

In the Matter of

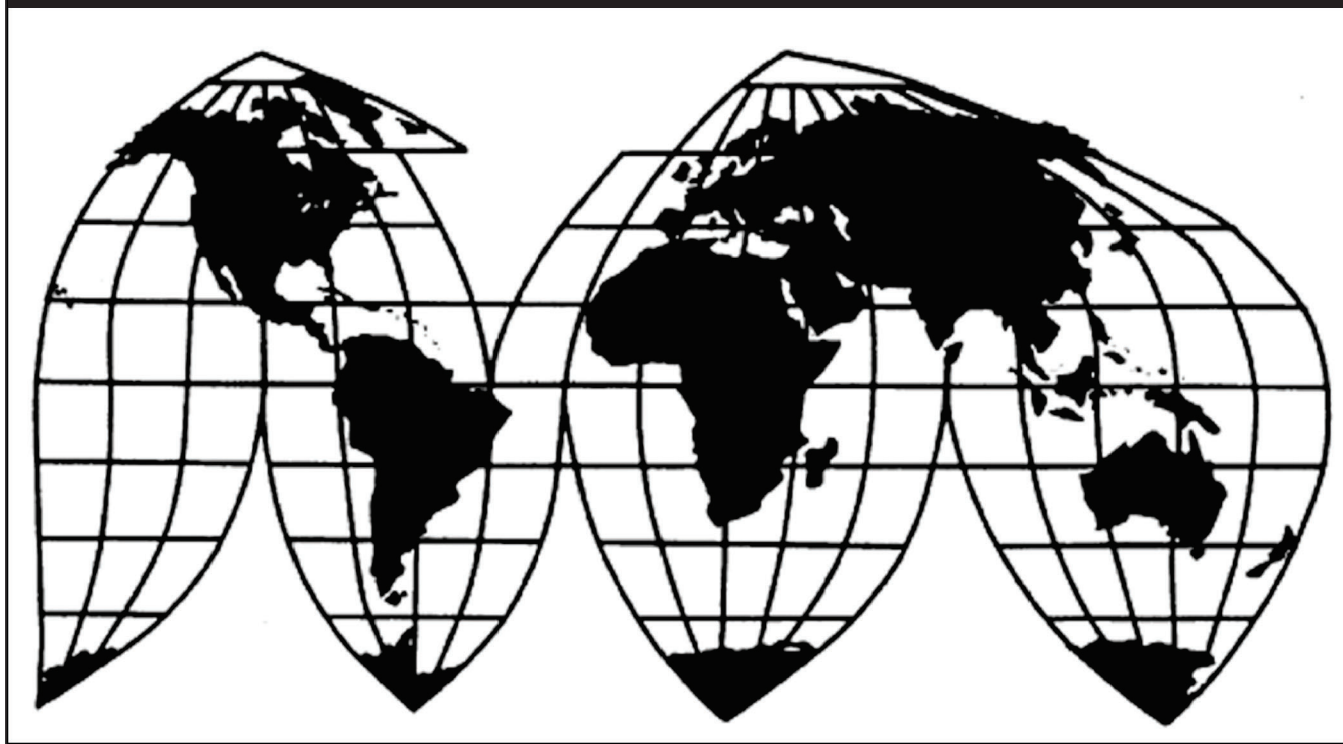
**CERTAIN WATER FILTERS AND
COMPONENTS THEREOF**

337-TA-1126

Publication 5082

June 2020

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

COMMISSIONERS

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**Address all communications to
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United States International Trade Commission
Washington, DC 20436**

U.S. International Trade Commission

Washington, DC 20436
www.usitc.gov

In the Matter of

CERTAIN WATER FILTERS AND COMPONENTS THEREOF

337-TA-1126



UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN WATER FILTERS AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1126

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

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a general exclusion order ("GEO") denying entry of certain water filters and components thereof as well as two cease and desist orders ("CDOs"). The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-3228. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server 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 August 1, 2018, based on a complaint, as amended, filed on behalf of Electrolux Home Products, Inc. of Charlotte, North Carolina, and KX Technologies, LLC of West Haven, Connecticut (collectively, "Complainants"). 83 *Fed. Reg.* 37514 (Aug. 1, 2018). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337") based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain water filters and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 8,673,146 ("the '146 patent"), 8,137,551 ("the '551 patent"), 9,233,322 ("the '322 patent"), and 9,901,852 ("the '852 patent"). *Id.* The Commission's notice of investigation names eight respondents. *Id.* The Office of Unfair Import Investigations ("OUII") is also a party to the investigation.

On October 3, 2018, the ALJ issued an initial determination finding certain respondents in default, specifically, Shenzhen Calux Purification Technology Co., Limited (“Calux”); Jiangsu Angkua Environmental Technical Co., Ltd. (“Angkua Environmental”); and Shenzhen Dakon Purification Tech Co., Ltd. (collectively, “the Defaulting Respondents”). *See* Order No. 9 (Oct. 3, 2018), *not reviewed*, Notice (Oct. 25, 2018). The remaining respondents, specifically, Ningbo Pureza Limited; HongKong Ecoaqua Co., Limited; Ecolife Technologies, Inc.; Ecopure Filter Co., Ltd.; and Crystala Filters LLC, were terminated from the investigation due to settlement. *See* Order Nos. 14, 15, 16, *not reviewed*, Notice (April 1, 2019).

On February 12, 2019, Complainants filed a motion for summary determination of violation of section 337 by the Defaulting Respondents. Complainants requested a general exclusion order (“GEO”) and cease and desist orders (“CDOs”) against all three Defaulting Respondents. On March 8, 2019, OUII filed a response supporting a finding of a violation as well as the requested remedies of a GEO and CDOs for two of the Defaulting Respondents (Calux and Angkua Environmental).

The ALJ issued the subject ID on July 11, 2019, granting the motion for summary determination and finding a violation of section 337 by the Defaulting Respondents. Specifically, the ID found that Complainants established infringement of claims 1-3, 6, 7, and 15 of the ’146 patent, claim 49 of the ’551 patent, claims 1-3, 7-9, and 12-15 of the ’322 patent, and claims 1, 4-6, 9-11, 14-18, and 21-31 of the ’852 patent with respect to each Defaulting Respondents’ accused product(s) by substantial, reliable, and probative evidence. The ALJ recommended that the Commission issue a GEO and CDOs against Calux and Angkua Environmental. The ALJ also recommended setting a bond during Presidential review in the amount of 100 percent. *Id.* No party petitioned for review of the subject ID.

On August 28, 2019, the Commission issued a Notice stating that the Commission determined to review the ID in part and, on review, to correct an error in a citation and a typo. 84 *Fed. Reg.* 45170 (Aug. 28, 2019). The Commission’s determination resulted in finding a violation of section 337. *Id.* The Notice also requested written submissions on remedy, the public interest, and bonding. *See id.*

On September 6, 2019, Complainants submitted a brief on remedy, the public interest, and bonding, requesting that the Commission issue a GEO, issue CDOs against two of the three Defaulting Respondents, and set a bond of 100 percent during the Presidential review period. On the same day, OUII also submitted a brief on remedy, the public interest, and bonding, supporting the ALJ’s recommended GEO, CDOs against two of the Defaulting Respondents, and bond in the amount of 100 percent. On September 13, 2019, OUII submitted a reply to Complainants’ opening brief. No other submissions were filed in response to the Notice.

The Commission finds that the statutory requirements for relief under section 337(d)(2) are met with respect to the Defaulting Respondents. *See* 19 U.S.C. 1337(d)(2). In addition, the

Commission finds that the public interest factors enumerated in section 337(d)(1) do not preclude issuance of statutory relief. *See id.* at 1337(d)(1).

The Commission has determined that the appropriate remedy in this investigation is: (1) a GEO prohibiting the unlicensed entry of certain water filters and components thereof that infringe one or more of claims 1–3, 6, and 7 of the '146 patent; claim 49 of the '551 patent; claims 1–3, 7–9, and 12–15 of the '322 patent; and claims 14–18 and 21–31 of the '852 patent; and (2) CDOs against Angkua Environmental and Calux. The Commission has also determined that the bond during the period of Presidential review pursuant to 19 U.S.C. 1337(j) shall be in the amount of 100 percent of the entered value of the imported articles that are subject to the GEO and CDOs. The Commission's orders were delivered to the President and to the United States Trade Representative on the day of its issuance. The investigation is terminated.

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

By order of the Commission.

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

Lisa R. Barton
Secretary to the Commission

Issued: November 12, 2019

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served by hand upon the Commission Investigative Attorney, **Claire Comfort, Esq.**, and the following parties as indicated, on **November 12, 2019**.



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

On Behalf of Complainant Electrolux Home Products, Inc.:

Andrew F. Pratt, Esq.
VENEABLE LLP
600 Massachusetts Ave NW
Washington, D.C. 20001

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

On Behalf of Complainant KX Technologies, LLC:

Robert Curcio, Esq.
DELIO, PETERSON & CURCIO LLC
700 State Street, Suite 402
New Haven, CT 06511

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

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN WATER FILTERS AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1126

GENERAL EXCLUSION ORDER

The United States International Trade Commission ("Commission") has determined that there is a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 ("section 337"), in the unlawful importation, sale for importation, or sale within the United States after importation of certain water filter cartridges for refrigerators, including water filter cartridge assemblies and interconnection subassemblies, that infringe one or more of claims 1-3, 6, and 7 of U.S. Patent No. 8,673,146 ("the '146 patent"); claim 49 of U.S. Patent No. 8,137,551 ("the '551 patent"); claims 1-3, 7-9, and 12-15 of U.S. Patent No. 9,233,322 ("the '322 patent"); and claims 14-18 and 21-31 of U.S. Patent No. 9,901,852 ("the '852 patent").

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that a general exclusion from entry for consumption is necessary to prevent circumvention of an exclusion order limited to products of named persons and because there is a pattern of violation of section 337 and it is difficult to identify the source of the infringing products. Accordingly, the Commission has determined to issue a general exclusion order prohibiting the unlicensed importation of

infringing water filter cartridges for refrigerators, including water filter cartridge assemblies and interconnection subassemblies.

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

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

1. Water filter cartridges for refrigerators, including water filter cartridge assemblies and interconnection subassemblies, that infringe one or more of claims 1–3, 6, and 7 of the '146 patent; claim 49 of the '551 patent; claims 1–3, 7–9, and 12–15 of the '322 patent; and claims 14–18 and 21–31 of the '852 patent (“covered articles”) are excluded from entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, for the remaining term of the patents, except under license of the patent owner or as provided by law.
2. Notwithstanding paragraph 1 of this Order, covered articles are entitled to entry into the United States for consumption, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption under bond in the amount of 100 percent (100%) 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 (60) days after the date of receipt of this Order. All entries of covered articles made pursuant to this paragraph are to be reported to U.S. Customs and Border Protection ("CBP"), in advance of the date of the entry, pursuant to procedures CBP establishes.

3. At the discretion of CBP and pursuant to the procedures it establishes, persons seeking to import covered articles that are potentially subject to this Order may be required to certify that they are familiar with the terms of this Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the products being imported are not excluded from entry under paragraph 1 of this Order. At its discretion, CBP may require persons who have provided the certification described in this paragraph to furnish such records or analyses to substantiate the certification.
4. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to covered articles that are imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.
5. The Commission may modify this Order in accordance with the procedures described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).
6. The 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.

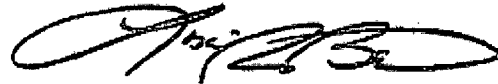
A handwritten signature in black ink, appearing to read 'LRB', is positioned above the printed name of the signatory.

Lisa R. Barton
Secretary to the Commission

Issued: November 12, 2019

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, **Claire Comfort, Esq.**, and the following parties as indicated, on **November 12, 2019**.



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

On Behalf of Complainant Electrolux Home Products, Inc.:

Andrew F. Pratt, Esq.
VENEABLE LLP
600 Massachusetts Ave NW
Washington, D.C. 20001

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

On Behalf of Complainant KX Technologies, LLC:

Robert Curcio, Esq.
DELIO, PETERSON & CURCIO LLC
700 State Street, Suite 402
New Haven, CT 06511

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

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN WATER FILTERS AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1126

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT Shenzhen Calux Purification Technology Co., Limited of Guangdong, China cease and desist from conducting any of the following activities in the United States: importing, selling, offering for sale, marketing, advertising, distributing, transferring (except for exportation), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of water filter cartridges for refrigerators, including water filter cartridge assemblies and interconnection subassemblies, that infringe one or more of claims 1–3, 6, and 7 of U.S. Patent No. 8,673,146 (“the ’146 patent”); claim 49 of U.S. Patent No. 8,137,551 (“the ’551 patent”); claims 1–3, 7–9, and 12–15 of U.S. Patent No. 9,233,322 (“the ’322 patent”); and claims 14–18 and 21–31 of U.S. Patent No. 9,901,852 (“the ’852 patent”) (collectively, “the asserted patents”) in violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337) (“section 337”).

I.
Definitions

As used in this order:

- (A) “Commission” shall mean the United States International Trade Commission.

- (B) “Complainants” shall mean Electrolux Home Products, Inc. and KX Technologies, LLC.
- (C) “Respondent” shall mean Shenzhen Calux Purification Technology Co., Limited of Guangdong, China.
- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority-owned or controlled subsidiaries, successors, or assigns.
- (E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.
- (F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.
- (G) The term “covered products” shall mean water filter cartridges for refrigerators, including water filter cartridge assemblies and interconnection subassemblies, that infringe one or more of claims 1–3, 6, and 7 of the ’146 patent; claim 49 of the ’551 patent; claims 1–3, 7–9, and 12–15 of the ’322 patent; and claims 14–18 and 21–31 of the ’852 patent. Covered products shall not include articles for which a provision of law or license avoids liability for infringement.

II. Applicability

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

III. Conduct Prohibited

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

For the remaining terms of the asserted patents, Respondent shall not:

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

IV. Conduct Permitted

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

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

V. Reporting

For purposes of this requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. The first report required under this section shall cover the period from the date of issuance of this order through June 30, 2020. This reporting

requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

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

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1126") in a prominent place on the cover pages and/or the first page. *See Handbook for Electronic Filing Procedures,*

http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.

Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainant's counsel.¹

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

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

VI.
Record-Keeping and Inspection

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

VII.
Service of Cease and Desist Order

Respondent is ordered and directed to:

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

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

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

VIII. Confidentiality

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

IX. Enforcement

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

X. Modification

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

XI. Bonding

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

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

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

² *See* Footnote 1.

Commission.

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

By order of the Commission.

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

Lisa R. Barton
Secretary to the Commission

Issued: November 12, 2019

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN WATER FILTERS AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1126

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT JiangSu Angkua Environmental Technical Co., Ltd. of RuGao, China cease and desist from conducting any of the following activities in the United States: importing, selling, offering for sale, marketing, advertising, distributing, transferring (except for exportation), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of water filter cartridges for refrigerators, including water filter cartridge assemblies and interconnection subassemblies, that infringe one or more of claims 1–3, 6, and 7 of U.S. Patent No. 8,673,146 (“the ’146 patent”); claim 49 of U.S. Patent No. 8,137,551 (“the ’551 patent”); claims 1–3, 7–9, and 12–15 of U.S. Patent No. 9,233,322 (“the ’322 patent”); and claims 14–18 and 21–31 of U.S. Patent No. 9,901,852 (“the ’852 patent”) (collectively, “the asserted patents”) in violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337) (“section 337”).

I.
Definitions

As used in this order:

- (A) “Commission” shall mean the United States International Trade Commission.

- (B) “Complainants” shall mean Electrolux Home Products, Inc. and KX Technologies, LLC.
- (C) “Respondent” shall mean JiangSu Angkua Environmental Technical Co., Ltd. of RuGao, China.
- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority-owned or controlled subsidiaries, successors, or assigns.
- (E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.
- (F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.
- (G) The term “covered products” shall mean water filter cartridges for refrigerators, including water filter cartridge assemblies and interconnection subassemblies, that infringe one or more of claims 1–3, 6, and 7 of the ’146 patent; claim 49 of the ’551 patent; claims 1–3, 7–9, and 12–15 of the ’322 patent; and claims 14–18 and 21–31 of the ’852 patent. Covered products shall not include articles for which a provision of law or license avoids liability for infringement.

II. Applicability

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

III. Conduct Prohibited

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

For the remaining terms of the asserted patents, Respondent shall not:

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

IV. Conduct Permitted

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

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

V. Reporting

For purposes of this requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. The first report required under this section shall cover the period from the date of issuance of this order through June 30, 2020. This reporting

requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

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

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1126") in a prominent place on the cover pages and/or the first page. *See Handbook for Electronic Filing Procedures,*

http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.

Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainant's counsel.¹

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

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

VI.
Record-Keeping and Inspection

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

VII.
Service of Cease and Desist Order

Respondent is ordered and directed to:

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

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

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

VIII. Confidentiality

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

IX. Enforcement

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

X. Modification

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

XI. Bonding

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

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

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

² See Footnote 1.

Commission.

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

By order of the Commission.

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

Lisa R. Barton
Secretary to the Commission

Issued: November 12, 2019

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, **Claire Comfort, Esq.**, and the following parties as indicated, on **November 12, 2019**.



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

On Behalf of Complainant Electrolux Home Products, Inc.:

Andrew F. Pratt, Esq.
VENEABLE LLP
600 Massachusetts Ave NW
Washington, D.C. 20001

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

On Behalf of Complainant KX Technologies, LLC:

Robert Curcio, Esq.
DELIO, PETERSON & CURCIO LLC
700 State Street, Suite 402
New Haven, CT 06511

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

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

In the Matter of

**CERTAIN WATER FILTERS AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1126

COMMISSION OPINION

I. INTRODUCTION

On August 23, 2019, the Commission determined that three respondents to this investigation, that were all found in default, violated section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“section 337”). Notice, 84 *Fed. Reg.* 45170 (Aug. 28, 2019). All other respondents named in this investigation were previously terminated from the investigation due to settlement. *See id.*; *see also* Order Nos. 14, 15, 16 (all Mar. 5, 2019), *not reviewed*, Notice (April 1, 2019). The Commission has determined that the appropriate remedy in this investigation is a general exclusion order (“GEO”) and cease and desist orders (“CDOs”) directed to two of the defaulting respondents. The Commission has determined to set a bond in the amount of 100 percent of the entered value for subject articles imported during the period of Presidential review. *See* 19 U.S.C. § 1337(j)(3).

II. BACKGROUND

The Commission instituted this investigation on August 1, 2018, based upon a complaint, as amended, filed on behalf of Electrolux Home Products, Inc. of Charlotte, North Carolina, and KX Technologies, LLC of West Haven, Connecticut (collectively, “Complainants”) alleging violations of section 337 in the sale for importation, importation, or sale after importation of certain

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water filters and components thereof that infringe one or more claims of U.S. Patent Nos. 8,673,146 (“the ’146 patent”), 8,137,551 (“the ’551 patent”), 9,233,322 (“the ’322 patent”), and 9,901,852 (“the ’852 patent”) (collectively, “the Asserted Patents”). 83 *Fed. Reg.* 37514 (Aug. 1, 2018); *see also* Amended Complaint (June 27, 2018) (“Am. Compl.”). The Complainants also alleged that a domestic industry exists. *Id.* The Commission’s notice of investigation named eight respondents. 83 *Fed. Reg.* 37514 (Aug. 1, 2018). The Office of Unfair Import Investigations (“OUII”) was also participating in the investigation. *Id.*

The following respondents were previously terminated from the investigation due to settlement: Ningbo Pureza Limited of Ningbo, China; Hong Kong Ecoaqua Co., Limited of Hong Kong, China; Ecolife Technologies, Inc. of City of Industry, California; Ecopure Filter Co., Ltd. of Qindao, China; and Crystala Filters LLC of Patterson, New Jersey (collectively, “the Settled Respondents”). *See* Order Nos. 14, 15, 16 (all Mar. 5, 2019), *not reviewed*, Notice (April 1, 2019).

The following three respondents were found in default: Shenzen Calux Purification Technology Co., Limited of Guangdong, China (“Calux”); JiangSu Angkua Environmental Technical Co., Ltd. of RuGao, China (“Angkua Environmental”); and Shenzhen Dakon Purification Tech Co., Ltd. Guangdong, China (“Dakon”) (collectively, “the Defaulting Respondents”). *See* Order No. 9 (Oct. 3, 2018), *not reviewed*, Notice (Oct. 25, 2018).

On October 29, 2018, the administrative law judge (“ALJ”) granted Complainants’ unopposed motion seeking termination of claim 15 of the ’146 patent and claims 1, 4-6, and 9-11 of the ’852 patent from this investigation. *See* Order No. 12 (Oct. 29, 2018), *not reviewed*, Notice (Nov. 26, 2018).

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On February 12, 2019, Complainants moved for summary determination that the domestic industry requirement was satisfied and that the Defaulting Respondents violated section 337. *See* Complainants' Memorandum in Support of Complainants' Motion for Summary Determination ("MSD"). OUII supported Complainants' motion. *See* OUII Response to Complainants' Motion for Summary Determination ("IA Response"). On July 11, 2019, the presiding ALJ issued Order No. 17 granting Complainants' motion. *See* Order No. 17 (July 11, 2019), *reviewed in part*, Notice (Aug. 28, 2019). Specifically, Order No. 17 found, *inter alia*, that: (1) the accused products infringe the Asserted Patents; (2) "the evidence satisfies the importation element by specific instances of importation and/or a sale for importation" of the accused products by the Defaulting Respondents; and (3) Complainants satisfy the domestic industry requirement, including both the so-called technical and economic prongs. Order No. 17 at 22, 34-62 (citing MSD at Ex. A (Beaman Aff.) at Exs. D, E, F); *see also* MSD at 29-31; IA Response at 24-27. The Order includes the ALJ's recommendation that the Commission issue a GEO and CDOs against two of the Defaulting Respondents, and impose a bond of 100 percent of entered value during the period of Presidential review. Order No. 17 at 62-80.

