

In the Matter of

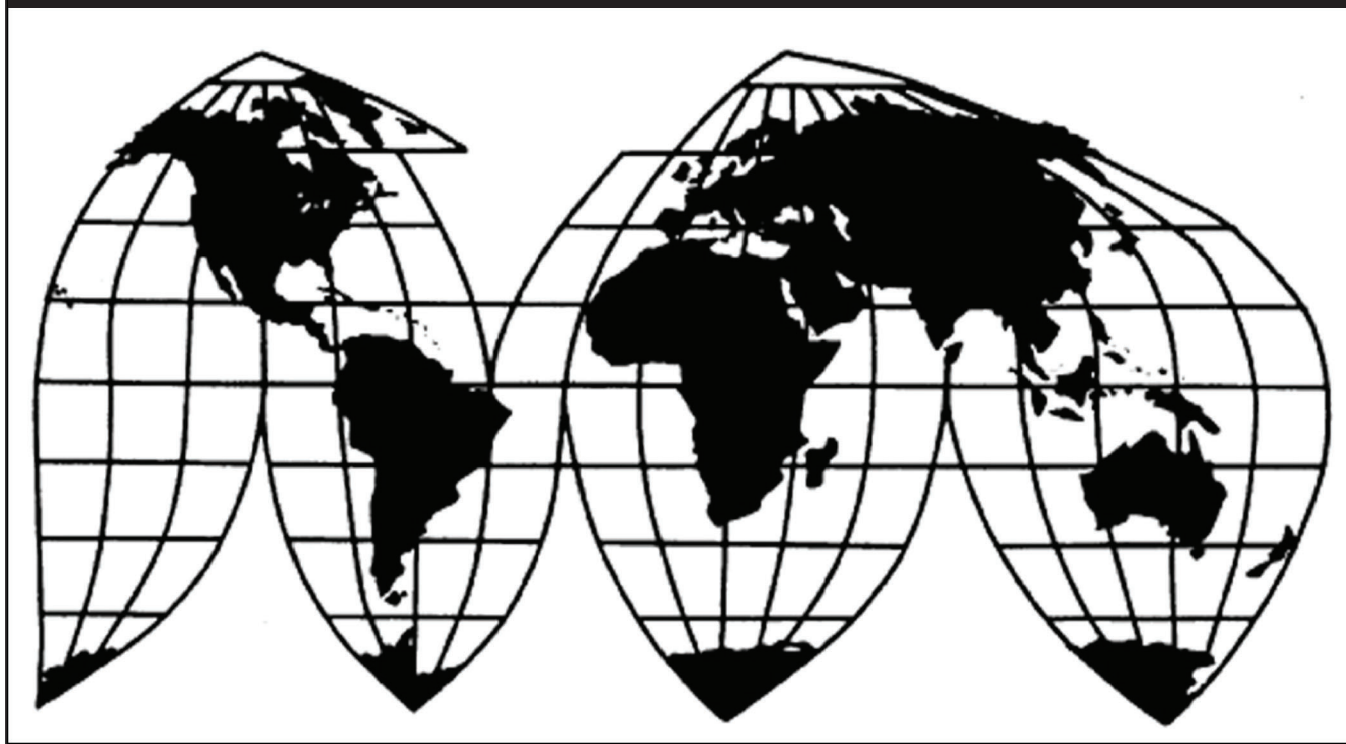
**CERTAIN ARROWHEADS WITH ARCUATE
BLADES AND COMPONENTS THEREOF**

Investigation No. 337-TA-1033

Publication 4961

September 2019

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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U.S. International Trade Commission

Washington, DC 20436
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CERTAIN ARROWHEADS WITH ARCUATE BLADES AND COMPONENTS THEREOF

Investigation No. 337-TA-1033



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

In the Matter of

**CERTAIN ARROWHEADS WITH
ARCUATE BLADES AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1033

**NOTICE OF A COMMISSION FINAL DETERMINATION OF VIOLATION OF
SECTION 337; ISSUANCE OF A 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 that there is a violation of section 337 of the Tariff Act of 1930, as amended in the above-captioned investigation. The Commission has issued a general exclusion order (“GEO”) barring entry of certain arrowheads with arcuate blades and components thereof that infringe the patents asserted in this investigation. The Commission has terminated this investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: On January 6, 2017, the Commission instituted an investigation under section 337, based on a complaint filed by complainant Flying Arrow Archery, LLC of Belgrade, Montana (“Flying Arrow,” or Complainant), alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain arrowheads with arcuate blades and components thereof (the “Accused Products”) by reason of infringement of one or more of claims 5 and 25 of U.S. Patent No. 8,920,269 (“the ‘269 patent”); the claim of U.S. Design Patent No. D713,919 (“the ‘919 design patent”); and the claim

of U.S. Design Patent No. D729,336 (“the ‘336 design patent”) (collectively, the “Asserted Patents”). *See* 82 FR 1760-61 (Jan. 6, 2017) (Notice of Investigation). The Notice of Investigation named the following respondents: Arthur Sifuentes of Spring, Texas; Liu Mengbao and Zhou Yang, both of Guangdong, China; Jiangfeng Mao of Jiangsu, China; Sandum Precision Industry (China) Co., Ltd. (In-Sail) of Guangdong Province, China; Wei Ran, Dongguan Hongsong, and Wanyuxue, all of Guangdong, China; and Yandong of Henan, China. A Commission investigative attorney (“IA”) is participating in this investigation. *Id.*

On April 4, 2017, the ALJ found Arthur Sifuentes, Zhou Yang, Jianfeng Mao, Sandum Precision, and Liu Mengbao (collectively, the “Defaulting Respondents”) in default. *See* Order No. 6 (*unreviewed*, Commission Notice (Apr. 28, 2017)). On April 6, 2017, the ALJ issued an Initial Determination granting Flying Arrow’s motion to terminate the Investigation as to the remaining respondents based on withdrawal of the infringement allegations in the Complaint. *See* Order No. 7 (*unreviewed*, Commission Notice (Apr. 28, 2017)).

On August 15, 2017, complainant filed a motion for summary determination of a violation of section 337 pursuant to Commission Rule 210.16(c)(2) to support its request for entry of a general exclusion order with respect to all asserted patents. The IA filed a timely response in support of the motion. No respondent filed a response to the motion.

On November 8, 2017, the presiding ALJ issued an ID (Order No. 9) granting Complainant’s motion for summary determination thus finding a violation of section 337, and recommending the issuance of a GEO. No party petitioned for review of the ID.

On December 21, 2017, the Commission determined not to review Order No. 9. *See* “Notice of Commission Decision Not to Review an Initial Determination Granting Complainant’s Motion for Summary Determination of a Violation of Section 337; Request for Submissions [on Remedy, the Public Interest, and Bonding]” (December 21, 2017) (“Commission Notice”). *See* 82 FR 61587-88 (Dec. 28, 2017). The Commission’s determination resulted in a determination of a violation of section 337.

The Commission requested written submissions on remedy, public interest, and bonding. *Id.* Complainant and the IA timely filed their submissions pursuant to the Commission Notice. No other parties filed any submissions in response to the Commission Notice.

Having reviewed the submissions filed in response to the Commission’s Notice and the evidentiary record, the Commission has determined that the appropriate form of relief in this investigation is a GEO prohibiting the unlicensed importation of certain arrowheads with arcuate blades and components thereof covered by one or more of claims 5 and 25 of the ‘269 patent, the claim of the ‘919 design patent, and the claim of the ‘336 design patent.

The Commission has further determined that the public interest factors enumerated in subsection (g)(1) (19 U.S.C. 1337(g)(1)) do not preclude issuance of the above-referenced remedial order. Finally, the Commission has determined that a bond in the amount of one hundred (100) percent of the entered value is required to permit temporary importation of the articles in question during the period of Presidential review (19 U.S.C. 1337(j)). The investigation is terminated.

The Commission's order, opinion, and the record upon which it based its determination were delivered to the President and to the United States Trade Representative on the day of their issuance. The Commission has also notified the Secretary of the Treasury of the order.

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

By order of the Commission.

A handwritten signature in black ink, appearing to read "Lisa R. Barton", written in a cursive style.

Lisa R. Barton
Secretary to the Commission

Issued: April 12, 2018

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served by hand upon the Commission Investigative Attorney, John Shin, Esq., and the following parties as indicated, on April 12, 2018.



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

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**CERTAIN ARROWHEADS WITH ARCUATE BLADES
AND COMPONENTS THEREOF**

Inv. No. 337-TA-1033

Certificate of Service – Page 2

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

In the Matter of

**CERTAIN ARROWHEADS WITH
ARCUATE BLADES AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1033

GENERAL EXCLUSION ORDER

The Commission has determined that there is a violation of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), in the unlawful importation, sale for importation, and sale within the United States after importation of certain arrowheads with arcuate blades and components thereof that infringe one or more of claims 5 and 25 of U.S. Patent No. 8,920,269 (“the ‘269 patent”); the claim of U.S. Design Patent No. D713,919 (“the ‘919 design patent”); and the claim of U.S. Design Patent No. D729,336 (“the ‘336 design patent”).

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 from entry for consumption is necessary to prevent circumvention of an exclusion order limited to products of named persons and because there is a pattern of violation of Section 337 and it is difficult to identify the source of infringing products. Accordingly, the Commission has determined to issue a general exclusion order prohibiting the unlicensed importation of infringing arrowheads with arcuate blades and components thereof.

The Commission has also determined that the public interest factors enumerated in 19 U.S.C. § 1337(g)(1) do not preclude the issuance of the general exclusion order, and that the bond during the Presidential review period 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. Arrowheads with arcuate blades and components thereof that infringe one or more of claims 5 and 25 of the '269 patent; the claim of the '919 design patent; and the claim of the '336 design 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 patents, except under license of the patent owner or as provided by law.
2. Notwithstanding paragraph 1 of this Order, the aforesaid arrowheads with arcuate blades and components thereof are entitled to entry into the United States for consumption, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption under bond in the amount of one hundred (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 arrowheads with arcuate blades and components thereof that are potentially subject to this Order may be required to certify that they are familiar with the terms of this Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the products being imported are not excluded from entry under paragraph 1 of this Order. At its discretion, CBP may require persons who have provided the certification described in this paragraph to furnish such records or analyses as are necessary to substantiate the certification.
4. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to arrowheads with arcuate blades and components thereof imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.
5. The Commission may modify this Order in accordance with the procedures described in section 210.76 of the Commission’s Rules of Practice and Procedure (19 C.F.R. § 210.76).
6. The Commission Secretary shall serve copies of this Order upon each party of record in this investigation and upon CBP.
7. Notice of this Order shall be published in the *Federal Register*.

By order of the Commission.

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

Lisa R. Barton
Secretary to the Commission

Issued: April 12, 2018

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **COMMISSION ORDER** has been served by hand upon the Commission Investigative Attorney, John Shin, Esq., and the following parties as indicated, on April 12, 2018.



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

On Behalf of Complainant Flying Arrow Archery, LLC:

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**CERTAIN ARROWHEADS WITH ARCUATE BLADES
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PUBLIC VERSION

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

In the Matter of

**CERTAIN ARROWHEADS WITH
ARCUATE BLADES AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1033

COMMISSION OPINION

I. BACKGROUND AND PROCEDURAL HISTORY

On January 6, 2017, the Commission instituted this investigation under section 337, based on a complaint filed by Flying Arrow Archery, LLC of Belgrade, Montana (“Flying Arrow,” or Complainant), alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain arrowheads with arcuate blades and components thereof (the “Accused Products”) by reason of infringement of one or more of claims 5 and 25 of U.S. Patent No. 8,920,269 (“the ‘269 patent”); the claim of U.S. Design Patent No. D713,919 (“the ‘919 design patent”); and the claim of U.S. Design Patent No. D729,336 (“the ‘336 design patent”) (collectively, the “Asserted Patents”). *See* 82 *Fed. Reg.* 1760-61 (Jan. 6, 2017) (Notice of Investigation). The Notice of Investigation named the following respondents: Arthur Sifuentes of Spring, Texas; Liu Mengbao and Zhou Yang, both of Guangdong, China; Jiangfeng Mao of Jiangsu, China; Sandum Precision Industry (China) Co., Ltd. (In-Sail) of Guangdong Province, China; Wei Ran, Dongguan Hongsong, and Wanyuxue, all of Guangdong, China; and Yandong of Henan, China. A Commission

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investigative attorney (“IA”) is participating in this investigation. *Id.*

On April 4, 2017, the presiding administrative law judge (“ALJ”) found Arthur Sifuentes, Zhou Yang, Jianfeng Mao, Sandum Precision, and Liu Mengbao (collectively, the “Defaulting Respondents”) in default for failure to appear to dispute the allegations against them. *See* Order No. 6 (*unreviewed*, Commission Notice (Apr. 28, 2017)). On April 6, 2017, the ALJ issued an Initial Determination granting Flying Arrow’s motion to terminate the Investigation as to the remaining respondents based on withdrawal of the infringement allegations in the Complaint. *See* Order No. 7 (*unreviewed*, Commission Notice (Apr. 28, 2017)).

On August 15, 2017, Complainant moved for a summary determination, seeking a finding of a violation of section 337 and requesting entry of a general exclusion order (“GEO”) with respect to all Asserted Patents. On August 24, 2017, the IA filed a response in support of the motion. No other party filed a response.

On November 8, 2017, the ALJ issued “Order No. 9: Initial Determination Granting Complainant’s Motion For Summary Determination Finding A Violation Of Section 337 And Requesting Entry Of A General Exclusion Order” (“ID,” or “ID/RD”) granting Complainant’s motion for summary determination and finding a violation of Section 337. In particular, the ALJ found a violation of Section 337 based on: (1) the importation into the United States, the sale for importation, or the sale within the United States after importation of accused products by each of the Defaulting Respondents, *see* ID/RD at 11-12; (2) the infringement by the accused products of: (a) asserted claims 5 and 25 of the valid and enforceable ‘269 patent, *see* ID/RD at 14-15; (b) the asserted claim of the ‘919 design patent, *see* ID/RD at 22-29, and (c) the asserted claim of the

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'336 design patent, *see* ID/RD at 32-35; and (3) the existence of a domestic industry with respect to articles protected by the Asserted Patents, *see* ID/RD at 16-22, 29-31, 35-44. The ALJ recommended that the Commission issue a GEO to remedy the violation of Section 337. *See* ID/RD at 45-48. The ALJ also recommended that the bond during the Presidential review period be set at 100 percent of the entered value of Respondents' accused products. *See* ID/RD at 49-50.

No party petitioned for review of the ID, and the Commission determined not to review it. *See* 82 *Fed. Reg.* 61587-88 (Dec. 28, 2017). The Commission's determination resulted in a finding of violation of section 337.

The Commission also requested written submissions on remedy, public interest, and bonding. *Id.* Complainant and the IA timely filed their submissions pursuant to the Commission Notice. No other submissions were received in response to the Commission Notice.

II. SUMMARY OF DETERMINATIONS

The Commission has determined as follows with respect to the issues of remedy, the public interest, and bonding: (i) the appropriate remedy is a GEO prohibiting the unlicensed importation of certain arrowheads with arcuate blades and components thereof covered by one or more of claims 5 and 25 of the '269 patent, the claim of the '919 design patent, and the claim of the '336 design patent; (ii) the public interest will not be adversely affected by entry of the proposed remedial order; and (iii) the bond during the Presidential review period is set at 100 percent of the entered value of the products covered by the remedial order.

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III. DISCUSSION

A. Remedy

1. GEO

For the reasons that follow, we determine to issue a GEO pursuant to 19 U.S.C. § 1337(g)(2), forbidding entry into the United States of all arrowheads with arcuate blades and components thereof covered by one or more of claims 5 and 25 of the '269 patent; the claim of the '919 design patent; and the claim of the '336 design patent.

Under section 337(g)(2), the Commission is authorized to issue a GEO excluding all infringing goods regardless of the source when certain conditions are met: no person appears to contest the investigation, a violation is established by substantial, reliable, and probative evidence, and the provisions of section 337(d)(2) are satisfied. *See* 19 U.S.C. § 1337(g)(2).

The requirements of section 337(g)(2) have been satisfied in this investigation. No person appeared to contest the investigation. *See* ID/RD at 1-2. The Commission determined not to review the ALJ's finding of a violation for each of the defaulting respondents as established by substantial, reliable, and probative evidence. Commission Notice at 2. Finally, as detailed below, the record shows that the requirements of both subparagraph (A) and subparagraph (B) of section 337(d)(2) have been satisfied.

Section 337(d)(2) authorizes the Commission to issue a GEO to bar entry of infringing goods regardless of source provided that certain statutory requirements are met:

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

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19 U.S.C. § 1337(d)(2).

(a) Subparagraph (A) – Circumvention Of An LEO

The record shows that the named respondents have changed, or are capable of changing, names, facilities, or corporate structure to avoid detection of infringing activity. ID/RD at 46-47. The evidence also shows that the importers use generic packaging, the infringing products are shipped into the country under false and misleading labels, and profit margins are high enough to motivate infringing imports. *See* 8/15/17 Rager Decl. ¶¶121-123; Compl. Ex. 23 ¶¶3-19; Compl. Exs. 5-16; Compl. ¶¶65-79.¹ The evidence further shows that the shipping records for infringing products often do not match the online seller. Compl. ¶¶65-79. The evidence also shows that some respondents were unable to be served due to false or incorrect addresses, and others evaded service. *See* ALJ Orders 5-7; ComplRemedy at 5.

