and the following parties as indicated, on May 2, 2013.

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

On Behalf of Complainant Speculative Product Design, LLC:

Mark Hogge, Esq.
SNR Denton US LLP
1301 K St., N.W., Suite 600
Washington, D.C. 20005

( ) Via Hand Delivery
( ) Via Overnight Mail
(X) Via First Class Mail
( ) Other: _____

On Behalf of Respondents Fellowes, Inc. and Body Glove International, LLC:

William Atkins, Esq.
PILSBURY WINTHROP SHAW PITTMAN LLP
1650 Tysons Boulevard, 14th Floor
McLean, Virginia 22102

( ) Via Hand Delivery
( ) Via Overnight Mail
(X) Via First Class Mail
( ) Other: _____

On Behalf of Respondent Superior Communications, Inc.:

Philip J. Graves, Esq.
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( ) Via Overnight Mail
(X) Via First Class Mail
( ) INTERNATIONAL

Respondents:

En Jinn Industrial Co. Ltd.
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Wu Ku Industrial Zone
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( ) Via Hand Delivery
( ) Via Overnight Mail
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( ) INTERNATIONAL

Shengda Huanqiu Shijie North Kao Ku Digital Building, 1st Floor Futian District, Shenzhen Huaqiang C051, Shenzhen, China	( ) Via Hand Delivery ( ) Via Overnight Mail (✓) Via First Class Mail ( ) INTERNATIONAL
Anbess Electronices Co. Ltd. 1F, Block B, Building 4 Cui Feng hao Yuan ShuiJing, BuJi, LongGang, Shenzhen, GC, 518112, China	( ) Via Hand Delivery ( ) Via Overnight Mail (✓) Via First Class Mail ( ) INTERNATIONAL
ROCON Digital Technology Corp. Block 15, Fumin Industrial Zone Shenzhen, China 518111	( ) Via Hand Delivery ( ) Via Overnight Mail (✓) Via First Class Mail ( ) INTERNATIONAL
SW-Box.com (a/k/a Cellphonezone Limited) Flat A, 15/F Hillier Comm.Bldg, 65-67 Bonham Strand East Sheung Wan, Hong Kong	( ) Via Hand Delivery ( ) Via Overnight Mail (✓) Via First Class Mail ( ) INTERNATIONAL
Trait Technology (Shenzhen) Co., Limited (d/b/a Trait-Tech) 416 - 419RM, 305# Sufa Building Huafa North Road, Futian District Shenzhen, China 518031	( ) Via Hand Delivery ( ) Via Overnight Mail (✓) Via First Class Mail ( ) INTERNATIONAL
Hongkong Wexun Ltd, Wexun Tech (Hong Kong) Co., Ltd Block 15, Fumin Industrial Zone Pinghu Commuinty Office Longgang District Guangdong, China 518111	( ) Via Hand Delivery ( ) Via Overnight Mail (✓) Via First Class Mail ( ) INTERNATIONAL

Global Digital Star Industry, Ltd.
22F, Hong Ling Building
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2 Harbor Park Drive
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Jie Sheng Technology
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Tainan City 710, Taiwan

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(✓) Via First Class Mail
( ) INTERNATIONAL

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of **CERTAIN CASES FOR PORTABLE ELECTRONIC DEVICES**	**Investigation Nos. 337-TA-867/861 (Consolidated)**

COMMISSION OPINION

This investigation is before the Commission for a final determination on remedy, the public interest, and bonding. The presiding administrative law judge ("ALJ") issued a final initial determination ("ID"), finding that defaulting respondents violated section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in connection with claims 4, 5, 9, and 11 of United States Patent No. 8,204,561 ("the '561 patent"). *See* 79 *Fed. Reg.* 20228-30 (Apr. 11, 2014). The Commission determined not to review the ID and requested comments on remedy, the public interest, and bonding. *Id.*

Upon consideration of the comments received, the Commission issues herewith a general exclusion order ("GEO") prohibiting the entry of unlicensed infringing cases for portable electronic devices for consumption in the United States. The Commission finds that the public interest factors set out in section 337(d) do not preclude issuance of the GEO. The Commission sets a bond in the amount of 100 percent of entered value for unlicensed infringing cases for portable electronic devices imported during the period of Presidential review.

I. BACKGROUND

The Commission instituted Inv. No. 337-TA-861 on November 16, 2012, based on a complaint filed by Speculative Product Design, LLC of Mountain View, California

("Speck"). 77 *Fed. Reg.* 68828 (Nov. 16, 2012). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, by reason of infringement of various claims of the '561 patent. The complaint named several respondents.

The Commission instituted Inv. No. 337-TA-867 on January 31, 2013, based on a second complaint filed by Speck. 78 *Fed. Reg.* 6834 (Jan. 31, 2013). The complaint alleged violations of section 337 of the Tariff Act of 1930 by reason of infringement of various claims of the '561 patent. The complaint named several additional respondents. On January 31, 2013, the Commission consolidated the two investigations. *Id.*

All of the respondents that participated in the consolidated investigation were terminated from the investigation based upon settlement agreements, consent order stipulations, or withdrawal of the complaint. Specifically, the ALJ terminated respondents JWIN Electronics Corp., dba iLuv of Port Washington, New York and Fellowes, Inc. of Itasca, Illinois from the investigation based upon settlement agreements, and the Commission determined not to review the IDs.[1] The ALJ terminated respondents Project Horizon, Inc., d/b/a/ InMotion Entertainment of Jacksonville, Florida and En Jinn Industrial Co., Ltd. of New Taipei City, Taiwan based upon consent order stipulations, and the Commission determined not to review the IDs.[2] The ALJ terminated respondents

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[1] *See* Notice of Commission Determination Not to Review an Initial Determination (Order No. 10) Granting a Motion to Terminate the Investigation as to Respondent JWIN Electronics Corp., dba iLuv Based Upon a Settlement Agreement (May 28, 2013); Notice of Commission Determination not to Review an Initial Determination (Order No. 23) Granting a Motion to Terminate the Investigation as to Respondent Fellowes, Inc. Based Upon a Settlement Agreement (Mar. 6, 2014).

[2] *See* Notice of Commission Determination Not to Review an Initial Determination (Order No. 6) Granting a Motion to Terminate the Investigation as to Respondent Project Horizon, Inc., d/b/a/ InMotion Entertainment Based Upon a Consent Order Stipulation;

Superior Communications, Inc. of Irwindale, California ("Superior") and Shengda Huanqiu Shijie of Shenzhen, China from the investigation based upon withdrawal of allegations pertaining to them from the complaint, and the Commission determined not to review the IDs.[3] The ALJ terminated respondent Jie Sheng Technology of Tainan City, Taiwan from the investigation based upon amendment to the complaint and notice of investigation, and the Commission determined not to review the ID.[4] The ALJ granted a summary determination motion by respondent Body Glove International, LLC of Redondo Beach, California ("Body Glove") that it has not committed any acts in violation of section 337, and terminated Body Glove from the investigation. The Commission determined not to review the ID.[5]

The ALJ found the following respondents in default: Anbess Electronics Co. Ltd. of Shenzhen, China; ROCON Digital Technology Corp. of Shenzhen, China; Trait Technology (Shenzhen) Co., Ltd. of Shenzhen, China; Hongkong Wexun Ltd. of Guangdong, China; SW-Box.com (*aka* Cellphonezone Limited) of Sheung Wan, Hong

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Issuance of a Consent Order (Mar. 22, 2013); Notice of Commission Determination Not to Review an Initial Determination (Order No. 22) Granting a Motion to Terminate the Investigation as to Respondent En Jinn Industrial Co., Ltd. Based Upon a Consent Order Stipulation; Issuance of a Consent Order (Mar. 6, 2014).

[3] *See* Notice of Commission Determination Not to Review an Initial Determination (Order No. 19) Terminating the Investigation as to Superior Communications, Inc. (Nov. 20, 2013); Notice of Commission Determination Not to Review an Initial Determination (Order No. 21) Terminating the Investigation as to Shengda Huanqiu Shijie (Dec. 20, 2013).

[4] *See* Notice of Commission Determination Not to Review an Initial Determination (Order No. 9) Granting in Part Complainant's a Motion for Leave to Amend the Complaint and Notice of Investigation (May 23, 2013).

[5] *See* Notice of Commission Determination Not to Review an Initial Determination (Order No. 16) Granting Respondent Body Glove International, LLC's motion for Summary Determination of No Violation of Section 337 (Nov. 4, 2013).

Kong; and Global Digital Star Industry, Ltd. of Shenzhen City, China. The Commission determined not to review the IDs.[6] Accordingly, the only parties remaining active in this investigation are Speck and the Commission investigative attorney ("IA").

On September 30, 2013, the ALJ granted a motion by Speck to terminate the investigation as to claims 1-3, 6-8, 10, and 12-16 of the '561 patent, and the Commission determination not to review the ID.[7] Accordingly claims 4, 5, 9, and 11 remain pending in the investigation.

On August 19, 2013, Speck filed a motion for summary determination that it has satisfied the domestic industry requirement under sections 337(a)(3)(A), (B), and (C) (not including licensing). On August 19, 2013, the IA filed a response in support of Speck's motion that it has satisfied the domestic industry requirement under section 337(a)(3)(C). On September 10, 2013, the ALJ issued an initial determination ("ID") (Order No 15) granting Speck's motion in part. Specifically, the ALJ found that Speck established a domestic industry for the '561 patent under section 337(a)(3)(C). The Commission determined not to review the ID.[8]

On November 15, 2013, Speck filed a motion for summary determination of violation with respect to the defaulting respondents. On November 26, 2013, the IA filed

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[6] *See* Notice of Commission Determination to Review an Initial Determination (Order No. 8) Finding Certain Respondent in Default; Upon Review the Commission affirms the ALJ's Determination Under 19 C.F.R. § 210.16 (May 31, 2013); Notice of Commission Determination to Review Initial Determinations (Order Nos. 26 & 27) Extending the Target Date for Completion of the Investigation and Finding Certain Respondents in Default (Mar. 10, 2014).

[7] *See* Notice of Commission Determination Not to Review an Initial Determination (Order No. 17) Terminating Certain Claims from the Investigation (Nov. 11, 2013).

[8] *See* Notice of Commission Determination Not to Review an Initial Determination (Order No. 15) Granting Complainant's Motion for Summary Determination that it Satisfied the Domestic Industry Requirement (Oct. 23, 2013).

a response in support of Speck's motion. On February 21, 2014, the ALJ issued the final initial determination granting the motion and providing recommendation on remedy ("ID/RD"). Order No. 28. The ALJ recommended issuance of a general exclusion order ("GEO") and the imposition of a bond of 100 percent of entered value during the period of Presidential review.

On April 8, 2014, the Commission issued notice of its determination not to review the ALJ's finding of violation, and solicited submissions on remedy, the public interest, and bonding. 79 *Fed. Reg.* 20228-30 (Apr. 11, 2014). On April 23, 2014, Speck submitted an initial brief on remedy, the public interest, and bonding, requesting that the Commission issue a GEO and set a bond of 100 percent of entered value during the period of presidential review. *See* Complainant Speculative Product Design, LLC's Submission on Remedy, the Public Interest, and Bonding ("Speck Sub."). Speck's brief included a proposed GEO. *Id.* That same day, the IA submitted an initial brief on remedy, the public interest, and bonding, supporting Speck's request for a GEO and a bond of 100 percent. *See* Response of the Office of Unfair Import Investigations to the Commission's Request for Written Submission on Remedy, the Public Interest, and Bonding ("IA Sub."). The IA's brief also included a proposed GEO. *Id.* Also on April 23, 2014, terminated respondent Superior filed written comments in response to the Commission's April 8, 2014, notice, requesting a "carve-out" for its products from a GEO. *See* Written Submission of Interested Party Superior Communications, Inc. Concerning the Remedy to be Issued in the Above-Referenced Proceeding ("Superior Sub."). On April 30, 2014, Speck and the IA submitted their respective replies to the initial written submissions on remedy, the public interest, and bonding. *See* Speck's

Reply to Superior's Submission Concerning the Remedy to be Issued in the Above-Referenced Proceeding ("Speck Rep."); Reply of the Office of Unfair Import Investigations to Complainant's and Superior Communications, Inc.'s Written Submission on Remedy, the Public Interest, and Bonding ("IA Rep.")

III. REMEDY

1. General Exclusion Order

a. Legal Standard

Where a violation of section 337 has been found, the Commission must consider the issues of remedy, the public interest, and bonding. The Commission has "broad discretion in selecting the form, scope, and extent of the remedy." *Viscofan, S.A. v. U.S. Int'l Trade Comm'n*, 787 F.2d 544, 548 (Fed. Cir. 1986). The Commission may issue an exclusion order excluding the goods of the person(s) found in violation (a limited exclusion order) or, if certain criteria are met, against all infringing goods regardless of the source (a general exclusion order). 19 U.S.C. §§1337(d)(2), (g)(2). [9] 19 U.S.C.