On August 23, 2019, the Commission issued a Notice of its determination to review Order No. 17 in part and, on review, to correct an error in a citation and a typo. 84 *Fed. Reg.* at 45170. The Commission's determination resulted in finding a violation of section 337. *Id.* The Notice also requests written submissions on remedy, public interest, and bonding from the parties, government agencies, and the public. *Id.*

On September 6, 2019, Complainants submitted a brief ("Comp. Br." or "Complainants' Remedy Brief") on remedy, public interest, and bonding, requesting that the Commission issue a GEO, issue CDOs against two of the three Defaulting Respondents, and set a bond in the amount

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of 100 percent of entered value during the period of Presidential review. On the same day, OUII also submitted a brief (“OUII Br.”) on remedy, public interest, and bonding supporting the ALJ’s recommended GEO, CDOs against two of the Defaulting Respondents, and bond of 100 percent. On September 13, 2019, OUII submitted a reply to Complainants’ Remedy Brief. No other submissions were filed in response to the Notice.

III. DISCUSSION

Where a violation of section 337 has been found, the Commission must consider the issues of remedy, the public interest, and bonding applicable to infringing imports that enter the United States during the Presidential review period. The Commission has “broad discretion in selecting the form, scope, and extent of the remedy.” *Viscofan, S.A. v. Int’l Trade Comm’n*, 787 F.2d 544, 548 (Fed. Cir. 1986). The Commission may issue an exclusion order excluding the goods of the person(s) found in violation (a limited exclusion order) or, if certain criteria are met, against all infringing goods regardless of the source (a general exclusion order). *See Fuji Photo Film v. Int’l Trade Comm’n*, 474 F.3d 1281, 1286 (Fed. Cir. 2007); *see also* 19 U.S.C. §§ 1337(d)(2), (g)(2). In addition to, or in lieu of, the issuance of an exclusion order, the Commission has authority to issue cease and desist orders as a remedy for a violation of section 337. *See Certain Table Saws Incorporating Active Injury Mitigation Technology and Components Thereof*, Inv. No. 337-TA-965, Comm’n Op. at 4-6 (Feb. 1, 2017) (public version) (“*Table Saws*”); *Certain Protective Cases and Components Thereof*, Inv. No. 337-TA-780, Comm’n Op. at 28 (Nov. 19, 2012) (“*Protective Cases*”); *see also* 19 U.S.C. § 1337(f)(1).

For the reasons described herein, the Commission has determined to issue a GEO pursuant to section 337(d)(2), issue two CDOs pursuant to section 337(f)(1), and set a bond in the amount of 100 percent of the entered value of products covered by the GEO.

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A. A General Exclusion Order Under Section 337(d)(2) is Appropriate

General exclusion orders reach entities beyond those that appeared before the Commission.

Therefore, the Commission exercises caution when issuing this broad remedy. As the Commission has explained:

A general exclusion order may have far reaching consequences and applies to entities not respondents in the investigation, and even to entities who could not have been respondents, such as entities who did not import until after the conclusion of the investigation. Thus, the Commission has stated that “[b]ecause of its considerable impact on international trade, potentially extending beyond the parties and articles involved in the investigation, more than just the interests of the parties is involved. Therefore, the Commission exercises caution in issuing general exclusion orders and requires that certain conditions be met before one is issued.”

Certain Cases for Portable Elec. Devices, 337-TA-867/861, Comm’n Op. at 7–8 (July 10, 2014) (public version) (“*Cases for Portable Elec. Devices*”) (quoting *Certain Agricultural Tractors Under 50 Power Takeoff Horsepower*, Inv. No. 337-TA-380, Comm’n Op. at 15 (Mar. 12, 1997)).

Section 337 includes two subsections that address when the Commission may issue a GEO: section 337(d)(2) and section 337(g)(2). The principal difference between these two subsections is that subsection (d)(2) applies where one or more respondents appeared to contest the investigation, while subsection (g)(2) is reserved for investigations where no person appears to contest the investigation. See *Certain Handbags, Luggage, Accessories, and Packaging Thereof*, Inv. No. 337-TA-754, Comm’n Op. at 5 n.3 (June 13, 2012) (“*Handbags*”) (“Although 19 U.S.C. § 1337(g)(2) governs the consideration of whether to issue a GEO in default cases, this provision applies only when no respondent appears to contest the investigation. In this case, since several respondents did appear and were later terminated based on consent orders or settlement agreements, section 337(g)(2) does not apply.”); compare § 1337(d)(2) with § 1337(g)(2). While only the text of section 337(g)(2) explicitly states that the underlying violation of section 337 must be “established by substantial, reliable, and probative evidence” (see § 1337(g)(2)(B)), a GEO under

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section 337(d)(2) must also rest upon a violation established by the same standard of proof. *See Certain Sildenafil or Any Pharmaceutically Acceptable Salt Thereof, Such as Sildenafil Citrate, and Products Containing Same*, Inv. No. 337-TA-489, Comm'n Op. at 4 (July 23, 2004) (public version) (explaining that “a violation of section 337 may not be found unless supported by ‘reliable, probative, and substantial evidence,’” regardless of whether subsection (d)(2) or (g)(2) applies). Section 337(g)(2) also explicitly incorporates the requirements of subsection (d)(2) among its own requirements. 19 U.S.C. § 1337(g)(2).

Here, three respondents defaulted without appearing, but five other respondents appeared and were terminated based on settlement and consent orders. Therefore, section 337(d)(2) provides the correct legal framework to analyze whether a GEO is an appropriate remedy in this investigation. *See Handbags*, Comm'n Op. at 5 n.3; *Certain Self-Anchoring Beverage Containers*, Inv. No. 337-TA-1092, Comm'n Op. at 15 (July 24, 2019) (public version) (“[W]here a respondent appears and was terminated based on a settlement agreement, section 337(g)(2) does not apply”).

Section 337(d)(2) provides:

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

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

19 U.S.C. § 1337(d)(2). Satisfaction of either of the requirements in subsection (d)(2) will suffice to support issuance of a GEO. *See Fuji Photo Film*, 474 F.3d at 1286. As discussed below, the Commission has determined that both conditions are satisfied, *i.e.*, a GEO is necessary to prevent

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circumvention of limited exclusion orders (“LEOs”) directed to only the Defaulting Respondents, and there is both a pattern of violation of section 337 with respect to products that infringe the Asserted Patents and it is difficult to identify the source of the infringing products.

1. A GEO is Necessary to Prevent Circumvention of an LEO

The Commission has determined that a GEO is necessary to prevent circumvention of an LEO. The record evidence shows numerous internet seller listings on Amazon and eBay as well as generic, unmarked product shipments. *See* Order No. 17 at 67-68 (citing Am. Compl., Ex. 37 (Bayne Decl.) at ¶¶ 4-5 (Exs. A-D); Am. Compl. Exs. 10-12, 15; MSD at Ex. B (Ramos Decl.) at Exs. C, E; Declaration of Thai-Hoa X. Nguyen, Esq. in Support of Complainants’ Motion for Summary Determination (“Nguyen Decl.”) (Mar. 7, 2019) at ¶¶ 4-6); *see also Certain Toner Cartridges and Components Thereof*, Inv. No. 337-TA-918, Comm’n Op. at 6 (Oct. 1, 2015) (“*Toner Cartridges*”). Further, the distribution networks that the Defaulting Respondents use for selling and importing the infringing products are not clear. *Id.* For example, the evidence shows that Complainants attempted to place an order with Calux, but the order was fulfilled by Dakon. *See* Order No. 17 at 67 (citing Am. Compl., Ex. 37 (Bayne Decl.), ¶¶ 4-5 (Exs. A-D)). Thus, there is a high likelihood that an LEO directed to only the Defaulting Respondents would be ineffective from its inception, as it would immediately be circumvented through Internet operations, masking of identities and product sources, and use of unmarked, generic, or reseller-branded packaging.

Further, the record evidence demonstrates that the Defaulting Respondents can sell or route the infringing water filters through other internet sellers into the United States such that the product sources are masked. Comp. Br. at 14 (citing MSD at Ex. B (Ramos Decl.) ¶ 7 at Ex. C (Alibaba.com LLC 002) (listing Calux (d/b/a “caluxwell”) and Angkua Environmental (d/b/a “aqfeel”) address in China); Amended Complaint at Ex. 28 (displaying Dakon’s location in

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China)). The evidence further shows that the sources of infringing water filers can be obscured by using a freight company to ship the products in a generic cardboard shipping box without any branding or identification of the producer or the source. *Id.* at 15; *see, e.g.*, MSD at Ex. H (NPL_00001011) (U.S. Customs and Border Protection (“CBP”) form did not identify actual source); MSD at Ex. I (Aston Decl.) ¶¶ 9, 12. The Commission has previously found the practices of “facilitating circumvention through Internet operations; masking of identities and product sources; and use of unmarked, generic, and/or reseller-branded packaging” would all indicate a likelihood of circumvention. *See Toner Cartridges*, Comm’n Op. at 6. Based on the evidence of record, there is a high likelihood that an LEO would be circumvented, and thus, a GEO is necessary.

Finally, the conclusion that an LEO would likely be circumvented is reinforced by the fact that nearly all of the foreign sellers identified in the record offer their products for sale through online commerce sites such as Amazon.com, eBay.com, and Alibaba.com. *See* Order No. 17 at 4, 44; MSD at Ex. B (Ramos Decl.) at Exs. B, C (Alibaba LLC 002), E (Alibaba LLC 004); Nguyen Decl. at ¶¶ 4-8 (Amazon inventories held in names of third parties); MSD at Ex. D (Adair Decl.) at Ex. C). The Commission has previously recognized that such online sales indicate a likelihood that an LEO would be circumvented by virtue of the ease with which sellers can mask or change their identities. *See Toner Cartridges*, Comm’n Op. at 7 (“[T]he evidence shows that many of the Retailer Respondents . . . in this investigation conduct their operations via one or more Internet websites, thereby facilitating circumvention of an exclusion order limited to products of named respondents.”); *Certain Loom Kits for Creating Linked Articles*, Inv. No. 337-TA-923, Comm’n Op. at 12 (June 26, 2015) (public version) (“*Loom Kits*”) (“If the Commission entered an exclusion order limited to the products of the defaulting respondents, the defaulting respondents could

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circumvent the order via anonymous sales on the Internet.”); *Cases for Portable Elec. Devices*, Comm’n Op. at 9–10, 15–18 (“[T]he respondents can easily circumvent an LEO by selling infringing goods online.”).

Accordingly, based on the record before it, the Commission has determined that a GEO barring entry of articles is necessary to prevent circumvention of an exclusion order limited to the Defaulting Respondents. Thus, section 337(d)(2)(A) is satisfied.

2. There is a Pattern of Violation of Section 337 with Respect to the Asserted Patents and the Sources of the Infringing Products are Difficult to Identify

The Commission has determined that there is a pattern of violation of section 337. Complainants presented substantial, reliable, and probative evidence demonstrating that certain water filters, which are marketed as replacements and appear to infringe, are offered for sale by numerous foreign entities over the internet, with suspect product listings numbering into the thousands. *See* Order No. 17 at 68-71 (citing MSD at 98-105, 108-110; MSD at Ex. I (Aston Decl.) at ¶¶ 6-8, 11, 15; IA Response at 39; MSD at Ex. D (Adair Decl.) at ¶¶ 7-8, Exs. B-C; MSD at Ex. C (Conlin Depo.) at Exs. 1-3, 7; MSD at Ex. A (Beaman Aff.) at ¶¶ 54-55; MSD at Ex. J). The thousands of online product listings for replacement water filters supports the conclusion that there is a pattern of violation with respect to the products that infringe the Asserted Patents. *Id.*

The Commission has further determined that the sources of the infringing products are difficult to identify based on record evidence. *See* Order No. 17 at 71-72 (citing MSD at 99, 111; MSD at Ex. H; IA Response at 41; MSD at Ex. I (Aston Decl.) at ¶¶ 9, 12; MSD at Ex. J). For example, the evidence of record shows that domestic sellers on Amazon and eBay operate virtually anonymously by using various pseudonymous names, which can be changed easily and at will, and using listings that provide no information about the real account owner. *See* Order No. 17 at 69-70; Comp. Br. at 17-19 (citing MSD at Ex. D (Adair Decl.) ¶¶ 7-8 at Exs. B-C

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(AMZN0000001-AMZN0000002) (containing product listings by sellers using pseudonymous names); MSD at Ex. C (Conlin Depo.) at Exs. 1-3 (EBAY0000001-EBAY0000003) (same); MSD at Ex. L (Zhibin Depo.) at 68: 18-22; 69: 1-9). In addition, Complainants presented evidence demonstrating that the source of infringing water filters can be obscured by using a freight company to ship the infringing water filters in a generic cardboard shipping box without any branding identifying the producer. Comp. Br. at 15 (citing MSD at Ex. H (NPL_00001011)). Complainants also provided CBP seizure notices that show importers use counterfeit packaging with the name of one Complainant in this investigation but the original source is usually unknown. *Id.* (citing MSD at Ex. I (Aston Decl.) ¶¶ 9, 12).

Accordingly, based on the record before it, the Commission has determined that there is a pattern of violation of section 337 and that the sources of the infringing products are difficult to identify. Thus, the conditions of section 337(d)(2)(B) are satisfied.

B. Cease and Desist Orders as to Two Defaulting Respondents Under Section 337(f) are Appropriate¹

In addition to, or in lieu of, the issuance of an exclusion order, the Commission has

¹ Commissioner Schmidlein does not join section III.B. of the Commission's opinion. Instead, she finds that the requested CDO relief is governed by section 337(g)(1), rather than section 337(f)(1), because each of the Defaulting Respondents satisfy the conditions of subsections (A) through (E) of section 337(g)(1). *See* Order No. 9 (Oct. 3, 2018), *not reviewed*, Notice (Oct. 25, 2018). In prior investigations, Commissioner Schmidlein has explained her view that absent public interest considerations to the contrary the "shall, upon request, issue" language in section 337(g)(1) does not grant the Commission discretion to decline to issue a requested CDO when the conditions of subsections (A) through (E) are satisfied. *See Certain Industrial Automation Systems and Components Thereof Including Control Systems, Controllers, Visualization Hardware, Motion and Motor Control Systems, Networking Equipment, Safety Devices, and Power Supplies*, Inv. No. 337-TA-1074, Comm'n Op., Dissenting Views of Commissioner Schmidlein (April 23, 2019). Consistent with that view, Commissioner Schmidlein finds that the Commission is required to issue the requested CDOs against Angkua Environmental and Calux. No CDO against Dakon is warranted since Complainants are no longer seeking a CDO against that entity. *See* Comp. Br. at 8-11.

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authority to issue a CDO as a remedy for violation of section 337. *See* 19 U.S.C. § 1337(f)(1). The Commission has generally issued a CDO when, with respect to the imported infringing products, a respondent maintains commercially significant inventories in the U.S. or has significant domestic operations that could undercut the remedy provided by an exclusion order. *See, e.g., Table Saws*, Comm’n Op. at 4-6; *Protective Cases*, Comm’n Op. at 28 (citing *Certain Laser Bar Code Scanners and Scan Engines, Components Thereof and Products Containing Same*, Inv. No. 337-TA-551, Comm’n Op. at 22-23 (June 14, 2007)). “A complainant seeking a cease and desist order must demonstrate, based on the record, that this remedy is necessary to address the violation found in the investigation so as to not undercut the relief provided by the exclusion order.” *Table Saws*, Comm’n Op. at 5 (citing *Certain Integrated Repeaters, Switches, Transceivers, and Products Containing Same*, Inv. No. 337-TA-435, Comm’n Op. at 27 (Aug. 16, 2002) (“*Integrated Repeaters*”); H.R. Rep. No. 100-40, at 160 (1987)).

In prior investigations, the Commission has looked to factual allegations and evidence in the record, including the complaint, showing that a defaulting foreign respondent maintains domestic inventories of subject products or engages in domestic activities with respect to the subject products such as evidence of internet sales, sales through online retailers like Amazon.com, and sales receipts. *See, e.g., Certain Digital Photo Frames and Image Display Devices and Components Thereof*, Inv. No. 337-TA-807 (“*Digital Photo Frames*”), Comm’n Op. at 9 (Mar. 27, 2013); *Certain Hand Dryers and Housings for Hand Dryers*, Inv. No. 337-TA-1015, Comm’n Op. at 11 (Oct. 30, 2017) (“*Hand Dryers*”); *Certain Arrowheads with Deploying Blades and Components Thereof and Packaging Therefor*, Inv. No. 337-TA-977, Comm’n Op. at 21-22 (Apr. 28, 2017); *Certain Electric Skin Care Devices, Brushes and Chargers Therefore, and Kits Containing the Same*, Inv. No. 337-TA-959, Comm’n Op. at 31-33 (Feb. 13, 2017)).

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1. Angkua Environmental

The Commission has determined that the record evidence demonstrates that Angkua Environmental maintains commercially significant inventories and engages in business activities in the United States, which could undercut the effectiveness of a GEO. For example, the evidence shows that there are Amazon inventories containing large quantities of Angkua Environmental's infringing water filter products. *See* Nguyen Decl., ¶¶ 5-6 (citing to MSD at Ex. D (Adair Decl.) at Ex. C (indicating nearly 200,000 units are in inventory at Amazon warehouses)); *see also Hand Dryers*, Comm'n Op. at 11 (evidence of product sales fulfilled from domestic Amazon warehouses sufficient to allow for CDO). Further, the evidence demonstrates that Angkua Environmental previously sold for importation hundreds of infringing water filters to a non-respondent entity in Minnesota as well as thousands more to a non-respondent entity in Georgia. *See* Am. Compl., Ex. 11 (Arvig Decl.), ¶¶ 8-13, 19 (describing importation of water filters from Angkua Environmental; and internet advertising and sales by Water Filters Direct LLC d/b/a Tier 1 in Minnesota); Am. Compl., Ex. 11 (Arvig Decl.) at Ex. A (invoices and shipping documents); Am. Compl., Ex. 12 (Sebree Decl.), 11-17, 21, 26 (Angkua Environmental sold for importation thousands of infringing water filters for Brixton Holdings, LLC in Georgia for sale in the U.S.); Am. Compl., Ex. 12 (Sebree Decl.) at Exs. 1-2. There is also evidence that Angkua Environmental completed 103 sales transactions from 2016-2018 through Alibaba.com with delivery in the United States. *See* MSD at Ex. B. (Ramos Decl.) at Ex. E (Alibaba.com 0004). Therefore, based on the record evidence, the Commission has determined to issue a CDO against Angkua Environmental.

2. Calux

The Commission has determined that the record evidence demonstrates that Calux maintains commercially significant inventories and engages in business activities in the United

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States. For example, the evidence shows that Calux previously imported thousands of the infringing water filters for AGA Imports LLC (“AGA”) to sell in the United States. Comp. Br. at 10 (citing Am. Compl., Ex. 10 (Grazi Decl.), ¶¶ 22-23 (describing sales of filters manufactured by Calux, imported by AGA, and advertised by AGA on Amazon.com, Jet.com, Walmart.com and eBay.com)). Further, in April 2018, Calux advertised on Alibaba.com that it had the ability to supply commercial quantities of 20,000 pieces a month of replacement water filters under either Calux’s brand name or an OEM brand name of the purchaser’s choosing. Order No. 17 at 76 (citing Am. Compl., Ex. 25 (advertising replacement water filters with “Supply Ability: 20000 Piece/Pieces per Month ULTRAWF Refrigerator Water Filter” from the “Port: Shenzhen”)). The record evidence further demonstrates that Calux made four sales of commercial quantities of water filters on Alibaba.com in July and August 2018 for delivery to addresses in the United States. *Id.* (citing MSD at Ex. B. (Ramos Decl.) at Ex. E (Alibaba LLC 004) (see sales by “caluxwell” for “refrigerator air filter” sales to both an “MRX STORE” and to a zip code in Texas)). Based on the record evidence, it is reasonable to infer that Calux maintains commercially significant inventories and engages in business activities in the United States. Accordingly, the Commission has determined to issue a CDO against Calux.

3. Dakon

Complainants previously sought a CDO against the third Defaulting Respondent, Dakon, but Complainants’ Remedy Brief does not include a request, evidence, or arguments related to a CDO against Dakon. Compare Comp. Br. at 8-11 to MSD at 117; Am. Compl. at 2-3, 37.² The

² We note that the Federal Circuit has found that the Commission must grant relief against defaulting respondents, subject only to public interest concerns, if all prerequisites of section 337(g)(1) are satisfied. *Laerdal Medical Corp. v. Int’l Trade Comm’n*, 910 F. 3d 1207, 1212 (Fed. Cir. 2018). However, the Federal Circuit in *Laerdal* evaluated defaulting respondents under section 337(g), whereas here, the Commission evaluates the violation under

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Commission finds the absence of a request supported by evidence and arguments in Complainants' Remedy Brief to mean that Complainants are not seeking a CDO against Dakon. The Commission has, therefore, determined not to issue a CDO against Dakon.