A recent 2015 industry publication reporting on counterfeiting in the archery industry cited by Complainant states, “[foreign] forgeries are bilking manufacturers, dealers, customers and conservation programs.” Compl. ¶ 10 (citing Ex. 17 at 68).² The industry publication finds

¹ The following abbreviations of the parties’ pleadings are used in this Opinion: Compl. – “Complaint Of Flying Arrow Archery, LLC Under Section 337 Of The Tariff Act Of 1930, As Amended;” Mem. – “Memorandum In Support Of Complainant’s Motion For Summary Determination Finding A Violation Of Section 337 And Entry Of General Exclusion Order;” Staff Resp. – “Commission Investigative Staff’s Response To Complainant’s Motion For Summary Determination Finding A Violation Of Section 337 And Entry Of General Exclusion Order;” ComplRemedy – “Complainant’s Brief On Remedy, Public Interest, Bonding And Proposed Remedial Order;” IARemedy – “Response Of The Office Of Unfair Import Investigations To The Commission’s Request For Written Submissions On Remedy, The Public Interest, And Bonding.”

² Compl. Ex. 17, Patrick Durkin, “Counterfeiters Target Archery” in “Archery Business,” January/February 2015 at 68-74.

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that “[c]ounterfeiters have grown increasingly bold . . . [t]hey reverse engineer and manufacture knockoffs for ‘factory direct’ sales to retailers and consumers at prices far lower than name-brand originals.” *Id.* The publication further states that the counterfeiters “often sell their bogus products through online retailing powerhouses like eBay, Amazon, and Alibaba, as well as through direct email” and the products are “identified as gifts... [t]herefore, counterfeiters pay no federal excise taxes, which gives them further advantage over legitimate manufacturers while depriving revenues for state and federal wildlife management.” *Id.* (citations omitted).³

In addition, market conditions for arrowheads with arcuate blades invite wide-spread sale of infringing Flying Arrow’s products. ID/RD at 46-47. *See Certain Protective Cases and Components Thereof*, Inv. No. 337-TA-780, Comm’n Op. at 26-27 (Nov. 19, 2012). The record indicates that the market conditions are such that the respondents would be highly motivated to continue their operations at Complainant’s expense. The record shows that US-based demand for arrowheads with arcuate blades is strong. 12/05/16 Rager Decl. ¶¶17; 8/15/17 Rager Decl. ¶¶121-123. Complainant built an industry around such arrowheads and within two years, Complainant had grown the market substantially. 12/05/16 Rager Decl. ¶¶7-9, 15. The record indicates that the demand for Complainant’s successful products has encouraged foreign

³ We note that the term “counterfeit” is used very broadly in the article, encompassing the products that infringe U.S. patents and trademarks. *See e.g.* Compl. Ex. ¶ 17 at 72 (“Jack Bowman, president of Bear Archery and Trophy Ridge, said it’s company policy to enforce its trademarks and intellectual property rights. ‘We take those responsibilities very seriously,’ he said. ‘When you develop brands, trademarks and the marketing that builds their profiles, your financial investment goes into the millions very quickly. It’s very discouraging to see people take advantage of all your work and investments, and capitalize off of it by selling counterfeits. We’ve seen significant amounts of counterfeit Whisker Biscuits out there. That’s why we’ve filed suit with the International Trade Commission to position ourselves to take very strong actions to enforce our patent and trademark rights.’”)

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counterfeiters to sell infringing products into the United States through a variety of outlets. *See* ComplRemedy at 5. The record also indicates that there is established foreign manufacturing capability and low barriers to entry for numerous companies that offer to sell infringing Flying Arrow's TOXIC™, CYCLONE™, and TOM BOMB™ arrowhead products. ID/RD at 46.

In sum, the evidence establishes the likely circumvention of any issued limited exclusion order, thus justifying the issuance of a GEO.

(b) Subparagraph (B) – Pattern of Unauthorized Use and Difficulty Identifying the Source of Infringing Goods

Undisputed record evidence shows a pattern of infringement by both respondents and non-respondents. ID/RD at 47-48. The record contains evidence of a widespread pattern of violation and shows that it is difficult, if not impossible, to identify the source of the infringing products. ID/RD at 47. The evidence shows that, in addition to the Defaulting Respondents, numerous other sources of infringing arcuate arrowheads are available online. *See* Compl. ¶¶65, 68, 73-76; Compl. Exs. 5-16; 8/15/17 Rager Decl. ¶¶122, 124, 148-149. The record also shows that the Defaulting Respondents and others ship the infringing products in packaging that does not identify the manufacturers or retailers. *See* Compl. Exs. 5-16. The record indicates that although Complainant tried to identify sources of infringing counterfeits, it is virtually impossible to identify all sources given the anonymity with which counterfeiters conduct business through online retailers. *See* Compl. Ex. 57; Compl. ¶¶65-79; 8/15/17 Rager Decl. ¶¶122, 130. The difficulty in serving some respondents (with some being unlocatable) further demonstrates that it is difficult to identify the sources of the products. *See, e.g.*, Order No. 5 (Mar. 6, 2017) at 2-3; Order No. 7 (Apr. 6, 2017) at 1; ComplRemedy at 5.

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The record also shows that infringement is widespread. Specifically, Complainant identified dozens of infringers using generic names, *see* Compl. ¶¶65, 68, or simply the names of individual persons, *id.* ¶¶73-78. Undisputed evidence shows that there are numerous entities located outside the United States that offer for sale on the internet arrowheads with arcuate blades and components thereof that infringe the Asserted Patents. *See* Compl. Exs. 5-16; IARemedy at 31-32. The record further indicates that extensive infringement of Complainant's patents takes place online. An eBay search of "Toxic arrowhead" within the "arrows and parts/points and arrowheads" category resulted in dozens of hits, many from China, and most from parties other than named respondents. *See* 8/15/17 Rager Decl. ¶122.

The evidence shows that it would be difficult, if not impossible, for U.S. Customs and Border Protection to enforce an LEO issued in this investigation. Compl. Exs. 5-15; ComplRemedy at 8. Foreign infringing products are often sold under shifting names. *See* Compl. ¶¶65-79. In many cases, the online seller does not match the shipper or importer. ComplRemedy at 7. The record shows that descriptions provided for the infringing goods are inconsistent, vague, or misleading. Such products can be identified as, *e.g.*, "outdoor protection products," "artifacts," "outdoor item," or "hardware accessory." *See* Compl. at 43-44. The infringing products are often shipped in unmarked, generic packaging, and the shipping label often does not match the seller.

One of the Complainant's employees already spends a substantial amount of time attempting to shut down counterfeit offerings on third-party websites, such as, Amazon.com, eBay.com and Alibaba.com. 12/05/16 Rager Decl. ¶21. The record shows, however, that when

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one seller is stopped, others immediately fill the void and often change the way they sell to make it harder to shut down their online offerings. *Id.* See also ComplRemedy at 8-9.

Accordingly, the evidence establishes a pattern of infringement by respondents and non-respondents, and that it is difficult to identify the source of infringing goods, justifying the issuance of a GEO. See ID/RD at 48.

Based on the foregoing, we determine to issue a GEO in the investigation.

2. Cease and Desist Orders (“CDOs”)

Complainant did not request the issuance of CDOs against any of the Defaulting Respondents. ComplRemedy at 1; ID/RD at 45 n. 7 (citing Mem. at 41-48). Accordingly, the ALJ did not address the issue of the issuance of CDOs against any of the Defaulting Respondents, and made no recommendation in this regard. See ID/RD at 45-48. The IA submits that where Complainant did not request or even address CDOs against any of the defaulting Respondents, CDOs are not appropriate. IARemedy at 9-10 (citing ComplRemedy at 11 (“Complainant is not presently seeking any Cease and Desist Orders.”)). Based on the foregoing, we find that no CDO should be issued in this investigation.

B. Public Interest

Before issuing a remedy for a violation of Section 337, the Commission must consider the effect of the remedy on certain public interest considerations: (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles that are like or directly competitive with those which are the subject of the investigation, and (4) U.S. consumers. 19 U.S.C. § 1337(g)(1). Both the IA and Complainant submit that the public

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interest factors do not weigh against the proposed remedy in this investigation.

We find that there is no evidence in the record that the remedial order would be contrary to any of the public interest factors. With respect to the first factor, public health and welfare, the evidence of record does not raise any particular concerns as to the products at issue in this investigation (*i.e.*, hunting arrowheads with arcuate blades). *See* IARemedy at 10-11; Complainants' Statement of Public Interest, at 1-2 (received December 2, 2016) ("PI Statement"). The record likewise shows that, with respect to the second, third, and fourth factors, competitive conditions are robust in the United States economy for hunting arrowheads with arcuate blades. *See* IARemedy at 11. The record indicates that Flying Arrow and third parties in the U.S. appear to be able to replace the products at issue with their own like or directly competitive articles within a commercially reasonable time should an exclusion order goes into effect. *Id.* (citing PI Statement at 2-3). The evidence shows that U.S. consumers would therefore have access to competitive products from at least Flying Arrow and third party competitors. *Id.* (citing PI Statement at 2-3). Accordingly, any exclusion order would have minimal impact on competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or U.S. consumers. Based on the foregoing, we determine that entry of the GEO recommended by the ALJ would not be contrary to the public interest in this investigation.

C. Bond During Presidential Review Period

Pursuant to section 337(j)(3), the ALJ and the Commission must determine the amount of bond to be required of a respondent during the 60-day Presidential review period following the issuance of permanent relief in the event that the Commission determines to issue a remedy. 19

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U.S.C. § 1337(j)(3)). The purpose of the bond is to protect the complainant from any injury. 19 C.F.R. § 210.42(a)(1)(ii), § 210.50(a)(3).

When reliable price information is available, the Commission has often set the bond by eliminating the differential between the domestic product and the imported, infringing product. *Microsphere Adhesives, Processes for Making Same, and Prods. Containing Same, Including Self-Stick Repositionable Notes*, Inv. No. 337-TA-366, USITC Pub. 2949, Comm'n Op. at 24 (Dec. 8, 1995). In other cases, the Commission has turned to alternative approaches, especially when the level of a reasonable royalty rate could be ascertained. *Certain Integrated Circuit Telecomm. Chips and Prods. Containing Same, Including Dialing Apparatus*, Inv. No. 337-TA-337, Comm'n Op. at 41, 1993 WL 13033517, at *24 (June 22, 1993)). A one hundred percent bond has been required when no effective alternative existed based on the evidence available in the record. *Certain Flash Memory Circuits and Prods. Containing Same*, Inv. No. 337-TA-382, USITC Pub. No. 3046, Comm'n Op. at 26-27 (July 1997) (imposing a 100 percent bond when price comparison was not practicable because the parties sold products at different levels of commerce, and the proposed royalty rate appeared to be *de minimus* and without adequate support in the record)).

In his recommended determination, the ALJ considered Complainant's contention that given the "shifting marketplace conditions, it would be difficult or impossible to calculate a bond based on price differentials," as well as Complainant's request that the Commission set the bond at 100 percent. ID/RD at 49 (citing Mem. at 48). The ALJ also took into account that the IA takes a similar position. *Id.* (citing Staff Resp. at 33).

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The ALJ found that while the bond rate could be calculated using the average price differential between Complainant's TOXIC™, CYCLONE™, and TOM BOMB™ arrowhead products and the infringing products, doing so would be difficult given that many sales are made online at various price points and quantities. ID/RD at 50. Accordingly, the ALJ agreed with Complainant and the IA that the Commission should set the bond at 100 percent. *Id.* (citing *Certain Digital Photo Frames and Image Display Devices and Components Thereof*, Inv. No. 337-TA-807, Comm'n Op. at 17, USITC Pub. No. 4549 (July 2015) ("The Commission finds that there is little or no evidence in the record of this investigation as to pricing of the defaulting respondents' products The Commission has traditionally set a bond of 100 percent of the entered value of the products under these circumstances.")).

In this investigation, there is no reliable pricing information because the respondents defaulted and failed to participate in discovery. There is also no information on royalty rates. *See* ID/RD at 49-50; ComplRemedy at 9, IARemedy at 11-13. Accordingly, we determine to set the bond at 100 percent of the entered value of defaulted Respondents' infringing products during the period of Presidential review.

IV. CONCLUSION

Having considered the ALJ's Recommended Determination, the parties' submissions filed in response to the Commission's Notice, and the evidentiary record, the Commission has determined to issue a GEO pursuant to 19 U.S.C. § 1337(g)(2), forbidding entry into the United States of all arrowheads with arcuate blades and components thereof covered by one or more of claims 5 and 25 of the '269 patent; the claim of the '919 design patent; and the claim of the '336

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design patent. The Commission has further determined that the public interest factors enumerated in subsection (g)(1) (19 U.S.C. 1337(g)(1)) do not preclude issuance of the above-referenced remedial order. Finally, the Commission has determined that a bond in the amount of 100 percent of the entered value of the infringing products is required to permit temporary importation of the articles in question during the period of Presidential review (19 U.S.C. § 1337(j)).

By order of the Commission.

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

Lisa R. Barton
Secretary to the Commission

Issued: May 1, 2018

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **Commission Opinion** has been served by hand upon the Commission Investigative Attorney, John Shin, Esq., and the following parties as indicated, on **5/1/2018**



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

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**CERTAIN ARROWHEADS WITH ARCUATE BLADES
AND COMPONENTS THEREOF**

Inv. No. 337-TA-1033

Certificate of Service – Page 2

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District Cytech, Cytech Village
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China 518109

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

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN ARROWHEADS WITH
ARCUATE BLADES AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1033

**NOTICE OF COMMISSION DECISION NOT TO REVIEW AN INITIAL
DETERMINATION GRANTING COMPLAINANT'S MOTION FOR SUMMARY
DETERMINATION OF A VIOLATION OF SECTION 337; REQUEST FOR
SUBMISSIONS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 9) of the presiding administrative law judge ("ALJ") granting complainant's motion for summary determination of a violation of section 337. The Commission also requests written submissions regarding remedy, bonding, and the public interest.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 6, 2017, based on a complaint filed on behalf of Flying Arrow Archery, LLC of Belgrade, Montana. 82 FR 1760-61. The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by reason of infringement of certain claims of U.S. Patent Nos. 8,920,269; D713,919; and D729,336. The complaint further alleges that a domestic industry exists. The Commission's notice of investigation named the following respondents: Arthur Sifuentes of Spring, Texas; Liu Mengbao and Zhou Yang, both of

Guangdong, China; Jiangfeng Mao of Jiangsu, China; Sandum Precision Industry (China) Co., Ltd. (In-Sail) of Guangdong Province, China (collectively, “the remaining respondents”); Wei Ran, Dongguan Hongsong, and Wanyuxue, all of Guangdong, China; and Yandong of Henan, China (collectively, “the terminated respondents”). The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation.

On April 28, 2017, the Commission issued notice of its determination not to review the ALJ’s ID (Order No. 7) terminating the investigation as to the terminated respondents based on withdrawal of the infringement allegations in the complaint. In the same notice, the Commission issued notice of its determination not to review the ALJ’s ID (Order No. 6) finding the remaining respondents in default (“the defaulting respondents”).

Because a general exclusion order is sought, complainant is required to establish that a violation of section 337 has occurred by substantial, reliable, and probative evidence pursuant to Commission Rule 210.16(c)(2). On August 15, 2017, complainant filed a motion for summary determination of a violation of section 337 pursuant to Commission Rule 210.16(c)(2) to support its request for entry of a general exclusion order with respect to all asserted patents. OUII filed a response in support of the motion.

The ALJ issued the subject ID on November 8, 2017, granting complainant’s motion for summary determination. The ALJ found that all defaulting respondents met the importation requirement and that complainants satisfied the domestic industry requirement. *See* 19 U.S.C. 1337(a)(1)(B), (a)(2). The ID finds that a violation of section 337 has occurred based on its finding that each of the defaulting respondents’ accused products infringe one or more of the asserted claims of the patents at issue as established by substantial, reliable, and probative evidence in accordance with Commission Rule 210.16(c)(2). No petitions for review were filed. The ID also contains the ALJ’s recommended determination on remedy and bonding. The ALJ recommended a general exclusion order with respect to the asserted patents if the Commission finds a violation of section 337.

Having examined the record of this investigation, the Commission has determined not to review the subject ID.

As noted above, five respondents were found in default. Section 337(g) and Commission Rule 210.16(c) authorize the Commission to order relief against respondents found in default unless, after considering the public interest, it finds that such relief should not issue. Before the ALJ, complainant sought a general exclusion order under section 337(g)(2).

In connection with the final disposition of this investigation, the Commission may issue an order that could result in the exclusion of the subject articles from entry into the United States. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see Certain Devices for Connecting Computers via*

Telephone Lines, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (December 1994).

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

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

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

Complainants and OUII are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the dates that the patents expire, the HTSUS numbers under which the accused products are imported, and to supply the names of known importers of the products at issue in this investigation. The written submissions and proposed remedial orders must be filed no later than close of business on January 4, 2018. Reply submissions must be filed no later than the close of business on January 11, 2018. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit eight true paper copies to the Office of the Secretary pursuant to Section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1033") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary at (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be

treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel¹, solely for cybersecurity purposes. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: December 21, 2017

¹ All contract personnel will sign appropriate nondisclosure agreements.

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served by hand upon the Commission Investigative Attorney, John Shin, Esq., and the following parties as indicated, on December 21, 2017.



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

On Behalf of Complainant Flying Arrow Archery, LLC:

Jon R. Trembath, Esq.
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1515 Wynkoop Street, Suite 600
Denver, CO 80202

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

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN ARROWHEADS WITH
ARCUATE BLADES AND COMPONENTS
THEREOF**

Inv. No. 337-TA-1033

**ORDER NO. 9: INITIAL DETERMINATION GRANTING COMPLAINANT'S
MOTION FOR SUMMARY DETERMINATION FINDING A
VIOLATION OF SECTION 337 AND REQUESTING ENTRY OF A
GENERAL EXCLUSION ORDER**

(November 8, 2017)

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I. INTRODUCTION

On August 15, 2017, Complainant Flying Arrow Archery, LLC (“Flying Arrow”) moved (1033-023) for a summary determination, seeking a finding of a violation of section 337 and requesting entry of a general exclusion order (“GEO”) On August 24, 2017, the Commission Investigative Staff (“Staff”) filed a response in support of the motion. To date, no other party has filed a response.