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[9] 19 U.S.C. §1337(g)(2) provides:

> In addition to the authority of the Commission to issue a general exclusion from entry of articles when a respondent appears to contest an investigation concerning a violation of the provisions of this section, a general exclusion from entry of articles, regardless of the source or importer of the articles, may be issued if--
> (A) no person appears to contest an investigation concerning a violation of the provisions of this section,
> (B) such a violation is established by substantial, reliable, and probative evidence, and
> (C) the requirements of subsection (d)(2) of this section are met.

19 U.S.C. § 1337(g)(2). The Commission has determined that a GEO issued under section 337(g)(2) is appropriate only when no respondents appear to contest the investigation. *See* 19 U.S.C. § 1337(g)(2); *Certain Plastic Molding Machines With Control Systems Having Programmable Operator Interfaces Incorporating General*

§ 1337(g) gives the Commission the authority to issue exclusion orders directed to defaulting respondents. However, when, as here, some respondents appeared to contest the investigation but others did not, the proper legal framework under which the Commission may issue a GEO is section 337(d)(2), which provides in relevant part:

> **(d) Exclusion of articles from entry**
>
> * * *
>
> **(2)** The authority of the Commission to order an exclusion from entry of articles shall be limited to persons determined by the Commission to be violating this section unless the Commission determines that -
>
> **(A)** a general exclusion from entry of articles is necessary to prevent circumvention of an exclusion order limited to products of named persons; or
>
> **(B)** there is a pattern of violation of this section and it is difficult to identify the source of infringing products.

19 U.S.C. § 1337(d)(2); *Certain Sildenafil or Any Pharmaceutically Acceptable Salt Thereof, such as Sildenafil Citrate, and Products Containing Same*, Inv. No. 337-TA-489, Comm'n Op. at 4 (July 2004) (finding that the issuance of a GEO under section 337(d)(2) was appropriate when not all respondents failed to appear to contest the investigation); *see also Certain Energy Drink Products*, Inv. No. 337-TA-678, Comm'n Op. at 4-7 (Sept. 2010); *Certain Toner Cartridges and Components Thereof*, Inv. No. 337-TA-740, Comm'n Op. at 24 (Oct. 5, 2011).

A general exclusion order may have far reaching consequences and applies to entities not respondents in the investigation, and even to entities who could not have been respondents, such as entities who did not import until after the conclusion of the

---

Purpose Computers, and Components Thereof II, 337-TA-462, Comm'n Op. at 5-7 (Apr. 2003).

investigation. Thus, the Commission has stated that "[b]ecause of its considerable impact on international trade, potentially extending beyond the parties and articles involved in the investigation, more than just the interests of the parties is involved. Therefore, the Commission exercises caution in issuing general exclusion orders and requires that certain conditions be met before one is issued." *Certain Agricultural Tractors Under 50 Power Takeoff Horsepower*, Inv. No. 337-TA-380, Comm'n Op. at 15 (Mar. 12, 1997). In addition, the Federal Circuit has emphasized that a party must meet the "heightened requirements of section 337(d)(2)(A) or (d)(2)(B)" before the Commission has authority to issue a GEO against products of non-respondents. *Kyocera Wireless Corp. v. Int'l Trade Comm'n*, 545 F.3d 1340, 1538 (Fed. Cir. 2008).

While the factors set forth in *Certain Airless Paint Spray Pumps and Components Thereof*, Inv. No. 337-TA-90, Comm'n Op. at 18-19 (Nov. 1981) guided the GEO analysis for some time, the Commission "now focus[es] principally on the statutory language itself." *Certain Ground Fault Circuit Interrupters and Products Containing Same*, Inv. No. 337-TA-615, Comm'n Op. at 25-26 (Mar. 27, 2009) (citing *Certain Airless Spray Pumps and Components Thereof*, Inv. No. 337- TA-90, USITC Pub. 119, Comm'n Op. at 18-19, (Nov. 1981)). In *Circuit Interrupters*, the Commission referenced its earlier opinion in *Hydraulic Excavators*, in which the Commission stated that "[c]onsideration of some factual issues or evidence examined in *Spray Pumps* may continue to be useful for determining whether the requirements of Section 337(d)(2) have been met. However, we do not view *Spray Pumps* as imposing additional requirements beyond those identified in Section 337(d)(2)." *Certain Hydraulic Excavators & Components Thereof*, Inv. No. 337-TA-582, Comm'n Op. at 16-18 (Feb. 3, 2009). Thus,

in *Circuit Interrupters* and *Hydraulic Excavators*, the Commission did not apply the *Spray Pumps* factors as such in determining whether a general exclusion order should issue.

b. Analysis

The Commission agrees with the ALJ, Speck, and the IA that the requirements for the issuance of a GEO under section 337(d)(2)(A) and (d)(2)(B) have been met. *See* 19 U.S.C. § 1337(d)(2). With respect to prong (A) "prevent[ing] circumvention" of a limited exclusion order ("LEO"), the evidence shows that the defaulting respondents customarily engage in various business practices that would necessitate a GEO to prevent circumvention of an LEO. ID/RD at 30-40. Specifically, as the ALJ found, the respondents can easily circumvent an LEO by selling infringing goods online. ID/RD at 39. In addition, unnamed parties frequently infringe the '561 patent by making imitations of Speck's CandyShell products that are protected by the '561 patent. Gibbins Dec. at 22-23. The evidence further shows that in July 2013 there were 4,500 internet auctions of imitations of Speck products, most of which were covered by the '561 patent, demonstrating that the respondents can easily circumvent a LEO by selling infringing goods online. ID/RD at 38-39; Gibbins Dec. at 8-13, 16-17; Exhs. 2, 3; Riley Dec. at 4; Gosselin Dec. at 2-6. As the ALJ further found, the evidence shows that most of these infringing products originate in southern China through companies operating under fake names and fake addresses, while using professional quality molds. ID/RD at 39; Gibbins Dec. at 8, 21, 30, 49. The ALJ also found that the barrier for entering the protective case manufacturing market is low and that foreign manufacturing operations can change their names and distribution patterns to avoid detection. ID/RD at 38. Against this

background, the Commission finds that the respondents have, or are capable of, changing names, facilities, or corporate structure to avoid detection. *See* ID/RD at 38-39.

Speck has also met its burden to show that issuance of a GEO is necessary because the evidence shows a widespread pattern of infringement by respondents and non-respondents alike, and it is difficult to identify the source of the infringing products. 19 U.S.C. § 1337(d)(2)(B). As the ALJ noted, the Commission has recognized that anonymity over the Internet increases the difficulty in identifying the sources of infringing products. *See Certain Toner Cartridges and Components Thereof*, Inv. No. 337-TA-740, Comm'n Op. at 6 (Nov. 19, 2012). The evidence here shows that foreign infringers frequently copy Speck's designs, and despite Speck's efforts to stop the infringement, the number of infringers continues to grow. Gibbins Dec. at 13, 24, 31, 33, 37, 40, 43, 51. For example, Speck has compiled a list of over 150 imitations of the CandyShell products and identified 90 companies in Hong Kong and China that it believes are producing imitations of Speck products that infringe the '561 patent. Gibbins Dec. at 14, 40. The evidence further shows that these manufacturers sell the infringing products online, under false names to avoid detection. Gibbins Dec. at 11, 24, 52. Of the 90 companies identified by Speck, 44 percent were found to list addresses that were not real locations. *Id.*

Based on the foregoing, we agree with the ALJ that the statutory requirements for a GEO have been satisfied under section 337(d)(2)(A) and (d)(2)(B). The Commission therefore adopts the ALJ's recommendation and has determined to issue a GEO in this investigation. Under the GEO, cases for portable electronic devices covered by claims 4, 5, 9, and 11 of the '561 patent are excluded from entry into the United States for

consumption, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, for the remaining terms of the patents except under license of the patent owner or as provided by law.

2. Terminated Respondent Superior's Request for a "Carve-out"

a. Superior's Submission

Superior filed a submission stating that if the Commission issues a GEO, it should "either (i) exempt the products imported by and for Superior from the scope of the order, or (ii) include a provision enabling third parties such as Superior to certify that their products do not infringe Speck's '561 Patent." Superior Sub. at 1. Superior explains that it participated fully in the investigation until a few days prior to the hearing when Speck unilaterally moved to terminate Superior. *Id.* at 2-4. Specifically, Superior asserts that it participated in fact and expert discovery and claim construction, and filed its witness statements and pre-hearing brief on time as scheduled. *Id.* However, on October 21, 2013, Speck moved to withdraw the complaint and terminate the investigation as to Superior, on the ground that Superior had ceased importation of the accused DualTek line of cases. *Id.* According to Superior, it opposed the termination and was prepared to contest infringement and the validity of the asserted claims. *Id.* The ALJ, however, granted Speck's termination motion on October 29, 2013, and Superior argues this deprived it of the ability to offer its defense at the Commission. *Id.* Superior did not contest the ALJ's ruling by filing a petition for review of the ID. Thus, the Commission determined not to review the ID on November 20, 2013, thereby terminating the investigation as to Superior.

Superior notes that during a conference call with the ALJ on October 29, 2013 to discuss Speck's motion, Superior requested that the ALJ provide a carve-out for Superior's products in his recommended remedy. Superior Sub. at 4. The ALJ rejected Superior's request, stating that the particulars of any remedy relating to an exclusion order is "within the exclusive purview of the Commission upstairs." *Id.* Superior argues that the GEO requested by Speck and recommended by the ALJ, if issued in its present form, will encompass Superior's products, and that given the procedural posture of this investigation, Superior's products should be excluded from any remedy the Commission issues. *Id.* Superior argues that *Certain Power Supply Controllers* Inv. No. 337-TA-541, Comm'n Op., (Aug. 11, 2006) and *Certain Laminated Floor Panels*, Inv. No. 337-TA-545, Comm'n Op., at 29-30 (Jan. 24, 2007) support the inclusion of a carve-out in this investigation. Alternatively, Speck requests that the Commission include a certification provision in the GEO. *Id.* at 10.

b. Speck's Reply Submission

Speck notes that Superior does not ask the Commission to refrain from issuing a GEO in this investigation, but rather seeks a carve-out for its products from the GEO. Speck Rep. at 1. Speck urges the Commission to reject Superior's request for a carve-out for the following five reasons:

> (1) the exemption Superior seeks is overbroad and would permit Superior to import infringing products of its own and many others now and at any time in the future; (2) the exemption sought by Superior would impermissibly include products that Superior concealed from Speck during the investigation; (3) Superior did not seek review of the ALJ's initial determination terminating Superior from the investigation; (4) Superior will not be prejudiced by a GEO as Superior has already twice challenged the validity of the '561 patent and lost before the Patent Office; and (5)

> Customs can readily identify infringing products, including those that Superior may attempt to import, and many procedural safeguards exist to prevent seizure of noninfringing product.

Id. Speck asserts that contrary to Superior's arguments in its petition, it moved to terminate Superior from the investigation based upon Superior's own tactical strategy. *Id.* Specifically, Speck states that [[

]], and began the launch of what it characterized as a replacement product that 'is materially different from that of the DualTek cases that have been accused of infringement.'" *Id.* at 3 (citing Ex. 4, 10/18/13 email to R. Colletti). Speck adds that

> just days before the trial was originally set to begin, [i]n a sworn statement from the President of Superior's Puregear division (responsible for selling Superior's DualTek cases), Superior declared: [[
>
>]]. (Ex. 5, Cavanah Witness Statement at Q&A Nos. 15-26).