C. Entry of the GEO and Two CDOs Is Not Contrary to the Public Interest

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

The record in this investigation contains no evidence that a GEO or the two CDOs would adversely affect the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers. See 19 U.S.C. § 1337(d)(1). The Commission requested submissions from the public with respect to the public interest, but no third party filed a submission in response to the Commission's notice. See 84 Fed. Reg. 45170 (Aug. 28, 2019). In addition, the record shows that Complainants have sufficient capacity to readily replace the infringing products at issue

section 337(d)(2) and (f)(1). The Commission evaluates the GEO here under (d)(2) rather than (g)(2) because the Settled Respondents participated in the investigation. See 19 U.S.C. §§ 1337(d)(2), (g)(1). Further, because Complainants requested a GEO under section 337(d)(2), then under the language of the statute, the requested CDOs are "[i]n addition to ... taking action under subsection (d)" and therefore considered under section 337(f)(1). See 19 U.S.C. § 1337(f)(1). Thus, in this investigation, *Laerdal* does not apply to the Commission's remedy analysis.

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if they are excluded. *See* Comp. Br. at 29-30; *see also* OUII Br. at 17-18; *see also* MSD at 119 (citing Complainants' Statement on the Public Interest, at p. 4-5 (June 8, 2018)).

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

D. A Bond of 100 Percent of Entered Value is Appropriate Due to the Absence of Reliable Pricing Information

During the 60-day period of Presidential review, imported articles otherwise subject to remedial orders are entitled to conditional entry under bond. 19 U.S.C. § 1337(j)(3). The amount of the bond is specified by the Commission and must be an amount sufficient to protect the complainant from any injury during this 60-day period. *Id.*; 19 C.F.R. § 210.50(a)(3). The Commission frequently sets the bond by attempting to eliminate the difference in sales prices between the patented domestic product and the infringing product or alternatively based upon a reasonable royalty. *Certain Microsphere Adhesives, Process For Making Same, and Products Containing Same, Including Self-Stick Repositionable Notes*, Inv. No. 337-TA-366, Comm'n Op. at 24 (Jan. 1996). In cases where the Commission finds that the evidence is either unavailable or the complainant demonstrates that the available evidence is inadequate to base a determination of the appropriate amount of the bond, the Commission has set a 100 percent bond. *See Certain Sortation Systems, Parts Thereof, and Products Containing Same*, Inv. No. 337-TA-460, Comm'n Op. at 21 (Mar. 2003). The complainant bears the burden of establishing the need for a bond and the bond amount. *Certain Rubber Antidegradants, Components Thereof, and Prods. Containing Same*, Inv. No. 337-TA-533, Comm'n Op. at 39-40 (July 21, 2006).

Here, the ALJ, Complainants, and OUII all recommend a bond in the amount of 100 percent. Order No. 17 at 78-80; Comp. Br. at 30; OUII Br. at 18-19. For the following reasons, the Commission agrees that a 100 percent bond is appropriate.

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In this investigation, the Defaulting Respondents provided no discovery. Thus, there is a lack of reliable pricing information. Because of the large number of infringing water filters that are offered for sale at substantially varying prices online, it is not feasible to calculate a price differential or reasonable royalty from that information without additional information. *See* Order No. 17 at 78-80; Comp. Br. at 30; OUII Br. at 18-19. Further, the record as it stands lacks information sufficient to determine whether any particular online product listing is an unreliable outlier such that it should be excluded from an average price differential calculation.

Moreover, the Commission has set a bond of 100 percent in similar circumstances to those of this investigation. *See Loom Kits*, Comm'n Op. at 19 (The Commission set the bond at 100 percent where "the record [] shows that a large number of infringing loom kits are sold on the Internet at different prices," "the defaulting respondents in th[e] investigation provided no discovery, including discovery about pricing," and "[t]he record [] lacks a reliable comparison of the price of the domestic industry products to the price of the infringing products.").

Accordingly, the Commission has determined to set the bond in the amount of 100 percent of the entered value of infringing water filters imported during the period of Presidential review.

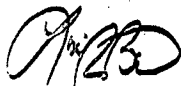
IV. CONCLUSION

The Commission has considered the issues of remedy, the public interest, and bonding and has determined to issue a GEO and CDOs directed to two Defaulting Respondents, Angkua Environmental and Calux. The GEO excludes from entry for consumption into the United States water filters for refrigerators and components thereof that infringe one or more of the asserted claims of the Asserted Patents. The Commission has also determined to set a bond in the amount of 100 percent of the entered value of the infringing water filters for refrigerators and components thereof imported during the period of Presidential review. The Commission has also determined that the public interest considerations of section 337(d) and (f)(1) do not preclude the issuance of

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the remedies for the violation found.

By order of the Commission.

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

Lisa R. Barton
Secretary to the Commission

Issued: November 15, 2019

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, **Claire Comfort, Esq.**, and the following parties as indicated, on **November 15, 2019**.



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

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UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN WATER FILTERS AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1126

**NOTICE OF A COMMISSION DETERMINATION TO REVIEW-IN-PART AN
INITIAL DETERMINATION GRANTING COMPLAINANTS' MOTION FOR
SUMMARY DETERMINATION OF VIOLATION OF SECTION 337 BY THE
DEFAULTING RESPONDENTS, AND, ON REVIEW, TO MODIFY CERTAIN
PORTIONS OF THE INITIAL DETERMINATION; REQUEST FOR WRITTEN
SUBMISSIONS ON REMEDY, BONDING, AND THE PUBLIC INTEREST**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part an initial determination ("ID") (Order No. 17) of the presiding administrative law judge ("ALJ") granting summary determination of violation of section 337 by certain defaulting respondents. The limited purpose of the review is to correct an error in a citation on page 44 and two typos on page 31 of the ID. The Commission requests written submissions on remedy, bonding, and the public interest.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, D.C. 20436, telephone 202-205-3228. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, 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 August 1, 2018, based on a complaint, as amended, filed on behalf of Electrolux Home Products, Inc. of Charlotte, North Carolina, and KX Technologies, LLC of West Haven, Connecticut (collectively, "Complainants"). 83 *Fed. Reg.* 37514 (Aug. 1, 2018). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337") based on the importation into the United States, the sale for importation, and the sale within the

United States after importation of certain water filters and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 8,673,146 (“the ’146 patent”), 8,137,551 (“the ’551 patent”), 9,233,322 (“the ’322 patent”), and 9,901,852 (“the ’852 patent”) (collectively, the “Asserted Patents”). *Id.* The Commission’s notice of investigation names eight respondents. *Id.* The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation.

On October 3, 2018, the ALJ issued an initial determination finding certain respondents in default, specifically, Shenzhen Calux Purification Technology Co., Limited (“Calux”); Jiangsu Angkua Environmental Technical Co., Ltd. (“Angkua Environmental”); and Shenzhen Dakon Purification Tech Co., Ltd. (collectively, “the Defaulting Respondents”). *See* Order No. 9 (Oct. 3, 2018), *not reviewed*, Notice (Oct. 25, 2018). The remaining respondents, specifically, Ningbo Pureza Limited; HongKong Ecoaqua Co., Limited; Ecolife Technologies, Inc.; Ecopure Filter Co., Ltd.; and Crystala Filters LLC (“Settled Respondents”), were terminated from the investigation due to settlement. *See* Order Nos. 14, 15, 16, *not reviewed*, Notice (April 1, 2019).

On February 12, 2019, Complainants filed a motion for summary determination of violation of section 337 by the Defaulting Respondents. Complainants requested a general exclusion order (“GEO”) and cease and desist orders (“CDOs”) against all three Defaulting Respondents. On March 8, 2019, OUII filed a response supporting a finding of a violation as well as the requested remedies of a GEO and CDOs for two of the Defaulting Respondents (Calux and Angkua Environmental).

The ALJ issued the subject ID on July 11, 2019, granting the motion for summary determination and finding a violation of section 337 by the Defaulting Respondents. Specifically, the ID finds that Complainants established infringement of claims 1-3, 6, 7, and 15 of the ’146 patent, claim 49 of the ’551 patent, claims 1-3, 7-9, and 12-15 of the ’322 patent, and claims 1, 4-6, 9-11, 14-18, and 21-31 of the ’852 patent with respect to each Defaulting Respondents’ accused product(s) by substantial, reliable, and probative evidence. The ALJ recommended that the Commission issue a GEO and CDOs against Calux and Angkua Environmental. The ALJ also recommended setting a bond during Presidential review of 100 percent. *Id.* No party petitioned for review of the subject ID.

The Commission has determined to review the subject ID in part for the limited purpose of correcting an error in a citation on page 44 and two typos on page 31 of the ID. *See* ID at 44, 31. The ID’s findings of section 337 violations as to the Defaulting Respondents are based on substantial, reliable, and probative evidence, and they do not require further substantive review. *See* 19 U.S.C. 1337(d)(2). The Commission has determined not to review the remainder of the ID.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party

should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (December 1994). In addition, if Complainants seek a cease and desist order against a respondent, the written submissions should respond to the following requests:

1. Please identify with citations to the record any information regarding commercially significant inventory in the United States as to each respondent against whom a cease and desist order is sought. If Complainants also rely on other significant domestic operations that could undercut the remedy provided by an exclusion order, please identify with citations to the record such information as to each respondent against whom a cease and desist order is sought.
2. In relation to the infringing products, please identify any information in the record, including allegations in the pleadings, that addresses the existence of any domestic inventory, any domestic operations, or any sales-related activity directed at the United States for each respondent against whom a cease and desist order is sought.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist 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.

Complainant and OUII are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the date that the Asserted Patents expire, to provide the HTSUS subheadings under which the accused products are imported, and to supply identification information for all known importers of the products at issue in this investigation.

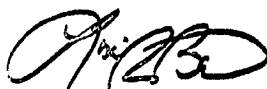
Written submissions and proposed remedial orders must be filed no later than close of business on September 6, 2019. Reply submissions must be filed no later than the close of business on September 13, 2019. Such submissions should address the ALJ's recommended determinations on remedy and bonding made in Order No. 17. 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-1126") in a prominent place on the cover page and/or the first page. (See Handbook on Filing Procedures, https://www.usitc.gov/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 personnel (all contract personnel will sign appropriate nondisclosure agreements), 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: August 23, 2019

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served by hand upon the Commission Investigative Attorney, **Claire Comfort, Esq.**, and the following parties as indicated, on 8/23/2019



Lisa R. Barton, Secretary
U.S. International Trade Commission
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PUBLIC VERSION

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

In the Matter of

**CERTAIN WATER FILTERS AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1126

Order No. 17

INITIAL DETERMINATION

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

And

RECOMMENDED DETERMINATION

On Remedy and Bonding

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I. Background

A. Institution of the Investigation and Procedural History

By publication of a notice in the *Federal Register* on August 1, 2018, pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, the Commission instituted this investigation to determine:

[W]hether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of products identified in paragraph (2) by reason of infringement of one or more of claims 1-3, 6, 7, and 15 of the '146 patent; claim 49 of the '551 patent; claims 1-3, 7-9, and 12-15 of the '322 patent; and claims 1, 4-6, 9-11, 14-18, and 21-31 of the '852 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 C.F.R. 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is "water filter cartridges for refrigerators, including water filter cartridge assemblies and interconnection subassemblies[.]"

83 Fed. Reg. 37514 (Aug. 1, 2018).

The complainants are Electrolux Home Products, Inc. of Charlotte, North Carolina, and KX Technologies, LLC of West Haven, Connecticut. The named respondents are:

1. Shenzhen Calux Purification Technology Co., Limited of Shenzhen, Guangdong, China,
2. Ningbo Pureza Limited of Yinzhou, Ningbo, China,
3. JiangSu Angkua Environmental Technical Co., Ltd. of RuGao (Jiangsu), China,
4. Ecopure Filter Co., Ltd. of Qindao (Qingdao), China,
5. Shenzhen Dakon Purification Tech Co., Ltd. of Shenzhen, Guangdong, China,
6. Hong Kong Ecoaqua Co., Limited of Hong Kong, China,
7. Ecolife Technologies, Inc. of City of Industry, California, and

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8. Crystala Filters LLC of Patterson, New Jersey

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

The target date for completion of this investigation was set at 15.3 months, *i.e.*, November 11, 2019. *See* Order No. 3 at 2 (Aug. 15, 2018). Accordingly, the initial determination on alleged violation of section 337 is due on July 11, 2019.

On August 30, 2018, Electrolux Home Products, Inc. (“Electrolux”), and KX Technologies, LLC (“KXT”) (collectively, “complainants”) filed a motion for an order to show cause why certain respondents that had not responded to complainants’ complaint or discovery requests should not be found in default. Motion Docket No. 1126-4. On September 12, 2018, the administrative law judge issued an order to show cause, ordering, *inter alia*, respondents Shenzhen Calux Purification Technology Co., Limited (“Calux”); JiangSu Angkua Environmental Technical Co., Ltd. (“Angkua Environmental”); and Shenzhen Dakon Purification Tech Co., Ltd. (“Dakon”), to respond by no later than September 27, 2018. *See* Order No. 8. None of those respondents responded to the show cause order. On October 3, 2018, the administrative law judge issued an initial determination finding those respondents (collectively, “defaulting respondents”) in default. Order No. 9 (Oct. 3, 2018), *aff’d*, Notice of the Commission’s Decision Not to Review an Initial Determination Finding Certain Respondents in Default (Oct. 25, 2018).

The remaining respondents (Ecolife Technologies, Inc., Ecopure Filter Co., Ltd., Hong Kong Ecoaqua Co. Limited, Ningbo Pureza Limited, and Crystala Filters LLC) appeared in the investigation. The administrative law judge issued initial determinations terminating these five respondents based on settlement agreements and the entry of consent orders as to each of these respondents. *See* Order Nos. 14-16 (Mar. 6, 2019), *aff’d*, Notice of a Commission Decision Not

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to Review an Initial Determinations Granting Joint Motions for Partial Termination of the Investigation as to Certain Respondents Based on Consent Order Stipulations and Proposed Consent Orders; Issuance of Consent Orders (Apr. 1, 2019).

On November 1, 2018, a *Markman* hearing was held in this investigation. *See* Order No. 6 (Sept. 4, 2018) (Procedural Schedule); *Markman* Tr. 1-84 (Nov. 1, 2018). Issuance of a *Markman* order was not required.

On February 6, 2019, complainants filed a notice under 19 C.F.R. § 210.16(c)(2) that they intend to file a motion for summary determination of violations by defaulting respondents and entry of a general exclusion order. *See* EDIS Doc. ID No. 666169.

On February 12, 2019, complainants filed a motion for (1) summary determination that the defaulting respondents have sold for importation into the United States, imported into the United States, or sold after importation certain water filters and components thereof (collectively, “accused products”), that infringe one or more of four U.S. patents owned by KX Technologies, LLC and licensed exclusively to Electrolux North American, Inc., and, particularly, infringe U.S. Patent Nos. 8,673,146 (‘146 patent), 8,137,551 (‘551 patent), 9,233,322 (‘322 patent), and 9,901,852 (‘852 patent) (collectively, “asserted patents”) in violation of section 337 of the Tariff Act as amended, 19 U.S.C. § 1337; (2) summary determination that complainants satisfy the domestic industry requirement with respect to the asserted patents; and (3) a recommended determination for entry of a general exclusion order, cease and desist orders directed to the defaulting respondents, and a bond set at 100 percent of entered value during the Presidential review period. *See* Motion Docket. No. 1126-18 at 1-2.

On March 8, 2019, the Staff filed a response supporting the motion for a finding of a violation, and supporting the requested remedy of a general exclusion order and cease and desist

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orders for at least certain defaulting respondents. *See* Staff at 2-3.

B. The Parties

1. Complainants Electrolux Home Products, Inc.; and KX Technologies, LLC

Complainant KXT is the sole owner of the asserted patents. *See* Compl., Exs. 5-8 (certified assignment records). KXT is a Delaware company with its principal place of business in West Haven, Connecticut. Compl., ¶ 14. KXT is primarily in the business of designing and producing water filtration systems, including the ULTRAWF, WF3CB, and “[]” water filter products that complainants are relying upon to show a domestic industry. *See id.*, ¶ 20.

Complainant Electrolux is the exclusive licensee to the asserted patents. *See* Compl., Ex. 24. Electrolux is a Delaware corporation with its headquarters in Charlotte, North Carolina. Compl., ¶ 9. Electrolux is a subsidiary of Electrolux North America, Inc., which is itself a subsidiary of AB Electrolux, a major manufacturer of home appliances, including the Frigidaire® line of refrigerators. Compl., ¶¶ 10-11.

Electrolux purchases the water filters that come preinstalled in certain models of its refrigerator products as well as the replacement filters that it also sells to the consumers of these products from KXT. *See id.*, ¶ 4. Electrolux also designs, develops, and tests certain models of refrigerators and their associated ice and water filtration units at a domestic facility in Anderson, South Carolina. *See id.*, ¶¶ 11-13.

2. Respondents

Respondents Calux and Dakon are both Chinese corporations with their principal place of business in Guangdong, China. *See* Compl., ¶¶ 21-22, 33-36. Respondent Angkua Environmental is a Chinese corporation with its principal place of business in Rugao, China.

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See id., ¶ 29-30.

The defaulting respondents all sell for importation, import, and/or sell after importation into the United States replacement refrigerator water filters, including the accused products which are offered and sold for use in the selected models of Electrolux-manufactured refrigerators designed for the ULTRAWF and WF3CB domestic industry filters. *See* Mem. at 8-9. The accused water filter products that Angkua Environmental sells for importation, imports, and/or sells after importation are known as Tier1 RWF1180 and Eternawater EWRF1022. *Id.* at 9. The accused water filter products that Calux sells for importation, imports, and/or sells after importation are known as Mist by Clearwater CWMF011 and Purneat Frigidaire ULTRAWF WF3CB. *Id.* The accused products that Dakon sells for importation, imports, and/or sells after importation is also known as Purneat Frigidaire ULTRAWF WF3CB. *Id.* However, there is evidence that the defaulting respondents sell essentially the same accused replacement water filter products under many different labels or brand names. *See* Compl., Ex. 25.

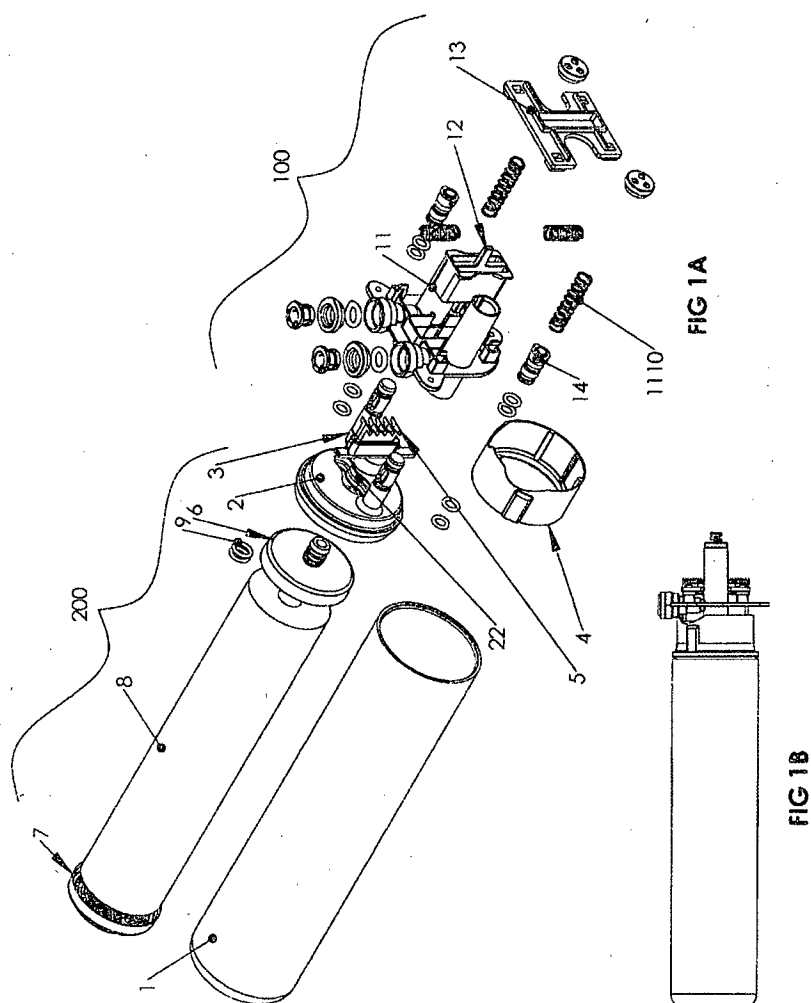
C. Technological Background

The asserted patents are related patents in the same patent family. *See* Am. Compl., Ex. 1 ('146 patent), Ex. 2 ('551 patent), Ex. 3 ('322 patent), Ex. 4 ('852 patent). The asserted patents are all entitled "Push Filter with Floating Key Lock." *See id.* The asserted patents all claim their earliest priority to U.S. Patent Application No. 12/188,816, which was filed on August 8, 2008. *See* Am. Compl., Ex. 2 ('551 patent). The first patent in the family issued on March 20, 2012. *See id.*

The asserted patents are directed to a filter assembly with a push-activated lock and push-activated release mechanism (*i.e.*, a push-push lock). *See* Am. Compl., Ex. 2 ('551 patent) at col. 1, lns. 3-21 ("the filter housing may be attached to, and removed from, the mount by a

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push-actuated release”). The disclosed filter housing assembly has a removable, detachable filter cartridge and a separate filter base. *See id.* at col. 9, lns. 57-59. The filter cartridge is composed of a filter head with an attached filter manifold and a filter housing (which encloses filter media such as a carbon block filter). *See id.* at col. 9, ln. 59 – col. 10, ln. 30. Figures 1A and 1B provide an exploded top view and a side plan view of a preferred embodiment of the filter assembly of the patented invention. *See id.* at col. 9, lns. 46-47, col. 10, lns. 28-30.