A. Procedural History

On December 2, 2016, Flying Arrow filed a Complaint alleging a violation of section 337 of the Tariff Act of 1930, as amended, in the importation and sale of certain arrowheads with arcuate blades and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 8,920,269, D713,919, and D729,336. 82 Fed. Reg. 1760-1761 (Jan. 6, 2017). It supplemented the Complaint on December 19, 20, and 22, 2016. *Id.*

On January 6, 2017, the Commission determined to institute this Investigation. *Id.*

Specifically, the Commission instituted this Investigation 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 arrowheads with arcuate blades and components thereof by reason of infringement of one or more of claims 5 and 25 of the ’269 patent; the claim of the D’919 patent; and the claim of the D’336 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

Id.

The Notice of Investigation named 9 respondents: Arthur Sifuentes; Liu Mengbao; Zhou Yang; Jianfeng Mao; Sandum Precision Industry (China) Co., Ltd.¹ (“Sandum Precision”); Wei

¹ This respondent is also referred to as In-Sail.

Ran; Dongguan Hongsang; Wanyuxue; and YanDong. *Id.* The Office of Unfair Import Investigations was also named as a party to the Investigation. *Id.*

During the course of this Investigation, five respondents were found to be in default and the remaining respondents were terminated from the Investigation. Specifically, on April 4, 2017, the undersigned found Arthur Sifuentes, Zhou Yang, Jianfeng Mao, Sandum Precision, and Liu Mengbao (collectively, the “Defaulting Respondents”) in default. (*See* Order No. 6; *see also* Notice of a Comm’n Determination Not to Review Initial Determinations Finding Five Respondents in Default and Terminating the Investigation as to the Remaining Respondents (Apr. 28, 2017).) On April 6, 2017, the undersigned issued an Initial Determination granting Flying Arrow’s motion to terminate the Investigation as to the remaining respondents based on withdrawal of the Complaint. (*See* Order No. 7; *see also* Notice of a Comm’n Determination Not to Review Initial Determinations Finding Five Respondents in Default and Terminating the Investigation as to the Remaining Respondents (Apr. 28, 2017).) None of the Defaulting Respondents have contested Flying Arrow’s allegations that they have violated and continue to violate section 337.

B. The Parties

1. Complainant

a) Flying Arrow Archery, LLC

Flying Arrow is a privately held, limited liability company organized under the laws of the State of Montana. (Compl. at ¶ 14.) It is in the archery and hunting business. (*Id.*) Flying Arrow designs, tests, and sells arcuate-blade broadhead products. (*Id.*)

2. The Defaulting Respondents

a) Jianfeng Mao

Respondent Jainfeng Mao is an individual residing in the People's Republic of China, where he/she markets and sells a variety of archery products for distribution within the United States. (*Id.* ¶ 19.)

b) Mengbao

Respondent Mengbao is an individual residing in the People's Republic of China, where he/she markets and sells a variety of archery products for distribution within the United States. (*Id.* ¶ 18.)

c) Sandum Precision Industry (China) Co., Ltd. (In-Sail)

Respondent Sandum Precision is a corporation formed under the laws of the People's Republic of China. (*Id.* ¶ 20.) Sandum Precision markets and sells a variety of archery products for distribution within the United States. (*Id.*)

d) Zhou Yang

Respondent Zhou Yang is an individual residing in the People's Republic of China, where he/she markets and sells a variety of archery products for distribution within the United States. (*Id.* ¶ 25.)

e) Arthur Sifuentes

Respondent Arthur Sifuentes is an individual residing in Spring, Texas. (*Id.* ¶ 26.) Mr. Sifuentes allegedly sells counterfeit Flying Arrow Archery broadheads on the internet. (*Id.*)

C. The Asserted Patents

1. U.S. Patent No. 8,920,269

The '269 patent, entitled "Broadhead Having Arcuate Blades," issued on December 30, 2014 to Christopher Allen Rager. The '269 patent is assigned to Flying Arrow Archery, LLC.

The '269 patent generally relates to broadheads having arcuate blades. (Compl at ¶ 34; '269 patent at Abstract.)

The '269 patent has 30 claims. Claims 5 and 25 are at issue in this Investigation. The asserted claims read as follows:

5. A broadhead comprising: a body portion having a plurality of slots extending substantially along a length thereof; and a plurality of removable blades having an arcuate shape causing each of the plurality of blades to have an inner side and an outer side, wherein a base portion of each of the plurality of removable blades is configured to be received in respective slots of the plurality of slots and further wherein at least one side of each of the plurality of removable blades has a sharpened edge extending substantially along a front portion of the plurality of removable blades; wherein the arcuate shape of each of the plurality of blades forms a half circle.

25. A broadhead comprising: a body portion; and a plurality of blades extending from the body portion, wherein each of the plurality of blades comprise: two opposing blade portions extending in opposite directions from a middle portion of each of the plurality of blades, wherein each of the two opposing blade portions arcuately extend toward the other blade portion, and further wherein each of the two opposing blade portions has at least one sharpened edge.

2. U.S. Patent No. D713,919

The D'919 patent, entitled "Arrowhead," issued on September 23, 2014 to Christopher Allen Rager. The patent is assigned to Flying Arrow Archery, LLC and claims ornamental designs for an arrowhead, as shown and described in the patent's figures:

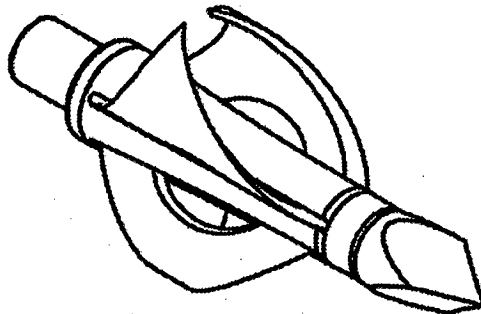


Fig. 1

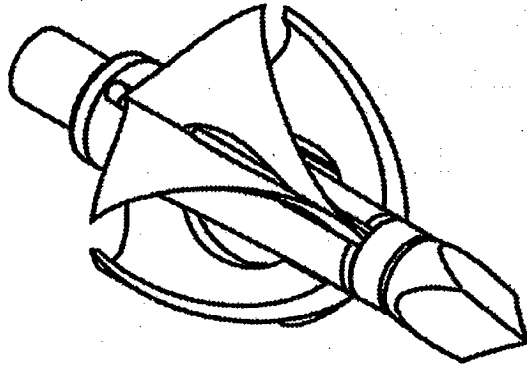


Fig. 8

(D'919 patent at Figs. 1 (showing isometric view of an arrowhead in accordance with the first embodiment) and 8 (showing isometric view of an arrowhead in accordance with the second embodiment, which corresponds to Flying Arrow's TOXIC™ branded arrowhead); *see also id.* at Figs. 2-7, 9-14.)

3. U.S. Patent No. D729,336

The D'336 patent, entitled "Arrowhead with Curved Blades," issued on May 12, 2015 to Christopher Allen Rager. The patent is assigned to Flying Arrow Archery, LLC and claims ornamental designs for an arrowhead, as shown and described in the patent's figures:

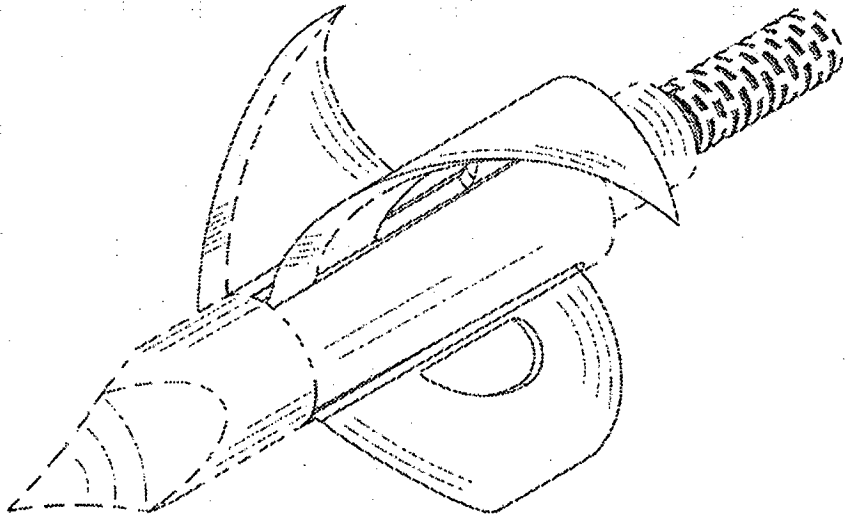


FIG. 1

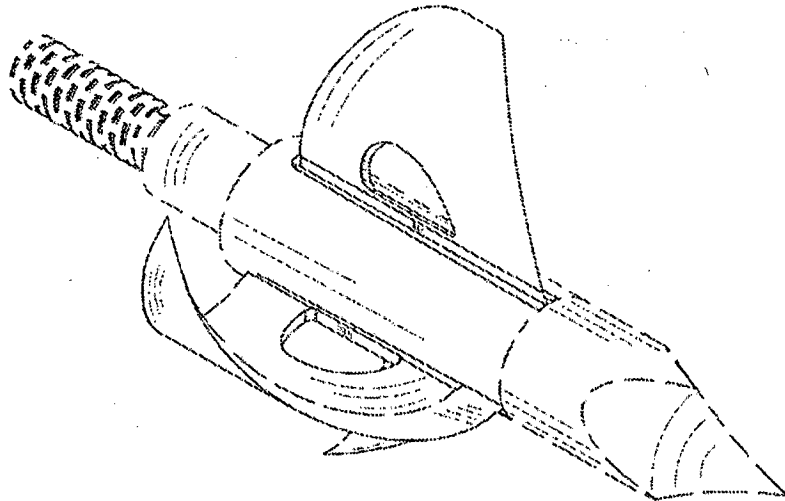


FIG. 2

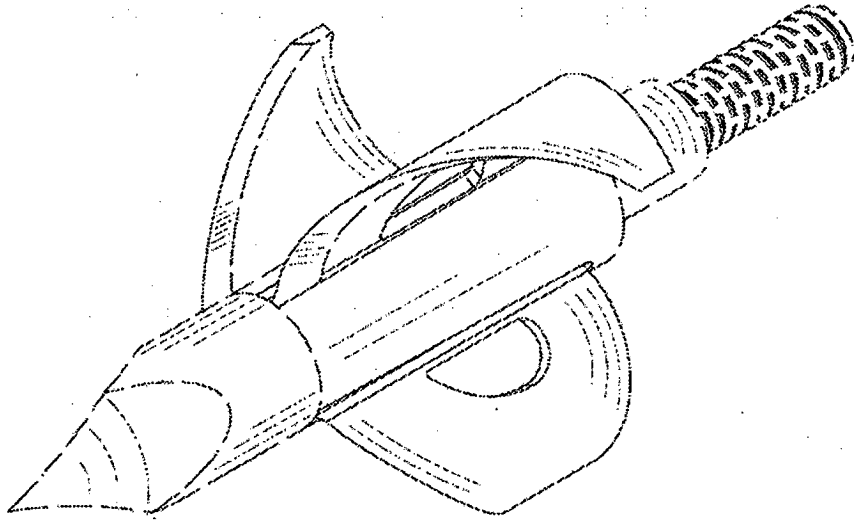


FIG. 11

(D'336 patent at Figs. 1 (showing view from a front-top-right angle of an arrowhead with curved blades in accordance with the first embodiment), Fig. 2 (showing a front-top-left angle view of an arrowhead in accordance with the first embodiment, which corresponds to Flying Arrow's CYCLONE™ branded arrowhead), and 11 (showing view from a front-top-right angle of an arrowhead with curved blades in accordance with the second embodiment); *see also id.* at Figs. 2-10, 12-20.)

D. Products at Issue

The products at issue in this Investigation are “broadheads” or arrowheads with blades. Broadheads with arcuate blades are typically used for hunting. (Compl. at ¶ 27; Mem. at 8; 8/15/17 Rager Decl. at ¶ 27.)

II. LEGAL STANDARDS

A. Summary Determination

Summary determination is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to a determination as a matter of law. *See* 19 C.F.R. § 210.18(b). In determining whether there is a genuine issue of material fact, “the evidence must

be viewed in the light most favorable to the party opposing the motion with doubts resolved in favor of the non-movant.” *Crown Operations Int’l, Ltd. v. Solutia, Inc.*, 289 F.3d 1367, 1375 (Fed. Cir. 2002) (citations omitted); *see also Paragon Podiatry Lab., Inc. v. KLM Labs, Inc.*, 984 F.2d 1182, 1185 (Fed. Cir. 1993) (“In other words, ‘[s]ummary judgement is authorized when it is quite clear what the truth is, and the law requires judgment in favor of the movant based upon facts not in genuine dispute.’”) (citations omitted).

B. Default

Commission Rule 210.16(b)(4) states: “A party found in default shall be deemed to have waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation.” 19 C.F.R. § 210.16(b)(4). Commission Rule 210.16(c) further provides that “[t]he facts alleged in the complaint will be presumed to be true with respect to the defaulting respondent.” 19 C.F.R. § 210.16(b)(4).

C. Infringement

1. Literal Infringement

Literal infringement is a question of fact. *Finisar Corp. v. DirecTV Grp., Inc.*, 523 F.3d 1323, 1332 (Fed. Cir. 2008). “An infringement analysis entails two steps. The first step is determining the meaning and scope of the patent claims asserted to be infringed. The second step is comparing the properly construed claims to the device accused of infringing.” *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed. Cir. 1995) (*en banc*), *aff’d*, 517 U.S. 370 (1996) (citation omitted).

Literal infringement requires the patentee to prove that the accused device contains each limitation of the asserted claim(s). If any claim limitation is absent, there is no literal

infringement of that claim as a matter of law. *Bayer AG v. Elan Pharm. Research Corp.*, 212 F.3d 1241, 1247 (Fed. Cir. 2000).

2. Design Patent Infringement

The test for determining infringement of a design patent is the “ordinary observer” test. *See Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665, 678 (Fed. Cir. 2008) (*en banc*). In defining the “ordinary observer” test, the Supreme Court stated:

[I]f, in the eye of an ordinary observer, giving such attention as a purchaser usually gives, two designs are substantially the same, if the resemblance is such as to deceive such an observer, inducing him to purchase one supposing it to be the other, the first one patented is infringed by the other.

Gorham Mfg. Co. v. White, 81 U.S. 511, 528 (1871). Thus, “the test for design patent infringement is not identity, but rather sufficient similarity.” *Pacific Coast Marine Windshields, Ltd. v. Malibu Boats, LLC*, 739 F.3d 694, 701 (Fed. Cir. 2014); *see also L.A. Gear, Inc. v. Thom McAn Shoe Co.*, 988 F.2d 1117, 1125 (Fed. Cir. 1993) (design patent infringement requires determining “whether ‘the effect of the whole design [is] substantially the same.’”).

D. Domestic Industry

In a patent-based complaint, a violation of section 337 can be found “only if an industry in the United States, relating to the articles protected by the patent . . . concerned, exists or is in the process of being established.” 19 U.S.C. § 1337(a)(2). Under Commission precedent, this “domestic industry requirement” of section 337 consists of an economic prong and a technical prong. *Certain Stringed Musical Instruments and Components Thereof*, Inv. No. 337-TA-586, Comm’n Op. at 12-14, 2009 WL 5134139 (U.S.I.T.C. Dec. 2009). The complainant bears the burden of establishing that the domestic industry requirement is satisfied. *See Certain Set-Top Boxes and Components Thereof*, Inv. No. 337-TA-454, Final Initial Determination at 294, 2002 WL 31556392 (U.S.I.T.C. June 21, 2002) (unreviewed by Commission in relevant part).

1. Economic Prong

Section 337(a)(3) sets forth the following economic criteria for determining the existence of a domestic industry in such investigations:

(3) For purposes of paragraph (2), an industry in the United States shall be considered to exist if there is in the United States, with respect to the articles protected by the patent, copyright, trademark, mask work, or design concerned –

- (A) significant investment in plant and equipment;
- (B) significant employment of labor or capital; or
- (C) substantial investment in its exploitation, including engineering, research and development, or licensing.

Given that these criteria are listed in the disjunctive, satisfaction of any one of them will be sufficient to meet the economic prong of the domestic industry requirement. *Certain Integrated Circuit Chipsets and Prods. Containing Same*, Inv. No. 337-TA-428, Order No. 10, Initial Determination (unreviewed) (May 4, 2000).

2. Technical Prong

The technical prong of the domestic industry requirement is satisfied when the complainant in a patent-based section 337 investigation establishes that it is practicing or exploiting the patents at issue. *See* 19 U.S.C. § 1337(a)(2) and (3); *Certain Microsphere Adhesives, Process for Making Same and Prods. Containing Same, Including Self-Stick Repositionable Notes*, Inv. No. 337-TA-366, Comm'n Op. at 8, 1996 WL 1056095 (U.S.I.T.C. Jan. 16, 1996). “The test for satisfying the ‘technical prong’ of the industry requirement is essentially [the] same as that for infringement, i.e., a comparison of domestic products to the asserted claims.” *Alloc, Inc. v. Int'l Trade Comm'n*, 342 F.3d 1361, 1375 (Fed. Cir. 2003). To prevail, the patentee must establish by a preponderance of the evidence that the domestic product practices one or more claims of the patent, either literally or under the doctrine of equivalents. *Bayer*, 212 F.3d at 1247. It is

sufficient to show that the products practice any claim of that patent, not necessarily an asserted claim of that patent. *Certain Microsphere Adhesives*, Comm'n Op. at 7-16.