Id. at 3. Speck states that "Superior subsequently produced an October 14, 2013 inventory report [[

]] *Id.* Speck emphasizes that "it moved to terminate Superior from the investigation only after [[

]] *Id.* According to Speck, "[w]hether Superior may not have meant to deny Speck a remedy at the ITC, or if Superior's actions were somehow designed to undermine the Commission's enforcement authority by [[

]], Superior's own actions should not now serve as a basis to exempt Superior from a GEO." *Id.*

Speck also argues that Superior chose not to contest the ALJ's decision to terminate Superior from the investigation by failing to file a petition for review with the Commission. With respect to Superior's alleged invalidity arguments, Speck states that those "arguments have been rejected on multiple occasions [by the Patent Office] under less stringent burdens of proof than would have been required at the ITC." *Id.*

c. The IA's Reply Submission

The IA contends that the Commission should not provide a carve-out for Superior's products. IA Rep. at 5. According to the IA, "[t]he precedent that Superior cites for such a carve-out are distinguishable, and Superior has not established compelling facts or cited to legal precedent to support a 'carve-out.'" *Id.* Regarding the investigations cited by Superior, the IA notes that in *Certain Power Supply Controllers* Inv. No. 337-TA-541, Comm'n Op., (Aug. 11, 2006), the Commission issued a LEO that exempted certain of respondent's products that the complainant had previously terminated from the investigation. The IA argues that *Certain Power Supply Controllers* does not compel a carve-out here because the complainant in *Certain Power Supply Controllers* withdrew its allegations as to some of the respondent's products but did not move to terminate the respondent from the investigation. *Id.* Regarding *Certain Laminated Floor Panels*, Inv. No. 337-TA-545, Comm'n Op., at 29-30 (Jan. 24, 2007), in which the Commission issued a GEO with a carve-out to specified third parties, the IA notes that the Commission clearly stated that it supported the respondent's request for a carve-out based on the recommendations of the ALJ, OUII, and complainants. IA Rep. at

6. The IA points to the Commission's statement that it "generally does not grant relief beyond that requested [by complainants]." *Id.* (citing *Certain Laminated Flooring* at 29). The IA, however, recommends inclusion of a certification provision "as it will provide both CBP [U.S. Customs and Border Protection] and third parties with the ability to certify that their products are not infringing, thereby reducing the burden imposed on CBP when it is not immediately apparent whether an imported product infringes the patent at issue." *Id.* at 6-7 (citing Exhibit A proposed GEO, at ¶ 3; Speck Resp., App. A, ¶ 3).

d. Analysis

The Commission agrees with the IA and Speck and declines to include a carve-out for Superior's products. Superior seeks a carve-out because, allegedly, Speck's unilateral motion to terminate the investigation as to Superior deprived Superior of its right to challenge Speck's complaint. Ordinarily, a complainant's unilateral decision to terminate products from an investigation may make such a carve-out necessary and appropriate. *See Certain Power Supply Controllers* Inv. No. 337-TA-541, Comm'n Op. at 4-5 (Aug. 11, 2006). Superior has not shown that such a carve-out is necessary or appropriate based on the facts presented in connection with its request.

While Superior accuses Speck of unilaterally moving to terminate the investigation, Superior's action contributed to and indeed caused Speck to file the motion. Speck moved to terminate Superior from the investigation based upon Superior's sworn testimony that [[

]]. *See* Speck Motion, Exh. 1, RX-0130C, Cavanah Witness Statement at Q&A Nos. 15-26 (Sept. 30, 2013). Moreover, Speck's motion also noted that Superior subsequently produced an October 14, 2013 inventory report [[ ]] *Id.*, Exh. 2, RX-0124C. The IA supported Speck's motion. Superior and Fellowes opposed the motion. The ALJ evaluated the parties' arguments, weighing the potential prejudice to the parties, and granted the motion.

The Commission's rules provide procedures whereby Superior could have contested the ALJ's ruling and sought appropriate relief by timely filing a petition for review of the ID. *See* 19 C.F.R. § 210.43(a). However, Superior failed to avail itself of the opportunity to obtain redress of its grievances through these established procedures. Thus, the Commission determined not to review the ID terminating Superior from the investigation. At this juncture, Superior cannot challenge that ruling, having waived its right to do so at the appropriate time pursuant to the Commission's Rules of Practice and Procedure. Under this procedural posture, a carve-out specifically for Superior's products is unwarranted.

Superior relies on *Certain Power Supply Controllers* and *Certain Laminated Floor Panels* to support a "carve-out." As the IA argues, those cases do not support inclusion of a carve-out here. In *Certain Power Supply Controllers* the Commission issued a limited exclusion order that specifically exempted certain of respondent's products that the complainant had previously terminated from the investigation. The LEO included a

provision stating that "[i]n accordance with [complainant] PI's withdrawal of infringement allegations against certain of [respondent] SG's products, the provisions of this Order shall not apply to SG's power supply controllers [listing them by model number]." *Id.*, LEO, ¶ 3 (Aug. 11, 2006). According to Superior, "[t]he only material difference is that here, the ALJ declined to recommend that any remedial order include an express carve-out for the affected products." Superior Sub. at 8. Superior is mistaken. In *Certain Power Supply Controllers*, the termination of those accused products did not originate from respondent's unilateral action [[

]] Rather, the complainant withdrew its complaint as to some of respondent's products while other accused products belonging to that same respondent remained in the investigation. Because the complainant terminated those products from the investigation, the Commission included a "carve-out" in the LEO. Thus, *Certain Power Supply Controllers* does not compel including the "carve-out" Superior seeks in this GEO.

Superior's reliance on *Certain Laminated Floor Panels* is also misplaced. In *Certain Laminated Floor Panels*, the Commission granted the respondent's request for a carve-out based on the recommendations of the ALJ, IA, and, importantly, complainant, stating that "[t]he Commission generally does not grant relief beyond that requested [by complainants]." That is, because the complainant agreed to the "carve-out," the Commission granted the request. Against this background, a carve-out for Superior's products is unwarranted and the Commission declines to provide such a carve-out.

The Commission notes that Superior requested that, in the alternative to a carve-out, the Commission should include a certification provision in the GEO. The

Commission has included certification provisions in GEOs to reduce the burden on CBP in enforcing GEOs and to alleviate concerns that products determined to be non-infringing will be prevented from entry. *See Certain Laminated Flooring* at 30 n.12. The Commission has decided to include such a certification provision in this GEO for the same reasons.[10] The Commission further notes that Superior can obtain a ruling as to its products by filing a petition for modification of the GEO under 19 C.F.R. § 210.76(a)(1) or by requesting an advisory opinion under 19 C.F.R. § 210.79(a). Given that the record before the Commission is well-developed, Superior would likely obtain an expeditious decision.

VI. THE PUBLIC INTEREST

Sections 337(d) of the Tariff Act of 1930, as amended, direct the Commission to consider certain public interest factors before issuing a remedy. These public interest factors include the effect of any remedial order on the "public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers." 19 U.S.C. § 1337(d)(1). The public interest analysis does not concern whether there is a public interest in issuing a remedial order, but whether issuance of such an order will adversely affect the public interest. *Certain Agricultural Vehicles and Components Thereof*, Inv. No. 337-TA-487, Comm'n Op. at 17 (Dec. 2004).

Speck states that none of the public interest factors warrant denial of a GEO, citing *Certain Protective Cases & Components Thereof*, Inv. No. 337-TA-780, Comm'n Op. at

[10] Superior states that the Commission should "limit any GEO that it issues to claims 4, 5, 9 and 11, as it is only those claims that the ALJ determined were infringed by the defaulted respondents." As noted above, those are the only asserted claims of the '561 patent that remain in the investigation. Thus, the GEO is limited to those claims.

29 (Nov. 19, 2012). In *Protective Cases*, the Commission agreed with the complainants and the IA that the evidence of record in that investigation did not indicate an adverse impact on the public interest factors. Speck also notes that no one raised any public interest concerns in this investigation. *Id.*

Regarding the first and fourth factors of the public interest analysis, *i.e.*, effect of a GEO on the public health and welfare and U.S. consumers, the IA observes that the record evidence contains no indication that a GEO directed to the accused cases for portable electronic devices would have an effect on the public health and welfare and U.S. consumers. *See* IA Sub. at 7-8 (citing *Certain Ground Fault Circuit Interrupters and Products Containing Same,* Inv. No. 337-TA-739, Comm'n Op. at 95 (June 8, 2012); *Certain Integrated Circuit Telecommunication Chips and Products Containing Same, Including Dialing Apparatus*, Inv. 337-TA-337, Comm'n Op. at 40, USITC Pub. 2760 (Aug. 1993)).

With respect to the second and third factors, the IA states that "the competitive conditions are robust in the United States economy for cases for portable electronic devices" and that the respondents' accused products represent a small portion of the market for protective cases." *Id.* at 8. The IA further states that "Speck, its licensees, and a multitude of other third parties could readily replace the products at issue with their own like or directly competitive articles within a commercially reasonable time should an exclusion order go into effect." *Id.* (citing Complainant's Statement of Public Interest, filed December 26, 2012 (EDIS Doc. No 499991)). The IA concludes that "there would be minimal impact of any exclusion order on competitive conditions in the United States economy and the production of like or directly competitive articles in the United States."

The Commission finds, based on the evidence of record, that issuing a GEO in this investigation would not harm the public interest. There is no evidence that domestic demand for protective cases cannot be met by Speck and its legitimate competitors, *i.e.*, manufacturers and retailers of cases for portable electronic devices that do not infringe the patent claims at issue. Similarly, the record does not indicate that the issuance of the GEO would have any potential adverse impact on the public health and welfare, competitive conditions in the U.S. economy, or U.S. production. The Commission notes that no responses to the Commission's notice for comments on the public interest were received. *See* 79 *Fed. Reg.* 20228-30 (Apr. 11, 2014).

Thus, the record does not support a finding that issuance of a GEO is precluded by consideration of the public interest factors set out in section 337(d)(1).

VII. BOND

During the 60-day period of Presidential review, imported articles otherwise subject to remedial orders are entitled to conditional entry under bond. 19 U.S.C. § 1337(j)(3). The amount of the bond is specified by the Commission and must be an amount sufficient to protect the complainant from any injury. *Id.*; 19 C.F.R. § 210.50(a)(3). The Commission frequently sets the bond by attempting to eliminate the difference in sales prices between the patented domestic product and the infringing product or alternatively based upon a reasonable royalty. *Certain Microsphere Adhesives, Process For Making Same, and Products Containing Same, Including Self-Stick Repositionable Notes*, Inv. No. 337-TA-366, USITC Pub. No. 2949, Comm'n Op. at 24 (Jan. 1996). In cases where the Commission finds that the evidence is either unavailable or the complainant demonstrates that the available evidence is inadequate to base a

determination of the appropriate amount of the bond, the Commission has set a 100 percent bond. *See Certain Sortation Systems, Parts Thereof, and Products Containing Same*, Inv. No. 337-TA-460, Comm'n Op. at 21 (Mar. 2003). Moreover, Complainant bears the burden of establishing the need for a bond amount in the first place. *Certain Rubber Antidegradants, Components Thereof, and Prods. Containing Same*, Inv. No. 337-TA-533, Comm'n Op. at 39-40 (July 21, 2006).

The ALJ recommended that if the Commission imposes a remedy following a finding of violation, it should set a bond in the amount of 100 percent of entered value during the 60-day period of Presidential review. ID/RD at 41. The ALJ found that "[t]he variety of pricing, coupled with the number of accused products, makes it difficult to reliably compare the price of Speck's domestic industry products to the infringing products" and that in such situations, a bond amount of 100 percent of entered value is appropriate. *Id.* (citing *Certain Neodymuirn-Iran-Baron Magnets, Magnet Alloys, and Products Containing Same*, Inv. No. 337-TA-372, Comm'n Op. on Remedy, the Public Interest and Bonding at 15,USITC Pub. 2964 (May 1996)).

The Commission agrees with the ALJ's recommendation. As the ALJ found, "[t]he variety of pricing, coupled with the number of accused products, makes it difficult to reliably compare the price of Speck's domestic industry products to the infringing products." ID/RD at 41. Speck established that "many of the accused products are offered for sale on the Internet at different prices based on the website visited, the age of the product, and the quantity purchased," making it difficult to reliably compare the price of Speck's domestic industry products to the infringing products. *See* Speck Sub. at 24. Where it is difficult or impossible to calculate a bond based upon price differentials, and

particularly where the respondents fail to provide discovery, the Commission has set the bond in the amount of 100 percent of the entered value of the infringing imported product. *Certain Oscillating Sprinklers, Sprinkler Components, and Nozzles,* Inv. No. 337-TA-448, Limited Exclusion Order at 4-6, USITC Pub. No. 3498 (Mar. 2002) (setting bond at 100 percent of entered value for products of defaulting respondent).

Accordingly, the Commission has determined to set the bond in the amount of 100 percent of the entered value of infringing cases for portable electronic devices imported during the period of Presidential review.

VIII. CONCLUSION

For the reasons set forth above, the Commission determines that the appropriate remedy for the violation found in this case is a GEO. The Commission finds that the public interest factors set out in section 337(d) do not preclude issuance of the GEO. The Commission sets a bond in the amount of 100 percent of entered value of infringing portable cases for electronic devices imported during the period of Presidential review.

By order of the Commission.