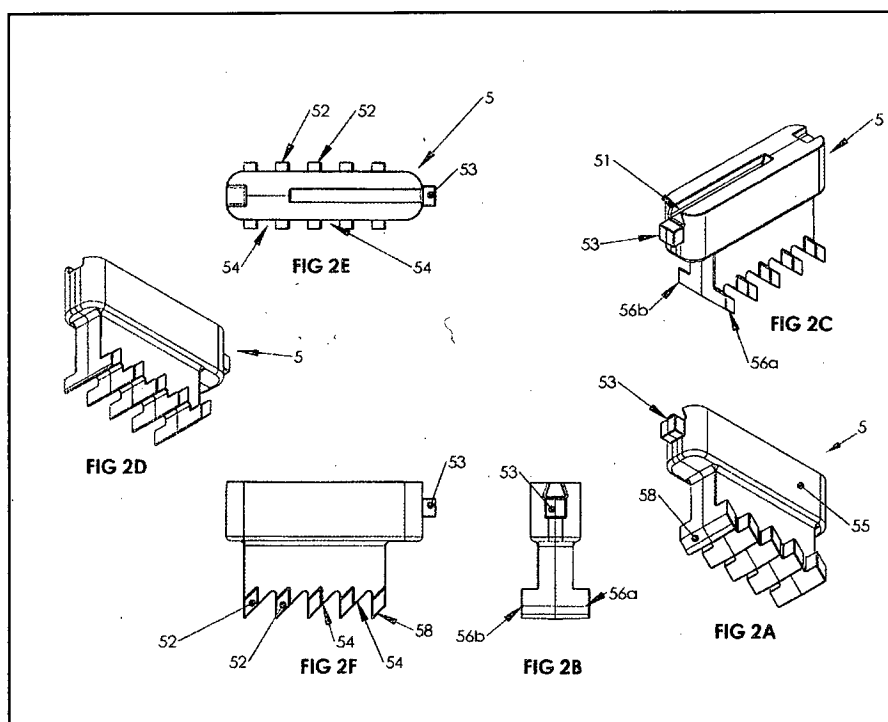


'551 Patent at Fig. 1

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The '551 patent indicates that the disclosed assembly is intended for use "as a filter for a refrigerator having a water dispenser and/or an ice dispenser." *Id.* at col. 2, lns. 2-17, col. 17, lns. 39-41 ("It is envisioned that the preferred embodiment of the present invention would be disposed in a refrigerator, most likely within the door.").

A unique filter key that mates with a floating lock on the filter base is connected to the filter manifold on the filter assembly. *See id.* at col. 6, lns. 39-54. The patent describes designs for the filter key which can "be used simultaneously as a lock and as an identifier for particular filter attributes." *Am. Compl., Ex. 2 ('551 patent)* at col. 1, lns. 7-8; Fig. 2. As disclosed, the filter key preferably has a plurality of fingers that mate and interlock with corresponding drive keys on the floating lock of the filter base. *Id.* at col. 12, lns. 11-63. The following Figures 2A-2E provide an illustration of a preferred embodiment for the filter key shown from multiple different views or angles.



'551 Patent at Fig. 2

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Each of the fingers of the disclosed filter key includes a slanted face for sliding contact with complementary angled features on the drive keys of the floating lock. *Id.* at col. 12, ln. 64 – col. 13, ln. 1. Upon the insertion of the filter cartridge, the sliding contact of the filter key's fingers will transversely shift the floating lock off of its initial position so that the fingers of the filter key are inserted within gaps between the drive keys of the floating lock. *Id.* at col. 13, lns.1-5. The automatic locking mechanism is specifically designed to provide facile removal and replacement of the filter cartridge in the filter base. *Id.* at col. 7, lns. 20-22.

D. The Products at Issue

1. The Accused Products

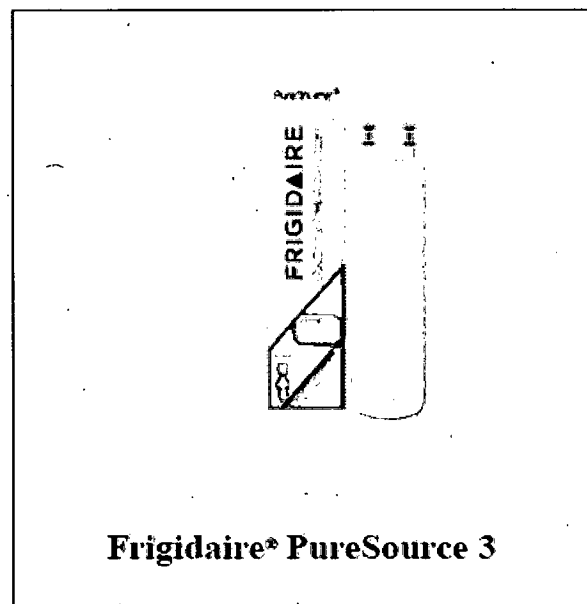
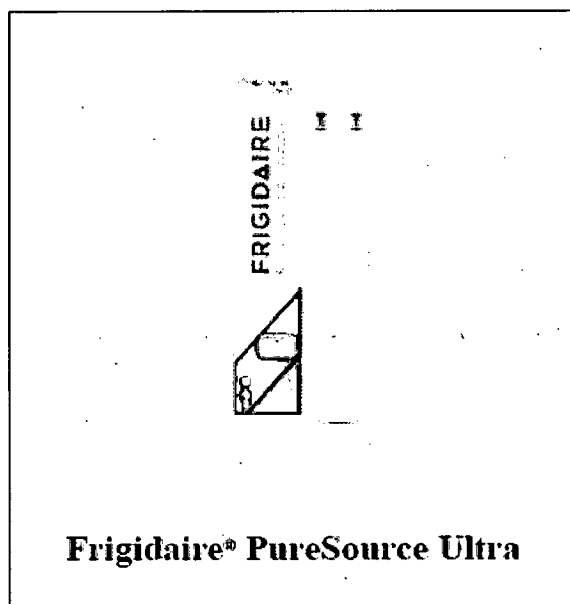
Below is a table that provides a summary of the defaulting respondents' accused products:

DEFAULTING RESPONDENTS	REPRESENTATIVE ACCUSED PRODUCT(S)
Shenzen Calux Purification Technology Co., Limited	Purneat Frigidaire ULTRA WF3CB
	Filter One RF22
	Clearwater Filters a/k/a Mist by Clearwater CWMF011
JiangSu Angkua Environmental Technical Co., Ltd.	Eternawater EWRF1002
	Tier1 RWF1180
Shenzhen Dakon Purification Tech Co., Ltd.	Purneat Frigidaire ULTRAWF WF3CB

See Mem. at 9.

2. The Domestic Industry Products

Complainants' asserted patents are practiced by the domestic industry filters ("DI Filters"), which are comprised of two production models and one model under development. The production models are the ULTRAWF ("PureSource Ultra" or "Ultra") and WF3CB ("PureSource III"). Below are photos of the DI Filters sold under Electrolux's Frigidaire® PureSource Ultra and PureSource 3 brands:



See Am. Compl., Ex. 19C (Barrillon Decl.), ¶ 6. Despite the different brand names and model numbers, the ULTRAWF and WF3CB filters are configured in the same way, with the differences relating mainly to the housings' length, and the characteristics of the carbon block within the housing. *See Am. Compl., Ex. 19C (Barrillon Decl.), ¶ 7.*

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See Mem. at 14-16; Mem. Ex. A (Beaman Aff.), ¶ 53; Mem. Ex. A (Beaman Aff.) at Ex. G (I.] Claim Charts).

II. Jurisdiction

No party has contested the Commission's *in rem* jurisdiction over the accused products. Evidence of specific instances of importation of the accused products were provided in the amended complaint and accompanying exhibits. See Am. Compl., Ex. 25 at 1; Am. Compl., Ex. 10 (AGA Decl.); Am. Compl., Ex. 14 and Ex. 37 (Bayne Decl.), ¶¶ 4-7, 9; Am. Compl., Ex. 12 (Brixton Holdings Decl.), ¶ 26; *see also* Am. Compl., Ex. 11 (Tier1 Decl.), ¶¶ 5-7, 9-11, and 16 (Ex. A). Additionally, evidence of specific instances of importation of the accused products is discussed in the importation section of this initial determination. Accordingly, it is found that the Commission has *in rem* jurisdiction over the accused products.

As indicated in the Commission's notice of investigation, discussed above, this investigation involves the importation of products alleged to infringe United States patents in a manner that violates section 337 of the Tariff Act, as amended. No party has contested the Commission's jurisdiction over the subject matter of this investigation. It is found that the Commission has subject matter jurisdiction over this investigation.

No party has contested the Commission's personal jurisdiction over it. In particular, the respondents have all been given notice of this investigation at least through service of the complaint and notice of investigation. It is therefore found that the Commission has personal jurisdiction over all parties.

III. General Principles of Applicable Law

A. Summary Determination

Section 337 prohibits “[t]he importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of articles that (i) infringe a valid and enforceable United States patent” 19 U.S.C.

§ 1337(a)(1)(B). A complainant need only prove importation of a single accused product to satisfy the importation element. *See Certain Trolley Wheel Assemblies*, Inv. No. 337-TA-161, Comm’n Op. at 7-8, USITC Pub. No. 1605 (Nov. 1984).

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

B. Claim Construction

Claim construction begins with the plain language of the claim.¹ Claims should be given their ordinary and customary meaning as understood by a person of ordinary skill in the art, viewing the claim terms in the context of the entire patent.² *Phillips v. AWH Corp.*, 415 F.3d

¹ Only those claim terms that are in controversy need to be construed, and only to the extent necessary to resolve the controversy. *Vanderlande Indus. Nederland BV v. Int’l Trade Comm.*, 366 F.3d 1311, 1323 (Fed. Cir. 2004); *Vivid Tech., Inc. v. American Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999).

² Factors that may be considered when determining the level of ordinary skill in the art include:

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1303, 1312-13 (Fed. Cir. 2005), *cert. denied*, 546 U.S. 1170 (2006).

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

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

In cases in which the meaning of a claim term is uncertain, the specification usually is the best guide to the meaning of the term. *Phillips*, 415 F.3d at 1315. As a general rule, the particular examples or embodiments discussed in the specification are not to be read into the

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

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

C. Infringement

1. Direct Infringement

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

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

If the accused product does not literally infringe the patent claim, infringement might be

³ Each patent claim element or limitation is considered material and essential. *London v. Carson Pirie Scott & Co.*, 946 F.2d 1534, 1538 (Fed. Cir. 1991). If an accused device lacks a limitation of an independent claim, the device cannot infringe a dependent claim. See *Wahpeton Canvas Co. v. Frontier, Inc.*, 870 F.2d 1546, 1552 n.9 (Fed. Cir. 1989).

found under the doctrine of equivalents. “Under this doctrine, a product or process that does not literally infringe upon the express terms of a patent claim may nonetheless be found to infringe if there is ‘equivalence’ between the elements of the accused product or process and the claimed elements of the patented invention.” *Warner-Jenkinson Co., Inc. v. Hilton Davis Chemical Co.*, 520 U.S. 17, 21 (1997) (citing *Graver Tank & Mfg. Co. v. Linde Air Products Co.*, 339 U.S. 605, 609 (1950)). “The determination of equivalence should be applied as an objective inquiry on an element-by-element basis.”⁴ *Id.* at 40.

“An element in the accused product is equivalent to a claim limitation if the differences between the two are insubstantial. The analysis focuses on whether the element in the accused device ‘performs substantially the same function in substantially the same way to obtain the same result’ as the claim limitation.” *AquaTex Indus. v. Techniche Solutions*, 419 F.3d 1374, 1382 (Fed. Cir. 2005) (quoting *Graver Tank*, 339 U.S. at 608); accord *Absolute Software*, 659 F.3d at 1139-40.⁵

2. Indirect Infringement

a. Induced Infringement

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

⁴ “Infringement, whether literal or under the doctrine of equivalents, is a question of fact.” *Absolute Software, Inc. v. Stealth Signal, Inc.*, 659 F.3d 1121, 1130 (Fed. Cir. 2011).

⁵ “The known interchangeability of substitutes for an element of a patent is one of the express objective factors noted by *Graver Tank* as bearing upon whether the accused device is substantially the same as the patented invention. Independent experimentation by the alleged infringer would not always reflect upon the objective question whether a person skilled in the art would have known of the interchangeability between two elements, but in many cases it would likely be probative of such knowledge.” *Warner-Jenkinson*, 520 U.S. at 36.

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“To prevail on a claim of induced infringement, in addition to inducement by the defendant, the patentee must also show that the asserted patent was directly infringed.” *Epcon Gas Sys. v. Bauer Compressors, Inc.*, 279 F.3d 1022, 1033 (Fed. Cir. 2002). Further, “[s]ection 271(b) covers active inducement of infringement, which typically includes acts that intentionally cause, urge, encourage, or aid another to directly infringe a patent.” *Arris Group v. British Telecomm. PLC*, 639 F.3d 1368, 1379 n.13 (Fed. Cir. 2011). The Supreme Court held that “induced infringement under § 271(b) requires knowledge that the induced acts constitute patent infringement.” *Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 766 (2011) (“*Global-Tech*”). The Court further held: “[g]iven the long history of willful blindness⁶ and its wide acceptance in the Federal Judiciary, we can see no reason why the doctrine should not apply in civil lawsuits for induced patent infringement under 35 U.S.C. § 271(b).” *Global-Tech*, 563 U.S. at 768 (footnote omitted).

b. Contributory Infringement

Section 271(c) of the Patent Act provides: “Whoever offers to sell or sells within the United States or imports into the United States a component of a patented machine, manufacture, combination or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or

⁶ “While the Courts of Appeals articulate the doctrine of willful blindness in slightly different ways, all appear to agree on two basic requirements: (1) the defendant must subjectively believe that there is a high probability that a fact exists and (2) the defendant must take deliberate actions to avoid learning of that fact. We think these requirements give willful blindness an appropriately limited scope that surpasses recklessness and negligence.” *Global-Tech*, 563 U.S. at 769.

commodity of commerce suitable for substantial noninfringing use, shall be liable as a contributory infringer. 35 U.S.C. § 271(c).

Section 271(c) “covers both contributory infringement of system claims and method claims.”⁷ *Arris*, 639 F.3d at 1376 (footnotes omitted). To hold a component supplier liable for contributory infringement, a patent holder must show, *inter alia*, that (a) the supplier’s product was used to commit acts of direct infringement; (b) the product’s use constituted a material part of the invention; (c) the supplier knew its product was especially made or especially adapted for use in an infringement” of the patent; and (d) the product is not a staple article or commodity of commerce suitable for substantial noninfringing use. *Id.*

D. Domestic Industry

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

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

(A) significant investment in plant and equipment;

(B) significant employment of labor or capital; or

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

⁷ “Claims which recite a ‘system,’ ‘apparatus,’ ‘combination,’ or the like are all analytically similar in the sense that their claim limitations include elements rather than method steps. All such claims can be contributorily infringed by a component supplier.” *Arris*, 639 F.3d at 1376 n.8.

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19 U.S.C. § 1337(a)(3).

These statutory requirements consist of an economic prong (which requires certain activities)⁸ and a technical prong (which requires that these activities relate to the intellectual property being protected). *Certain Stringed Musical Instruments and Components Thereof*, Inv. No. 337-TA-586, Comm’n Op. at 13 (May 16, 2008) (“*Stringed Musical Instruments*”). The burden is on the complainant to show by a preponderance of the evidence that the domestic industry requirement is satisfied. *Certain Multimedia Display and Navigation Devices and Systems, Components Thereof, and Products Containing Same*, Inv. No. 337-TA-694, Comm’n Op. at 5 (July 22, 2011) (“*Navigation Devices*”).

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

⁸ The Commission practice is usually to assess the facts relating to the economic prong at the time that the complaint was filed. See *Certain Coaxial Cable Connectors and Components Thereof and Products Containing Same*, Inv. No. 337-TA-560, Comm’n Op. at 39 n.17 (Apr. 14, 2010) (“We note that only activities that occurred before the filing of a complaint with the Commission are relevant to whether a domestic industry exists or is in the process of being established under sections 337(a)(2)-(3).”) (citing *Bally/Midway Mfg. Co. v. U.S. Int’l Trade Comm’n*, 714 F.2d 1117, 1121 (Fed. Cir. 1983)). In some cases, however, the Commission will consider later developments in the alleged industry, such as “when a significant and unusual development occurred after the complaint has been filed.” See *Certain Video Game Systems and Controllers*, Inv. No. 337-TA-743, Comm’n Op., at 5-6 (Jan. 20, 2012) (“[I]n appropriate situations based on the specific facts and circumstances of an investigation, the Commission may consider activities and investments beyond the filing of the complaint.”).

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requirement that the activities of engineering, research and development, and licensing are actually related to the asserted intellectual property right.” *Stringed Musical Instruments*, Comm’n Op. at 13.

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

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

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E. Default

“In any motion requesting the entry of default or the termination of the investigation with respect to the last remaining respondent in the investigation, the complainant shall declare whether it is seeking a general exclusion order.” 19 C.F.R. § 210.16(b)(4)(2). “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). After a respondent has been found in default by the Commission, “[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(c).

IV. Summary Determination

Complainants request the following:

- (1) an initial determination that those Respondents who have been found in default in this Investigation (“Defaulting Respondents”) have violated Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, through their importation into the United States, sale for importation, and/or sale within the United States after importation of certain water filters and components thereof (collectively, “Accused Products”), that infringe one or more of four U.S. patents owned by KX Technologies, LLC and licensed exclusively to Electrolux North American, Inc., and, more particularly, of Accused Products that infringe one or more of the following thirty-two claims (independent claims are shown in bold):

U.S. Patent No.	Asserted Claims
8,673,146	1, 2, 3, 6, 7
8,137,551	49
9,233,322	1, 2, 3, 7, 8, 9, 12, 13, 14, 15
9,901,852	14 , 15, 16, 17, 18, 21 , 22, 23, 24, 25 , 26, 27 , 28 , 29, 30, 31

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- (2) an initial determination that Complainants have satisfied both the technical and economic prongs of the domestic industry requirement of 19 U.S.C. § 1337(a)(3)[].

Mot. at 1-2.⁹

The Staff argues:

The Staff supports Complainants' Motion for a summary determination of violation of Section 337 based on the evidence and declarations submitted, and because the Staff has not identified any material facts in dispute. In the Staff's view, Complainants have made the showing necessary to establish that each of the Defaulting Respondents has violated Section 337. Specifically, Complainants have set forth substantial, reliable, and probative evidence that:

- (1) with respect to the Accused Products, the Defaulting Respondents have each imported into the United States, sold for importation, or sold within the United States after importation;
- (2) the Accused Products infringe claims 1-3 and 6-7 of the '146 Patent, claim 49 of the '551 Patent, claims 1-3, 7-9, and 12-15 of the '322 Patent, and claims 14-18 and 21-31 of the '852 Patent; and
- (3) a domestic industry exists with respect to products protected by the Asserted Patents.

The Staff knows of no reason to dispute the material facts that Complainants have set forth in their Motion and the declarations submitted therewith. Accordingly, Complainants motion for summary determination of violation of Section 337 by the Defaulting Respondents should be granted.

Staff Resp. at 2.¹⁰

A. Importation

Section 337 prohibits "[t]he importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of articles that – (i) infringe a valid and enforceable United States patent" 19 U.S.C.

§ 1337(a)(1)(B). A complainant "need only prove importation of a single accused product to

⁹ Emphasis in original unless noted otherwise.

¹⁰ Citations omitted unless noted otherwise.

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satisfy the importation element.” *Certain Purple Protective Gloves*, Inv. No. 337-TA-500, Order No. 17 at 5 (Sept. 23, 2004); *Certain Trolley Wheel Assemblies*, Inv. No. 337-TA-161, Views of the Commission at 7-8 (Aug. 29, 1984), USITC Pub. No. 1605 (Nov. 1984), *available as* 1984 WL 951859 (importation of product sample sufficient to establish violation, even though sample “had no commercial value and had not been sold in the United States”). The evidence shows a specific instance of importation and/or a sale for importation of the accused water filters by each of the defaulting respondents.

Complainants argue:

There is substantial, reliable, and probative evidence establishing that the Defaulting Respondents have violated Section 337 through their importation into the United States, sale for importation, and/or sale within the United States after importation of the Accused Products that infringe the Asserted Claims of the Asserted Patents. There is also substantial, reliable, and probative evidence establishing that non-Respondent importers and sellers have violated Section 337 while operating from abroad and/or behind the protection of anonymous seller IDs on online sales platforms such as Amazon and eBay.

Mem. at 40.

The Staff argues: “The evidence shows a specific instance of importation and/or a sale for importation of the accused water filters by each of the Defaulting Respondents.” Staff Resp. at 17.

For Calux, a declaration from Albert Grazi of AGA Imports LLC d/b/a Clearwater Filters (AGA) and attached shipping invoices show that “Clearwater Filters a/k/a Mist by Clearwater,” which are sold as replacements for the Frigidaire® ULTRAWF filter cartridge, were sent directly from Calux in Shenzhen, China to AGA in Lakewood, NJ and/or its importer BINO Products LLC in New York, NY. *See* Am. Compl., Ex. 10 (AGA Decl.), ¶¶ 12-14, 17, and 22 (AGA006-

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009 (shipment invoices)).

For Dakon, evidence shows that KXT's counsel made a purchase through Alibaba.com from Michelle Cao of respondent Calux and then was sent, by respondent Dakon, two water filters labeled with the brand name "Purneat," to be used as ULTRAWF/WF3CB replacement filter cartridges. *See* Am. Compl., Ex. 37 (Bayne Decl.), ¶¶ 4-5, Exs. A-D. The Dakon-supplied "Purneat" water filters were sent from Shenzhen, China to Wallingford, CT. *See id.*; *see also* Am. Compl., Ex. 14 (Receipts) (shipping invoice).