III. IMPORTATION

Section 337(a)(1) prohibits, *inter alia*, “[t]he importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of articles that . . . infringe a valid and enforceable United States patent . . . or are made, produced, processed, or mined under, or by means of, a process covered by the claims of a valid and enforceable United States patent.” 19 U.S.C. § 1337(a)(1). 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 (Sept. 23, 2004) (unreviewed).

Flying Arrow asserts that “[i]t is undisputed that [the Defaulting] Respondents’ accused products were sold for importation into the United States, and imported and sold in the United States.” (Mem. at 10.) It explains that prior to filing the Complaint, company representatives purchased from each named Respondent several allegedly infringing broadheads and that these broadheads were imported into the United States from China as evidenced by the shipping labels for the packages. (*Id.* (citing Compl. Ex. 23 at ¶ 5); *see also id.* at 11-17.) Staff agrees that there is no factual dispute related to importation of the accused products by the Defaulting Respondents. (Staff Resp. at 10-13.)

The undersigned finds that Flying Arrow has established that the importation requirement of section 337 is satisfied with respect to the Defaulting Respondents. In the Complaint, Flying Arrow identified specific instances of importation by each of the Defaulting Respondents. (*See* Compl. at ¶¶ 69-70, Ex. 8 (Mengbao); ¶ 71, Ex. 9 (Jianfeng Mao); ¶ 72, Ex. 10 (Sandum Precision), ¶ 77, Ex. 15 (Zhou Yang); ¶¶ 78-79, Ex. 16, Ex. 18 at ¶¶ 18-19, Ex. 24 at ¶ 18, Ex. 24 at ¶ 3 (Sifuentes).) Because the Commission presumes the facts alleged in the complaint to be

true, Flying Arrow has satisfied their burden of demonstrating infringement. Additionally, the undersigned is not aware of any evidence to the contrary with respect to importation by the Defaulting Respondents.

IV. JURISDICTION

A. Subject Matter Jurisdiction

Section 337 confers subject matter jurisdiction on the Commission to investigate, and if appropriate, to provide a remedy for, unfair acts and unfair methods of competition in the importation, the sale for importation, or the sale after importation of articles into the United States. *See* 19 U.S.C. §§ 1337(a)(1)(B) and (a)(2). Flying Arrow filed a complaint alleging a violation of this subsection. Accordingly, the Commission has subject matter jurisdiction over this Investigation under section 337 of the Tariff Act of 1930. *Amgen, Inc. v. U.S. Int'l Trade Comm'n*, 902 F.2d 1532, 1536 (Fed. Cir. 1990).

B. Personal Jurisdiction

Personal jurisdiction is not required so long as the products are being imported. *See Sealed Air Corp. v. U.S. Int'l Trade Comm'n*, 645 F.2d 976, 985-89 (C.C.P.A. 1981). The undersigned has determined hereinabove that the accused products have indeed been imported into the United States. *See* Section III. Furthermore, by defaulting, the Defaulting Respondents have waived their right to contest that *in personam* jurisdiction exists. *See Certain Protective Cases and Components Thereof*, Inv. No. 337-TA-780, Initial Determination at 46 (June 29, 2012).

C. In Rem Jurisdiction

The Commission therefore has *in rem* jurisdiction by virtue of the fact that accused arrowheads with arcuate blades have been imported into the United States. *See Sealed Air Corp. v. U. S. Int'l Trade Comm'n*, 645 F.2d 976, 985 (C.C.P.A. 1981).

V. VALIDITY

A patent is presumed valid. 35 U.S.C. § 282; *Microsoft Corp. v. i4i Ltd. P'ship*, 131 S. Ct. 2238, 2242 (2011). In the instant matter, no party has challenged the validity of the asserted patents. The Commission is therefore prohibited from making a determination on validity since no defense of invalidity has been raised. *Lannom Mfg. Co., Inc. v. U.S. Int'l Trade Comm'n*, 799 F.2d 1572, 1580 (Fed. Cir. 1986.) (“We conclude, therefore, that Congress did not authorize the Commission to redetermine patent validity when no defense of invalidity has been raised.”) Accordingly, there is no issue of material fact as to the validity of the asserted patents.

VI. U.S. PATENT NO. 8,920,269

A. Claim Construction

Flying Arrow does not believe the asserted claims require construction. It explains that “none of the terms are in dispute and the language can be understood according to its ordinary and customary meaning in the art.” (Mem. at 17.) Staff concurs. (Staff Resp. at 10.) Given the absence of any dispute, the undersigned finds that the terms of the asserted claims should be construed according to their plain and ordinary meaning. *See O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co., Ltd.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008) (“district courts are not (and should not be) required to construe *every* limitation present in a patent’s asserted claims,” but rather only “[w]hen the parties present a fundamental dispute regarding the scope of a claim term.” (emphasis added)); *see also Hakim v. Cannon Avent Group, PLC*, 479 F.3d 1313, 1318-19 (Fed. Cir. 2007) (“Claim construction is directed to claims or claim terms whose meaning is

disputed as applied to the patentee’s invention in the context of the accused device. When there is no dispute as to the meaning of a term that could affect the disputed issues of the litigation, ‘construction’ may not be necessary.”)

B. Infringement

Flying Arrow contends that the accused products from Jianfeng Mao, Zhou Yang, Mengbao, Sandum Precision, and Arthur Sifuentes literally infringe the ’269 patent. (Mem. at 17-21.) Flying Arrow’s infringement allegations are summarized below:

U.S. PATENT NO. 8,920,269		
RESPONDENT	CLAIM 5	CLAIM 25
Jianfeng Mao	X	
Mengbao		X
Sandum Precision		X
Zhou Yang	X	
Arthur Sifuentes	X	X

(*Id.*) Staff supports a finding of infringement. In Staff’s view, “there are no material facts in dispute and . . . Complainant has presented substantial, reliable, and probative evidence of infringement.” (Staff Resp. at 15.)

For the foregoing reasons, the undersigned finds that Flying Arrow has established that the Defaulting Respondents’ accused products infringe the ’269 patent. In the Complaint, Flying Arrow asserted that each of the Defaulting Respondents and their products infringe. (Compl. at ¶¶ 43 (Jianfeng Mao), 44 (Mengbao), 45 (Sandum Precision), 50 (Zhou Yang), 51-52 (Arthur Sifuentes.) It also attached claim charts to the Complaint demonstrating how each of the Defaulting Respondents’ products infringe the asserted claims of the patent. (Compl. Exs. 28 (Jianfeng Mao – claim 5), 29 (Mengbao – claim 25), 30 (Sandum Precision – claim 25), 35 (Zhou Yang – claim 5), 36 (Arthur Sifuentes – claim 5), 37 (Arthur Sifuentes – claim 25).) In addition, Flying Arrow submitted a declaration from its founder and CEO, Mr. Christopher A.

Rager. (See 8/15/17 Rager Decl. at ¶¶ 59-89.) Mr. Rager was also proffered as a technical expert.^{2, 3} In this role, Mr. Rager examined Respondents' accused products and compared those products (element-by-element) to the asserted claims of the '269 patent. (*Id.*) Based upon his examination, Mr. Rager concluded that Jianfeng Mao's accused TOM BOMB™-like arrowhead, Zhou Yang's accused TOM BOMB™-like arrowhead, and Arthur Sifuentes' accused CYCLONE™-like arrowhead infringe asserted claim 5 of the '269 patent. (*Id.* at ¶¶ 59-74.) Mr. Rager similarly concluded that Mengbao's accused TOXIC™-like arrowhead, Sandum Precision Industry's accused TOXIC™-like arrowhead, and Arthur Sifuentes' accused TOXIC™-like arrowhead infringe asserted claim 25 of the '269 patent. (*Id.* at ¶¶ 75-89.) Additionally, the undersigned is not aware of any evidence to the contrary with respect to infringement of the '269 patent by the Defaulting Respondents.

Accordingly, the undersigned finds that Flying Arrow has established by substantial, reliable, and probative evidence that the Defaulting Respondents' accused products infringe the '269 patent. Specifically, the undersigned hereby determines that the accused products of Jianfeng Mao, Zhou Yang, and Arthur Sifuentes infringe asserted claim 5 of the '269 patent and that the accused products from Mengbao, Sandum Precision, and Arthur Sifuentes infringe asserted claim 25 of the '269 patent.

² There does not appear to be any dispute that Mr. Rager's experience qualifies him as an expert in the design of arrowheads. (See 8/15/17 Rager Decl. at ¶¶ 1-8; Staff Ex. A (Bowhunter article on TOXIC™ broadhead).)

³ As Staff noted, "[w]hile [Mr. Rager's] status as an employee might weigh against his testimony if Respondents had presented an opposing expert, the Staff does not believe that this provides a basis for denying Complainant's Motion. See, e.g., *Ethicon, Inc. v. U.S. Surgical Corp.*, 135 F.3d 1456, 1465 (Fed. Cir. 1998) ("Furthermore, a witness's pecuniary interest in the outcome of a case goes to the probative weight of testimony, not its admissibility."). The undersigned concurs.

C. Technical Prong

Flying Arrow asserts that all of its arrowheads (*i.e.*, the TOXIC™, CYCLONE™, and TOM BOMB™ branded arrowheads) are covered by the '269 patent. (Mem. at 32.) Specifically, Flying Arrow contends that the CYCLONE™ and TOM BOMB™ branded arrowheads practice claim 5, and the TOXIC™ branded arrowheads practice claim 25. (*Id.* at 32-34.) It attached claim charts to the Complaint demonstrating how each of its domestic industry products practice either claim 5 or 25 of the '269 patent. (Compl. Exs. 48-50.) In addition, Flying Arrow submitted a declaration from Christopher A. Rager, its CEO and a technical expert in arrowhead design. Mr. Rager opines: "While archers have many different fixed and mechanical blade broadheads they can use, Flying Arrow Archery's Domestic Industry Products have successfully defined a niche product with features protected by the Asserted Patents." (8/15/17 Rager Decl. at ¶ 97.) In support of his opinion, Mr. Rager adopts the claim charts mapping the domestic industry products against each of the asserted claims and then provides a limitation-by-limitation analysis of how each product practices either claim 5 or 25 of the '269 patent. (*Id.* at ¶¶ 98-115.) Staff believes that Flying Arrow satisfies the technical prong of the domestic industry requirement. Staff states: "This Staff is not aware of any dispute as to the evidence offered by Complainant and Mr. Rager substantiating that FAA's Toxic, Cyclone, and Tom Bomb branded arrowheads practice a claim of the '269 patent in the United States." (Staff Resp. at 20.)

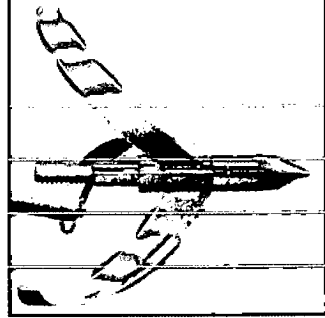
The following claim charts demonstrate how the TOM BOMB™ and CYCLONE™ branded arrowheads practice claim 5 of the '269 patent.

U.S. PATENT NO. 8,920,269

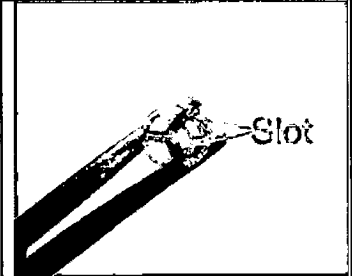
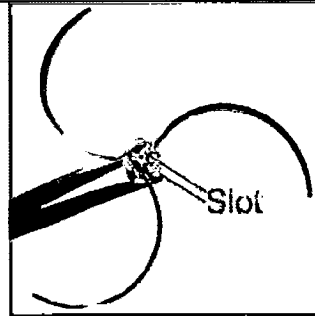
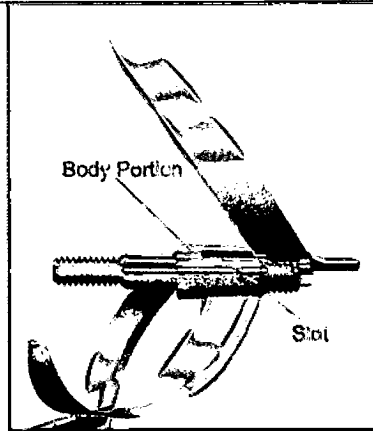
CLAIM LANGUAGE – CLAIM 5

COMPLAINANT'S TOM BOMB™ PRODUCT

5. A broadhead comprising:



a body portion having a plurality of slots extending substantially along a length thereof; and

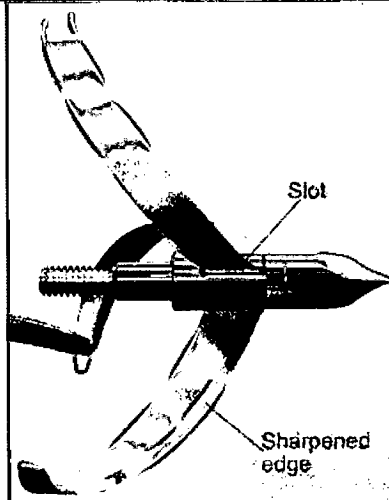


U.S. PATENT NO. 8,920,269

CLAIM LANGUAGE – CLAIM 5

COMPLAINANT'S TOM BOMB™ PRODUCT

a plurality of removable blades having an arcuate shape causing each of the plurality of blades to have an inner side and an outer side, wherein a base portion of each of the plurality of removable blades is configured to be received in respective slots of the plurality of slots and further wherein at least one side of each of the plurality of removable blades has a sharpened edge extending substantially along a front portion of the plurality of removable blades;



wherein the arcuate shape of each of the plurality of blades forms a half circle.

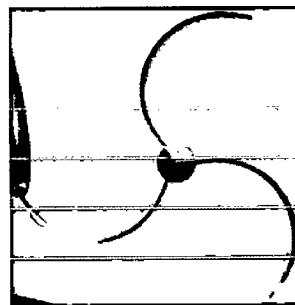


Fig. 5 from the '269 patent is reproduced below and corresponds to the embodiment having half-circle blades.

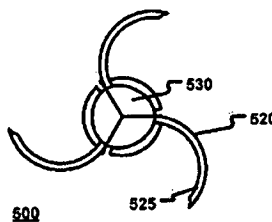


Fig. 5

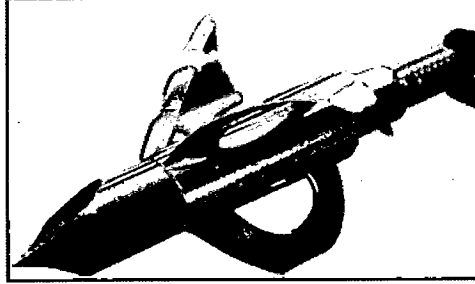
(Compl. Ex. 48)

U.S. PATENT NO. 8,920,269

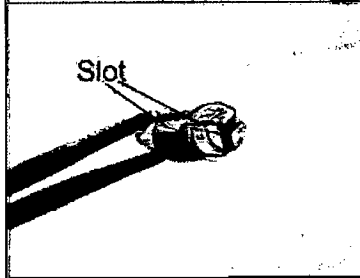
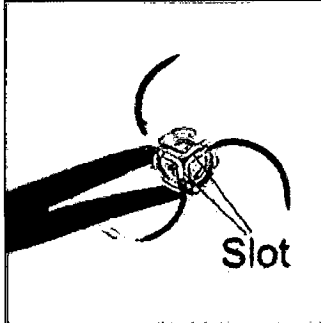
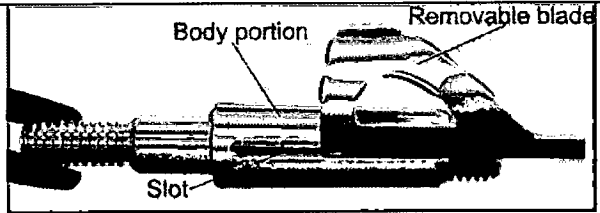
CLAIM LANGUAGE – CLAIM 5

COMPLAINANT'S CYCLONE™ PRODUCT

5. A broadhead comprising:



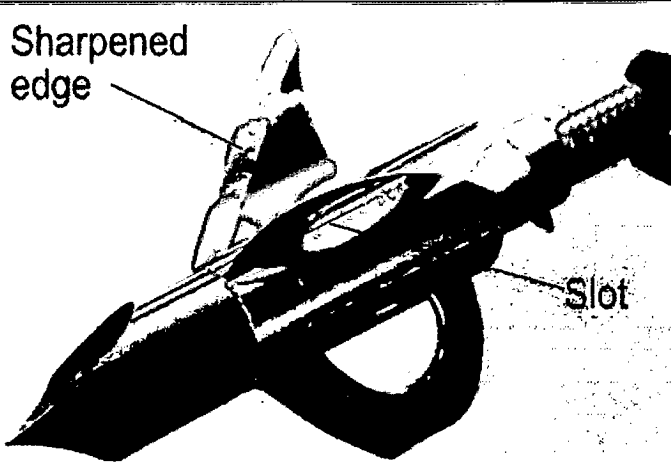
a body portion having a plurality of slots extending substantially along a length thereof; and



CLAIM LANGUAGE – CLAIM 5

a plurality of removable blades having an arcuate shape causing each of the plurality of blades to have an inner side and an outer side, wherein a base portion of each of the plurality of removable blades is configured to be received in respective slots of the plurality of slots and further wherein at least one side of each of the plurality of removable blades has a sharpened edge extending substantially along a front portion of the plurality of removable blades;

COMPLAINANT'S CYCLONET™ PRODUCT



wherein the arcuate shape of each of the plurality of blades forms a half circle.