Lisa R. Barton
Secretary to the Commission

Issued: July 10, 2014

CERTAIN DEVICES WITH SECURE COMMUNICATION CAP ABILITIES, COMWONENTSTHEREOF,AND PRODUCTS CONTAINING THE SAME **337-TA-867/861**

CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **Commission Opinion** has been served by hand upon John Shinn, Esq., and the following parties as indicated, on July 10, 2014.

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Public Version

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of	
CERTAIN CASES FOR PORTABLE ELECTRONIC DEVICES	**Inv. No. 337-TA-861** **Inv. No. 337-TA-867** **(Consolidated)**

ORDER NO. 28: INITIAL DETERMINATION GRANTING COMPLAINANT SPECK'S MOTION FOR SUMMARY DETERMINATION THAT THE DEFAULTING RESPONDENTS VIOLATED SECTION 337 AND FOR ENTRY OF A GENERAL EXCLUSION ORDER

(February 21, 2014)

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INITIAL DETERMINATION

On November 15, 2013, complainant Speculative Product Design, LLC's ("Speck" or "Complainant") filed a Motion for Summary Determination of Violation and For Entry of a General Exclusion Order. (Motion Docket No. 867-028.) On November 26, 2013, the Commission Investigative Staff ("Staff") filed a response in support of Speck's motion. On February 18, 2014, Speck filed a supplemental declaration from its expert, Dr. Osswald, in further support of its motion for summary determination of violation. No other responses were received.

I. BACKGROUND

This investigation is a consolidation of investigations 337-TA-861 and 337-TA-867.

On September 26, 2012, Complainant Speck filed its original Complaint. On November 16, 2012, by publication in the Federal Register, the Commission issued a Notice of Investigation ("NOI") instituting investigation 337-TA-861. In particular, the Commission ordered that:

> Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain cases for portable electronic devices that infringe one or more of claims 1-16 of the '561 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337

77 Fed. Reg. 68828. The NOI named the following Respondents: Anbess Electronics Co., Ltd. ("Anbess"), BodyGlove International, LLC ("BodyGlove"), Fellowes, Inc. ("Fellowes"), ROCON Digital Technology Corp. ("Rocon"), SW-Box.com, a/k/a Cellphonezone Limited ("SW-Box"), Trait Technology (Shenzhen) Co., Limited ("Trait"), and Hongkong Wexun Ltd. ("Wexun"). *Id.*

On December 26, 2012, Speck filed a second Complaint. On January 25, 2013, by publication in the Federal Register, the Commission issued a NOI instituting investigation 337-TA-867 and ordering investigations 337-TA-861 and 337-TA-867 consolidated. 78 Fed. Reg. 6834. In particular, the Commission ordered that:

> Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain cases for portable electronic devices by reason of infringement of one or more of claims 1-16 of the '561 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337

Id. The NOI named the following Respondents: En Jinn Industrial Co., Ltd. ("En Jinn"), Shengda Huanqiu Shijie ("Shengda"), Global Digital Star Industry, Ltd. ("Global Digital"), JWIN Electronics Corp., d/b/a iLuv ("JWIN"), Project Horizon, Inc. ("Horizon"), Superior Communications, Inc. ("Superior"), and Jie Sheng Technology ("Jie Sheng"). *Id.*

During the course of the investigation, a number of respondents either have been terminated or have defaulted. The current status of each of the original Respondents is as follows:

Respondent	Status	Docket Entry
Hongkong Wexun Ltd. (337-TA-861)	In default	Order No. 8 (April 2, 2013)
ROCON Digital Technology Corp. (337-TA-861)	In default	Order No. 8 (April 2, 2013)
SW-Box.com (337-TA-861)	In default	Order No. 27 (February 21, 2014)
Trait Technology Co. (337-TA-861)	In default	Order No. 8 (April 2, 2013)
Anbess Electronics Co., Ltd. (337-TA-861)	In default	Order No. 8 (April 2, 2013)
Global Digital Star Industry, Ltd. (337-TA-867)	In default	Order No. 27 (February 21, 2014)
JWIN Electronics Corp. (337-TA-867)	Terminated on the basis of a settlement agreement	Order No. 10 (April 30, 2013)
Project Horizon, Inc. (337-TA-867)	Terminated on the basis of a stipulation and consent order	Order No. 6 (March 1, 2013)
En Jinn Industrial Co., Ltd. (337-TA-867)	Terminated on the basis of a stipulation and consent order	Order No. 22 (February 5, 2014)
Jie Sheng Technology (337-TA-867)	Terminated by amendment to the Complaint and NOI	Order No. 9 (April 30, 2013)

Shengda Huanqiu Shijie (337-TA-867)	Terminated due to withdrawal of the Complaint	Order No. 21 (November 26, 2013)
Body Glove International, LLC (337-TA-861)	Terminated from the investigation on summary determination	Order No. 16 (September 17, 2013)
Superior Communications, Inc. (337-TA-867)	Terminated due to withdrawal of the Complaint	Order No. 19 (October 29, 2013)
Fellowes, Inc. (337-TA-861)	Terminated on the basis of a settlement agreement	Order No. 23 (February 6, 2014)

On September 30, 2013, I issued Order No. 17 as an Initial Determination granting Speck's motion to partially terminate the investigation as to claims 1-3, 6-8, 10, and 12-16 of the '561 patent. Thus, only claim 4, 5, 9, and 11 of the '561 patent remain at issue.

On November 4, 2013, Speck moved to terminate the last participating Respondent, Fellowes Inc., based on a settlement agreement.[1] (Motion Dkt. 867- 027.) In compliance with 19 C.F.R. § 210.16(c)(2), Speck included in the motion a declaration that it would seek a general exclusion order ("GEO"). On February 10, 2014, I issued Order No. 25 granting Speck's request to suspend the procedural schedule in this investigation *nunc pro tunc* to November 4, 2013. Order No. 25 also granted Speck leave to file its present motion for summary determination of violation out of time.

II. STANDARDS OF LAW

A. Summary Determination

Pursuant to Commission Rule 210.18(b), summary determination "shall be rendered if pleadings and any depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the

[1] Fellowes has since been terminated based on settlement agreement. (*See* Order No. 23.)

moving party is entitled to a summary determination as a matter of law." 19 C.F.R. § 210.18(b). Summary determination should therefore be granted when a hearing on the matter at issue would serve no useful purpose and the movant is entitled to judgment as a matter of law. *See Certain Recombinant Erythropoietin*, Inv. No. 337-TA-281, USITC Pub. 2186, ID at 70 (Jan. 19, 1989).

The moving party bears the initial burden of establishing that there is an absence of a genuine issue of material fact and that it is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the movant satisfies its initial burden, the burden then shifts to the non-movant to demonstrate specific facts showing that there is a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). When evaluating a motion for summary determination, the evidence is to be examined in the light most favorable to the non-moving party, and all justifiable inferences are to be drawn in its favor. *Anderson*, 477 U.S. at 255; *Certain Lens-Fitted Film Packages*, Inv. No. 337-TA-406, Order No. 7 at 3 (July 10, 1998). Any doubt as to the existence of a genuine issue of material fact must be resolved in favor of the non-moving party. *Certain Coated Optical Waveguide Fibers and Products Containing Same*, Inv. No. 337-TA-410, Order No. 6 at 3 (July 28, 1998) (denying a motion for summary determination of non-infringement). Summary determination is improper where "the record contains facts which, if explored and developed, might lead the Commission to accept the position of the non-moving party." *Id.* However, "[a] party may not overcome a grant of summary judgment by merely offering conclusory statements." *TechSearch L.L.C. v. Intel Corp.*, 286 F.3d 1360, 1371 (Fed. Cir. 2002).

After a respondent has been found in default by the Commission, the facts alleged in the complaint will be presumed true with respect to that respondent. *See* 19 C.F.R. § 210.16(c); *see also Certain Toner Cartridges & Components Thereof*, Inv. No. 337-TA-740, Order No. 26,

ID/RD at 11-12 (June 1, 2011). A finding of default can lead to a substantive finding of a violation of Section 337 and issuance of a general exclusion order. *See Certain Tadalafil or Any Salt or Solvate Thereof & Prods. Containing Same*, Inv. No. 337-TA-539, USITC Pub. 3992, Notice of Comm'n Issuance of Gen. Exclusion Order (June 13, 2006) (issuing a general exclusion order against nine respondents who defaulted for failure to respond to the Complaint and the Notice of Investigation).

B. Violation of Section 337(a)(1)(B) and (a)(2)

To establish violation of Section 337(a)(1)(B) and (a)(2), a complainant must prove three elements: (1) the importation of goods into the United States, the sale for importation, or the sale within the United States after importation; (2) infringement by those goods of a valid and enforceable United States patent; and (3) a domestic industry in the United States. 19 U.S.C. §§ 1337(a)(1)(B), 1337(a)(2); *Alloc, Inc. v Int'l Trade Comm'n*, 342 F.3d 1361, 1365 (Fed. Cir. 2003).

1. Importation of Goods Into the United States

A complainant "need only prove importation of a single accused product to satisfy the importation element." *Certain Purple Protective Gloves*, Inv. No. 337-TA-500, Order No. 17, at 5 (Sept. 23, 2004); *Certain Trolley Wheel Assemblies*, Inv. No. 337-TA-161, USITC Pub. 1605, Comm'n Action & Order at 7-8 (Nov. 1984) (finding importation requirement satisfied by the importation of single trolley wheel assembly of no commercial value). The importation requirement can be established through a summary-determination motion. *See Certain Mobile Commc'ns & Computer Devices & Components Thereof*, Inv. No. 337-TA-704, Order No. 48, ID at 3 (Oct. 5, 2010) (granting summary determination as to importation requirement).

2. Infringement

Section 337(a)(1)(B)(i) prohibits "the importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of articles that – (i) infringe a valid and enforceable United States patent." 19 U.S.C. §1337(a)(1)(B)(i). The Commission has held that the word "infringe" in Section 337(a)(1)(B)(i) "derives its legal meaning from 35 U.S.C. § 271, the section of the Patent Act that defines patent infringement." *Certain Electronic Devices with Image Processing Systems, Components Thereof, and Associated Software ("Electronic Devices")*, Inv. No. 337- TA-724, Comm'n Op. at 13-14 (December 21, 2011)). Under 35 U.S.C. § 271(a), direct infringement of a patent consists of making, using, offering to sell, or selling the patented invention without consent of the patent owner.

Determination of patent infringement requires a two-step analysis: first, the claims must be properly construed, and second, the properly construed claims must be compared to the infringing device. *See Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed. Cir. 1995). The first step—claim construction—is a matter of law, but the second step—comparison of the properly construed claims to the accused product—is a question of fact. *Zelinski v.Brunswick Corp.*, 185 F.3d 1311, 1315 (Fed. Cir. 1999) (citations omitted). "A claim for patent infringement must be proven by a preponderance of the evidence, which simply requires proving that infringement was more likely than not to have occurred." *Warner-Lambert Co. v. Teva Pharm. USA, Inc.*, 418 F.3d 1326, 1341 n.15 (Fed. Cir. 2005) (internal citations omitted). To prove direct infringement, "the patentee must show that the accused device meets each claim limitation, either literally, or under the doctrine of equivalents." *Catalina Mktg. Int'l, Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 812 (Fed. Cir. 2002) (citations omitted).

3. Domestic Industry

In an investigation based on a claim of patent infringement, Section 337 requires that an industry in the United States, relating to the articles protected by the patent, exist or be in the process of being established. 19 U.S.C. § 1337(a)(2). Under Commission precedent, the domestic industry requirement has been divided into (i) an "economic prong" (which requires certain activities with respect to the protected articles) and (ii) a "technical prong" (which requires that the activities relate to the asserted patent). *Certain Video Game Systems and Controllers ("Video Games")*, Inv. No. 337-TA-743, Comm'n Op. at 6-7 (April 14, 2011).

a. "Economic Prong"

The "economic prong" of the domestic industry requirement is satisfied when there exists in the United States in connection with products practicing at least one claim of the patent at issue: (A) significant investment in plant and equipment; (B) significant employment of labor or capital; or (C) substantial investment in its exploitation, including engineering, research and development, and licensing. 19 U.S.C. §1337(a)(3). Establishment of the "economic prong" is not dependent on any "minimum monetary expenditure" and there is no need for complainant "to define the industry itself in absolute mathematical terms." *Certain Stringed Musical Instruments and Components Thereof ("Stringed Instruments")*, Inv. No. 337-TA-586, Comm'n Op. at 25-26 (May 16, 2008). However, a complainant must substantiate the significance of its activities with respect to the articles protected by the patent. *Certain Printing and Imaging Devices and Components Thereof ("Imaging Devices")*, Inv. No. 337-TA-694, Comm'n Op. at 30 (February 17, 2011). Further, a complainant can show that its activities are significant by showing how those activities are important to the articles protected by the patent in the context of the company's operations, the marketplace, or the industry in question. *Id.* at 27-28.

b. "Technical Prong"

The "technical prong" of the domestic industry requirement is satisfied when it is determined that the complainant practices at least one claim of each of the patents at issue. *Certain Microlithographic Machines and Components Thereof ("Microlithographic Machines")*, Inv. No. 337-TA-468, Initial Determination at 63 (April 1, 2003). The test for determining whether a complainant is practicing a claim of a patent at issue is essentially the same as that for infringement, *i.e.*, it requires that a complainant's domestic product practice at least one claim of the asserted patent. *Alloc, Inc. v. Int'l Trade Comm'n*, 342 F.3d 1361, 1375 (Fed. Cir. 2003).