For Angkua Environmental, a declaration from Kerry Sebree of Brixton Holdings LLC d/b/a Eternawater and attached shipping invoices show that "Eternawater" filters, sold as replacements for the Frigidaire® ULTRAWF filter cartridge, were sent from respondent Angkua Environmental in RuGao, China to Brixton Holdings LLC in Suwanee, GA. *See* Am. Compl., Ex. 12 (Brixton Holdings Decl.), ¶¶ 13, 16, 21, 26, Exs. 1-2. A declaration from Jamin Arvig on behalf of Water Filters Direct LLC and U.S. Water Filters, Inc. d/b/a Tier1 (Tier1), and attached shipping invoices also show that replacement water filters for the Frigidaire® WF3CB and ULTRAWF filter cartridge were sent by respondent Angkua Environmental in RuGao, China to Tier1 in Zumbrota, MN. *See* Am. Compl., Ex. 11 (Tier1 Decl.), ¶¶ 9-13, 16-17, Ex. A.

Thus, the administrative law judge has determined that the evidence satisfies the importation element by specific instances of importation and/or a sale for importation of the accused water filters by each of the defaulting respondents.

B. Infringement

Complainants argue:

The Defaulting Respondents and the Non-Respondent Sellers all sell identical infringing water filters as replacement for the DI Products. Complainants and their expert, Dr. Joseph J. Beaman, Sc.D., professor of mechanical

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engineering at the University of Texas, evaluated each of the Accused Products and determined that they infringe each of the Asserted Patents literally and/or under the doctrine of equivalents.

Mem. at 26. It is argued:

There is substantial, reliable, and probative evidence establishing that the Accused Products of the Defaulting Respondents and Non-Respondent Sellers infringe each Asserted Claim of each Asserted Patent literally and/or under the doctrine of equivalents. Dr. Beaman evaluated each of the Accused Products as compared to the Asserted Claims of the Asserted Patents and concluded that each and every claim was infringed literally and/or under the doctrine of equivalents. The analysis below is intended to be read in conjunction with the claim charts and analysis prepared by Dr. Beaman, which further illustrate these concepts in comparison to the actual Accused Products.

Mem. at 28.¹¹

The Staff argues: “In the Staff’s view, substantial evidence shows that the Accused Products of the Defaulting Respondents infringe claims 1-3 and 6-7 of the ’146 Patent, claims 1-3, 7-9, and 12-15 of the ’322 Patent, claims 14-18 and 21-31 of the ’852 Patent, and claim 49 of the ’551 Patent.” Staff Resp. at 18-19.

Complainants allege infringement of four patents in the same patent family: the ‘146 patent, the ‘551 patent, the ‘322 patent, and the ‘852 patent, all titled “Push Filter with Floating Key Lock.” See Am. Compl., Ex. 1 (‘146 patent); Ex. 2 (‘551 patent); Ex. 3 (‘322 patent); Ex. 4 (‘852 patent). The asserted patents all claim their earliest priority to U.S. Patent Application No. 12/188,816, filed on August 8, 2008. See Am. Compl., Ex. 2 (‘551 patent). In particular, complainants assert claims 1-3 and 6-7 of the ‘146 patent, claims 1-3, 7-9, and 12-15 of the ‘322 patent, claims 14-18 and 21-31 of the ‘852 patent, and claim 49 of the ‘551 patent against accused products of defaulting respondents. See Mem. at 6. The asserted claims of the ‘146

¹¹ Footnotes omitted unless noted otherwise.

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patent, '322 patent, and '852 patent are directed to a filter cartridge or a filter housing assembly. Claim 49 of the '551 patent is directed to a method for attaching a filter housing assembly to a filter base.

Complainants and their expert, Dr. Joseph J. Beaman, Sc.D., professor of mechanical engineering at the University of Texas, evaluated each of the accused products and determined that they infringe each of the asserted patents literally and/or under the doctrine of equivalents.

Dr. Beaman is an endowed professor and former chair of the Department of Mechanical Engineering at the University of Texas at Austin in Austin, Texas. *See* Mem. Ex. A (Beaman Aff.), ¶ 1. Dr. Beaman has forty years of experience as a professor in mechanical engineering at the University of Texas at Austin. Dr. Beaman received Bachelor and Master of Science degrees in Mechanical Engineering from the University of Texas at Austin in 1972 and 1975, respectively. He received a Doctor of Science in Mechanical Engineering in 1979 from Massachusetts Institute of Technology in Cambridge, Massachusetts. Dr. Beaman is a registered professional engineer in Texas. He has received numerous awards and commendations. He was named a member of the National Academy of Engineers in 2013, and received the Distinguished Centennial Engineering Research Award at the University of Texas at Austin in 2018. *See id.*

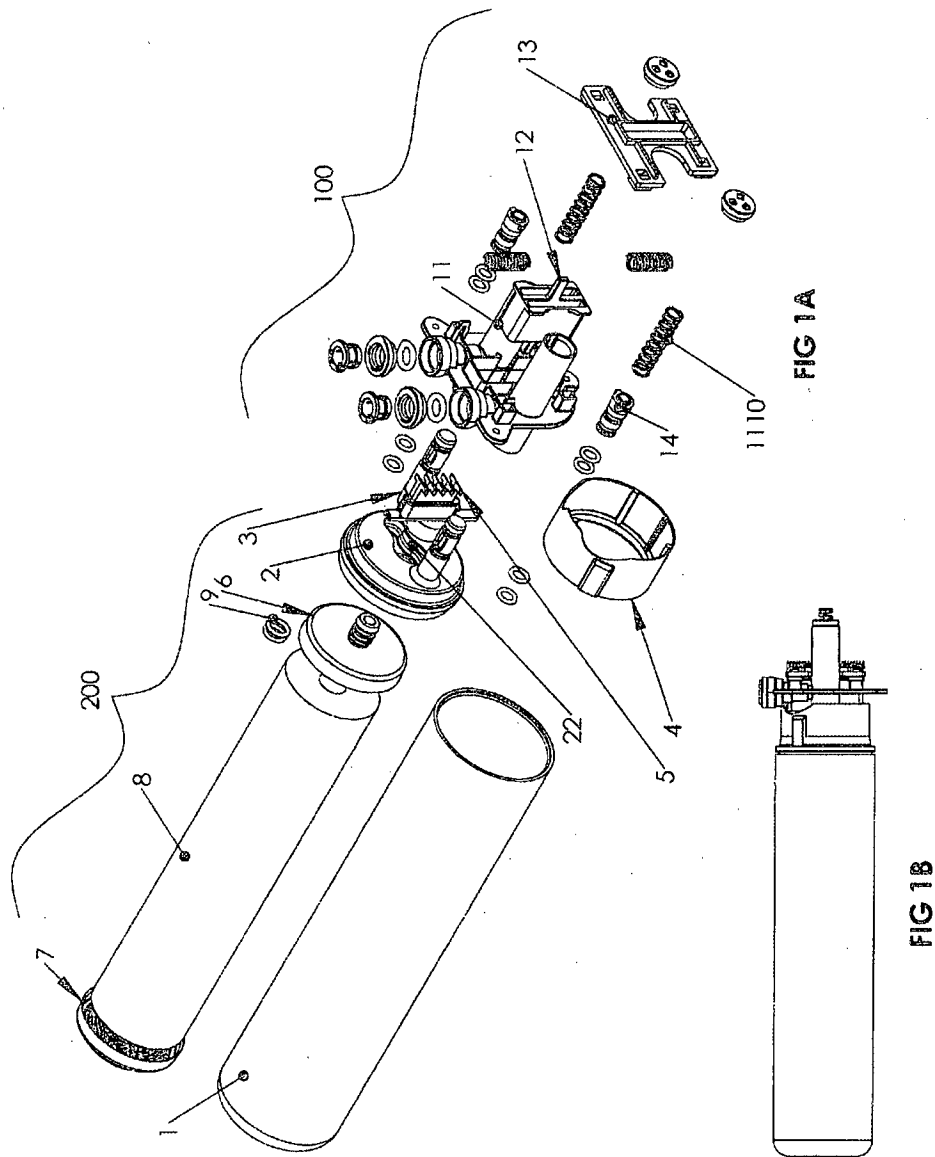
For each of the defaulting respondents and each of the accused products, complainants and Dr. Beaman provided limitation-by-limitation infringement claim charts that address all thirty-two of the asserted claims of the asserted patents. *See id.* at Exs. C-F. The infringement claim charts attached to the "Beaman Affidavit" are organized as follows: (1) Exhibit C includes all '551 patent claim charts for each of the defaulting respondents and accused products; (2) Exhibit D includes all '146 patent claim charts for each of the defaulting respondents and accused products; (3) Exhibit E includes all '322 patent claim charts for each of the defaulting

respondents and accused products; and (4) Exhibit F includes all '852 patent claim charts for each of the defaulting respondents and accused products.

1. Asserted Patents

As noted above, the asserted patents are related patents in the same patent family. *See* Am. Compl., Ex. 1 ('146 patent), Ex. 2 ('551 patent), Ex. 3 ('322 patent), Ex. 4 ('852 patent). The asserted patents are all entitled "Push Filter with Floating Key Lock." *See id.* The asserted patents all claim their earliest priority to U.S. Patent Application No. 12/188,816, which was filed on August 8, 2008. *See* Am. Compl., Ex. 2 ('551 patent). The first patent in the family issued on March 20, 2012. *See id.*

The asserted patents are directed to a filter assembly with a push-activated lock and push-activated release mechanism (*i.e.*, a push-push lock). *See* Am. Compl., Ex. 2 ('551 patent) at col. 1, lns. 3-21 ("the filter housing may be attached to, and removed from, the mount by a push-actuated release"). The disclosed filter housing assembly has a removable, detachable filter cartridge and a separate filter base. *See id.* at col. 9, lns. 57-59. The filter cartridge is composed of a filter head with an attached filter manifold and a filter housing (which encloses filter media such as a carbon block filter). *See id.* at col. 9, ln. 59 – col. 10, ln. 30. Figures 1A and 1B provide an exploded top view and a side plan view of a preferred embodiment of the filter assembly of the patented invention. *See id.* at col. 9, lns. 46-47, col. 10, lns. 28-30.

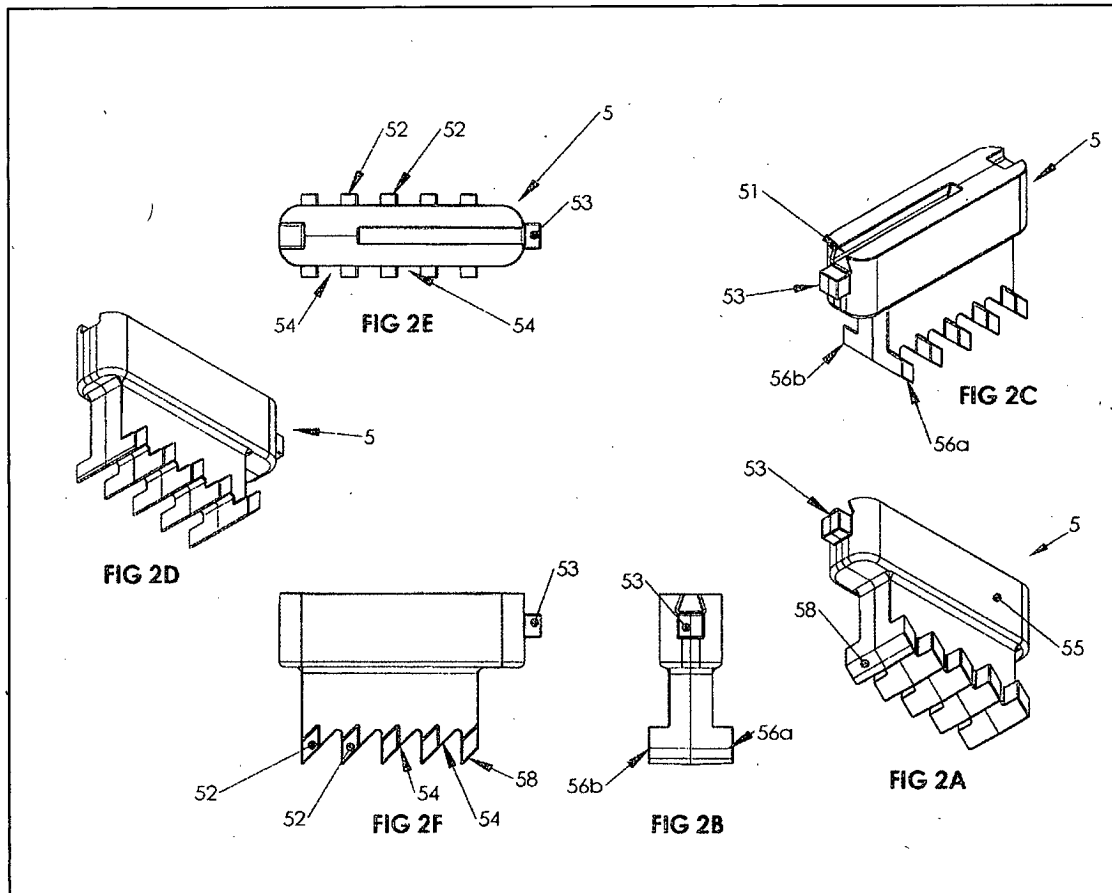


'551 Patent at Fig. 1

The '551 patent instructs that the disclosed assembly is intended for use "as a filter for a refrigerator having a water dispenser and/or an ice dispenser." *Id.* at col. 2, lns. 2-17, col. 17, lns. 39-41 ("It is envisioned that the preferred embodiment of the present invention would be disposed in a refrigerator, most likely within the door.").

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A unique filter key that mates with a floating lock on the filter base is connected to the filter manifold on the filter assembly. *See id.* at col. 6, lns. 39-54. The patent describes designs for the filter key which can “be used simultaneously as a lock and as an identifier for particular filter attributes.” Am. Compl., Ex. 2 (‘551 patent) at col. 1, lns. 7-8; Fig. 2. As disclosed, the filter key preferably has a plurality of fingers that mate and interlock with corresponding drive keys on the floating lock of the filter base. *Id.* at col. 12, lns. 11-63. The following figures 2A-2E provides an illustration of a preferred embodiment for the filter key shown from multiple different views or angles.



'551 Patent at Fig. 2

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Each of the fingers of the disclosed filter key includes a slanted face for sliding contact with complementary angled features on the drive keys of the floating lock. *Id.* at col. 12, ln. 64 – col. 13, ln. 1. Upon the insertion of the filter cartridge, the sliding contact of the filter key's fingers will transversely shift the floating lock off of its initial position so that the fingers of the filter key are inserted within gaps between the drive keys of the floating lock. *Id.* at col. 13, lns.1-5. The automatic locking mechanism is specifically designed to provide for facile removal and replacement of the filter cartridge in the filter base. *Id.* at col. 7, lns. 20-22.

As discussed above, the thirty-two patent claims that are presently at issue in this investigation are the following: claims 1-3 and 6-7 of the '146 patent; claim 49 of the '551 patent; claims 1-3, 7-9, and 12-15 of the '322 patent; and claims 14-18 and 21-31 of the '852 patent.

The asserted claims of the '146 patent, '322 patent, and '852 patent are directed to a filter cartridge or a filter housing assembly. Claim 49 of the '551 patent is directed to a method for attaching a filter housing assembly to a filter base.

2. A Person of Ordinary Skill in the Art

Neither the complainants nor the Staff offered any arguments concerning the technical qualifications of a person of ordinary skill in the art at the time of the claimed inventions. Nonetheless, the administrative law judge has determined that a person of ordinary skill in the art at the time of the claimed inventions would have had (1) a mechanical engineering degree or an equivalent education; and (2) two to three years of experience in industry with regard to fluid devices or fluid handling apparatus. *See Markman* Tr. 49 (“We’ve all seem to have come to terms with a person having ordinary skill in the art having a mechanical engineering degree,

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having experience in industry with regard to fluid devices or fluid handling apparatus.”).

3. Claim Construction

Complainants, the settled respondents, along with the Staff, filed a joint claim construction chart regarding certain disputed terms from claims of the asserted patents. As noted, a *Markman* hearing was held on November 1, 2018.

The parties agreed to the following claim constructions:

extending laterally from said top surface
‘146 patent claim 1 ‘322 patent claims 1, 12 ‘852 patent claim 14
extending sideways from the top surface

on each longitudinal side [of said filter key] extending laterally from said top surface
‘322 patent claims 1, 12 ‘852 patent claim 14
located on both lengthwise sides [of the filter key] extending sideways from the top surface

winged extensions
‘146 patent claim 1 ‘322 patent claims 1, 12, 14, 15 ‘852 patent claims 14, 16, 17 ‘551 patent claim 49
extensions outward from the width of the body of the protrusion, finger, attachment finger, or lateral finger

See Mem. at 26-27; *see also* Staff Resp. at 10.

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The disputed terms are provided in chart form below:

a plurality of spaced protrusions or fingers	
'146 patent claim 1 '322 patent claims 1, 12 '852 patent claim 14	
Complainants' Construction	Settled Respondents' and Staff's Construction
Plain and ordinary meaning. No construction necessary	multiple gap-separated projections

laterally facing opposing side faces	
'852 patent claims 25, 28	
Complainants' Construction	Settled Respondents' and Staff's Construction
opposing surfaces oriented in the same direction as the filter key's shortest sides	opposing flat surfaces oriented in the same direction as the filter key's shortest sides

lateral fingers [of filter key]	
'551 patent claim 49	
Complainants' Construction	Settled Respondents' and Staff's Construction
Plain and ordinary meaning. No construction necessary	multiple sideways gap-separated projections

slanted or angled face(s)	
'146 patent claim 1 '322 patent claims 1, 12 '852 patent claims 16, 21, 27	
Complainants' Construction	Settled Respondents' and Staff's Construction
surface(s), each of which is slanted or angled	flat surface(s), each of which is slanted or angled

See Mem. at 26-27; *see also* Staff Resp. at 10.

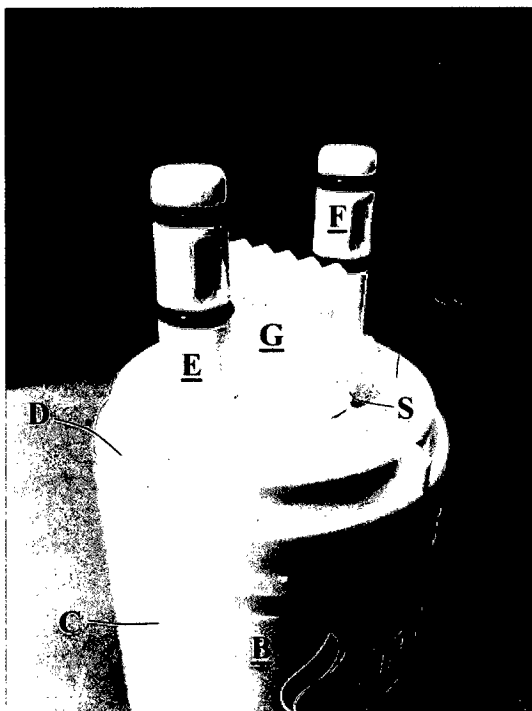
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For infringement analysis (discussed below in the infringement sections), Dr. Beamon considered all claim constructions including those for the disputed claim terms. *See* Mem. at 28 (“In the analysis that follows, infringement can be established under any party’s constructions, both literally and under the doctrine of equivalents.”); Staff Resp. at 10-11 (“Irrespective of which of these proposed constructions is adopted for each of the disputed claim terms, the Accused Products and the domestic industry products all satisfy the relevant claim limitations.” (citing Mem. Ex. A (Beamon Aff.) (applying both constructions in the alternative with no difference in outcome))); Mem. Ex. A (Beamon Aff.), ¶ 25 (“I have been instructed to refer to the claim constructions where agreed upon by the parties, and to consider all parties’ claim constructions where agreement has not been reached.”).