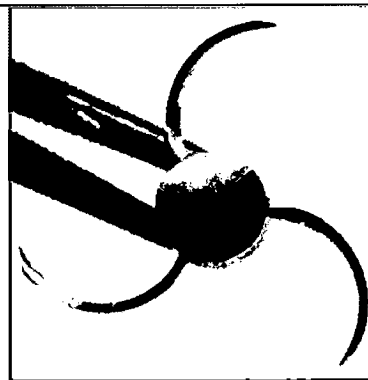
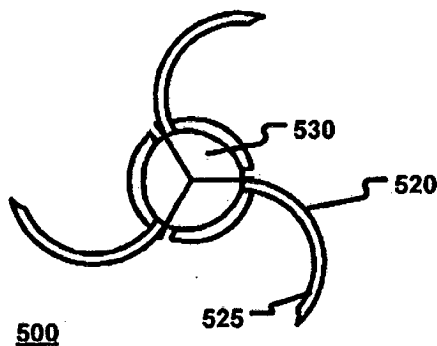


Fig. 5 from the '269 patent is reproduced below and corresponds to the embodiment having half-circle blades.

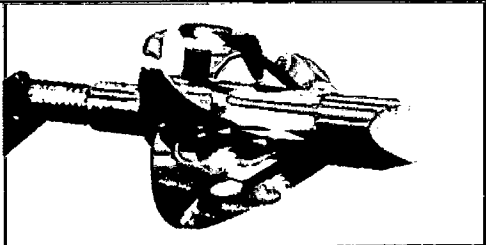
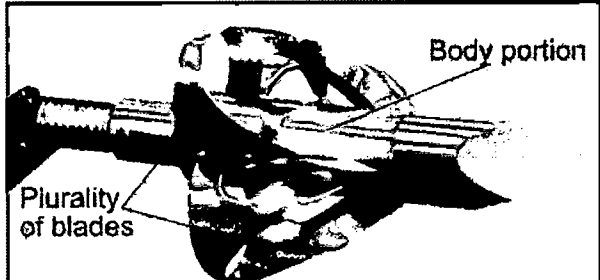


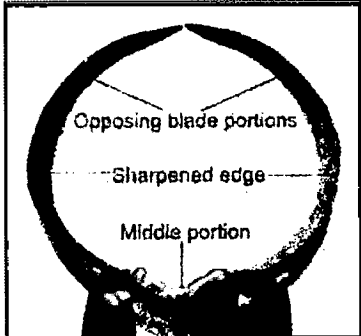
(*Id.* at Ex. 49.) As detailed in the above claim charts, Flying Arrow's TOM BOMB™ and CYCLONE™ branded arrowheads include all of the elements of claim 5 of the '269 patent:

- a body portion having a plurality of slots extending substantially along a length thereof;
- a plurality of removable blades having an arcuate shape causing each of the plurality of blades to have an inner side and an outer side;
- a base portion of each of the plurality of removable blades is configured to be received in respective slots of the plurality of slots;
- at least one side of each of the plurality of removable blades has a sharpened edge extending substantially along a front portion of the plurality of removable blades; and
- the arcuate share of each of the plurality of blades forms a half circle.

(*Compare* '269 patent (claim 5), *with* Compl. Exs. 48-49.)

Similarly, Flying Arrow's TOXIC™ branded arrowheads possess the required elements of claim 25.

U.S. PATENT NO. 8,920,269	
CLAIM LANGUAGE – CLAIM 25	COMPLAINANT'S TOXIC™ PRODUCT
25. A broadhead comprising: a body portion; and	
a plurality of blades extending from the body portion, wherein each of the plurality of blades comprise:	

U.S. PATENT NO. 8,920,269		
CLAIM LANGUAGE – CLAIM 25	COMPLAINANT’S TOXIC™ PRODUCT	
two opposing blade portions extending in opposite directions from a middle portion of each of the plurality of blades, wherein each of the two opposing blade portions arcuately extend toward the other blade portion, and further wherein each of the two opposing blade portions has at least one sharpened edge.	 <p>The diagram shows a cross-section of a broadhead. It features two curved blade portions that meet at a central middle portion. The inner edges of the blades are labeled as 'Sharpened edge'. The top and bottom points of the blades are labeled as 'Opposing blade portions'. The central area is labeled as 'Middle portion'.</p>	Reproduced left is a blade removed from the assembled broadhead.

(*Id.* at Ex. 50.) In addition, there is no evidence of record to contradict Flying Arrow’s assertion that the TOXIC™, CYCLONE™, and TOM BOMB™ branded arrowheads practice the ’269 patent.

The undersigned therefore finds that Flying Arrow has presented substantial, reliable, and probative evidence that the technical prong of the domestic industry requirement is satisfied with respect to the ’269 patent.

VII. U.S. PATENT NO. D713,919

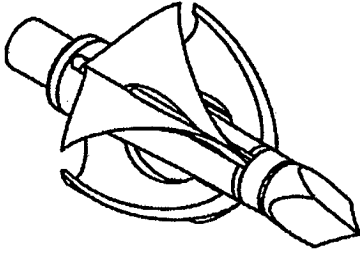
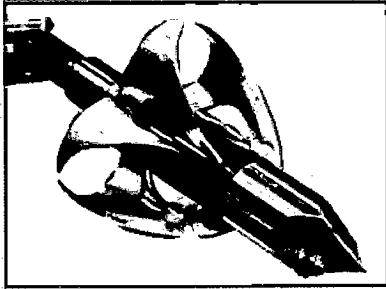
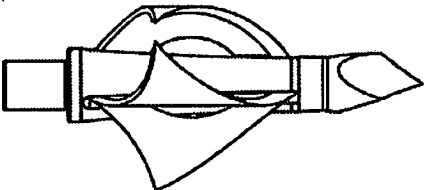
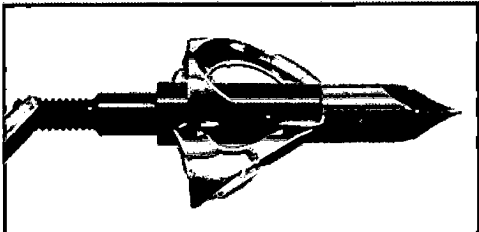
A. Infringement

Flying Arrow alleges that Respondents Mengbao, Sandum Precision, and Arthur Sifuentes infringe the D’919 patent. (Mem. at 22-28.) In support of these allegations, Flying Arrow attached claim charts to the Complaint demonstrating how the accused products of these Respondents infringe the D’919 patent. (Compl. at ¶ 54, Ex. 39 (Mengbao); ¶ 55, Ex. 40 (Sandum Precision); ¶59, Ex. 44 (Arthur Sifuentes).) It also submitted a declaration from Mr. Rager, wherein Mr. Rager stated that “[i]t is [his] opinion that the accused broadheads sold, offered for sale, and imported by the defaulting Respondents Mengbao, Sandum Precision Industry, and Arthur Sifuentes infringe the patented design of the ’919 patent” as they are “substantially the same and embody the patented design.” (8/15/17 Rager Decl. at ¶ 90.) Staff

supports a finding of infringement. (Staff Resp. at 16-17 (“Given that their appearances are very similar, and applying the ordinary observer test, the Staff also supports a finding that Mengbao, Sandum Precision Industry, and Arthur Sifuentes’ Toxic-like arrowheads infringe the D’919 patent.”).)

The test for infringement of a design patent is whether “in the eye of an ordinary observer, giving such attention as a purchaser usually gives, two designs are substantially the same.” *Egyptian Goddess, Inc.*, 543 F.3d at 678. Here, the designs are “substantially the same” as evidenced by the photos below.

Respondent Mengbao

U.S. Patent No. D713,919 S	
CLAIMED DESIGN	ACCUSED PRODUCT BY MENGBAO
 Fig. 8	
 Fig. 9	

U.S. Patent No. D713,919 S

CLAIMED DESIGN

ACCUSED PRODUCT BY MENGBAO

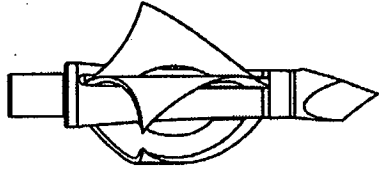


Fig. 10

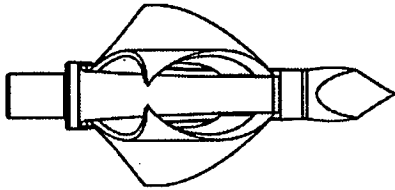
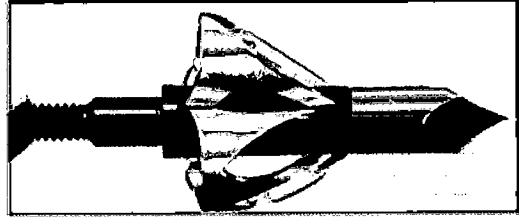


Fig. 11

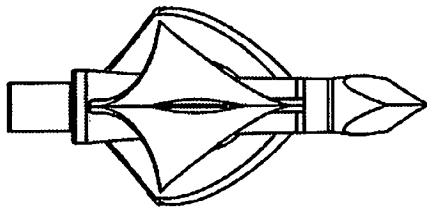
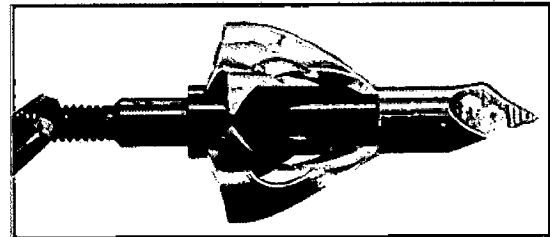


Fig. 12

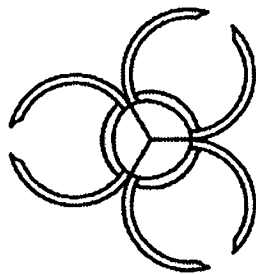
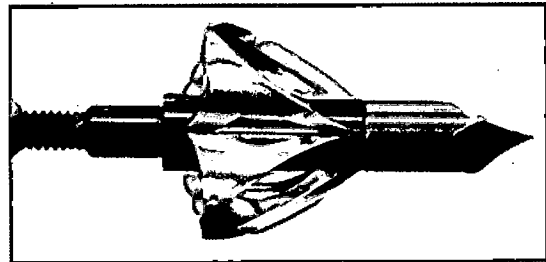
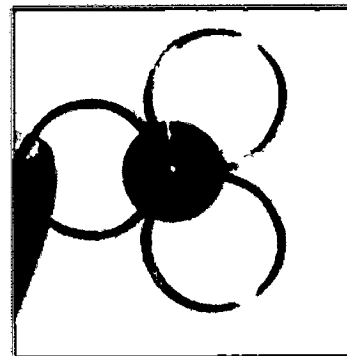
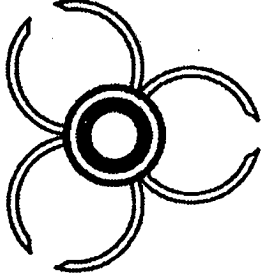
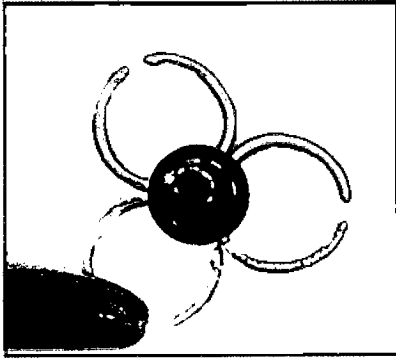


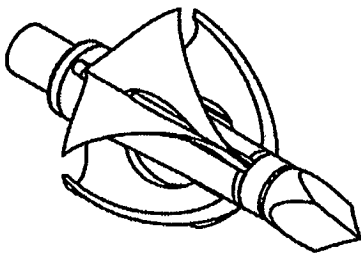
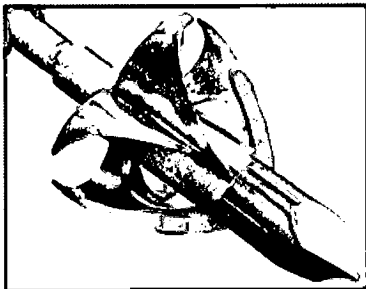
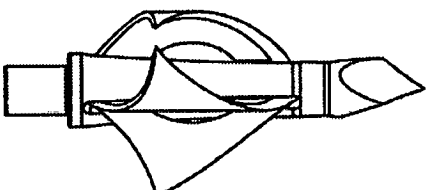
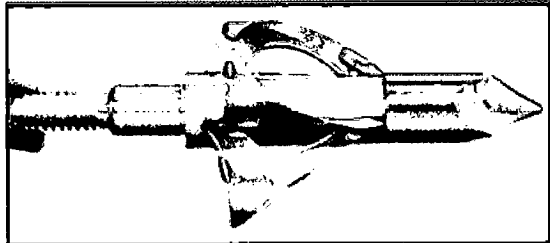
Fig. 13



U.S. Patent No. D713,919 S	
CLAIMED DESIGN	ACCUSED PRODUCT BY MENGBAO
 <p style="text-align: center;">Fig. 14</p>	

(Compl. Ex. 39 (claim chart comparing figures 8-14 of the D'919 patent to the accused arrowhead of Respondent Mengbao).)

Respondent Sandum Precision

U.S. Patent No. D713,919 S	
CLAIMED DESIGN	ACCUSED PRODUCT BY SANDUM PRECISION INDUSTRY (CHINA) CO., LTD.
 <p style="text-align: center;">Fig. 8</p>	
 <p style="text-align: center;">Fig. 9</p>	

U.S. Patent No. D713,919 S

CLAIMED DESIGN

ACCUSED PRODUCT BY SANDUM PRECISION
INDUSTRY (CHINA) Co., LTD.

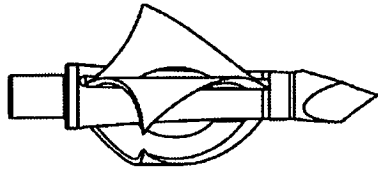


Fig. 10

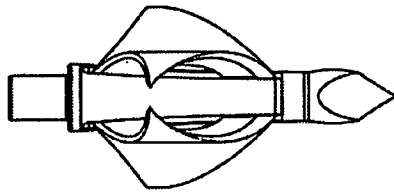
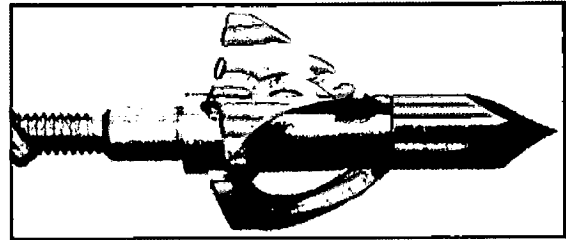


Fig. 11

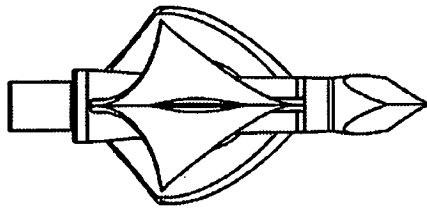
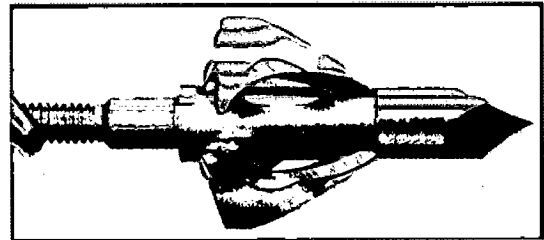


Fig. 12

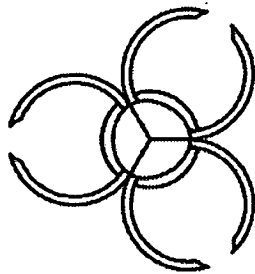
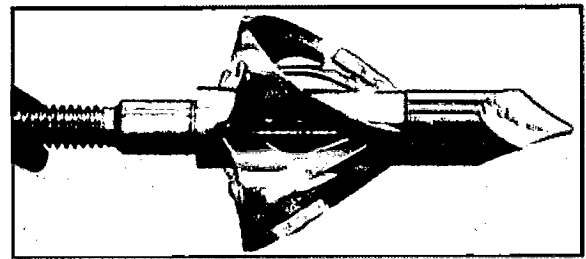
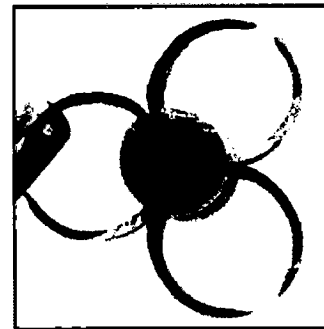
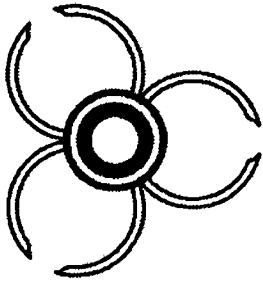
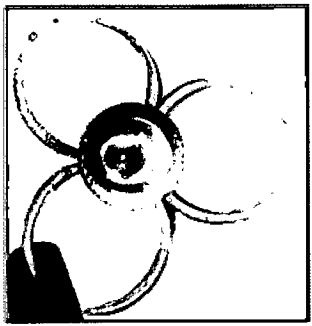


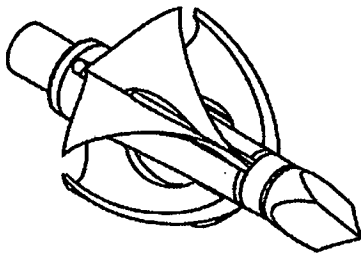
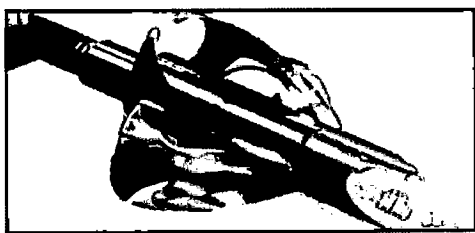
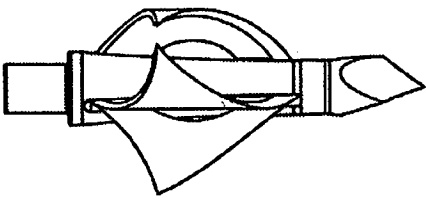
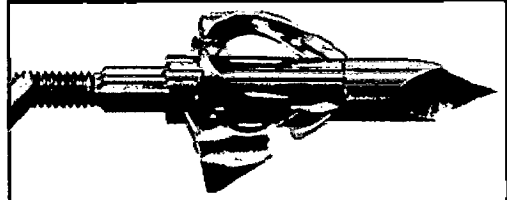
Fig. 13



U.S. Patent No. D713,919 S	
CLAIMED DESIGN	ACCUSED PRODUCT BY SANDUM PRECISION INDUSTRY (CHINA) CO., LTD.
 <p style="text-align: center;">Fig. 14</p>	

(Compl. Ex. 40 (claim chart comparing figures 8-14 of the D'919 patent to the accused arrowhead of Respondent Sandum Precision).)