III. DISCUSSION REGARDING VIOLATION - U.S. PATENT NO. 8,204,561

A. Introduction

U.S. Patent No. 8,204,561 ("the '561 Patent") is titled "One Piece Co-Formed Exterior Hard Shell Case With An Elastomeric Liner For Mobile Electronic Devices." (JX-001, cover page.) The '561 Patent issued on June 19, 2012, based on a patent application filed on October 26, 2011. (*Id.*) The '561 Patent lists Ryan H. Mongan, David J. Law, Jarret Weis, Bryan L. Hynecek, and Stephen R. Myers as inventors and Speculative Product Design, LLC as the assignee. (*Id.*)

The '561 Patent is generally directed to a one-piece, dual-layered case for portable electronic devices comprised of a flexible inner layer co-molded with a hard protective exterior shell. (JX-1 at 1:59-2:37.) The '561 Patent has one independent claim and 15 dependent claims. Speck is asserting dependent claims 4, 5, 9, and 11 ("Asserted Claims").

B. Asserted Claims

Speck argues that defaulted respondents Hongkong Wexun Ltd., ROCON Digital Technology Corp., SW-Box.com, Trait Technology Co., Anbess Electronics Co., Ltd., and

Global Digital Star Industry, Ltd., infringe at least one of claims 4, 5, 9, and 11 of the '561 Patent. The asserted claims read as follows:

> 1. A one-piece case for enclosing a personal electronic device comprising:
>
> a flexible inner layer co-molded with an exterior hard layer and permanently affixed together to form a co-molded one-piece assembly;
>
> wherein the co-molded one-piece assembly is sufficiently flexible to accept insertion of the personal electronic device and sufficiently rigid to securely retain the inserted personal electronic device, wherein:
>
> the flexible inner layer includes a bottom surface, side surfaces joined to the bottom surface and extending upward therefrom, and a fitted cavity configured to accept and retain the inserted personal electronic device such that the bottom surface covers at least a portion of a bottom surface of the inserted personal electronic device and the side surfaces cover at least a portion of a side surface of the inserted personal electronic device;
>
> the exterior hard layer includes a bottom surface and side surfaces sized and shaped to substantially cover an exterior of the bottom and side surfaces of the flexible inner layer and a cut away portion that is permanently filled with a portion of the co-molded flexible inner layer.
>
> ...
>
> 4. The one-piece case of claim 1, wherein the side surfaces of the exterior hard layer form a corner joint and the co-molded flexible inner layer fills in the cutaway portion located at the corner joint contributing to the overall flexibility of the one-piece case.
>
> 5. The one-piece case of claim 1, wherein the flexible inner layer that fills in the cut-away portion creates a stretch-zone that is sufficiently flexible to enable the co-molded one-piece assembly to deform and thereby accept insertion of the personal electronic device.
>
> ...

9. The case of claim 8, wherein an overhang extending from a top portion of one or more of the side surfaces and extends completely around the perimeter of the opening.

...

11. The one-piece case of claim 1, wherein the side surfaces of at least one of the flexible inner layer and the exterior hard layer extend above a top surface of the inserted personal electronic device.

C. Level of Ordinary Skill in the Art

In Order No. 13 a person of ordinary skill in the art at the time of the '561 Patent was found to include someone with an undergraduate degree (such as a Bachelor of Science) in industrial design, mechanical engineering or the equivalent with either course work in plastics or molding or 1-2 years of experience in the manufacturing or design of molded plastic products, preferably consumer products such as accessories for portable electronic devices, or a person of similar education and experience. (Order No. 13 at 7-8.) Alternatively, a person of ordinary skill in the art was found to include someone without an undergraduate degree, but with 2-4 years of experience in the manufacture or design of molded plastic products, preferably consumer products such as accessories for portable electronic devices or a person of similar education and experience. (*Id.*)

D. Claim Construction

On July 8, 2013, Order No. 13 issued construing certain terms of the '561 Patent.

1. Construction of Agreed-Upon Claim Terms

The parties' constructions of the agreed-upon claim terms of the '561 Patent were adopted as follows:

Claim Term	Claim(s)	Agreed Construction
Permanently affixed together	4, 5, 9, 11	Plain and ordinary meaning.
Sufficiently flexible	4, 5, 9, 11	Plain and ordinary meaning.
Sufficiently rigid	4, 5, 9, 11	Plain and ordinary meaning.

Substantially cover	4, 5, 9, 11	Plain and ordinary meaning.
Cut away portion	4, 5, 9, 11	Plain and ordinary meaning.
Contributes to	4	Plain and ordinary meaning.
Overall flexibility	4	Plain and ordinary meaning.
Creates	5	Plain and ordinary meaning.
Corner joint	4	Plain and ordinary meaning.

(*See* Order No. 13).

2. Construction of Disputed Claim Terms

The disputed claim terms of the '561 Patent were construed as follows:

Claim Term	Claim(s)	Construction
Co-molded	4, 5, 9, 11	Plain and ordinary meaning.
Flexible inner layer	4, 5, 9, 11	Plain and ordinary meaning.
Exterior hard layer	4, 5, 9, 11	Plain and ordinary meaning.
One-piece case	4, 5, 9, 11	Plain and ordinary meaning.
One-piece assembly	4, 5, 9, 11	Plain and ordinary meaning.
Fitted cavity	4, 5, 9, 11	Plain and ordinary meaning.
Permanently filled	4, 5, 9, 11	Plain and ordinary meaning.
Fills in	4, 5	Plain and ordinary meaning.

(*See* Order No. 13).

E. Importation and Infringement

Speck alleges that each of the defaulted Respondents has violated Section 337 by importing, selling for importation, and/or selling after importation certain cell-phone cases that infringe the '561 Patent. (Mem. at 1.) The defaulted Respondents Speck accuses of violating Section 337 are: Hongkong Wexun Ltd. ("Wexum"), ROCON Digital Technology Corp. ("Rocon"), SW-Box.com ("SW-Box"), Trait Technology Co. ("Trait"), Anbess Electronics Co., Ltd. ("Anbess"), and Global Digital Star Industry, Ltd. ("Global"). (*Id.* at 12-16.)

As discussed in more detail below, I find that there are no genuine issues of material fact that each of the defaulted Respondents has imported, sold for importation, and sold after importation in the United States products that infringe the asserted claims of the '561 Patent.

1. Defaulted Respondents Wexun, Rocon, and SW-Box

a. Importation

Defaulted Respondents Wexun, Rocon, and SW-Box are all involved in the manufacture, importation, and sale of Rocon branded cases. (861 Complaint at ¶¶ 48, 49, 51, Exh. 32.) Wexun currently operates a website at www.wexun-e.com. (Mem. at Exh. E ("Gosselin Dec.") at ¶ 3.) Rocon still operates a website at www.sinorocon.com. (Gosselin Dec. at ¶2). SW-Box is still in business and operates a website as SW-Box.com. (Gosselin Dec. at ¶4.) Rocon is a brand launched by Wexun, and is a registered trademark of Wexun. (Mem., Exh. B ("Riley Dec.") at ¶ 7.) A Wexun product catalog indicates that "ROCON is a brand launched by Hongkong Wexun Ltd. to meet the demands of electronics products accessories." (*Id.* at ¶ 7, Exh. 6.)

The evidence shows Rocon Cases are manufactured in China. (861 Complaint at ¶ 27; Riley Dec. at ¶ 2.) The evidence shows that Wexun makes in China, has others make in China, exports from China to the U.S., and/or imports into the U.S. for sale certain cases for handheld mobile electronics, for example the "Rocon CandyShell Case for iPhone 4 and 4S" in assorted colors. (861 Complaint at ¶ 26.) The evidence shows that Rocon also makes in China, has others make in China, exports from China to the U.S., and/or imports into the U.S. certain cases for portable electronic devices, for example the Rocon DTC Cases for the iPhone 4/4S. (*Id.* at ¶ 21, Exh. 15.) The evidence further shows that at the time of the complaint, SW-Box imported into the United States, sold for importation and/or sold within the United States after importation, certain cases for handheld mobile electronic devices, including Rocon brand cases, via its website, www.sw-box.com. (861 Complaint at ¶ 24, Exh. 25.)

The evidence shows Rocon Cases have been available for purchase in the U.S. online at, for example, (1) http://www.mart-shopping.com; and (2) http://www.sw-box.com; and (3)

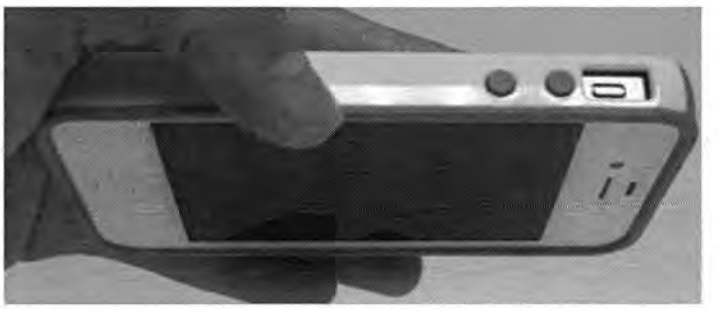
www.casefanatic.com. (861 Complaint at ¶¶ 24, 27; Riley Dec. at ¶¶ 2-6.) The evidence shows Speck purchased several Rocon Cases, including the Rocon CandyShell Case for IPhone 4/4S and Rocon DTC Case for IPhone 4/4S, online in the United States. (861 Complaint at ¶ 27; Riley Dec. at ¶¶ 2-6.) Moreover, the evidence shows the Rocon Cases purchased by Speck were imported from China to the United States. (Riley Dec. at ¶ 6).

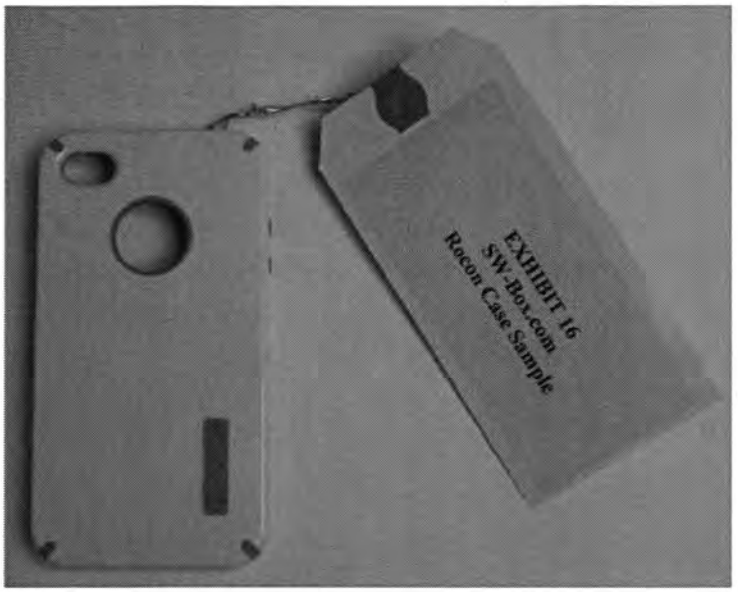
Accordingly, I find there to be no factual dispute that Rocon, Wexun, and SW-Box accused products were imported into the United States, sold for importation and/or sold within the United States after importation.

b. Infringement

Speck relies primarily on the testimony of its expert, Dr. Osswald, in support of its argument that the Recon brand cases infringe the asserted claims of the '561 Patent. The following claim chart from the declaration of Dr. Osswald addresses how a representative Rocon case for the iPhone 4/S maps to each limitation of the asserted '561 Patent claims:

Claim Term	**Rocon's iPhone Cases**
1. A one-piece case for enclosing a personal electronic device comprising:	
a flexible inner layer co-molded with an exterior hard layer and permanently affixed together to form a co-molded one-piece assembly;	The Rocon cases are one-piece. The flexible inner layer (blue) is co-molded with an exterior hard layer (white) and the two layers are permanently affixed together.