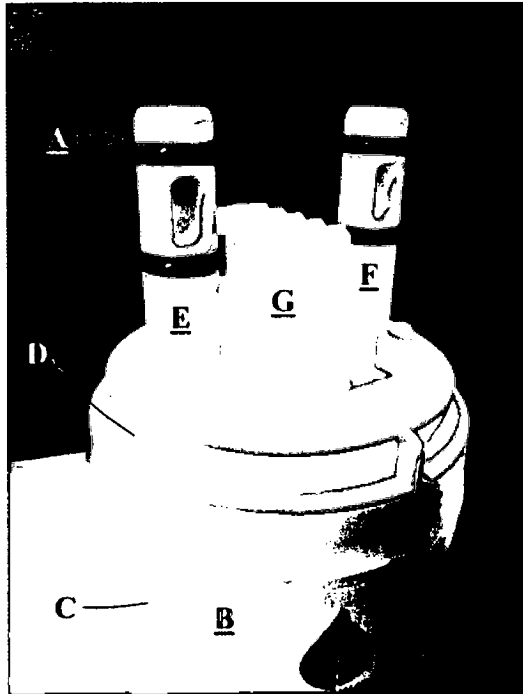
4. Accused Products

Below are photographs of each of the accused products:

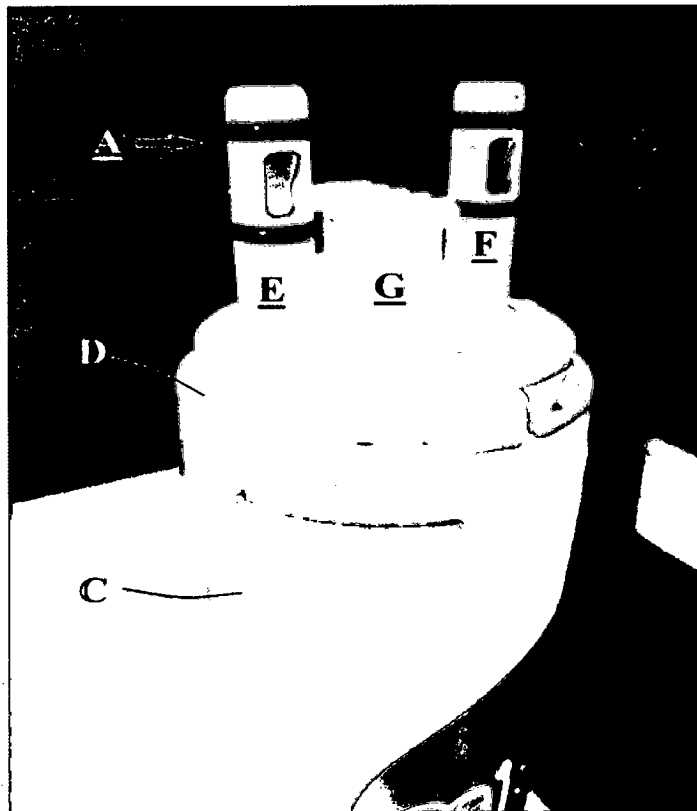
**Tier 1 RWF1180
(Angkua Environmental)**



**Eternawater EWRF1022
(Angkua Environmental)**



**Mist by Clearwater
CWMF011 (Calux)**



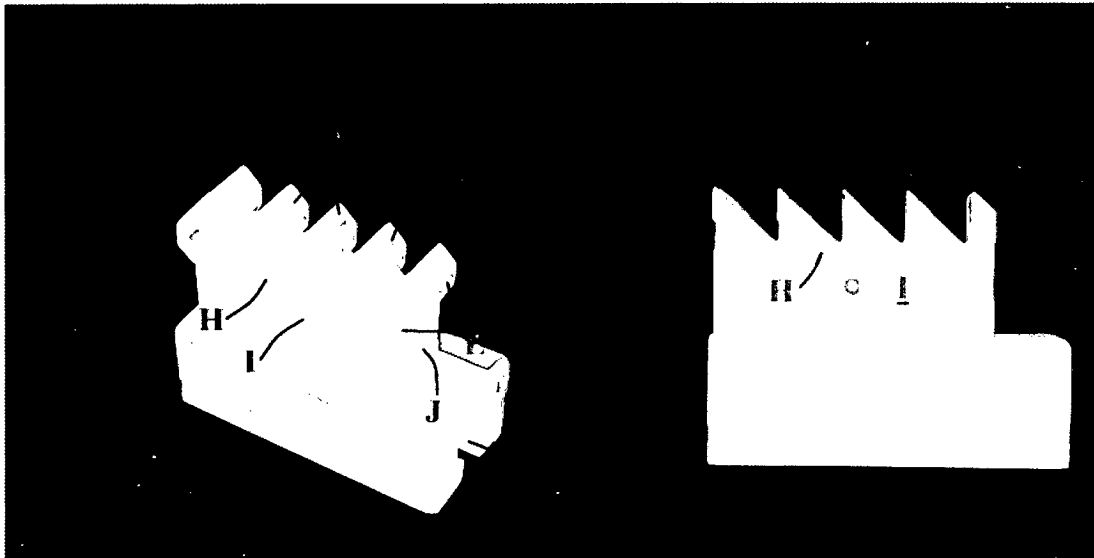
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**Purneat Frigidaire
ULTRAUF WF3CB
(Calux and Dakon)**



See Mem. Ex. A (Beaman Aff.) at Ex. C ('551 patent claim charts).

In each of the accused products, the filter key located on the filter housing has the following design:



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Filter Key

See id., ¶ 34 (explaining the accused products “all contain identical filter key structure, which is a direct copy of a ‘multi-finger’ embodiment of a filter key taught by the asserted patents. These products are geometrically identical to what is taught by the asserted claims and are identical to the complainants’ Frigidaire® ULTRA WF/WF3CB products that practice the asserted patents.”).

5. Infringement of the ‘146 Patent

Complainants argue that the accused products of the defaulting respondents and non-respondent sellers each infringe claims 1-3, 6, and 7 of the ‘146 patent pursuant to 35 U.S.C. § 271(a) literally and under the doctrine of equivalents. *See* Mem. Ex. A (Beaman Aff.) at Ex. D (‘146 patent claim charts).

a. Literal Infringement of the ‘146 Patent

Asserted claims 1-3 and 6-7 of the ‘146 patent are all apparatus claims that are directed to a filter housing assembly. *See* Am. Compl., Ex. 1 (‘146 patent) at claims 1-3, 6-7. The complainants provided detailed claim charts demonstrating the infringement by these accused products. *See* Mem. Ex. A (Beaman Aff.) at Ex. D (‘146 patent claim charts). The administrative law judge has determined the evidence establishes that claims 1-3 and 6-7 of the ‘146 patent are literally infringed by the accused products of the defaulting respondents.

b. Infringement of the ‘146 Patent Under the Doctrine of Equivalents

The ‘146 patent includes asserted claims 1-3, 6, and 7. Complainants note that applicant submitted arguments in an October 4, 2012 preliminary amendment to distinguish claim 1 over the cited prior art of Koslow (U.S. Patent No. 5,700,371), stating that Koslow does not teach or disclose a filter key with a plurality of spaced protrusions or fingers. *See* Mem. at 34. There

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were no claim narrowing amendments presented for dependent claims 2, 3, 6, and 7.

Claim 1 of the '146 patent includes a filter key located on the top portion of the filter housing having a plurality of spaced protrusions or fingers extending laterally from the top surface, where the fingers include winged extensions having slanted or angled faces for mating attachment. *See* Am. Compl., Ex. 1 ('146 patent) at col. 18, lns. 20-26. These limitations read directly on the accused products that each have a plurality of spaced protrusions or fingers, and allow for the application of the doctrine of equivalents under the function-way-result test and insubstantial differences test for other relevant limitations of this claim with respect to the terms, *inter alia*, “longitudinal sides,” “lateral sides,” “extending laterally from said top surface,” “winged extensions,” and “slanted or angled faces.” *See* Mem. Ex. A (Beaman Aff.), ¶37.

The dependent claims are entitled to the application of the doctrine of equivalents. For example, claim 2 provides for fingers having a diamond shaped cross-section. The diamond shaped cross-section provides for an embodiment where the shape of the finger lends itself to shifting the floating lock, and seating within a drive key. Fingers having curved features (*e.g.*, oval cross-section) that simply round-out a coarser diamond shaped cross-section would shift the floating lock and seat within the drive keys in the same manner, thus, performing the same function, in the same way, to produce the same result. *See* Mem. at 35.

Furthermore, claim 3 provides for snap fit, friction fit, welding, or bonding the filter key to the filter housing, and each of the accused products includes a filter key which is attached by snap fit or friction fit to the respective filter housing. Claims 6 and 7 are directly infringed for all accused designs, and therefore also under any application of the doctrine of equivalents. *Id.*

Therefore, the administrative law judge has determined the evidence establishes that claims 1-3 and 6-7 of the '146 patent are also infringed by the accused products under the

doctrine of equivalents.

6. Infringement of the '852 Patent

Complainants argue that the accused products of the defaulting respondents and non-respondent sellers each infringe claims 14-18, and 21-31 of the '852 patent pursuant to 35 U.S.C. § 271(a) literally and under the doctrine of equivalents. *See* Mem. Ex. A (Beaman Aff.) at Ex. F ('852 patent claim charts).

a. Literal Infringement of the '852 Patent

Asserted claims 14-18 and 21-31 of the '852 patent are all apparatus claims directed to either a filter housing assembly, a filter cartridge, or a filter key. *See* Am. Compl., Ex. 4 ('852 patent) at col. 18, ln. 55 – col. 19, ln. 18; col. 19, ln. 64 – col. 21, ln. 9. The complainants provided detailed claim charts demonstrating the infringement by these accused products. *See* Mem. Ex. A (Beaman Aff.) at Ex. F ('852 patent claim charts). The administrative law judge has determined the evidence establishes that claims 14-18 and 21-31 of the '852 patent are literally infringed by the accused products of the defaulting respondents.

b. Infringement of the '852 Patent Under the Doctrine of Equivalents

The '852 patent includes asserted claims 14-18, and 21-31. Complainants argue that in an August 30, 2016 preliminary amendment, applicant added new claims 26-28 to be prosecuted to define an attachment structure for the filter key. *See* Mem. at 36. Complainants assert these claims were added to include the attachment structure, and that the claims were not added to overcome any cited prior art.

In an interview with the examiner on October 24, 2017, the applicant proposed adding new claims (originally numbered 29-42) to the application. The proposed claims were

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submitted, “to provide additional protection for different aspects of the invention.” *See id.*

Furthermore, in a December 27, 2017 amendment, applicant amended originally numbered claim 29 (issued claim 21) and originally numbered claim 35 (issued claim 25) to more clearly delineate the direction of the filter housing axis (extending in an axial direction along the filter housing). *Id.* There were no other amendments to these claims, and the limitation for the filter key in each independent claim was allowed without amendment. The filter key limitation presented in each of these claims is entitled to the full-scope of the doctrine of equivalents.

The applicant amended the preamble of originally numbered dependent claims 40-42 to state their dependence upon the filter key of originally numbered claim 39. The applicant further submitted a terminal disclaimer. *Id.*

Claim 14 of the ‘852 patent includes a filter key “having a plurality of spaced protrusions or fingers on each longitudinal side of said filter key extending laterally from said top surface and having winged extensions.” *See* Am. Compl., Ex. 4 (‘852 patent) at col 18, lns. 64-66. These limitations read directly on the accused products that each have a plurality of spaced protrusions or fingers, and further allows for the application of the doctrine of equivalents under the FWR test and insubstantial differences test for other relevant limitations of this claim with respect to the terms, *inter alia*, “longitudinal sides,” “lateral sides,” “extending laterally from said top surface,” “winged extensions,” and “slanted or angled faces.” *See* Mem. Ex. A (Beaman Aff.), ¶ 41. Dependent claims 15-18 are entitled to the application of the doctrine of equivalents.

The doctrine of equivalents allows for these limitations to read on a filter key having a laterally or sideways extending finger or protrusion. The function performed by having a finger extend laterally or sideways from said top surface is to shift a floating lock drive key, which a finger of the accused products extending laterally performs, and based on the geometry of the

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finger/winged extension of the accused products, the floating lock will be shifted by the finger/winged extension in the same way, producing the same result. *See* Mem. Ex. A (Beaman Aff.), ¶¶ 39, 48.

The terms “winged extensions” and “slanted or angled faces” are not limited solely to literal infringement, and the elements of the accused products, represented by “winged extensions” and/or “slanted or angled faces,” necessarily perform the same function, in the same way as required by the patent claims.

With respect to claims 21 and 25 of the ‘852 patent, as noted above, the applicant amended originally numbered claim 29 (issued claim 21) and originally numbered claim 35 (issued claim 25) to more clearly delineate the direction of the filter housing axis (extending in an axial direction along the filter housing). *See* Mem. at 38. There were no other amendments to these claims. The relevant limitations of these claims are entitled to the application of the doctrine of equivalents.

Claim 21 includes the limitations:

a filter key located on or connected to the filter housing and having a top surface, longitudinal sides, and lateral sides shorter than the longitudinal sides, the filter key having a protrusion extending in a direction parallel to the filter key lateral sides, wherein the protrusion includes on one side a slanted or angled face angled with respect to the filter housing axis, and on an opposing side a face having a substantially straight edge parallel to the filter housing axis;

See Am. Compl., Ex. 4 (‘852 patent) at col. 20, lns 5-11. Claim 25 includes the limitations:

a filter key located on or connected to the filter housing for mating attachment to a filter base or manifold, the filter key having a top surface, longitudinal sides, and lateral sides shorter than the longitudinal sides, the filter key having an attachment finger extending in a direction parallel to the filter key lateral sides, wherein the attachment finger includes laterally facing opposing side faces, wherein one opposing side face forms a first angle with the filter housing axis and the other opposing side face forms a second angle with the filter housing axis, such that the first angle and the second angle are not equal.

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See id. at col. 20, lns. 31-42.

These limitations were allowed without a claim narrowing amendment, and are entitled to the application of the doctrine of equivalents. *See* Mem. at 39. The claims are applicable to all the accused products.

Complainants further argue that the term “lateral sides shorter than the longitudinal sides” identifies a side of the filter key that is in the plane of direction of an attachment finger. *See* Mem. at 39. Even if a portion of the filter key has a geometrically square configuration (as opposed to a rectangular configuration), the directional attributes of a “lateral direction” and “longitudinal direction” are applicable. The fact that the lateral side of a square is equal to a longitudinal side of a square does not alter the function-way-result of the filter key. This is so because the function of the filter key remains to secure the filter housing to the filter base, and the assignments of the sides of the filter key used to define the directionality of the attachment finger(s) are consistent with the location of the finger(s) in relation to the filter key. In this regard, the doctrine of equivalents remains applicable to this claim limitation. *See id.*

Both asserted claims include a description on the geometry of the finger. *See* Am. Compl., Ex. 4 (‘852 patent) at col. 20, lns 5-11; col. 20, lns. 31-42. In both instances, this asymmetry is equivalent to the shape of the fingers (winged extensions) of the accused products. The asymmetry of the accused products’ finger designs (whether under complainants’ construction or respondents’ construction) requires the same function of the finger, locking to the floating lock, in substantially the same way, shifting the floating lock under a camming action, to produce the same result, a locked filter housing to a filter base. *See* Mem. at 39-40. As complainants assert, the same argument applies to dependent claims 22-24 and 26.

Claims 27 and 28 are directed to a filter key, and share the filter key limitations of

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claims 21 and 25, respectively. *See, e.g.*, Mem. Ex. A (Beaman Aff.) at Ex. F ('852 patent claim charts) at 13-17 (Claim 21), 21-25 (Claim 25), 26-34 (Claims 27 and 28). These limitations were allowed without a claim narrowing amendment and are entitled to the application of the doctrine of equivalents. The claims are applicable to all accused products. Therefore, the administrative law judge has determined the evidence establishes that claims 14-18 and 21-31 of the '852 patent are also infringed by the accused products under the doctrine of equivalents. *See, e.g.*, Mem. Ex. A (Beaman Aff.) at Ex. F ('852 patent claim charts) at 35-37 (Claims 29-31: Angkua Environmental), 108-10 (Claims 29-31: Calux), 181-83 (Claims 29-31: Dakon).

7. Infringement of the '322 Patent

Complainants argue that the accused products of defaulting respondents and non-respondent sellers each infringe claims 1-3, 7-9, and 12-15 of the '322 patent pursuant to 35 U.S.C. § 271(a) literally and under the doctrine of equivalents. *See* Mem. Ex. A (Beaman Aff.) at Ex. E ('322 patent claim charts).

a. Literal Infringement of the '322 Patent

Asserted claims 1-3, 7-9, and 12-15 of the '322 patent are all apparatus claims that are directed to a filter housing assembly. *See* Am. Compl., Ex. 3 ('322 patent) at col. 16, lns. 24 – 39; col. 16, ln. 61 – col. 17, ln. 2; col. 17, lns. 15 – 37. Dr. Beaman has provided detailed claim charts to show that every limitation of asserted claims 1-3, 7-9, and 12-15 of the '322 patent is present in each of the accused products. *See* Mem. Ex. A (Beaman Aff.) at Ex. E ('322 patent claim charts).

Claim 1 of the '322 patent includes a filter key located on the top portion of the filter housing and having spaced protrusions or fingers on each longitudinal side extending laterally from the top surface, where the fingers include winged extensions having slanted or angled faces.

On the other (bottom) side of the filter key, a groove receives an elongated protrusion extending from the top surface of the filter housing. *See* Mem. Ex. A (Beaman Aff.), ¶ 40. These limitations read directly on the accused products that each have a plurality of spaced protrusions or fingers, and further allows for the application of the doctrine of equivalents under the FWR test and insubstantial differences test for other relevant limitations of this claim with respect to the terms, *inter alia*, “longitudinal sides,” “lateral sides,” “extending laterally from said top surface,” “winged extensions,” and “slanted or angled faces” as explained further below. *Id.* The same argument applies to independent claim 12. *Id.*, ¶ 41.

The detailed claim charts further demonstrate the infringement of the ‘322 patent by the accused products. *See id.* at Ex. E. Accordingly, the administrative law judge has determined the evidence establishes that claims 1-3, 7-9, and 12-15 of the ‘852 patent are literally infringed by the accused products of the defaulting respondents.

b. Infringement of the ‘322 Patent Under the Doctrine of Equivalents

The ‘322 patent includes asserted claims 1-3, 7-9, and 12-15. These claims were allowed without any claim narrowing amendments. A terminal disclaimer was submitted for the allowance of these claims. *See* Mem. at 32. Complainants argue that the terms discussed above in connection with literal infringement have exactly the same meaning when applied to the accused products and would present equivalents as well. *Id.* For example, the directional terms (“longitudinal sides,” “lateral sides” “extending laterally from said top surface”) have equivalent application to the accused products, and their directional attributes can be applied to the geometric designs of other multi-finger filter keys. *Id.* at 32-33.

These terms provide directionality, assigning a lateral direction for the direction of the

finger, and longitudinal direction perpendicular to the lateral direction. The term “extending laterally from said top surface” has the finger extend in a lateral direction sideways from said top surface. *Id.* The doctrine of equivalents allows for these limitations to read on a filter key having a laterally or sideways extending finger or protrusion. The function performed by having a finger extend laterally or sideways from said top surface is to shift a floating lock drive key, which a finger of the accused products extending laterally performs, and based on the geometry of the finger/winged extension of the accused products, the floating lock will be shifted by the finger/winged extension in the same way, producing the exact same result. *See* Mem., Ex A (Beaman Aff.), ¶¶ 39, 48.

The terms “winged extensions” and “slanted or angled faces” are not limited solely to literal infringement, and the elements of the accused products, represented by “winged extensions” and/or “slanted or angled faces,” necessarily perform the same function, in the same way as required by the patent claims. Therefore, the administrative law judge has determined that the evidence establishes that claims 1-3, 7-9, and 12-15 of the ‘322 patent are infringed by the accused products under the doctrine of equivalents.

8. Indirect Infringement of the ‘551 Patent

Complainants argue that defaulting respondents were aware of the ‘551 patent, and intended for their actions to result in a third-party infringing method claim 49 of the ‘551 patent. *See* Mem. at 29. The Staff notes that complainants only appear to allege inducement under section 271(b) and not contributory infringement under Section 271(c) of the Patent Act. *See* Staff Resp. at 24 n8. The Staff states that there is substantial evidence that the defaulting respondents have induced infringement of asserted claim 49 of the ‘551 patent. *See* Staff Resp. at 24; *see also* Mem. Ex. A (Beaman Aff.) at Ex. C (‘551 patent claim charts).

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The Staff argues that there is clear evidence in the record that claim 49 of the ‘551 patent is being directly infringed by the customers (or end users) who install the accused products in their refrigerators. *See, e.g.*, Staff Resp. at 25; *ACCO Brands, Inc. v. ABA Locks Mfrs. Co.*, 501 F.3d 1307, 1313 (Fed. Cir. 2007) (for direct infringement, patentee “must either point to specific instances of direct infringement or show that the accused device necessarily infringes the patent in suit”); *see also Vita-Mix Corp. v. Basic Holding Inc.*, 581 F.3d 1317, 1326 (Fed. Cir. 2009) (direct infringement of a method claim may be proven by circumstantial evidence); *Moleculon Research Corp. v. CBS, Inc.*, 793 F.2d 1261, 1272 (Fed. Cir. 1986) (same).

The Staff argues that in addition to an underlying act of direct infringement, a claim for induced infringement under 35 U.S.C. § 271(b) also requires that the accused infringer must have (1) knowledge of or willful blindness to the existence of the patent, and (2) specific intent to induce infringement. *See* Staff Resp. at 25-26; *see also Global-Tech*, 563 U.S. at 768. The specific intent required to induce infringement may be proven by circumstantial evidence and may be inferred from all the circumstances. *See Commil USA LLC v. Cisco Sys., Inc.*, 720 F.3d 1361, 1367 (Fed. Cir. 2013), *aff’d in relevant part*, 135 S.Ct. 1920, 1926-28 (2015); *Global-Tech*, 563 U.S. at 770-71.

Asserted claim 49 of the ‘551 patent directs to a method for attaching a filter housing assembly to a filter base. *See* Am. Compl., Ex. 2 (‘551 patent) at col. 24, lns. 44-45. Dr. Beaman provided detailed claim charts showing how every limitation of claim 49 of the ‘551 patent is necessarily practiced—and that claim 49 is therefore directly infringed—whenever the accused products of the defaulting respondents are installed in a corresponding filter base. *See* Mem. Ex. A (Beaman Aff.) at Ex. C (‘551 patent claim charts). Dr. Beaman also opined that the only use for the accused products is installation in a corresponding refrigerator filter base, in

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accordance with the method of claim 49 of the '551 patent. *See id.*, ¶¶ 46-49, Ex. C. The evidence shows the accused products have no substantial non-infringing use. *See id.* There is no dispute with respect to any of the factual issues contained in the '551 patent claim charts.