Respondent Arthur Sifuentes

U.S. Patent No. D713,919 S	
CLAIMED DESIGN	ACCUSED PRODUCT BY ARTHUR SIFUENTES
 <p style="text-align: center;">Fig. 8</p>	
 <p style="text-align: center;">Fig. 9</p>	

U.S. Patent No. D713,919 S

CLAIMED DESIGN

ACCUSED PRODUCT BY ARTHUR SIFUENTES

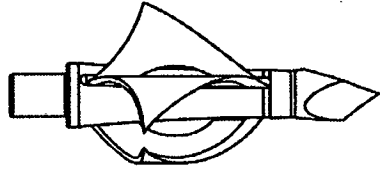


Fig. 10

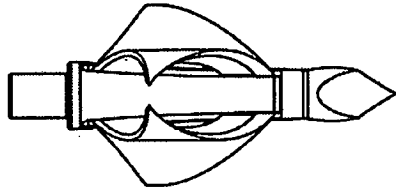
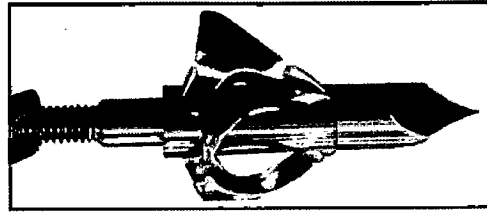


Fig. 11

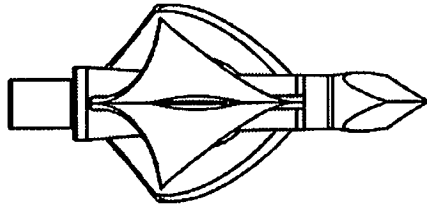
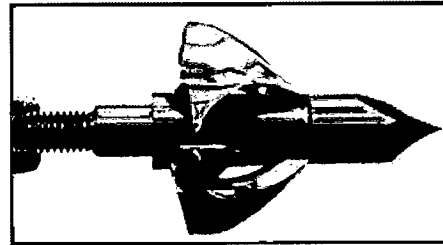


Fig. 12

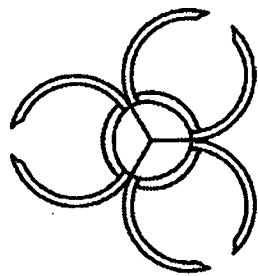
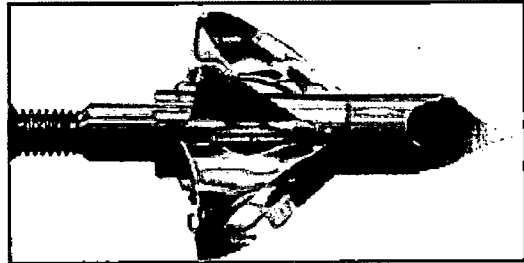
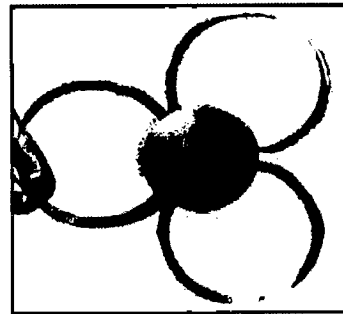
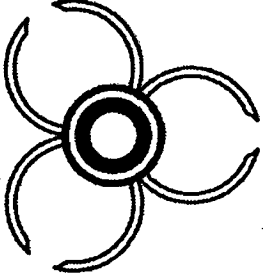
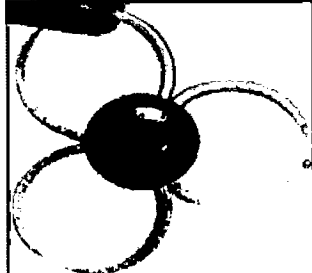


Fig. 13



U.S. Patent No. D713,919 S	
CLAIMED DESIGN	ACCUSED PRODUCT BY ARTHUR SIFUENTES
 <p style="text-align: center;">Fig. 14</p>	

(Compl. Ex. 44 (claim chart comparing figures 8-14 of the D’919 patent to the accused arrowhead of Respondent Arthur Sifuentes).) The undersigned agrees with Staff that “it is unlikely that a layman could tell the difference between the products, and an ordinary observer would clearly conclude that the accused products are substantially the same as the patented design.” (Staff Resp. at 17.) Additionally, the undersigned is not aware of any evidence to the contrary with respect to infringement by Respondents Mengbao, Sandum Precision, and Arthur Sifuentes.

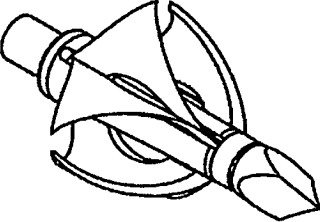
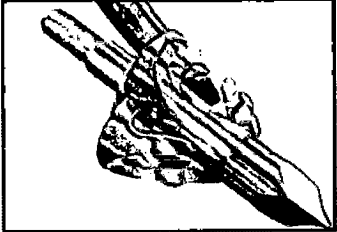
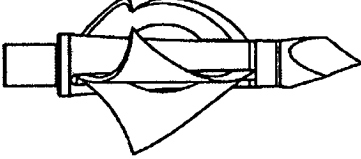
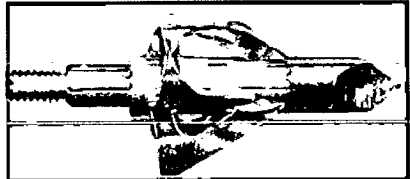
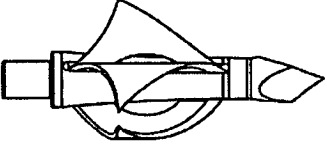

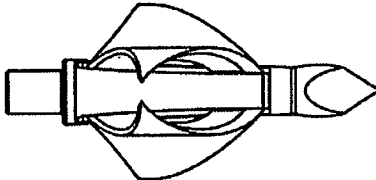
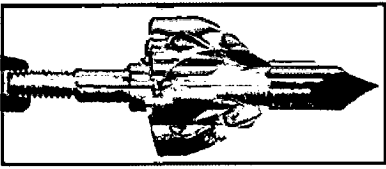
Accordingly, the undersigned finds that Flying Arrow has established by substantial, reliable, and probative evidence that the accused products of Respondents Mengbao, Sandum Precision, and Arthur Sifuentes infringe the D’919 patent.

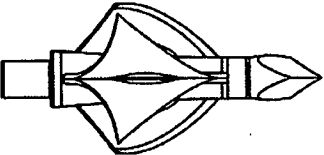
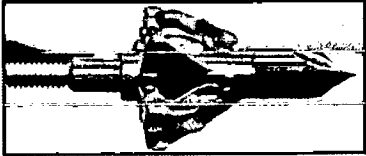
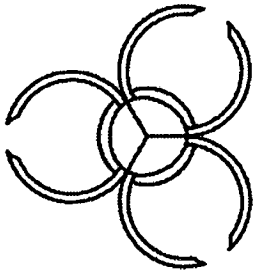
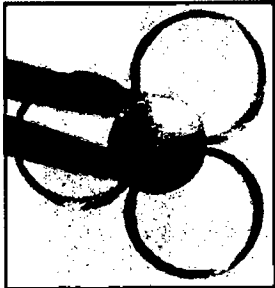
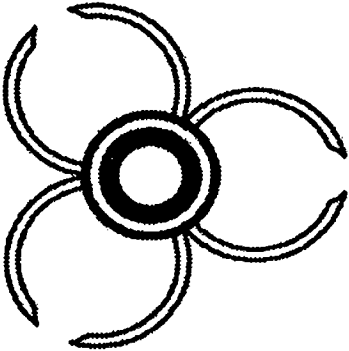
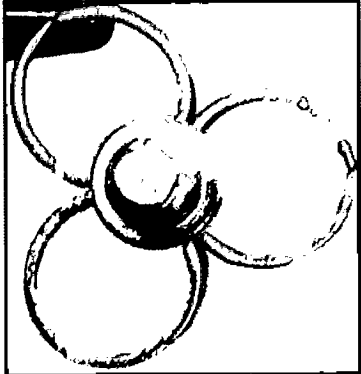
B. Technical Prong

Flying Arrow asserts that its TOXIC™ branded arrowhead is covered by the D’919 patent. (Mem. at 34-36.) In support, it submitted a claim chart demonstrating how exemplary TOXIC™ broadheads practice the D’919 patent, as well as testimony from Mr. Rager as a technical expert for arrowhead design. (Mem. at 31, 34-36; 8/15/17 Rager Decl. at ¶ 116.) Mr. Rager opined that “the actual product made by Flying Arrow Archery is substantially similar to

the claimed design.” (8/15/17 Rager Decl. at ¶ 116.) In Staff’s view, “Complainant has . . . presented substantial, reliable, and probative evidence that the technical prong of the domestic industry requirement is satisfied with respect to the D’919 patent.” (Staff Resp. at 21.)

As can be seen from the chart below, Flying Arrow’s TOXIC™ branded arrowhead is substantially similar to the claimed design of the D’919 patent.

U.S. PATENT NO. D713,919S	
CLAIMED DESIGN	FLYING ARROW’S TOXIC™ PRODUCT
 <p>Fig. 8</p>	
 <p>Fig. 9</p>	
 <p>Fig. 10</p>	
 <p>Fig. 11</p>	

U.S. PATENT NO. D713,919S	
CLAIMED DESIGN	FLYING ARROW'S TOXIC™ PRODUCT
 <p>Fig. 12</p>	
 <p>Fig. 13</p>	
 <p>Fig. 14</p>	

(Compl. Ex. 51 (claim chart demonstrating how exemplary TOXIC™ arrowheads practice the D'919 patent).) There is also no evidence of record to contradict Flying Arrow's assertion that its TOXIC™ branded arrowhead practices the D'919 patent.

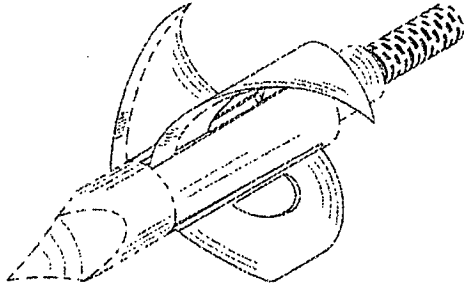
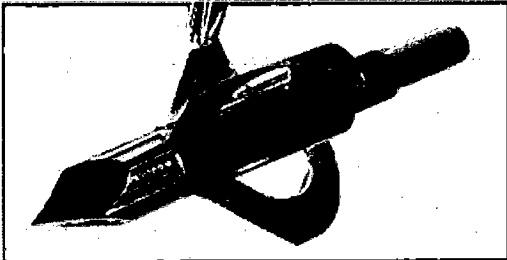
Accordingly, the undersigned finds that Flying Arrow has satisfied the technical prong of the domestic industry requirement for the D'919 patent.

VIII. U.S. PATENT NO. D729,336

A. Infringement

Flying Arrow alleges that Respondent Arthur Sifuentes infringes the D'336 patent. (Mem. at 28-31.) In support of this allegation, Flying Arrow attached a claim chart to the Complaint demonstrating how the accused products of Arthur Sifuentes infringe the D'336 patent. (Compl. at ¶ 62, Ex. 47 (Arthur Sifuentes).) It also submitted a declaration from Mr. Rager, wherein Mr. Rager stated that “[i]t is [his] opinion that the accused broadheads sold, offered for sale, and imported by the [Arthur Sifuentes] infringe the patented design of the ‘336 patent” as they are “substantially the same and embody the patented design.” (8/15/17 Rager Decl. at ¶¶ 94-95.) Staff agrees that there are no material facts in dispute and submits that Flying Arrow has presented substantial, reliable, and probative evidence of infringement. (Staff Resp. at 17-18.)

The undersigned again agrees with Staff that “it is unlikely that a layman could tell the difference between the products, and an ordinary observer would clearly conclude that the accused products are substantially the same as the patented design.” (Staff Resp. at 18.) Here, there is no dispute that the designs are similar.

U.S. PATENT NO. D729,336S	
CLAIMED DESIGN	ACCUSED PRODUCT BY ARTHUR SIFUENTES
 <p>FIG. 1</p>	

U.S. PATENT NO. D729,336S

CLAIMED DESIGN

ACCUSED PRODUCT BY ARTHUR SIFUENTES

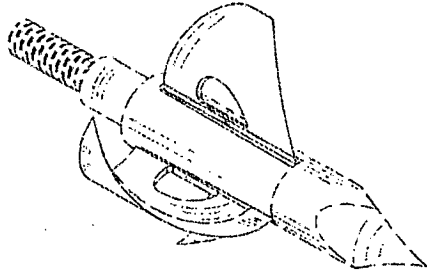


FIG. 2

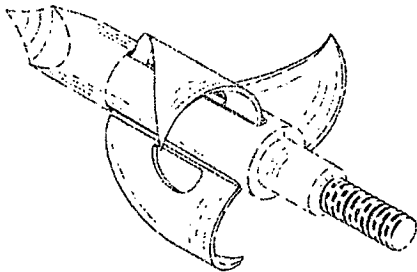
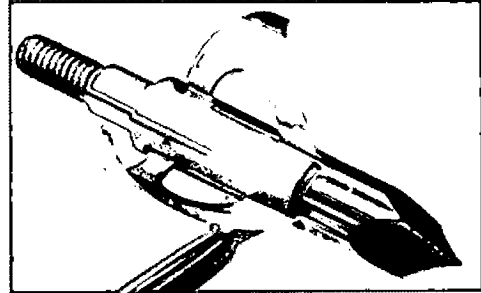


FIG. 3

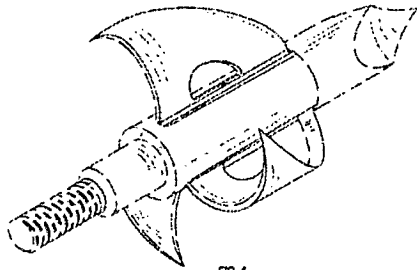
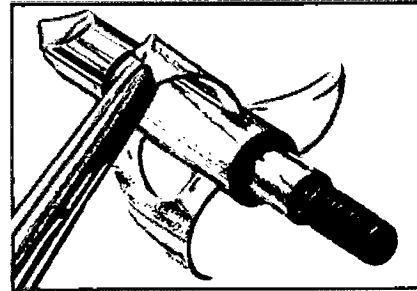


FIG. 4

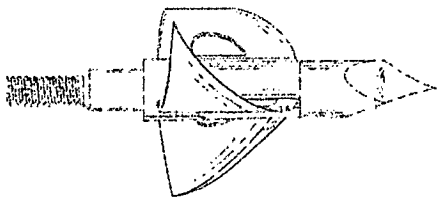
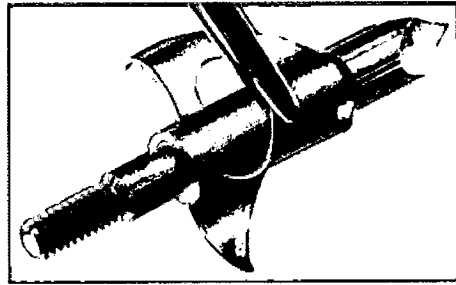


FIG. 5

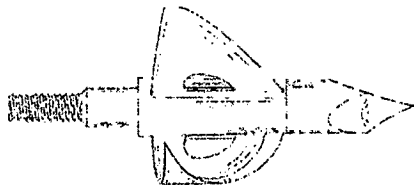
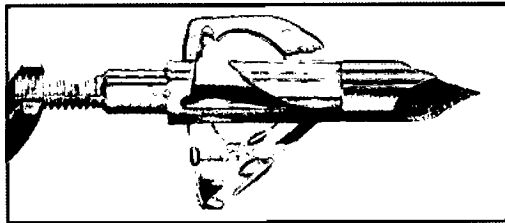
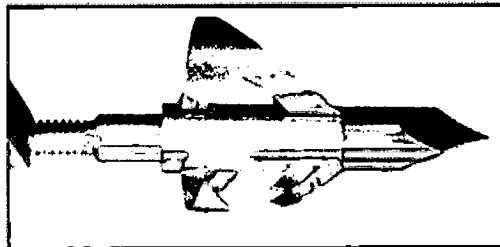