Claim Term	**Rocon's iPhone Cases**
wherein the co-molded one-piece assembly is sufficiently flexible to accept insertion of the personal electronic device and sufficiently rigid to securely retain the inserted personal electronic device,	 The Rocon cases are sufficiently flexible to insert the phone into the case and sufficiently rigid to securely retain the phone.
wherein: the flexible inner layer includes a bottom surface, side surfaces joined to the bottom surface and extending upward therefrom, and a fitted cavity configured to accept and retain the inserted personal electronic device such that the bottom surface covers at least a portion of a bottom surface of the inserted personal electronic device and the side surfaces cover at least a portion of a side surface of the inserted personal electronic device;	 The Rocon cases have the claimed geometry.

Claim Term	**Rocon's iPhone Cases**
the exterior hard layer includes a bottom surface and side surfaces sized and shaped to substantially cover an exterior of the bottom and side surfaces of the flexible inner layer and	 The exterior hard layer (white) substantially, if not entirely, covers an exterior of the bottom and side surfaces of the flexible inner layer (blue)
a cut away portion that is permanently filled with a portion of the co-molded flexible inner layer.	 The corners of the Rocon cases have cut away portions permanently filled with a portion of the co-molded flexible inner layer.

Claim Term	**Rocon's iPhone Cases**
4. The one-piece case of claim 1, wherein the side surfaces of the exterior hard layer form a corner joint and the co-molded flexible inner layer fills in the cut-away portion located at the corner joint contributing to the overall flexibility of the one-piece case.	
5. The one-piece case of claim 1, wherein the flexible inner layer that fills in the cut-away portion creates a stretch-zone that is sufficiently flexible to enable the co-molded one-piece assembly to deform and thereby accept insertion of the personal electronic device.	The side surfaces of the Rocon cases form a corner joint filled with the co-molded flexible inner layer which contributes to the overall flexibility of the case and which creates a stretch-zone that allows the case to deform to accept insertion of the phone.
8. The one-piece case of claim 1, further comprising: an opening parallel to the bottom surface of the flexible inner layer positioned such that a portion of the inserted personal electronic device is not enclosed by the co-molded one-piece assembly.	
9. The case of claim 8, wherein an overhang extending from a top portion of one or more of the side surfaces and extends completely around the perimeter of the opening.	The Rocon cases have a 360° overhang that extends from the top of the side surfaces and extends completely around the perimeter of the opening

Claim Term	Rocon's iPhone Cases
11. The one-piece case of claim 1, wherein the side surfaces of at least one of the flexible inner layer and the exterior hard layer extend above a top surface of the inserted personal electronic device.	 The side surfaces of the Rocon cases extend above a top surface of the phone.

(Osswald Dec. at ¶¶ 6-9.) I find the declaration of Dr. Osswald, a polymer engineering expert, persuasive. Dr. Osswald's declaration demonstrates infringement of the claimed features by Rocon branded cases for the iPhone 4/4S.

Accordingly, I find there to be no factual dispute that the accused Rocon branded cases imported into the United States, sold for importation and/or sold within the United States after importation infringe the asserted claims of the '561 patent.

2. Defaulted Respondent Trait

a. Importation

The evidence shows that Trait makes in China, has others make in China, exports from China to the U.S., and/or imports into the U.S. for sale certain cases for handheld mobile electronics including, without limitation, the "Dexter Speck, Candy Phone Protective Case" for iPhone 4/4S, the CandyShell Grip for iPhone, the Candyshell Flip for iPhone, and Cases for Samsung Galaxy (collectively "the Trait Cases"). (861 Complaint at ¶ 25, Riley Dec. at ¶ 8.) Trait currently operates the website www.trait-tech.com. (Gosselin Dec. ¶ 5.) The evidence

shows that as of the filing of the Complaint the Trait Cases were available for purchase in the United States online at Trait's website www.trait-tech.com. (861 Complaint ¶ 25; Riley Dec. at ¶¶ 8-9.) The evidence further shows that Speck purchased at least one Trait Case in the United States and that the case was shipped to the United States from China. (*Id.*)

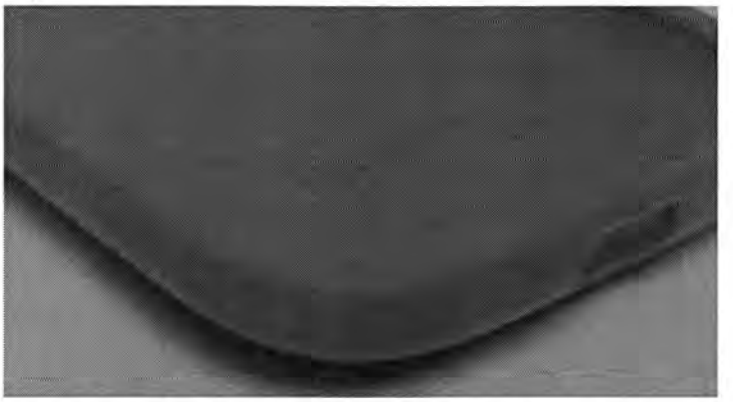
Accordingly, I find there to be no factual dispute that Trait's accused products were imported into the United States, sold for importation and/or sold within the United States after importation.

b. Infringement

Speck relies primarily on the testimony of its expert, Dr. Osswald, in support of its argument that the Recon brand cases infringe the asserted claims of the '561 Patent. The following claim chart from the declaration of Dr. Osswald addresses how a representative Trait case for the Galaxy S III maps to each limitation of the asserted '561 patent claims:

Claim Term	**Trait's Dexter Speck Cases**
1. A one-piece case for enclosing a personal electronic device comprising:	
a flexible inner layer co-molded with an exterior hard layer and permanently affixed together to form a co-molded one-piece assembly;	Trait's cases are one-piece. The flexible inner layer (blue) is co-molded with an exterior hard layer (white) and the two layers are permanently affixed together.

Claim Term	**Trait's Dexter Speck Cases**
wherein the co-molded one-piece assembly is sufficiently flexible to accept insertion of the personal electronic device and sufficiently rigid to securely retain the inserted personal electronic device,	Trait's cases are designed to be sufficiently flexible to insert the phone into the case and sufficiently rigid to securely retain the phone.
wherein: the flexible inner layer includes a bottom surface, side surfaces joined to the bottom surface and extending upward therefrom, and a fitted cavity configured to accept and retain the inserted personal electronic device such that the bottom surface covers at least a portion of a bottom surface of the inserted personal electronic device and the side surfaces cover at least a portion of a side surface of the inserted personal electronic device;	 Trait's cases have the claimed geometry.
the exterior hard layer includes a bottom surface and side surfaces sized and shaped to substantially cover an exterior of the bottom and side surfaces of the flexible inner layer and	 The exterior hard layer (blue) substantially, if not entirely, covers the exterior of the bottom and side surfaces of the flexible inner layer (red)

Claim Term	**Trait's Dexter Speck Cases**
a cut away portion that is permanently filled with a portion of the co-molded flexible inner layer.	 The corners of Trait's cases have cut away portions permanently filled with a portion of the co-molded flexible inner layer.
4. The one-piece case of claim 1, wherein the side surfaces of the exterior hard layer form a corner joint and the co-molded flexible inner layer fills in the cut-away portion located at the corner joint contributing to the overall flexibility of the one-piece case.	 The side surfaces of Trait's cases form a corner joint filled with the co-molded flexible inner layer which contributes to the overall flexibility of the case and which creates a stretch-zone that allows the case to deform to accept insertion of the phone.
5. The one-piece case of claim 1, wherein the flexible inner layer that fills in the cut-away portion creates a stretch-zone that is sufficiently flexible to enable the co-molded one-piece assembly to deform and thereby accept insertion of the personal electronic device.	

Claim Term	**Trait's Dexter Speck Cases**
8. The one-piece case of claim 1, further comprising: an opening parallel to the bottom surface of the flexible inner layer positioned such that a portion of the inserted personal electronic device is not enclosed by the co-molded one-piece assembly.	
9. The case of claim 8, wherein an overhang extending from a top portion of one or more of the side surfaces and extends completely around the perimeter of the opening.	Trait's cases have a 360° overhang that extends from the top of the side surfaces and extends completely around the perimeter of the opening
11. The one-piece case of claim 1, wherein the side surfaces of at least one of the flexible inner layer and the exterior hard layer extend above a top surface of the inserted personal electronic device.	 The side surfaces of Trait's cases extend above a top surface of the phone.

(Osswald Dec. at ¶¶ 10-14.) I find Dr. Osswald's declaration that the accused Trait cases infringe and "look[] very much like Speck's CandyShell product, and even bear the Speck logo" persuasive. I find Dr. Osswald's declaration demonstrates infringement of the asserted claims by the accused Trait cases. I note that the evidence shows that the Trait Cases are not authorized by or manufactured for Speck. (Riley Dec. at ¶ 10; Gibbins Dec. at ¶ 46).

Accordingly, I find there to be no factual dispute that the accused Trait cases imported into the United States, sold for importation and/or sold within the United States after importation infringe the asserted claims of the '561 patent.

3. Defaulted Respondent Anbess

a. Importation

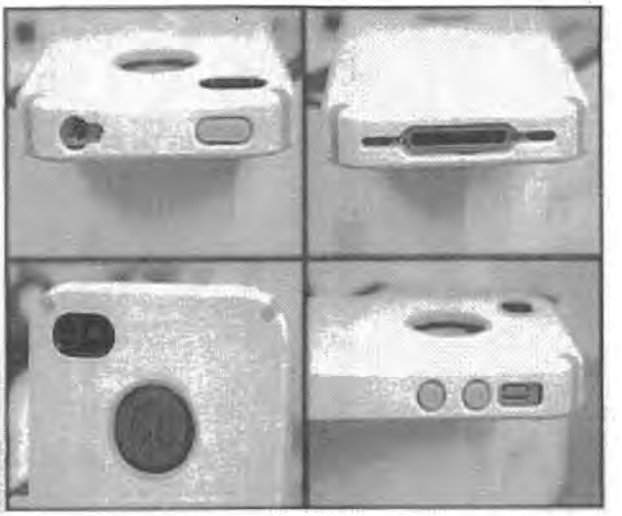
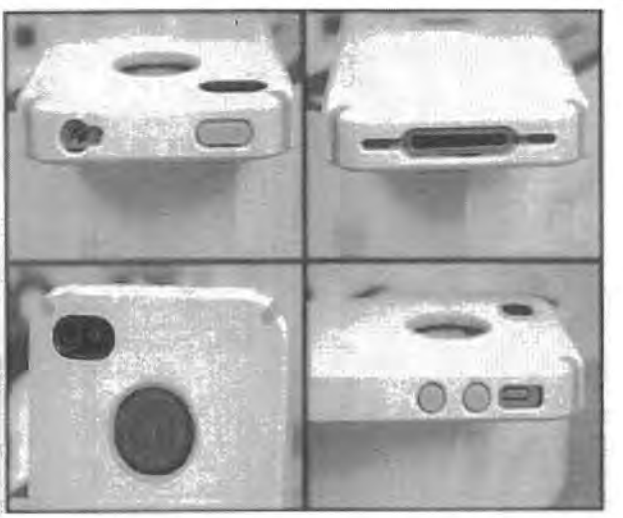
The evidence shows that Anbess makes in China, has others make in China, exports from China to the U.S., and/or imports into the U.S. for sale certain cases for handheld mobile electronics including, without limitation, the "Speck Spek Candy Shell Cases for iPhone 4s and 4G" in assorted colors (collectively "Anbess Cases"). (861 Complaint at ¶¶ 11, 39.) The evidence shows that Anbess Cases were, at the time of the Complaint, available for purchase in the United States online at www.anbess.com. (861 Complaint at ¶ 11, Exh. 3.) However, since the institution of this Investigation, the evidence shows Anbess has disabled its website. (Memo., Statement of Material Facts Not in Dispute at 36.) Although Anbess has since disabled its website, Anbess continues to sell cell-phone cases on other websites, for example on the website www.dhgate.com. (Gosselin Dec. ¶ 7.)