With respect to knowledge of the patent, there is circumstantial evidence that defaulting respondents have copied complainants' ULTRAWF and/or WF3CB filter products. *See, e.g.*, Am. Compl., Ex. 25 (Calux advertisement), Ex. 28 (Dakon advertisement), Ex. 11 at Ex. A (Angkua Environmental invoices), Ex. 10 at AGA005, 6, 8 (Calux invoices). Thus, the defaulting respondents had reason to be aware that there could be intellectual property rights associated with the ULTRAWF and/or WF3CB filter products. The evidence supports an inference of willful blindness by defaulting respondents where they should have known of the existence of the patent. *See Global-Tech*, 563 U.S. at 768; *see also Certain Network Devices, Related Software and Components Thereof (II)*, Inv. No. 337-TA-945, Comm'n Op. at 63 (June 1, 2017) (affirming findings in initial determination that a respondent willfully blinded itself to complainants' patents and its infringement where it copied certain patented features and marketed those features to customers).

Additionally, defaulting respondents had actual knowledge of the patent by no later than the time that they were served with the complaint and notice of institution of investigation. *See Certain Television Sets, Television Receivers, Television Tuners, and Components Thereof*, Inv. No. 337-TA-910, Comm'n Op. at 41-43 (Oct. 30, 2015) ("In the context of section 337, we concluded that service of a section 337 complaint can be adequate to provide knowledge of the asserted patents"). The evidence further demonstrates that at least defaulting respondents Angkua Environmental and Calux continued selling for importation and/or importing accused products into the United States after this occurred. *See* Mem. Ex. B. (Ramos Decl.) at Ex. C

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(Alibaba LLC 002), Ex. E (Alibaba LLC 004) (sellers “aqfeel” and “caluxwell”).

As to specific intent, the evidence shows that the defaulting respondents are all marketing and/or selling their accused products as stated replacements for complainants’ ULTRAWF and WF3CB filters. *See, e.g.*, Am. Compl., Ex. 25 (Calux advertisement), Ex. 28 (Dakon advertisement), Ex. 11 at Ex. A (Angkua Environmental invoices); Ex. 10 at AGA005, 6, 8 (Calux invoices). For Angkua Environmental, complainants have included evidence in the form of an Amazon listing for its accused “Tier 1” filter product that expressly provides instructions to consumers for practicing the patented method by attaching the filter product to a compatible filter base. *See* Mem. Ex. A (Beaman Aff.) at Ex. C (‘551 patent claim charts) at 5. This is circumstantial evidence that Angkua Environmental’s customers are committing direct infringement of claim 49 of the ‘551 patent, and that Angkua Environmental specifically intends for this infringement to occur.

Accordingly, the administrative law judge finds the record shows defaulting respondents specifically intended for their accused products to be installed and used in accordance with the method of claim 49 of the ‘551 patent. Therefore, the evidence establishes that defaulting respondents have induced the infringement of claim 49 of the ‘551 patent.

C. Validity

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

Complainants argue: “Under 35 U.S.C. § 282, the Asserted Patents are presumed to be valid unless proved otherwise by clear and convincing evidence. There is no present dispute that the patents are valid.” Mem. at 47.

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The Staff argues:

The Staff does not seek to challenge the validity of the Asserted Patents. “A patent shall be presumed valid,” 35 U.S.C. § 282, and can only be proven invalid by clear and convincing evidence. *Microsoft Corp. v. i4i Ltd. Partnership*, 564 U.S. 91 (2011). The Staff is thus of the view that there is no disputed issue of material fact relating to the validity of the Asserted Patents.

Staff Resp. at 15.

No party has challenged the validity or enforceability of any of the patents at issue. Thus, there is no issue of material fact as to the validity or enforceability of the asserted patents. *See Lannom Mfg. Co., Inc. v. Int’l Trade Comm’n*, 799 F.2d 1572, 1580 (Fed. Cir. 1986) (Commission did not have authority to redetermine patent validity when no defense of invalidity had been raised).

D. Domestic Industry (Technical Prong)

In a section 337 investigation, the complainant has the burden of proving the existence (or establishment) of a domestic industry relating to articles protected by the patent-at-issue. 19 U.S.C. § 1337(a)(2). For a patent-based claim, the domestic industry requirement consists of a technical prong and an economic prong. *See, e.g., Certain Variable Speed Wind Turbines & Components Thereof*, Inv. No. 337-TA-376, Comm’n Op. at 14-17, USITC Pub. No. 3003 (Nov. 1996) (“*Wind Turbines*”). The complainant bears the burden of establishing that both prongs have been satisfied. *See, e.g., Certain Concealed Cabinet Hinges & Mounting Plates*, Inv. No. 337-TA-289, 1990 WL 710375, Comm’n Op. at 22 (Jan. 8, 1990).

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

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purposes of the domestic industry requirement is the same as that for infringement.”).

Complainants argue:

The technical prong requires that the complainant practice the patents-in-suit in the United States. The test for determining whether the technical prong is met through the practice of the patent “is essentially same as that for infringement, *i.e.*, a comparison of domestic products to the asserted claims.” Each of the three DI Filters—the ULTRAWF, WR3CB, and the []—practice each of the Asserted Claims of the Asserted Patents.

Mem. at 47.

The Staff argues that complainants have “demonstrated that the following products satisfy the technical prong of the domestic industry requirement: DI Filters, [], and I&W Modules incorporating DI Filters.” Staff Resp. at 31, *see id.* at 28-31.

The evidence shows that complainants satisfy the technical prong of the domestic industry requirement for each of the asserted patents. Each of the three DI Filters—the ULTRAWF, WR3CB, and the []—practice each of the asserted claims of the asserted patents. *See* Mem. Ex. A (Beaman Aff.), ¶¶ 51, 53; Mem. Ex. A (Beaman Aff.) at Ex. B (ULTRAWF and WF3CB Claim Charts); Mem. Ex. A (Beaman Aff.) at Ex. G ([] Claim Charts). As noted, the [] uses the same configuration in terms of the patented technology. []:

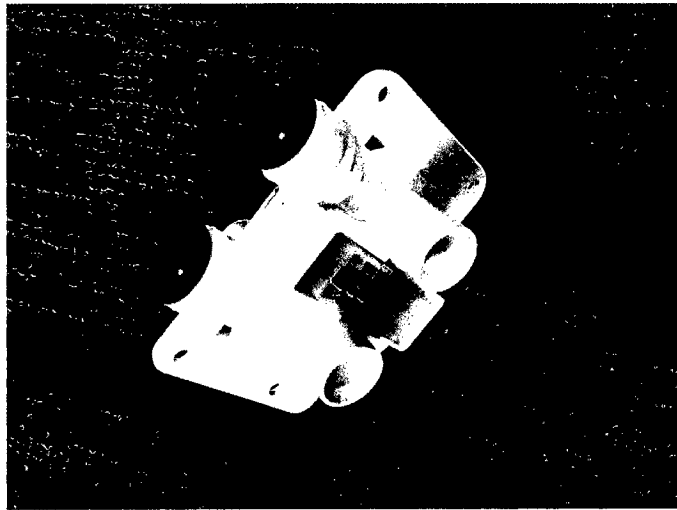
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See Mem. at 14-16; Mem. Ex. A (Beaman Aff.), ¶ 53; Mem. Ex. A (Beaman Aff.) at Ex. G ([] Claim Charts). Complainants' expert Dr. Beaman provided detailed claim charts showing the Seahawk practicing all elements of each of the asserted claims.

The ULTRAWF and WF3CB filters have essentially the same structure, with differences relating only to the length of the housing and the characteristics of the carbon block within the housing. *See* Am. Compl., Ex. 19C (Barrillon Decl.). The following are images of complainants' ULTRAWF and WF3CB filters and a corresponding filter base:



ULTRAWF and WF3CB filters (side-by-side)



Corresponding Filter Base (installed in refrigerator)

See Staff Resp. at 28-29.

In Exhibits B and G to his affidavit, complainants' expert Dr. Beaman provided detailed claim charts for each asserted patent showing that complainants' DI Filters satisfy every limitation of every asserted claim in this investigation: claims 1-3 and 6-7 of the '146 patent; claims 1-3, 7-9, and 12-15 of the '322 patent; claims 14-18 and 21-31 of the '852 patent; and claim 49 of the '551 patent. *See* Mem. Ex. A (Beaman Aff.) at Ex. B (ULTRAWF and WF3CB Claim Charts); Mem. Ex. A (Beaman Aff.) at Ex. G ([] Claim Charts). There is no reason to dispute Dr. Beaman's assessment that every limitation of claims 1-3 and 6-7 of the '146 patent, claims 1-3, 7-9, and 12-15 of the '322 patent, claims 14-18 and 21-31 of the '852 patent, and claim 49 of the '551 patent is literally found in the DI Filters. Every limitation of the asserted claims is satisfied under all of the claim constructions proposed by the parties.

Complainants provided substantial and probative evidence that their DI Filters practice at least one claim of each of the asserted patents. Thus, the administrative law judge finds that complainants have demonstrated that each of the three DI Filters satisfy the technical prong of

the domestic industry requirement.

E. Domestic Industry (Economic Prong)

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

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

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Complainants argue:

A domestic industry related to products that practice the Asserted Patents exists for both KXT and its licensee Electrolux individually, and in the aggregate. KXT invented, developed, tested, and validated the DI Filters in West Haven, CT, where it continues to engage in these activities in addition to packaging the DI Filters. Electrolux collaborated in the development of the DI Filters, and further implemented those filters in its refrigerators' ice and water systems, which was a predicate to creating the market for the DI Filters. KXT's investments were significant and substantial because, without those investments, a saleable, functioning DI Filter would not exist. Likewise, Electrolux's investments are substantial because there is no market for the DI Filters other than as filters for its refrigerators' ice and water systems, and thus Electrolux's substantial efforts to integrate the filters into those systems was vital to both the refrigerators' function and to creating the market for the DI Filters. As explained in the detailed analysis that follows, the total investments of KXT and Electrolux that related to the DI Filters that practice the Asserted Patents is at least \$[] in plant, equipment, labor, capital, and exploitation.

Mem. at 48.

Complainants argue:

Electrolux is the exclusive licensee of the Asserted Patents. KXT sells the DI Filters exclusively to Electrolux to be used in certain high-end Frigidaire models. The DI Filters reach end-consumers in two ways: (i) as a pre-installed component of the water filtration system in certain high-end Frigidaire models, and (ii) as standalone, OEM replacements that can be purchased separately.

As previously discussed, the DI Filters are comprised of two filters currently in production, as well as a new filter in development, each of which practice the Asserted Patents. The two production products are the ULTRA WF and WF3CB DI Filters, which are primarily marketed to refrigerator customers under the brand names of "PureSource Ultra" and "PureSource 3," respectively. The next generation filter, which also practices the Asserted Patents, is currently referred to as the "[]."

Mem. at 49.

The Staff argues: "the Complainants have satisfied the economic prong of the domestic industry requirement under each of subsections (A), (B), and/or (C)." Staff Resp. at 31.

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1. Plant and Equipment (Section 337(a)(3)(A))

Regarding KXT, complainants argue:

Evidence of domestic investment in plant and equipment used for activities related to products practicing the Asserted Patents by KXT is three-fold: 1) investment in plant, as measured by square footage, for the portion of the West Haven, CT facility economically associated with activities related to practicing products; 2) expenditures on facilities at the West Haven, CT facility economically associated with practicing products; and 3) investment economically associated with equipment at that facility.

Mem. at 66. With respect to Electrolux, complainants argue:

Electrolux has made substantial domestic investments in plant and equipment related to products incorporating the DI Filters. Evidence of domestic investment in plant and equipment used for activities related to products incorporating the DI Filters by Electrolux is three-fold: (1) investment in plant, as measured by square footage, for the portion of the Anderson, SC facility economically associated with activities related to products incorporating DI Filters; (2) expenditures on facilities at the Anderson, SC facility economically associated with products incorporating DI Filters; and (3) investment economically associated with equipment at that facility.

Mem. at 82.

The Staff argues that “the collective plant and equipment investments by KXT and Electrolux are significant.” Staff Resp. at 35.

Complainant KXT

Complainant KXT has its headquarters at a [] square foot facility in West Haven, Connecticut.¹² See Mem. Ex. E (Seth Aff.), ¶ 67 (citing Ex. 27 (KXT Floor Plan)). The evidence shows that nearly all the product development and engineering for the DI Filters was

¹² KXT uses its headquarters for multiple purposes, including the research and development and packaging for certain of its water filtration products, administrative and sales activities, the manufacture of certain filtration media, and storage space. See Mem. Ex. E (Seth Aff.), ¶¶ 44-45.

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performed by KXT at its headquarters. *See id.*, ¶ 17. Although the DI filters are manufactured abroad in Singapore, the evidence further shows that approximately [] square feet (about []%) of KXT's West Haven headquarters is exclusively used for the post-manufacture packaging of the DI Filters that are not preinstalled in Electrolux refrigerators but are instead independently sold as replacement water filters. *See* Mem. Ex. E (Seth Aff.), ¶¶ 67-68 (citing Ex. 27 (KXT Floor Plan)); *see also* Mem. Ex. E (Seth Aff.) at Ex. 41 (Barrillon Decl.), ¶ 10 (photograph of KXT's domestic packaging line).

The evidence shows that between 2015 and 2018 these packaging activities are important to KXT's business as they make the product saleable and packaging quality affects the reputations of KXT. Mem. Ex. E (Seth Aff.), ¶ 79. KXT's packaging materials include instructions for installing the DI filters in accordance with asserted claim 49 of the '551 patent. *See id.*, ¶ 65.

The evidence shows that from 2015 to June 2018, about [] square feet of space was dedicated for packaging activities of DI Filters. *See* Mem. Ex. E (Seth Aff.), ¶ 68 (citing Ex. 27 (KXT Floor Plan), KXT0006962).¹³ This is about []% of the total square feet of the facility. *Id.* The evidence shows that, in 2017-2018, workspace was provided for [] KXT employees in West Haven, Connecticut to spend some of their time on activities for these products. *See id.*, ¶ 68 n131-33 (citing Ex. 29 (KXT Investments), KXT0006969-77), Table 1. In 2018, these employees have more than [] square feet of office workspace at KXT's headquarters. *See* Mem. Ex. E (Seth Aff.), ¶ 68 n131. From this number, complainants' expert Dr. Pallavi Seth specifically allocated [] square feet of office workspace at KXT's West Haven

¹³ The Seth affidavit cites to "Exhibit 28 "KST Floor Plan," KXT0006962," however this floor plan is Exhibit 27, not Exhibit 28.

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facility as dedicated to the DI filters based on the percentage of time each employee spent on tasks related to DI filters. *See id.*, ¶ 68.¹⁴

From 2015 to June 2018, KXT incurred approximately \$[] in real property and personal tax expenses and \$[] in utilities expenses. *See id.*, ¶¶ 69-70, Table 2.

Complainants' expert Dr. Seth thus estimates that approximately \$[] in property taxes and \$[] in utilities expenses can be specifically allocated to KXT's activities related to the DI filters. *Id.* Dr. Seth has also determined that KXT has incurred \$[] in equipment depreciation expenses at its West Haven facility tied to the packaging line and leak testing activities directly related to the DI filters. *See id.*, ¶ 71. Accordingly, Dr. Seth concludes that from 2008-2018, KXT has expended approximately \$[] in domestic plant and equipment expenses tied to the DI Filters. *See id.*, ¶ 72.

The investments by KXT in plant and equipment discussed above are significant. The DI filters of KXT were invented in West Haven, where activities related to DI filters in engineering, research, materials, packaging, and sales and management were performed. Mem. at 6, 57, 68-70; Mem. Ex. E (Seth Aff.), ¶¶ 73-74, Table 1. Thus, given KXT's domestic industry products would not exist without these investments, under the required contextual analysis, KXT's plant and equipment investments are significant.

Complainant Electrolux

Electrolux's domestic refrigerator operations are headquartered in Anderson, South Carolina. Mem. at 78. The evidence shows that Electrolux researches and develops refrigeration

¹⁴ Dr. Seth states that this is a highly conservative figure in that it fails to account for how other portions of the West Haven facility (such as laboratory facilities) are also used in relation to the DI filters and the recent work that KXT has done on the [] DI filter. *See id.*, ¶ 68.

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devices and technologies at its Cold Technology Center (“CTC”), which occupies [] square feet at its Anderson facility. *See* Mem. Ex. E (Seth Aff.), ¶ 88. The Ice and Water Group (“I&W Group”) within the CTC consists of approximately [] employees: [] engineers, [] technician, and [] engineering manager. *See id.*, ¶ 84 n153 (citing McCollough Dep. Tr. 53). The I&W Group uses approximately [] square feet (about []%) of the CTC’s total square footage to test and develop ice and water modules (“IWMs”). *See* Mem. Ex. E (Seth Aff.), ¶ 88 n160. It is estimated that, as of the time of filing of the complaint, approximately []% of the I&W Group’s time was dedicated to IWMs incorporating DI filters. *See id.*, ¶ 89. This yields an allocation of approximately [] square feet to the testing and development of IWMs incorporating the DI filters.¹⁵

The evidence shows that from 2013 to June 2018, the CTC incurred approximately \$[] in direct rental expenses for the Anderson facility, which amounts to \$[] per square foot. *See* Mem. Ex. E (Seth Aff.), ¶ 89. For the same period, Dr. Seth determined that Electrolux incurred approximately \$[] in direct rental expenses for engineering work related to the IWMs incorporating the DI filters. *See id.*, ¶¶ 89-90.

The evidence shows that Electrolux has further invested a total (non-depreciated) value of approximately \$[] in equipment assets used fully or partially to support the IWMs incorporating the DI filters. *See id.*, ¶ 91. Additionally, based on asset-level utilization estimates, depreciation of CTC assets was allocated to the I&W Group in the amount of \$[]. *Id.* According to Dr. Seth, a fixed assets depreciation expense of \$[] can therefore be allocated to the IWMs incorporating the DI filters. *Id.*

¹⁵ []

1. *See* Mem. Ex. E (Seth Aff.), ¶ 89.

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Thus, the evidence shows that Electrolux has expended over \$[] in domestic plant and equipment depreciation expenses that are specifically attributable to the DI filters. *See* Mem. Ex. E (Seth Aff.), ¶ 116, Table 4.¹⁶ Electrolux has also separately made significant investments totaling nearly \$[] for equipment that is used in whole or in part for the DI filters. *See id.*, ¶ 91. The evidence shows that while Electrolux is a sizeable corporation, a significant portion of the engineering work performed by the Electrolux I&W Group in Anderson, SC is specific to the DI filters. *See id.*¹⁷

The investments by Electrolux in plant and equipment discussed above is significant. Thus, given Electrolux's domestic industry products would not exist without these investments, under the required contextual analysis, Electrolux's plant and equipment investments are significant.

* * *

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

2. Labor and Capital (Section 337(a)(3)(B))

Regarding KXT, complainants argue:

KXT's domestic efforts directly relate to the DI Filters, and comprise both R&D

¹⁶ In Table 4, in the section labelled "Plant & Equipment" under "Electrolux," see rows marked "Rent" and "Capitalized Assets."

¹⁷ The I&W Group's engineering work relating to the DI Filters is based on Mr. Candeo's estimate that approximately [] of the I&W Group's time was dedicated to IWMs incorporating DI Filters in 2013-2014, 2015-2017, and through June 2018, respectively. *See* Mem. Ex. E (Seth Aff.) at Ex. 43 (Candeo Dep. Tr.) at 172, 203.

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(including engineering, design, and testing) and packaging operations of the DI Filters. The initial R&D involved collaborating with Electrolux to design the filters, testing them internally, and sending them to NSF for certification. Ongoing R&D activities include continued internal testing, obtaining re-certifications from NSF, and collaborating with Electrolux to resolve any issues with the DI Filters and creating models for potential redesigns.

Mem. at 71. Complainants argue that “Electrolux has also made substantial domestic investments in employment related to products incorporating DI Filters.” Mem. at 84.

The Staff argues that “Complainants’ collective investment in labor is significant.” Staff Resp. at 36.

Complainant KXT

As discussed above, KXT employed in 2008-2018, [] employees on activities related to DI filters in engineering, research, materials, packaging and sales and management. Mem. at 68-70; Mem. Ex. E (Seth Aff.), ¶¶ 73-74, Table 1.

In 2017, the evidence shows KXT employed approximately [] individuals in its West Haven facility, of whom [] domestic employees who devote some of their time to the DI filters. See Mem. Ex. E (Seth Aff.), ¶ 46 n86 (citing Ex. 29 (KXT Investments), KXT0006969-77, at 970-72). [] of those employees work on product development, materials procurement, and packaging for the DI filters. *Id.* Dr. Seth excludes labor costs relating to sales activities from all DI investment allocations. *Id.*, ¶ 47. Dr. Seth has determined that from 2008-2018, KXT has incurred over \$[] in salary and benefits for research and development, engineering, materials, packaging, and related management activities specific to the DI Filters. *Id.* at ¶ 74, Table 1.

Complainant Electrolux

The evidence shows that between 2013 and June 2018, Electrolux's I&W Group at Anderson, South Carolina incurred \$[] in total salaries and benefits for its engineers. *See* Mem. Ex. E (Seth Aff.), ¶ 96. Dr. Seth allocated approximately \$[] of these labor expenses by Electrolux to the DI products. *See id.* Thus, the record evidence establishes that Electrolux has made significant investments in labor with respect to the products protected by the asserted patents.

* * *

Thus, the record evidence establishes that complainants have made significant investments in labor and capital with respect to the products protected by the asserted patents. There is no dispute and indeed no genuine issue as to any material fact that complainants satisfy the economic prong of the domestic industry requirement under 19 U.S.C. § 1337(a)(3)(B).