FIG. 6



U.S. PATENT NO. D729,336S

CLAIMED DESIGN

ACCUSED PRODUCT BY ARTHUR SIFUENTES

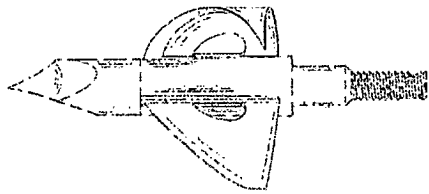


FIG. 7

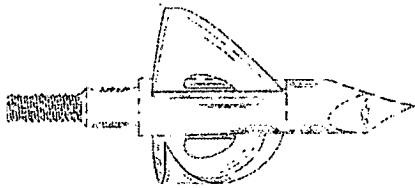
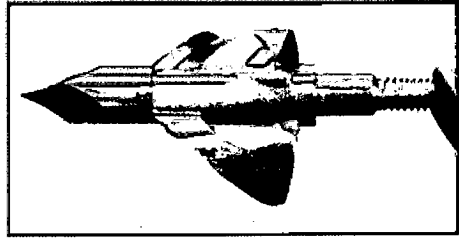


FIG. 8

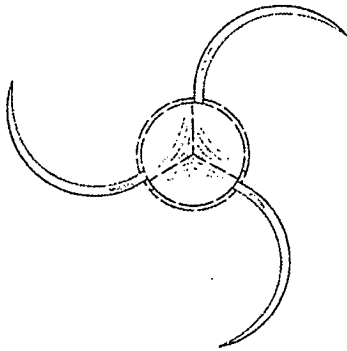
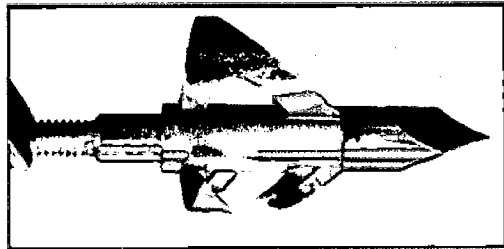


FIG. 9

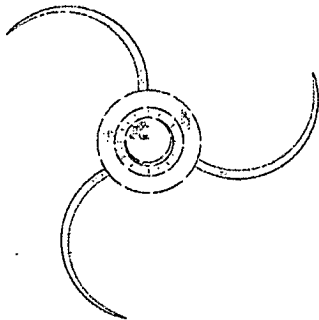
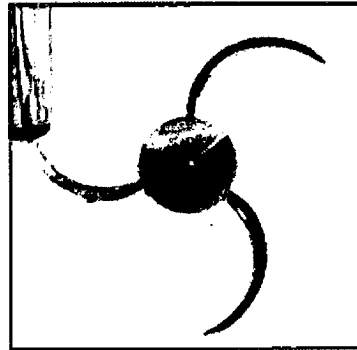
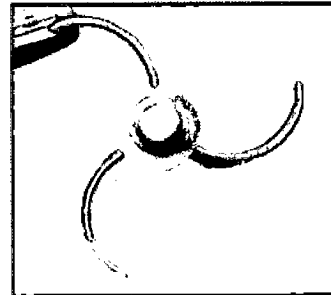


FIG. 10



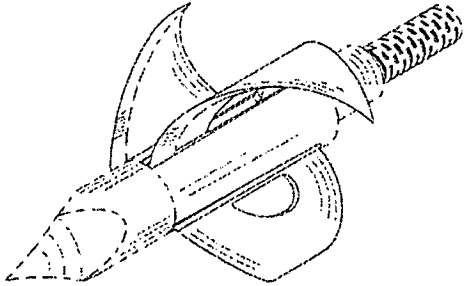
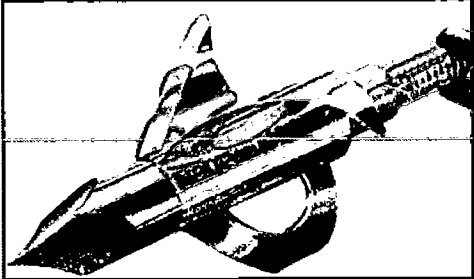
(Compl. Ex. 47 (comparing exemplary embodiments of the D'336 patent with the accused products of Arthur Sifuentes).) In addition, the undersigned is not aware of any evidence to the contrary with respect to infringement by Respondent Arthur Sifuentes.

Accordingly, the undersigned finds that Flying Arrow has established by substantial, reliable, and probative evidence that the accused products of Respondent Arthur Sifuentes infringe the D'336 patent.

B. Technical Prong

Flying Arrow asserts that its CYCLONE™ branded arrowhead is covered by the D'336 patent. (Mem. at 31, 36-39.) Flying Arrow submitted a claim chart mapping an exemplary CYCLONE™ arrowhead against Figures 1-10 of the D'336 patent, as well as testimony from Mr. Rager as a technical expert for arrowhead design. (Mem. at 31, 36-39; 8/15/17 Rager Decl. at ¶ 117.) Mr. Rager opined that “the actual product made by Flying Arrow Archery is substantially similar to the claimed design.” (8/15/17 Rager Decl. at ¶ 117.) Staff submits that no issue of material fact exists regarding whether Flying Arrow’s CYCLONE™ branded arrowhead practices the D'336 patent. (Staff Resp. at 21-22.)

As the chart below evidences, Flying Arrow’s CYCLONE™ branded arrowhead is substantially similar to the claimed design of the D'336 patent.

U.S. PATENT NO. D729,336	
CLAIMED DESIGN	COMPLAINANT’S CYCLONE™ PRODUCT
 <p style="text-align: center; font-size: small;">FIG. 1</p>	

U.S. PATENT NO. D729,336

CLAIMED DESIGN

COMPLAINANT'S CYCLONE™ PRODUCT

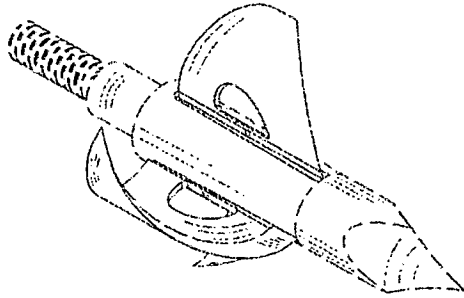


FIG. 2

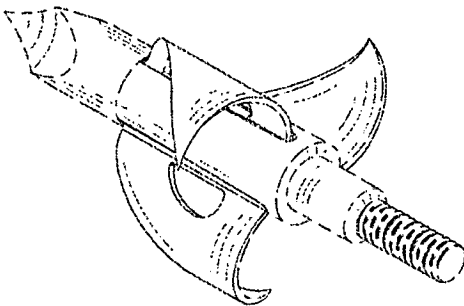
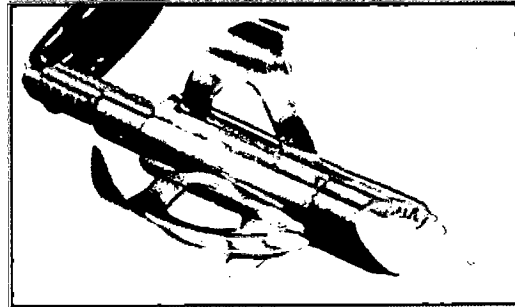


FIG. 3

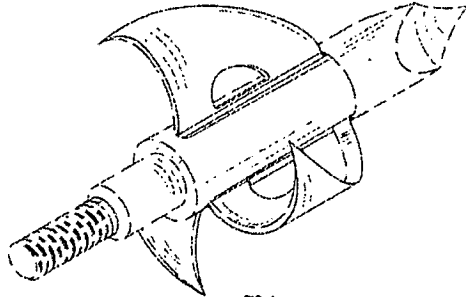
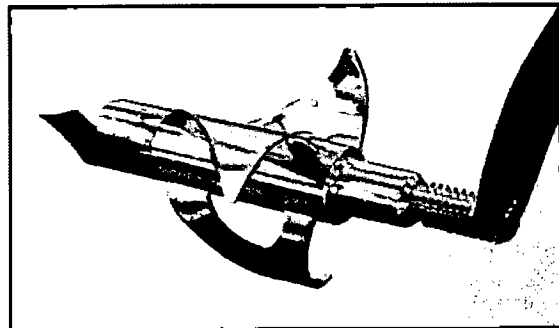


FIG. 4

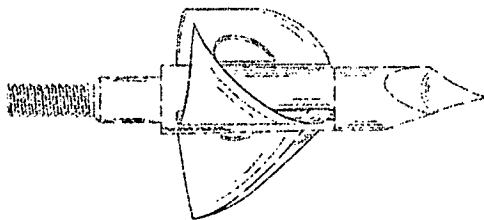
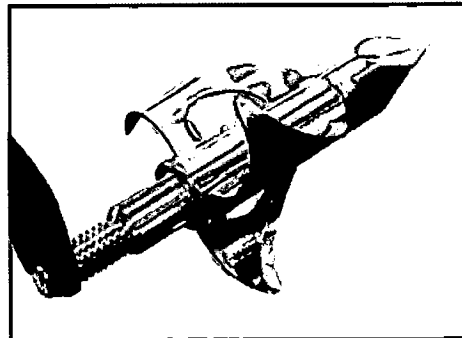
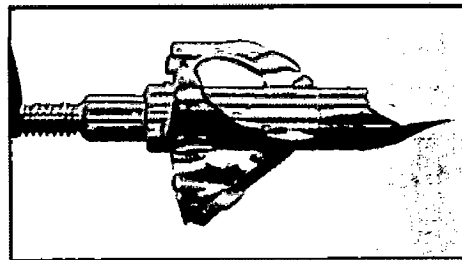


FIG. 5



U.S. PATENT NO. D729,336

CLAIMED DESIGN

COMPLAINANT'S CYCLONE™ PRODUCT

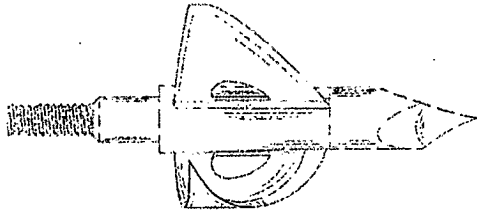


FIG. 6

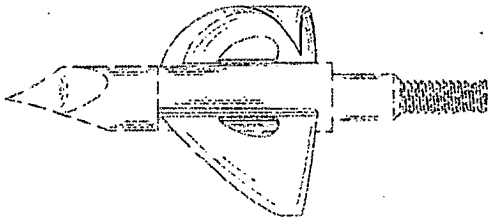
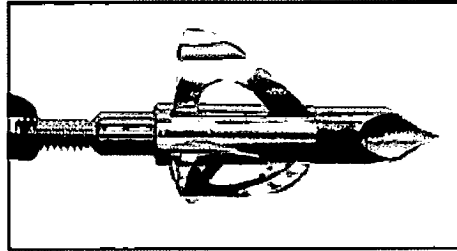


FIG. 7

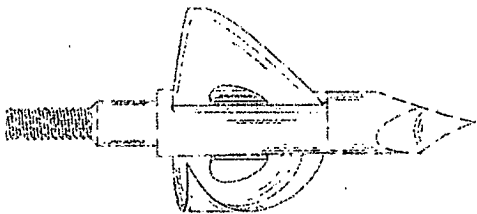
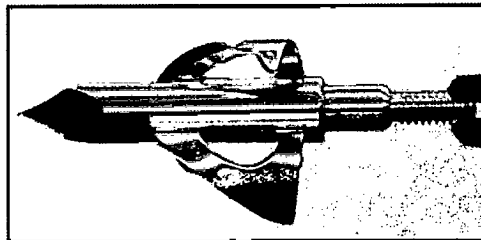


FIG. 8

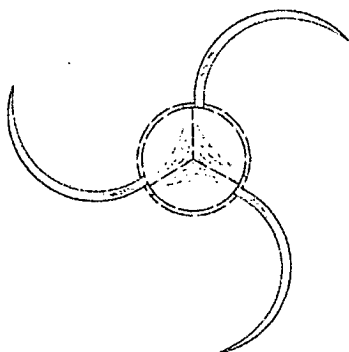
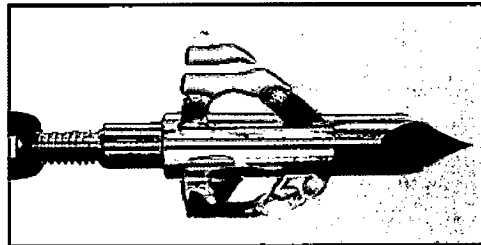
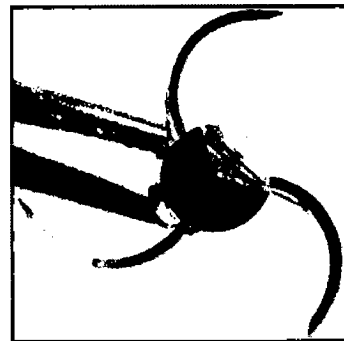
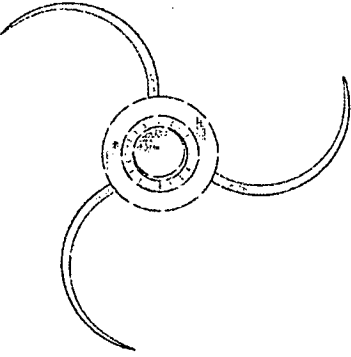
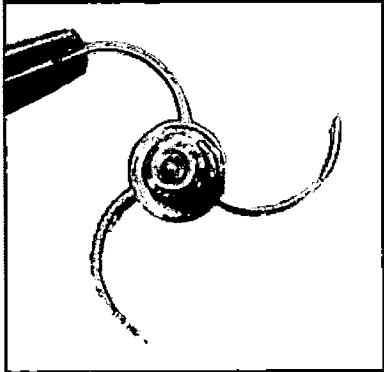


FIG. 9



U.S. PATENT NO. D729,336	
CLAIMED DESIGN	COMPLAINANT'S CYCLONE™ PRODUCT
	

(Compl. Ex. 52 (claim chart demonstrating how exemplary CYCLONE™ arrowheads practice the D'336 patent).) Furthermore, there is no evidence of record to contradict Flying Arrow's assertion that its CYCLONE™ branded arrowheads practice the D'336 patent.

Accordingly, the undersigned finds that Flying Arrow has satisfied the technical prong of the domestic industry requirement for the D'336 patent.

IX. DOMESTIC INDUSTRY – ECONOMIC PRONG

Flying Arrow asserts that it has satisfied the economic prong of the domestic industry requirement with respect to the asserted patents based on substantial investments in the exploitation of the intellectual property under 19 U.S.C. §1337(a)(3)(C). (Mem. at 39-41.) In Staff's view, "the engineering and research and development expenditures made by [Flying Arrow], and Mr. Rager's 'sweat equity,' represent a substantial investment in the exploitation of the Asserted Patents, and thus satisfy the economic prong based on investments in R&D and engineering." (Staff Resp. at 29.)

The undersigned finds that Flying Arrow has adduced substantial, reliable, and probative evidence to support a finding that it satisfies the economic prong of the domestic industry requirement under § 337(a)(3)(C), as it has demonstrated that its domestic investments in

developing the TOXIC™, CYCLONE™, and TOM BOMB™ branded arrowheads are related to its exploitation of the asserted patents. Flying Arrow is a small business which has substantially invested in the equipment used to test broadhead prototypes, as well as existing broadhead products, to ensure they meet rigorous quality standards. (8/15/17 Rager Decl. at ¶¶ 125, 130.) As a result of this engineering, and research and development, Flying Arrow has improved the design of its arrowheads and minimized product variations. (*Id.* at ¶ 119.) Flying Arrow’s U.S. facilities have significant assets used for research, development, production, testing for quality assurance, prototyping, prototype testing, and the sale of its broadheads. (*Id.* at ¶ 129.) It employs [REDACTED] employees at its U.S. facilities to work on its domestic industry products. (*Id.* at ¶¶ 128, 130.)

[REDACTED] all of its inventive work is done domestically. See *Certain Microcomputer Memory Controllers, Components Thereof and Prods. Containing Same*, Inv. No. 337-TA-331, Order No. 6, 1992 WL 811299 at *3 (Jan 8, 1992) (“Under (C), there must be a substantial investment in the exploitation of the patent in the United States, but it is irrelevant where the patented articles are made.”) Mr. Rager, the inventor of the patents-in-suit, conceived of and reduced to practice the inventions of three asserted patents domestically. (8/15/17 Rager Dec. at ¶ 118.) Since 2012, Mr. Rager has invested all of his time in developing arcuate blade arrowheads in the U.S. (*Id.*) According to Staff, for the industry in question, Mr. Rager “should be credited with single-handedly creating a market for his unique, patented arrowheads over the past several years.” (Staff Resp. at 23 (citing Staff Ex. A (“First Look: Flying Arrow Toxic Broadhead,” Bowhunter article, dated Aug. 29, 2013); 8/15/17 Rager Decl. at ¶¶ 144-146 (“Within two years, Complainant had grown the market in excess [REDACTED].) The undersigned agrees.

In addition, Flying Arrow continues to spend time and money developing new products, in addition to testing and improving existing products. (*Id.* at ¶ 138.) In this regard, Mr. Rager has dedicated between forty and one hundred percent of his work week to testing and developing new products covered by the asserted patents over the past four years. (*Id.* at ¶ 139.) This activity includes engineering, research and development activities within the meaning of §337, including but not limited to the development of the asserted patents, as well as improvements building upon the patents-in-suit. (*Id.* at ¶ 140.)

With respect to the exploitation of the asserted patents, Mr. Rager provided information concerning Flying Arrow’s investments in “researching, testing, refining, and further developing arcuate arrowheads.” (*Id.* at ¶ 119.) This information includes expenditures for specific research and development equipment such as testing rigs, measurement tooling, design jigs, prototypes, and other testing equipment for its domestic industry arrowhead products. (*Id.*) Mr. Rager also testified that Flying Arrow maintains a U.S. facility in Belgrade, Montana where all testing occurs and the equipment is kept along with other “significant assets used for research, development, production, testing for quality assurance, prototyping, prototype testing and the sale of its broadheads.” (*Id.* at ¶¶ 126-129.) Mr. Rager states that Flying Arrow has made at least the following investments in equipment and other expenses related to its domestic industry arrowhead products since 2012:

CATEGORY OF INVESTMENT	AMOUNT
Flying Arrow Equipment (such as testing rigs, measurement tooling, design jigs, prototypes, and other testing equipment)	██████████
Other Testing Expenses (“including travel and license for field testing of the patented products”)	██████████
TOTAL	██████████

(*Id.* at ¶ 119.) The undersigned is not aware of any evidence contradicting Mr. Rager's estimates.