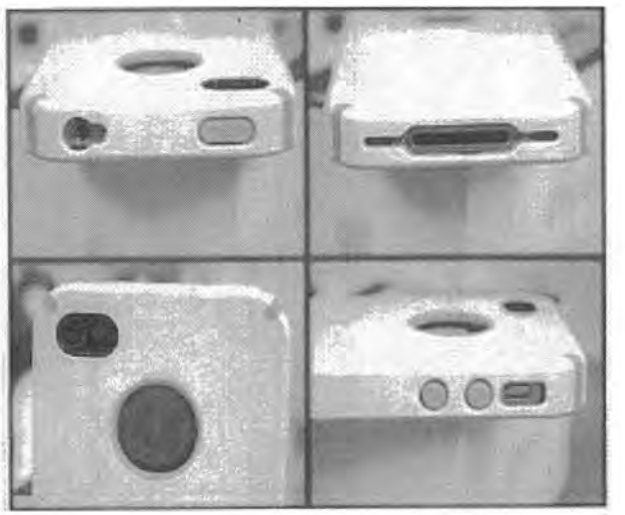
Accordingly, I find there to be no factual dispute that Anbess' accused products were imported into the United States, sold for importation and/or sold within the United States after importation.

b. Infringement

Speck relies primarily on the testimony of its expert, Dr. Osswald, in support of its argument that the Anbess Speck Spek Candy Shell Cases for iPhone infringe the asserted claims of the '561 Patent. The following claim chart from the declaration of Dr. Osswald addresses how a representative Anbess case maps to each limitation of the asserted '561 patent claims:

Claim Term	**Cases from Anbess**
1. A one-piece case for enclosing a personal electronic device comprising:	 The cases from Anbess are one-piece. The flexible inner layer (blue) is co-molded with an exterior hard layer (purple) and the two layers are permanently affixed together.
a flexible inner layer co-molded with an exterior hard layer and permanently affixed together to form a co-molded one-piece assembly;	The cases from Anbess are designed to be sufficiently flexible to insert the phone into the case and sufficiently rigid to securely retain the phone.

Claim Term	**Cases from Anbess**
wherein the co-molded one-piece assembly is sufficiently flexible to accept insertion of the personal electronic device and sufficiently rigid to securely retain the inserted personal electronic device,	 The cases from Anbessare designed to be sufficiently flexible to insert the phone into the case and sufficiently rigid to securely retain the phone.
wherein: the flexible inner layer includes a bottom surface, side surfaces joined to the bottom surface and extending upward therefrom, and a fitted cavity configured to accept and retain the inserted personal electronic device such that the bottom surface covers at least a portion of a bottom surface of the inserted personal electronic device and the side surfaces cover at least a portion of a side surface of the inserted personal electronic device;	 The cases from Anbess have the claimed geometry.

Claim Term	**Cases from Anbess**
the exterior hard layer includes a bottom surface and side surfaces sized and shaped to substantially cover an exterior of the bottom and side surfaces of the flexible inner layer and	 The exterior hard layer (purple) substantially, if not entirely, covers the exterior of the bottom and side surfaces of the flexible inner layer (blue).
a cut away portion that is permanently filled with a portion of the co-molded flexible inner layer.	 The corners have cut away portions permanently filled with a portion of the co-molded flexible inner layer.

Claim Term	Cases from Anbess
4. The one-piece case of claim 1, wherein the side surfaces of the exterior hard layer form a corner joint and the co-molded flexible inner layer fills in the cut-away portion located at the corner joint contributing to the overall flexibility of the one-piece case.	
5. The one-piece case of claim 1, wherein the flexible inner layer that fills in the cut-away portion creates a stretch-zone that is sufficiently flexible to enable the co-molded one-piece assembly to deform and thereby accept insertion of the personal electronic device.	The side surfaces form a corner joint filled with the co-molded flexible inner layer which contributes to the overall flexibility of the case and which creates a stretch-zone that allows the case to deform to accept insertion of the phone.

(Osswald Supp. Dec. at ¶¶ 4-6.) I find Dr. Osswald's declaration persuasive. I find Dr. Osswald's declaration demonstrates infringement of asserted claims 4 and 5 by the accused Anbess cases.

Accordingly, I find there to be no factual dispute that the accused Anbess cases imported into the United States, sold for importation and/or sold within the United States after importation infringe asserted claims 4 and 5 of the '561 patent.

4. Defaulted Respondent Global Digital

a. Importation

The evidence shows that Global Digital makes in Taiwan or China, has others make in Taiwan or China, exports from Taiwan or China to the U.S., and/or imports into the U.S. for sale certain cases for handheld mobile electronics ("Global Digital Cases"). (867 Complaint at ¶ 13, Exh. 14.) Moreover, the evidence shows that Speck purchased at least one Global Digital Case

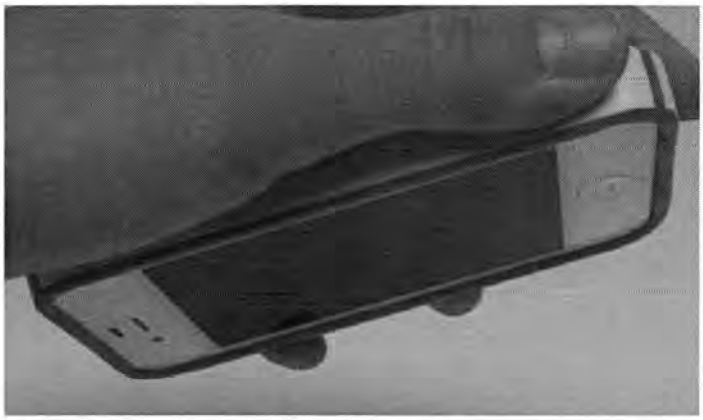
in the United States, and that the case was shipped to the United States from China. (867 Complaint at ¶ 13; Riley Dec. ¶¶ 11-13.)

Accordingly, I find there to be no factual dispute that Global's accused products were imported into the United States, sold for importation and/or sold within the United States after importation.

b. Infringement

Speck relies primarily on the testimony of its expert, Dr. Osswald, in support of its argument that the Global Digital Cases infringe the asserted claims of the '561 Patent. The following claim chart from the declaration of Dr. Osswald addresses how a representative Global Digital Case maps to each limitation of the asserted '561 patent claims:

Claim Term	**Global Digital's CandyShell Cases**
1. A one-piece case for enclosing a personal electronic device comprising:	
a flexible inner layer co-molded with an exterior hard layer and permanently affixed together to form a co-molded one-piece assembly;	Global's cases are one-piece. The flexible inner layer (blue) is co-molded with an exterior hard layer (white) and the two layers are permanently affixed together.

Claim Term	**Global Digital's CandyShell Cases**
wherein the co-molded one-piece assembly is sufficiently flexible to accept insertion of the personal electronic device and sufficiently rigid to securely retain the inserted personal electronic device,	 Global's cases are designed to be sufficiently flexible to insert the phone into the case and sufficiently rigid to securely retain the phone.
wherein: the flexible inner layer includes a bottom surface, side surfaces joined to the bottom surface and extending upward therefrom, and a fitted cavity configured to accept and retain the inserted personal electronic device such that the bottom surface covers at least a portion of a bottom surface of the inserted personal electronic device and the side surfaces cover at least a portion of a side surface of the inserted personal electronic device;	 Global's cases have the claimed geometry.

Claim Term	**Global Digital's CandyShell Cases**
the exterior hard layer includes a bottom surface and side surfaces sized and shaped to substantially cover an exterior of the bottom and side surfaces of the flexible inner layer and	 The exterior hard layer (white) substantially, if not entirely, covers the exterior of the bottom and side surfaces of the flexible inner layer (blue)
a cut away portion that is permanently filled with a portion of the co-molded flexible inner layer.	 The corners of Global's cases have cut away portions permanently filled with a portion of the co-molded flexible inner layer.

<table>
<tr><th><u>Claim Term</u></th><th><u>Global Digital's CandyShell Cases</u></th></tr>
<tr><td>4. The one-piece case of claim 1, wherein the side surfaces of the exterior hard layer form a corner joint and the co-molded flexible inner layer fills in the cut-away portion located at the corner joint contributing to the overall flexibility of the one-piece case.</td><td rowspan="2"> 
The side surfaces of Global's cases form a corner joint filled with the co-molded flexible inner layer which contributes to the overall flexibility of the case and which creates a stretch-zone that allows the case to deform to accept insertion of the phone.</td></tr>
<tr><td>5. The one-piece case of claim 1, wherein the flexible inner layer that fills in the cut-away portion creates a stretch-zone that is sufficiently flexible to enable the co-molded one-piece assembly to deform and thereby accept insertion of the personal electronic device.</td></tr>
<tr><td>8. The one-piece case of claim 1, further comprising: an opening parallel to the bottom surface of the flexible inner layer positioned such that a portion of the inserted personal electronic device is not enclosed by the co-molded one-piece assembly.</td><td rowspan="2"> 
Global's cases have a 360° overhang that extends from the top of the side surfaces and extends completely around the perimeter of the opening</td></tr>
<tr><td>9. The case of claim 8, wherein an overhang extending from a top portion of one or more of the side surfaces and extends completely around the perimeter of the opening.</td></tr>
</table>

Claim Term	Global Digital's CandyShell Cases
11. The one-piece case of claim 1, wherein the side surfaces of at least one of the flexible inner layer and the exterior hard layer extend above a top surface of the inserted personal electronic device.	 The side surfaces of Global's cases extend above a top surface of the phone.

(Osswald Dec. at ¶¶ 15-19; Osswald Supp. Dec. at ¶¶ 2-3.) I find Dr. Osswald's declaration persuasive. I find Dr. Osswald's declaration demonstrates infringement of the asserted claims by the accused Global Digital Cases. I note that the evidence shows that the Global Digital Cases are not authorized by or manufactured for Speck. (Gibbins Dec. at ¶ 47).

Accordingly, I find there to be no factual dispute that the accused Global Digital Cases imported into the United States, sold for importation and/or sold within the United States after importation infringe the asserted claims of the '561 patent.

IV. DOMESTIC INDUSTRY

On September 10, 2013, I issued Order No. 15 granting-in-part Speck's motion for partial summary determination of the domestic industry requirement, finding both the economic prong and technical prong satisfied. (*See* Order No. 15 at 29-30.) I determined that "Speck has provided convincing and uncontroverted proof that its CandyShell line of products practice the '561 Patent." (*Id.* at 29). I also found that Speck's CandyShell line of products practices each

and every element of representative claims 1, 4, 5, 8, 9, 14, and 15. (*Id.*). I further found that "Speck satisfied the economic prong requirement of 19 U.S.C. 1337(a)(3)(C)." (*Id.*)

On October 24, 2013, the Commission issued a Notice that it had determined not to review the ID finding that Speck had satisfied the domestic industry requirement of Section 337.

V. CONCLUSION

I find that there are no issues of material fact or law as to whether the defaulted respondents have violated section 337. Accordingly, for the reasons above, I find that Speck is entitled to summary determination that the defaulted respondents Hongkong Wexun Ltd., ROCON Digital Technology Corp., SW-Box.com, Trait Technology Co., Anbess Electronics Co., Ltd., and Global Digital Star Industry, Ltd. are in violation of Section 337 though the importation, sale for importation, or sale in the United States after importation of certain cases for electronic devices that infringe at least one asserted claim of U.S. Patent No. 8,204,561.

VI. CONCLUSIONS OF LAW

1. The Commission has subject-matter jurisdiction over the accused products.

2. The importation or sale requirement of Section 337 is satisfied with regard to the accused Recon brand cases.

3. The accused Recon brand cases infringe U.S. Patent No. 8,204,561.

4. The importation or sale requirement of Section 337 is satisfied with regard to the accused Trait cases.

5. The accused Trait cases infringe U.S. Patent No. 8,204,561.

6. The importation or sale requirement of Section 337 is satisfied with regard to the accused Anbess cases.

7. The accused Anbess cases infringe U.S. Patent No. 8,204,561.

8. The importation or sale requirement of Section 337 is satisfied with regard to the accused Global Digital cases.

9. The accused Global Digital cases infringe U.S. Patent No. 8,204,561.

10. The domestic industry requirement is satisfied with respect to U.S. Patent No. 8,204,561.

11. There has been a violation of Section 337 with respect to U.S. Patent No. 8,204,561 by defaulted Respondents Hongkong Wexun Ltd., ROCON Digital Technology Corp., SW-Box.com, Trait Technology Co., Anbess Electronics Co., Ltd., and Global Digital Star Industry, Ltd.

VII. INITIAL DETERMINATION

Based on the foregoing, it is my Initial Determination that a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, has been found in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain cases for electronic devices that infringe at least one of claims 4, 5, 9, and 11 of U.S. Patent No. 8,204,561.

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

RECOMMENDED DETERMINATION ON REMEDY AND BONDING

Pursuant to Commission Rules 210.36(a) and 210.42(a)(1)(ii), the Administrative Law Judge is to consider evidence and argument on the issues of remedy and bonding and issue a recommended determination thereon.