Flying Arrow also provided enough data to use a sales-based allocation method to calculate its investments in specific products that practice the intellectual property rights at issue. For example, Mr. Rager explains that approximately █% of Flying Arrow's sales are of its most important product, the TOXIC™ brand arrowheads. (*Id.* at ¶ 41.) In contrast, Flying Arrow's CYCLONE™ branded arrowheads account for █ of its sales and the TOM BOMB™ branded arrowheads account for █ of its sales. (*Id.* at ¶¶ 33, 37.)

The undersigned previously determined that the TOXIC™, CYCLONE™, and TOM BOMB™ branded arrowheads practice the '269 patent. (*See* Sections VI.C, VII.B, VIII.B.) The TOXIC™ arrowhead also practices the D'919 patent, while the CYCLONE arrowhead practices the D'336 patent. (*Id.*) Because only the TOXIC™ branded arrowhead practices the D'919 patent, █ of Flying Arrow's investments should be allocated to the D'919 patent based on sales, which amounts to █. Similarly, as only the CYCLONE™ branded arrowhead practices the D'336 patent, █ of Flying Arrow's investments should be allocated to the D'336 patent based on sales, which amounts to █. Staff prepared a summary of these allocations:

ASSERTED PATENT	TOTAL R&D VALUE	PERCENTAGE ALLOCATED TO EACH PATENT	TOTAL ALLOCATED VALUE OF INVESTMENTS
'269 patent	█	█	█
D'919 patent	█	█	█
D'336 patent	█	█	█

(Staff Resp. at 25.) The undersigned is not aware of any evidence to the contrary.

The Commission has stated that in order to determine whether a Complainant has made a “substantial” investment, “there is no minimum monetary expenditure that a complainant must demonstrate to qualify as a domestic industry under the ‘substantial investment’ requirement of [section 337(a)(3)(C)],” and instead “the requirement for showing the existence of a domestic industry will depend on the industry in question, and the complainant’s relative size.” *Certain Stringed Musical Instruments and Components Thereof* (“*Stringed Instruments*”), Inv. No. 337-TA-586, Comm’n Op. at 16 (May 16, 2008). Here, the allocated values credited towards the asserted patents should each be considered substantial in the context of its overall operations – namely, Flying Arrow’s small business⁴ and small amount of sales⁵. In particular, the research and development expenditures directed to the domestic industry products totaling [REDACTED] sufficient to establish that Flying Arrow has satisfied a domestic industry under section 337(a)(3)(c). See *Certain Liquid Crystal Display Modules, Prods. Containing Same, and Methods for Using the Same*, Inv. No. 337-TA-634, Order No. 8 at 10 (Nov. 7, 2008) (“The Commission has found that domestic research and development expenditures directed to products that incorporate the patented technologies at issue are sufficient to satisfy the economic prong of the domestic industry requirement under 337(a)(3)(C).”)

A. “Sweat Equity”

Given the extensive amount of time invested by Mr. Rager as the inventor of the asserted patents and the founder and CEO of Flying Arrow, Staff believes that Flying Arrow should also be credited with Mr. Rager’s investment of his “sweat equity.” (Staff Resp. at 27.) The undersigned agrees.

⁴ As noted *supra*, Flying Arrow employs [REDACTED]. (8/15/17 Rager Decl. at ¶ 128.)

⁵ In Mr. Rager’s declaration, he explained that Flying Arrow had [REDACTED] in sales in 2014, [REDACTED] in 2016, and sales were even lower in 2017. (*Id.* at ¶ 120.)

The Commission discussed the concept of “sweat equity” in *Certain Stringed*

Instruments:

[Complainant] refers to various other activities, e.g., alleged “sweat equity.” We acknowledge that [Complainant] has expended such non-monetary resources in addition to the above expenditures found by the ALJ. While we do not discount the concept of sweat equity, documentation thereof in this case lacked sufficient detail. A precise accounting is not necessary, as most people do not document their daily affairs in contemplation of possible litigation. Nevertheless, evidence or testimony would have to demonstrate a sufficiently focused and concentrated effort to lend support to a finding of a “substantial investment.”

Stringed Instruments at 26.

In the instant matter, Flying Arrow has submitted an uncontested declaration accounting for the substantial and “sufficiently focused and concentrated effort” Mr. Rager spent developing the domestic industry products. (8/15/17 Rager Decl. at ¶¶ 118, 139-140.) Specifically, Mr. Rager provided a quantifiable estimate of his time — between 40%-100% per week for the past four years directed towards testing and developing new products covered by the asserted patents. (*Id.* at ¶ 139.) Even at the low end of Mr. Rager’s estimated time commitment of 40% per week over four years, this commitment equals at least 832 man-hours/year⁶ or 3,328 total hours over the past four years. The undersigned finds such dedication of time and effort to be continuous, focused, and concentrated. *See Stringed Instruments* at 26.

As previously discussed, Flying Arrow’s research and development, and engineering for its patented arrowhead products is located solely in the United States. The man-hours spent by Mr. Rager contributed to the early success of at least the TOXIC™ arrowhead product in the marketplace and also quickly built up the premium arrowhead industry in the U.S. (8/15/17 Rager Decl. ¶¶ 118, 137, 139-140, 144, 146.) Unlike the complainant in *Stringed Instruments*, who took eighteen years to make five prototypes but had not yet manufactured a commercial

⁶ 40% x (avg. 40 hrs/wk x 52 weeks)

product, Mr. Rager's efforts were "sufficiently focused and concentrated" and led to a commercial product that has been recognized by the industry as "one of the best" and allowed Flying Arrow to go from incorporation in 2012 to selling its first TOXIC™ branded arrowhead in 2013. (*Compare Stringed Instruments* at 26, with Staff Ex. A and 8/15/17 Rager Decl. at ¶¶ 118-120.) Indeed, as a measure of success in developing this niche industry, Flying Arrow asserts that it has sold over [REDACTED] worth of its arrowheads in the United States over the past several years. (8/15/17 Rager Decl. at ¶ 120.)

The undersigned therefore finds Mr. Rager's "sweat equity" to further constitute substantial and significant development and research relative to the asserted patents.

B. Conclusion

For the reasons stated above, the undersigned finds that Flying Arrow satisfies the economic prong of the domestic industry requirement under 19 U.S.C. § 337(a)(3)(C).

XI. REMEDY AND BONDING⁷

A. General Exclusion Order

Section 337(d)(2) provides that a general exclusion order may issue in cases where (a) a general exclusion from entry of articles is necessary to prevent circumvention of an exclusion order limited to products of named respondents; or (b) 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). The statute essentially codifies Commission practice under *Certain Airless Paint Spray Pumps and Components Thereof*, Inv. No. 337-TA-90, Comm'n Op. at 18-19, USITC Pub. 119 (Nov. 1981) ("*Spray Pumps*"). See *Certain Neodymium-Iron-Boron Magnets, Magnet Alloys, and Articles Containing the Same*, Inv. No. 337-TA-372 ("*Magnets*"), Comm'n Op. on Remedy, the Public Interest and Bonding at 5 (USITC Pub. 2964 (1996)) (statutory standards "do not differ significantly" from the standards set forth in *Spray Pumps*). In *Magnets*, the Commission confirmed that there are two requirements for a general exclusion order: [1] a "widespread pattern of unauthorized use;" and [2] "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." *Id.* The focus now is primarily on the statutory language itself and not an analysis of the *Spray Pump* factors. *Ground Fault Circuit Interrupters and Prods. Containing Same*, Inv. No. 337-TA-615, Comm'n Op. at 25 (Mar. 9, 2009).

Flying Arrow and Staff both submit that a GEO is appropriate in this Investigation.

⁷ Flying Arrow did not request cease and desist orders against any of the Defaulting Respondents. (See generally Mem. at 41-48.)

1. Circumvention of a Limited Exclusion Order

Flying Arrow asserts that any limited exclusion order issued in this Investigation would likely be subject to immediate evasion because it is difficult to gain information about the entities selling these products, the Defaulting Respondents are unlikely to comply with a limited exclusion order, and there is a significant incentive created by established demand for the accused products to circumvent a limited exclusion order. (Mem. at 42.) For example, Flying Arrow points to paragraphs 65-79 of its Complaint, noting that the shipping records for infringing products often do not match the online seller. (*Id.*) It also contends that “some of the named respondents avoided investigation because the best name available (e.g., “Alice”) was too ambiguous to institute an investigation” or “were unable to be served due to false or incorrect addresses, while at least some evaded service.” (*Id.* at 42-43.) Flying Arrow further asserts that “[e]ven if the Commission were to enter an LEO in this investigation, the market conditions are such that the respondents would be highly motivated to continue their operations at [its] expense.” (*Id.* at 44.) It explains that US-based demand for arrowheads with arcuate blades is strong and margins are desirable, and there is established foreign manufacturing capability and low barriers to entry. (*Id.*)

Staff believes Flying Arrow has presented clear evidence that a GEO is necessary to prevent the circumvention of a limited exclusion order. (Staff Resp. at 30-31.) Staff cites to, among other things, the evidence provided by Flying Arrow of basically anonymous sales through online portals such as Amazon, eBay, DHgate, and Alibaba. (*Id.* at 31 (citing Mem. at 45; 8/15/17 Rager Decl. at ¶ 130; Compl. Exs. 5-16, 57.)

The undersigned finds Flying Arrow’s and Staff’s arguments persuasive. The evidence shows that the named Respondents have changed, or are capable of, changing names, facilities,

or corporate structure to avoid detection. *See Certain Cases for Portable Electronic Devices* (“*Cases for PEDs*”), Inv. No. 337-TA-867/861 (Consolidated), Comm’n Op. at 9-10 (July 10, 2014). Flying Arrow has also provided evidence that the importers use generic packaging, the accused products are shipped into the country under false and misleading labels, and the profit margins are high and desirable for the accused products to motivate counterfeiters. (*See, e.g.*, 8/15/17 Rager Decl. at ¶¶ 121-123; Compl. Ex. 23 at ¶¶ 3-19; Compl. Exs. 5-16; Compl. at ¶¶ 65-79.) Moreover, the fact that the Defaulting Respondents have ignored proceedings in this Investigation (which resulted in them being found in default) suggests that they would not abide by the terms of any limited exclusion order the Commission may impose.

2. Widespread Pattern of Unauthorized Use

Flying Arrow asserts that infringement is widespread. (Mem. at 45.) It identifies dozens of infringers going by generic and non-specific names like “Alice,” “Huntingsky,” or simply individual persons, and notes that infringing products are readily available through internet sites. (*Id.* (citing Compl. at ¶¶ 65, 68, 73-78).) It explains that the infringing market has significantly diminished the legitimate market for authentic arrowheads, as well as jeopardized the industry created by Flying Arrow since consumers confuse the counterfeits for Flying Arrow’s high-quality products. (*Id.*) Flying Arrow also contends that many of the counterfeiters take deliberate actions to evade paying the federal excise taxes on archery products. (*Id.* at 46.) According to Flying Arrow, by avoiding costs that it must pay, the infringers are able to undercut Flying Arrow’s prices and create an unfair advantage. (*Id.*) In addition, it argues that foreign infringing products are often sold under shifting, inconsistent names and the descriptions provided for the infringing goods are usually vague or misleading. (*Id.* at 46-47.)

Staff advances similar arguments, and concludes that Flying Arrow has shown there is a widespread pattern of violation and that the sources of the infringing products are difficult to identify. (Staff Resp. at 31-32.)

The undersigned finds that Flying Arrow has presented evidence of a widespread pattern of violation and that it is difficult, if not impossible, to identify the source of the infringing products. In particular, the evidence shows that, in addition to the Defaulting Respondents, numerous other sources of infringing arcuate arrowheads are available for purchase online.⁸ (See Compl. at ¶¶ 65, 68, 73-76; Compl. Ex 18 at ¶ 25; Compl. Exs. 5-16; 8/15/17 Rager Decl. at ¶¶ 122, 124, 148-149.) The evidence also shows that the Defaulting Respondents and others ship the accused products in packaging that does not identify the manufacturers or retailers. (See Compl. Exs. 5-16.) While Flying Arrow has attempted to identify sources of infringing counterfeits, it is impossible to identify all sources given the anonymity with which counterfeiters conduct business through online retailers. (See, e.g., Compl. Ex. 57; Compl. at ¶¶ 65-79; 8/15/17 Rager Decl. at ¶¶ 122, 130.). Furthermore, the difficulty in serving some respondents (with some being unlocatable) demonstrates that it is difficult to identify the sources of the products. (See, e.g., Compl. at ¶¶ 15, 17, 21; Order No. 7 (Apr. 6, 2017).)

3. Conclusion

For the foregoing reasons, the undersigned recommends that in the event the Commission finds a violation of section 337, the appropriate remedy is a GEO that encompasses the infringing products. The undersigned also finds that the additional requirements of section 337(g)(2) have been satisfied in this Investigation.

⁸ “The Commission has found in other investigations that numerous online sales of infringing imported goods can constitute a pattern of violation of section 337.” *Certain Loom Kits For Creating Linked Articles (“Loom Kits”)*, Inv. No. 337-TA-923, Comm’n Op. at 14 (June 26, 2015) (citing *Cases for PEDs*, Comm’n Op. at 10).

B. Bonding

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

When reliable price information is available, the Commission has often set the bond by eliminating the differential between the domestic product and the imported, infringing product. *See Microsphere Adhesives, Processes for Making Same, and Prods. Containing Same, Including Self-Stick Repositionable Notes*, Inv. No. 337-TA-366, USITC Pub. 2949, Comm'n Op. at 24 (Dec. 8, 1995). In other cases, the Commission has turned to alternative approaches, especially when the level of a reasonable royalty rate could be ascertained. *See, e.g., Certain Integrated Circuit Telecomm. Chips and Prods. Containing Same, Including Dialing Apparatus*, Inv. No. 337-TA-337, Comm'n Op. at 41, 1993 WL 13033517, at *24 (U.S.I.T.C. June 22, 1993). A 100 percent bond has been required when no effective alternative existed. *See, e.g., Certain Flash Memory Circuits and Prods. Containing Same*, Inv. No. 337-TA-382, USITC Pub. No. 3046, Comm'n Op. at 26-27 (July 1997) (imposing a 100% bond when price comparison was not practical because the parties sold products at different levels of commerce, and the proposed royalty rate appeared to be *de minimus* and without adequate support in the record).

Flying Arrow contends that given the "shifting marketplace conditions, it would be difficult or impossible to calculate a bond based on price differentials." (Mem. at 48.) It therefore requests that the Commission set the bond at 100%. (*Id.*) Staff also believes that a bond of 100% is appropriate. (Staff Resp. at 33.)

While the bond rate could be calculated using the average price differential between Flying Arrow's TOXIC™, CYCLONE™, and TOM BOMB™ arrowhead products and the infringing products, doing so would be difficult given that many sales are made online at various price points and quantities. The undersigned therefore agrees with Flying Arrow and Staff that the Commission set the bond value at 100%. *See Certain Digital Photo Frames and Image Display Devices and Components Thereof*, Inv. No. 337-TA-807, Comm'n Op. at 17, U.S.I.T.C. 4549 (July 2015) ("The Commission finds that there is little or no evidence in the record of this investigation as to pricing of the defaulting respondents' products. . . . The Commission has traditionally set a bond of 100 percent of the entered value of the products under these circumstances.").

X. INITIAL DETERMINATION

For the foregoing reasons, it is the INITIAL DETERMINATION of the undersigned that Flying Arrow has shown by reliable, probative, and substantial evidence that a domestic industry exists and a violation of section 337 has occurred. Accordingly, Flying Arrow's motion for summary determination of violation (1033-023) is hereby granted.

In addition, the undersigned recommends that the Commission issue a general exclusion order, and that 100 percent bond be imposed during the Presidential review period.

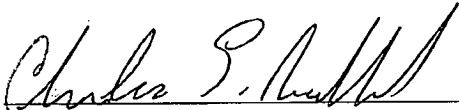
The Secretary shall serve the confidential version of this Initial Determination upon counsel who are signatories to the Protective Order (Order No. 1) issued in this Investigation. A public version will be served at a later date upon all parties of record.

Pursuant to 19 C.F.R. § 210.42(h), this Initial Determination shall become the determination of the Commission unless a party files a petition for review pursuant to 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 therein.

Within ten days of the date of this document, the parties shall submit to the Office of Administrative Law Judges a joint statement regarding whether or not they seek to have any portion of this document deleted from the public version. The parties' submission shall be made by hard copy and must include a copy of this Initial Determination with red brackets indicating any portion asserted to contain confidential business information to be deleted from the public version. The parties' submission shall include an index identifying the pages of this document where proposed redactions are located. The parties' submission concerning the public version of this document need not be filed with the Commission Secretary.

SO ORDERED.



Charles E. Bullock
Chief Administrative Law Judge

**CERTAIN ARROWHEADS WITH ARCUATE BLADES
AND COMPONENTS THEREOF**

Inv. No. 337-TA-1033

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **PUBLIC VERSION ORDER NO. 9** has been served by hand upon the Commission Investigative Attorney, John Shin, Esq., and the following parties as indicated, on November 16, 2017.



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

On Behalf of Complainant Flying Arrow Archery, LLC:

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