I. REMEDY AND BONDING

A. Remedy

Speck seeks a general exclusion order ("GEO") that would prevent the importation into the United States of "all cases for Portable Electronic Devices that infringe Claims 1-16 of the '561 patent." (867 Complaint ¶ XI.C, p. 16; Mem. at 39-40.) Alternatively, Speck seeks a limited exclusion order "forbidding entry into the United States of all Cases for Portable Electronic Devices imported, sold for importation, or sold following importation by the Respondents that infringe Claims 1-16 of the '561 patent." (867 Complaint ¶ XI.C, p. 16; Mem. at 52)

1. Legal Standard

The Commission has broad discretion in selecting the form, scope, and extent of the remedy in a Section 337 proceeding. *Viscofan, S.A. v. U.S. Int'l Trade Comm'n*, 787 F.2d 544, 548 (Fed. Cir. 1986). The Commission may issue a GEO that applies to all infringing products, regardless of manufacturer, instead of a limited exclusion order ("LEO") directed to persons determined to be in violation of Section 337, when:

> (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). The Commission has also historically considered the existence of a "widespread pattern of unauthorized use" and "certain business conditions from which one might reasonably infer that foreign manufacturers other than the respondents to the investigation may attempt to enter the U.S. market with infringing articles." *Certain Airless Paint Spray Pumps*, Inv. No. 337-TA-90, USITC Pub. 1199, Comm'n Op. at 18 (Nov. 1981).

2. The Parties' Positions

Speck argues that a GEO is warranted because a limited exclusion order against the defaulting respondents would not adequately address the infringement of Speck's patents. (Mem. at 39.) First, Speck argues that industry for protective cases for portable electronic devices is particularly susceptible to repeated violations of Section 337 because of the anonymous nature of internet sales, the number of retailers, and the difficulty in locating manufacturers and sellers. (*Id.* at 42.) Speck argues the industry for protective cases is also susceptible to repeated violations of Section 337 because of the low barriers to entry and the high profit margins associated with product sales. (*Id.* at 49.) Second, Speck argues that the widespread infringement of the '561 patent by a large numbers of infringers prevents Speck from being able to enforce their IP rights. (*Id.* at 43.) Third, Speck argues that due to the increasing popularity of e-commerce, large numbers of unregulated foreign manufacturers can manufacture and sell infringing goods with minimal effort. (*Id.* at 44-45.) Fourth, Speck argues that it is difficult to identify the source of infringing products due to the nature of the manufacturers, as well as the lack of identifying packaging on the products themselves. (*Id.* at 45-50.) Finally, Speck argues that unauthorized infringing activity is rising despite its enforcement efforts, and the fact that five out of fourteen original respondents opted not to raise a defense or appear in the investigation is probative of a pattern of violation, and supports issuance of a GEO. (*Id.* at 50-52.)

The Staff agrees with Speck, and recommends the Commission enter a GEO in this investigation. (Staff at 16.)

3. Discussion

I find Speck's arguments regarding the nature of the industry for protective cases for portable electronic devices and the inadequacy of a limited exclusion order persuasive. GEOs may issue in cases where the exclusion from entry of articles is necessary to prevent circumvention of an exclusion order that would otherwise be limited to the products of named respondents. 19 U.S.C. § 1337(d)(2)(A). An evidentiary record that reveals that respondents have, or are capable of, changing names, facilities, or corporate structure to avoid detection is relevant to an inquiry under Section 337(d)(2)(A). *Certain Protective Cases and Components Thereof ("Protective Cases")*, Inv. No. 337-TA-780, Comm'n Op. at 25-26 (November 19, 2012). Here, I agree with Speck and the Staff that market conditions for cell-phone cases invite counterfeiting and infringement. I find the low barriers to entry in the protective case manufacturing market and the ease with which foreign manufacturing operations can change their names and distribution patterns to avoid detection are particularly relevant. In light of the ease in which counterfeit products can be manufactured and distributed, even if a limited exclusion order were to be awarded, Speck would be unreasonably burdened by enforcement actions. Indeed, the evidence presented by Speck of the frequency of unauthorized infringing activity demonstrates just such a trend.

Specifically, the evidence shows that unnamed parties frequently counterfeit Speck's CandyShell products that are protected by the '561 patent. (Gibbins Dec. at ¶¶ 22-23). Mr. Christian Gibbins, Speck's Director of Global Brand Protection, explained that Speck loses millions of dollars each year due to the sale of counterfeit CandyShell cases. (*Id.* at ¶ 9). The evidence also shows that in July of 2013 there were 4,500 internet auctions of counterfeit Speck

products, most of which were covered by the patent at issue. (*Id.* at ¶¶ 16-17; Exhs. 2, 3). The evidence shows that Speck has filed multiple lawsuits and sent numerous cease-and-desist letters, but the counterfeiting problem has grown. (*Id.* at ¶¶ 13, 37). Additionally, the evidence shows that most of these counterfeiters originate in southern China through companies operating under fake names and fake addresses, while using professional quality molds. (*Id.* at ¶¶ 8, 21, 30, 49). The evidence further shows that Respondents may easily circumvent a limited exclusion order by selling counterfeit goods online. (*Id.* at ¶¶ 8-13, 52; Riley Dec. at ¶ 4; Gosselin Dec. at ¶¶ 2-6).

Accordingly, I find a GEO would be well justified under 19 U.S.C. § 1337(d)(2)(A).

I also find Speck's argument that a GEO should be awarded based on a pattern of violation and difficulty in identifying the source also persuasive. A GEO may issue if there is a widespread pattern of violation of Section 337 and it is difficult to identify the source of infringing products. 19 U.S.C. § 1337(d)(2)(B). *See, e.g. Certain Cigarettes and Packaging Thereof*, 337-TA-643, Order No. 23 at p. 8 (March 18, 2009) (finding that the fact that the complainant has "engaged in twenty-three lawsuits since 2002, not including this investigation, against 85 defendants" supported a GEO). The Commission has recognized that the anonymity over the Internet increases the difficulty in identifying the sources of infringing products. *See, e.g.*, *Certain Toner Cartridges and Components Thereof*, Inv. No. 337-TA-740, Comm'n Op. at 6 (Nov. 19, 2012). Here, the evidence shows that foreign counterfeiters frequently copy Speck's designs, and despite Speck's efforts to stop the counterfeiting, the number of counterfeiters has grown. (Gibbins Dec. at ¶¶ 13, 24, 31, 33, 37, 40, 43, 51.) The evidence shows that Speck has compiled a list of over 150 counterfeit CandyShell products and identified 90 companies in Hong Kong and China that allegedly produce counterfeit Speck products. (*Id.* at ¶¶ 24, 40.) The

evidence shows the manufacturers sell the counterfeit products online, under false names, to avoid detection. (*Id.* at ¶¶ 11, 52.) Of the 90 companies identified by Speck, 44% were found to list addresses that were not real locations. (*Id.* at ¶ 24.) In this investigation alone, Speck named fourteen Respondents, many of whom defaulted. Thus, I find the evidence demonstrates a widespread pattern of violation of Section 337 by manufacturers which would be difficult to identify.

Accordingly, I find a GEO would be well justified under 19 U.S.C. § 1337(d)(2)(B).

B. Bond

1. Legal Standard

If the Commission enters an exclusion order in this investigation, affected articles shall still be entitled to entry and sale under bond during the 60-day Presidential review period. The amount of such bond must "be sufficient to protect the complainant from any injury." 19 U.S.C. § 1337(j)(3); see also 19 C.F.R. § 210.50(a)(3). The Commission typically sets the Presidential review period bond based on the price differential between the imported or infringing product, or based on a reasonable royalty. *See, e.g., Certain Microsphere Adhesives, Process For Making Same, and Products Containing Same, Including Self-Stick Repositionable Notes*, Inv. No. 337-TA-366, Comm'n Op. at 24, (December 15, 1995) (setting bond based on price differentials); *Certain Plastic Encapsulated Integrated Circuits*, Inv. No. 337-TA-315, Comm'n Op. on Issues Under Review and on Remedy, the Public Interest, and Bonding at 45, USITC Pub. 2574 (Nov. 1992) (setting the bond based on a reasonable royalty). However, where the available pricing or royalty information is inadequate, the bond may be set at 100% of the entered value of the accused product. *See, e.g., Certain Neodymuim-Iron-Boron Magnets, Magnet Alloys, and Products Containing Same*, Inv. No. 337-TA-372, Comm'n Op. on Remedy, the Public Interest and Bonding at 15, USITC Pub. 2964 (May 1996).

2. The Parties' Positions

Speck argues that reliable price information is not available, and price comparisons are not practicable because many of the accused products are offered for sale on the internet at different prices based on the website visited, the age of the product, and the quantity purchased. (Mem. at 53.) Accordingly, Speck argues that bond should be set at 100%.

The Staff agrees with Speck, and argues that the evidence shows that many sales are made online at various price points, calculating an average price will be unnecessarily difficult. (Staff at 16-17.) Therefore, the Staff believes bond should be set at 100%. (*Id.*)

3. Discussion

I agree with Speck and the Staff that a bonding rate of 100% is appropriate. The variety of pricing, coupled with the number of accused products, makes it difficult to reliably compare the price of Speck's domestic industry products to the infringing products. In these situations, a bond value of 100% is appropriate. *See, e.g., Certain Neodymuim-Iron-Boron Magnets, Magnet Alloys, and Products Containing Same*, Inv. No. 337-TA-372, Comm'n Op. on Remedy, the Public Interest and Bonding at 15, USITC Pub. 2964 (May 1996).

Accordingly, I find that Respondents are required to post a bond of 100% of entered value during the 60-day Presidential Review Period.

To expedite service of the public version, the parties are hereby ORDERED to jointly submit no later than seven (7) days from the date of this Order: (1) a proposed public version of this EID with any proposed redactions bracketed in red; and (2) a written justification for any proposed redactions specifically explaining why the piece of information sought to be redacted is confidential and why disclosure of the information would be likely to cause substantial harm or

likely to have the effect of impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions.[2] [3]

SO ORDERED.

Thomas B. Pender
Administrative Law Judge

[2] Under Commission Rules 210.5 and 201.6(a), confidential business information includes:

> information which concerns or relates to the trade secrets, processes, operations, style of works, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, or other information of commercial value, the disclosure of which is likely to have the effect of either impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions, or causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained, unless the Commission is required by law to disclose such information.

See 19 C.F.R. § 201.6(a). Thus, to constitute confidential business information the disclosure of the information sought to be designated confidential must ***likely have the effect of*** either: (1) impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions; or (2) ***causing substantial harm*** to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained.

[3] While the parties are required to jointly submit the proposed redactions, there is no requirement that the parties must agree on all the redactions. However, the parties' written justification for any proposed redactions should distinguish between those redactions that are agreed upon and those proposed by the individual parties.

IN THE MATTER OF CERTAIN CASES FOR PORTABLE ELECTRONIC DEVICES

337-TA-861
337-TA-867
(Consolidated)

CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **PUBLIC ORDER NO. 28 INITIAL DETERMINATION** has been served upon, **John Shin, Esq.**, Commission Investigative Attorney, and the following parties on

MAR - 5 2014

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

FOR COMPLAINANT SPECULATIVE PRODUCT DESIGN, LLC.:

Christian Samay, Esq.
FROMMER LAWRENCE & HAUG LLP
745 Fifth Avenue, 10th Floor
New York, NY 10151

( )Via Hand Delivery
(✓)Via Express Delivery
( )Via First Class Mail
( )Other:_____

FOR RESPONDENTS:

BODYGLOVE INTERNATIONAL, LLC. & FELLOWES, INC.
William P. Atkins, Esq.
PILLSBURY WINTHROP SHAW PITTMAN LLP
1650 Tysons Boulevard, 14th Floor
McLean, VA 22102

( )Via Hand Delivery
(✓)Via Express Delivery
( )Via First Class Mail
( )Other:_____

RESPONDENT EN JINN INDUSTRIAL CO. LTD
No. 5 Wu Chan 3rd Road
Wu Ku Industrial Zone
New Taipei City, Taiwan

( )Via Hand Delivery
(✓)Via Express Delivery
( )Via First Class Mail
( )Other:_____

IN THE MATTER OF CERTAIN CASES FOR PORTABLE

337-TA-861
337-TA-867
(Consolidated)

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( )Via Hand Delivery
(✓)Via Express Delivery
( )Via First Class Mail
( )Other

SW-Box.com (a/k/a Cellphonezone Ltd.)
c/o Sino Wholesale Ltd.
Rm 19C Lockhart Ctr.
301-307 Lockhart Rd.
Wanchai, Hong Kong

( ) Via Hand Delivery
(✓) Via Express Delivery
( ) Via First Class Mail
( ) Other: _____