3. Exploitation of the Asserted Patents (Section 337(a)(3)(C))

Regarding KXT, complainants argue:

KXT's exploitation activities also include working with OEM customer Electrolux to understand its requirements for KXT's DI Filters in its current and future products, meeting and collaborating with Electrolux engineers, design teams, and architecture teams, and working with other manufacturing teams in Singapore to ensure KXT's custom water filtration products, such as the DI Filters, meet Electrolux's technical and packaging requirements. Accordingly, the R&D, design, engineering, testing, and validation investments and activities exploit the Asserted Patents.

Mem. at 74 (citing Mem. Ex. E (Seth Aff.), ¶ 77).

Complainants argue that Electrolux has substantial investments and activities related to the DI filters and asserted patents in Anderson, South Carolina:

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- Regarding labor, [] of the I&W Group's time was dedicated to IWMs incorporating DI Filters in 2013-2014, 2015-2017, and through June 2018, respectively. This corresponded to \$[] in labor costs from 2013 through the June 2018 period.
- Between 2013 and June 2018, the I&W Group consisted of [] engineers, responsible for interfacing and collaborating with KXT, designing and engineering IWMs, and conducting and reporting on ongoing tests related to the DI Filters and other components of the IWMs.
- Between 2013 and June 2018, Electrolux incurred \$[] in direct rental expense for engineering work related to IWM's incorporating the DI Filters.
- Fixed assets allocable to IWMs that utilize the DI Filters that amounts to \$[] between 2013 to June 2018.
- Electrolux's domestic R&D investments in the [] DI Filter project were approximately \$[] over the same period.
- [] percent of the CTC's total square feet for testing and development of IWMs, corresponding to \$[] per year in rent allocable to the development and testing of IWMs.

In view of the investments, the nature of the activities, and their relationship to both the DI Filters and Asserted Patents, Complainants have demonstrated substantial investments by Electrolux in the Asserted Patents under Section 337(a)(3)(C).

Mem. at 91-92.

The Staff argues that complainants have collectively "made substantial investments in exploitation of the patents which satisfy the economic prong for domestic industry under subsection (C)." Staff Resp. at 37.

Complainant KXT

The technologies claimed in the Asserted Patents were invented and developed in the United States. Mem. at 6, 57. The evidence shows that KXT has expended approximately \$[] allocated to salaries and benefits for its employees who work on research and development, engineering, materials procurement, and related management specific to the DI

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filters. *See* Seth Aff. at 36, Table 2.¹⁸

These research and development, engineering, materials procurement, and related management costs are substantial. As discussed above, the domestic industry filters of KXT were designed and developed in the United States, and activities related to DI filters in engineering, research, materials, packaging, and management were performed in West Haven. As such, the domestic industry products of KXT would not exist without these investments, and under the required contextual analysis, KXT's research and development costs are substantial.

Complainant Electrolux

The discussion of evidence related to investments by Electrolux in plant and equipment, and labor, from above is repeated here. As explained by Dr. Seth, the DI filters are a crucial component of the IWMs. *See* Mem. Ex. E (Seth Aff.), ¶ 97. There is no market for the DI filters other than for use with their associated IWMs in certain Electrolux refrigerators. *Id.* Further, asserted claim 49 of the '551 patent is directed to a method for attaching a filter housing assembly to a filter base, which would necessarily need to reside in the IWM. *See* Am. Compl., Ex. 2 ('551 patent) at claim 49.

The imported filter is a component of the Electrolux refrigerator, a downstream product. In such cases, the relevant domestic industry can be defined in terms of a downstream product. *See Video Game Systems*, Inv. No. 337-TA-770, Comm'n Op at 66-67. The reality of the marketplace dictates that while filters may be purchased singly, they are exploited with the IWM in the refrigerator because the filters are a critical component of a system, the IWM within the

¹⁸ *See* Table 2, middle section, \$[] (row 7 "Total Salaries + Benefits for Employees Allocated to DI Filters" – row 11 "Packaging").

Electrolux refrigerator.

Nexus to the United States

Section 337(a)(3)(C) requires that the investment occur in the United States. 19 U.S.C. § 1337(a)(3)(C). Electrolux conducts its development, design and exploitation of the DI filters in Anderson, South Carolina. *See* Mem. Ex. E (Seth Aff.), ¶¶ 19-20, 112.

Whether the Investment Is “Substantial”

The evidence shows that between 2013 and 2018, Electrolux has invested approximately \$[] in plant & equipment (Prong A) and labor expenses (Prong B) specific to IWMs incorporating the DI Filters. *See* Mem. Ex. E (Seth Aff.), ¶ 98, Table 3.

These research and development, engineering, and related management costs are substantial. As discussed above, Electrolux has made substantial investments in the United States to exploit the asserted patents through engineering and research and development.

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

* * *

There is no dispute with respect to the evidence offered by complainants. Complainants presented substantial, reliable, and probative evidence that the economic prong of the domestic industry requirement has been satisfied. Therefore, complainants are entitled to a summary determination that they have satisfied the economic prong of the domestic industry requirement.

V. Recommended Determination on Remedy and Bonding

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

Complainants request, along with a finding of violation, that the administrative law judge recommend a remedy in the form of a general exclusion order (GEO) with respect to each of the asserted claims of the asserted patents. *See Mem.* at 95. Complainants request that bond during the presidential review period be set at 100% of the value of the accused products. *See Mem.* at 121. Complainants also request that cease and desist orders (CDO) be issued against each of the defaulting respondents. *See Mem.* at 112.

The Staff supports complainants' request for a GEO, and request for a 100% bond. *See Staff Resp.* at 38, 47. However, the Staff only supports complainants' request for a CDO against defaulting respondents Angkua Environmental and Calux, but does not support complainants' request for a CDO against defaulting respondent Dakon. *See id.* at 38.

A. General Exclusion Order

A GEO is warranted when "a general exclusion from entry of articles is necessary to prevent circumvention of an exclusion order limited to products of named persons" or "there is a pattern of violation of this section and it is difficult to identify the source of infringing products."

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19 U.S.C. § 1337(d)(2)(A); 19 U.S.C. § 1337(d)(2)(B). Satisfaction of either criterion is sufficient for imposition of a GEO. *Certain Cigarettes and Packaging Thereof*, Inv. No. 337-TA-643, Comm’n Op. at 24 (Oct. 1, 2009). The Commission “now focus[es] principally on the statutory language itself” when determining whether a GEO is warranted. *Certain Ground Fault Circuit Interrupters and Products Containing Same*, Inv. No. 337-TA-615, Comm’n Op. at 25 (Mar. 27, 2009). The Commission may look not only to the activities of active respondents, but also to those of non-respondents as well as respondents who have defaulted or been terminated from an investigation. *See, e.g., Certain Coaxial Cable Connectors and Components Thereof and Products Containing Same*, Inv. No. 337-TA-650, Comm’n Op. at 59 (Apr. 14, 2010).

The Commission has long recognized that it has the authority to issue a general exclusion order where, as here, some respondents have been found in default. *See, e.g., Certain Plastic Molding Machines With Control Systems Having Programmable Operator Interfaces Incorporating General Purpose Computers, and Components Thereof II*, Inv. No. 337-TA-462, Comm’n Opinion, 2003 WL 24011979 at *8 (April 2, 2003) (The Commission made clear that section 1337(g)(2) applied not only to situations in which all respondents were found in default, but also to situations where some respondents were in default and others were not.).

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

In the event the Commission does not issue a GEO, the administrative law judge finds that the default determination is sufficient to establish a violation for the purpose of issuing

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limited exclusion orders directed to the defaulting respondents.¹⁹ See 19 C.F.R. § 210.16(c)(1).

Complainants argue:

- The Defaulting Respondents are China-based producers of the Accused Products that sell their products in bulk to domestic reseller-customers through the web-giant Alibaba's sales platform.
- The Defaulting Respondents continued to offer the Accused Products on Alibaba after the date for responding to the Amended Complaint had passed.
- Alibaba further revealed that additional Non-Respondent China-based entities are selling the Accused Products to domestic customers.
- It is difficult or impossible to determine the source of the Accused Product because (1) U.S. Customs and Border Protection ("CBP") forms list logistics companies and not the producers, (2) Alibaba sellers can and do sell the Accused Products to other Alibaba sellers who then route the Accused Products to the United States, and (3) the products themselves often include no source-identifying information.
- The domestic customers of these Alibaba producer-sellers buy the Accused Products in bulk and then sell through Amazon and eBay's sales platforms.
- The Amazon and eBay sellers sell under pseudonymous "storefront" names on those platforms, which obscure their actual identities and can be changed at will to, e.g., frustrate enforcement efforts of rights holders.
- Despite being able to trace some Alibaba sales to Amazon and eBay sellers, sources for thousands of Amazon and eBay sellers of the Accused Products cannot be determined despite having received full discovery from each of these sales platforms.

Accordingly, without a GEO the widespread infringement by producers and sellers will continue as before. Should that happen, Complainants will have very limited ability to trace the sources of the

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

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continued unlawful imports because the domestic sellers of the Accused Products will be hidden by pseudonymous storefront names that can be changed at will. Accordingly, and as explained below, the facts support the issuance of a GEO to stanch the flow of the Accused Products into the country.

Mem. at 96-97. The Staff agrees. *See* Staff Resp. at 39-42.

The Commission's authority to issue a GEO in a situation such as this one, where some respondents have been terminated and the remaining respondents have been found in default, is found in 19 U.S.C. § 1337(d)(2). *See Certain Handbags, Luggage, Accessories, and Packaging Thereof*, Inv. No. 337-TA-754, Comm'n Op. at 5 n.3 (June 13, 2012) ("Although 19 U.S.C. § 1337(g)(2) governs the consideration of whether to issue a GEO in default cases, this provision applies only when no respondent appears to contest the investigation. In this case, since several respondents did appear and were later terminated based on consent orders or settlement agreements, section 337(g)(2) does not apply.").

Section 337(d)(2) states in relevant part:

(d) Exclusion of articles from entry . . .

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

(A) a general exclusion from entry of articles is necessary to prevent circumvention of an exclusion order limited to products of named persons; or

(B) there is a pattern of violation of this section and it is difficult to identify the source of infringing products.

19 U.S.C. § 1337(d)(2). "The standards for finding a violation of 337 under section 337(d)(2) are the same as those for finding a violation under 337(g)(2)." *Certain Digital Multimeters, and Products with Multimeter Functionality*, Inv. No. 337-TA-588, Comm'n Op. at 4 (June 3, 2008).

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In other words, a violation of section 337 under 337(d)(2) must be supported by “substantial, reliable, and probative evidence.” *Id.* at 4 (citing *Certain Sildenafil or any Pharmaceutically Acceptable Salt Thereof Such as Sildenafil Citrate, and Products Containing Same*, Inv. 337-TA-489, Comm’n Op. at 5 (Feb. 9, 2004) (under the Administrative Procedure Act, 5 U.S.C. § 556, a violation under section 337(d) must be supported by “reliable, probative, and substantial evidence”; there is no difference between this standard and the “substantial, reliable, and probative evidence” standard of 337(g)(2)).

1. Necessary to Prevent Circumvention of an LEO

Under section 337(d)(2)(A), the Commission considers whether conditions are ripe for circumvention of a limited exclusion order. *See Certain Electronic Paper Towel Dispensing Devices and Components Thereof*, Inv. No. 337-TA-718, Comm’n Op. (Pub. Version), at 8, 16 (Jan. 20, 2012). In considering whether conditions are ripe for circumvention, the Commission has relied on “evidence [that] shows the following: (1) there is a strong demand for the [patented products]; (2) the importation and sale of infringing products can be extremely profitable...; (3) extensive domestic marketing and distribution networks already exist which allow foreign manufacturers to widely distribute infringing [products] throughout the United States...; (4) large online marketplaces ... have emerged which provide both foreign manufacturers and domestic retailers a dedicated, flexible way to sell to consumers; (5) it is difficult to identify the sources of infringing products because of the ability to package infringing [products] in unmarked, generic packaging, . . . and (6) manufacturers can easily evade a limited exclusion order by establishing shell offshore distribution companies with unclear ties to the original manufacturer.” *Certain Inkjet Ink Supplies & Components Thereof (“Inkjet Ink”)*, Inv. No. 337-TA-730, Comm’n Op. (Pub. Version), at 4-5 (Feb. 24, 2012).

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As discussed below, complainants presented substantial, reliable, and probative evidence that a GEO is necessary under section 337(d)(2)(A) to prevent circumvention of a LEO.

The evidence shows that a GEO is necessary to prevent circumvention of a LEO. The evidence showing numerous Amazon and eBay seller listings and generic, unmarked product shipments illustrates a clear risk of circumvention of any LEO in the absence of a GEO. *See Certain Toner Cartridges and Components Thereof*, Inv. No. 337-TA-918, Comm’n Op. at 6 (Oct. 1, 2015) (finding the practices of “facilitating circumvention through Internet operations; masking of identities and product sources; and use of unmarked, generic, and/or reseller-branded packaging” would all indicate a likelihood of circumvention). Furthermore, the distribution networks that the defaulting respondents use for selling and importing the accused products are not clear. For example, complainants’ attempt to place a product order with defaulting respondent Calux resulted in having the order fulfilled by defaulting respondent Dakon. *See* Am. Compl., Ex. 37 (Bayne Decl.), ¶¶ 4-5 (Exs. A-D).

The evidence also shows that unnamed and unknown third party resellers are involved in the importation and/or sale after importation of the accused products in the United States. *See* Mem. Ex. B. (Ramos Decl.) at Ex. C (Alibaba LLC 002), Ex. E (Alibaba LLC 004); Declaration of Thai-Hoa X. Nguyen, Esq. in Support of Complainants’ Motion for Summary Determination (EDIS Doc. ID No. 669342) (Mar. 7, 2019) (“Nguyen Decl.”), ¶¶ 4-6 (Amazon inventories held in names of third parties). Moreover, likelihood of circumvention is increase by evidence that at least defaulting respondents Calux and Angkua Environmental advertise and/or sell some portion of their accused products with reseller-branded packaging, making it difficult to identify the source of the product. *See* Am. Compl., Ex. 25 (advertising OEM packaging); *see also* Am. Compl., Exs. 10-12.

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Accordingly, the issuance of a general exclusion order under 19 U.S.C. § 1337(d)(2)(A) is appropriate with respect to the asserted patents.

2. Widespread Pattern of Violation Where It Is Difficult to Identify the Source of Infringing Products

Complainants argue:

There is a clear pattern of violation of Section 377 by the Defaulting Respondents and thousands of Non-Respondent Sellers. As noted above, the Accused Product is being produced abroad, primarily in China, sold into the United States by Alibaba sellers and possibly others, and then sold in large volumes on Amazon and eBay. The sellers can change their names and listings at will to always stay steps ahead of Complainants' enforcement efforts, and the pseudonymous names those sellers use to obscure the identities of the sellers can only be determined through use of subpoenas. Accordingly, a GEO is necessary to address this widespread unlawful activity.

Mem. at 100.

As discussed below, complainants presented substantial, reliable, and probative evidence for the issuance of GEO under section 337(d)(2)(B) directed to the asserted patents due to a pattern of violation and the difficulty in identifying the source of infringing earpiece devices.

Widespread Pattern of Violation

As discussed below, the evidence shows a widespread pattern of violation with respect to the asserted patents.

In addition to the three defaulting respondents named in this investigation, complainants presented evidence that thousands of non-respondent sellers are also involved in a clear pattern of violation. *See* Mem. at 100. The record shows accused products and other structurally identical alternative to the DI filters are sold on online retailers such Alibaba.com, Amazon, and eBay. *See* Mem. at 110; *see also* Mem. Ex. I (Aston Decl.) (test buys); Staff Resp. at 39. Complainants argue that accused products sold on Amazon and eBay originates from Alibaba

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sellers, and from there “thousands and thousands of listings have sold the Accused Products after importation into the United States.” Mem. at 100.

Complainants provided a “tiny sample” of the non-respondent sellers of the “Accused Products” on Amazon and eBay:

Non-Respondent Seller Names	Online Retailer
Express Parts!!	Amazon
OSSOLA Direct or HomeMaster	Amazon
COOPLAY	Amazon
LN3	Amazon
TopGlobalStore	Amazon
MIARA’s Collections	Amazon
Jianyuanhong2223	eBay
Forcus-professor	eBay
Xingg_8660	eBay
Ghnew88	eBay
Sky-lines	eBay

See Mem. at 101; *see also* Mem. Ex. D (Adair Decl.), ¶¶ 7-8, Exs. B-C (AMZN0000001-AMZN0000002) (containing product listings by sellers using pseudonymous names); Ex. C (Conlin Depo.) at Exs. 1-3 (EBAY0000001-EBAY0000003). The Commission has found that such evidence of numerous online sales of infringing imported goods can demonstrate a pattern of violation of section 337. *See, e.g., Certain Loom Kits for Creating Linked Articles, Inv. No. 337-TA-923*, Comm’n Op. at 14 (June 26, 2015) (citing *Certain Cases for Portable Electronic*

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Devices, Inv. No. 337-TA-867/861, Comm'n Op. at 10 (July 10, 2014)).

Complainants presented evidence that shows that non-respondent sellers, as well as defaulting respondents, sell allegedly infringing water filters. *See* Mem. at 98-105; *see also* Mem. Ex. A (Beaman Aff.), ¶¶ 54-55; Mem. Ex. I (Aston Decl.), ¶¶ 6-8, 11; Staff Resp. at 39.

Complainants have presented evidence that despite its efforts to enforce its intellectual property by identifying and seeking removal and takedown of such product listings on Amazon, other anonymous infringing listings appeared. *See* Mem at 108; *see also* Mem. Ex. I (Aston Decl.), ¶15; Mem. Ex. J (CBP Seizure Notices). The evidence from Amazon's document production shows that since the filing of the complaint, thousands of allegedly infringing water filters listings were created by non-respondent sellers. *See* Mem at 108-09; *see also* Mem. Ex. D (Adair Decl.), ¶¶ 7-8 at Exs. B and C (AMZN0000001 and AMZN0000002). According to complainants, for those entities that have removed their product listings, either new entities have appeared, or the original entities may now be operating under different names and continuing to import allegedly infringing products. *See* Mem. at 109. The evidence shows that thousands of non-respondent entities located in multiple countries including Armenia, Australia, Bahrain, Bulgaria, Canada, Hong Kong, China, Columbia, Costa Rica, Egypt, Greece, Israel, Thailand, and Vietnam created thousands of allegedly infringing water filter listings. *See* Mem. at 110; *see also* Mem. Ex. C (Conlin Dep. Tr.) at Ex. 7 (EBAY0000009).

Thus, the evidence presented by complainants establishes a widespread availability of imported allegedly infringing water filters in the United States.

Difficulty Identifying Sources of Infringing Products

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

Complainants argue that the industry of water filters, in particular, is susceptible to repeated violations because many sales after importation are made via Amazon and eBay, making it difficult to both identify and locate manufacturers and sellers. *See* Mem. at 111. Complainants further argue that defaulting respondents and non-respondent sellers can and likely do obscure the sources of their allegedly infringing products when selling into the United States. *See* Mem. at 99. The evidence shows that defaulting respondents and non-respondent sellers could import accused products or allegedly infringing products to the United States while obscuring the identity of the seller and thereby prevent CBP from identifying the accused product from exclusion based on the information provided by the importer. *See* Mem. at 98-99; *see also* Mem. Ex. H (NPL_00001011) (settled respondent Ningbo Pureza Filters sold accused product for importation to a customer, the CBP form did not identify Pureza anywhere on the form, and instead listed another entity, [REDACTED], as the importer of record); Staff Resp. at 41.

The evidence also shows that inspection of the product itself would not indicate the ultimate source of the product. *See* Mem. at 99. Complainants provide evidence that accused products ship to customers in a generic cardboard shipping box, without any branding identifying the producer. *See* Mem. Ex. I (Aston Decl.), ¶¶ 9, 12; *see also* Mem. at 99. Furthermore, record evidence shows seizures by CBP of counterfeit Electrolux packaging used by importers that indicate the original source of the accused product as unknown or at best simply the logistic

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company with the recipient's address. *See* Mem. Ex. J (CBP Seizure Notices); *see also* Mem. at 99; Staff Resp. at 41.

Complainants further state that in efforts to identify sources of infringing product shipments, they served Commission subpoenas on three parties listed as addresses for these products, and received no response. *See* Mem. at 99; *see also* Mem. Ex. K (Subpoenas *Duces Tecum* and *Ad Testificandum* to Wonder Cross Wholesale LLC; E Mart Intl., Inc; and YJD, Inc.).

Based on the undisputed evidence presented, complainants have met their burden of establishing a pattern of infringement by respondents, and that it is difficult to identify the sources of infringing products. *See* 19 U.S.C. § 1337(d)(2)(B). Therefore, the circumstances of this particular industry are such that a GEO is necessary to provide complainants with an effective remedy.

Accordingly, the issuance of a GEO under 19 U.S.C. § 1337(d)(2)(B) is appropriate with respect to the asserted patents.

B. Cease and Desist Orders

Section 337(g)(1) authorizes the Commission to issue cease and desist orders against defaulted respondents. 19 U.S.C. § 1337(g)(1); *see also* *Certain Hand Dryers and Housing for Hand Dryers*, Inv. No. 337-TA-1015, Comm'n Op. at 9-10 (Oct. 30, 2017) ("*Hand Dryers*"). This provision provides:

If—

(A) a complaint is filed against a person under this section;

(B) the complaint and a notice of investigation are served on the person;

(C) the person fails to respond to the complaint and notice or otherwise fails to appear to answer the complaint and notice;

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(D) the person fails to show good cause why the person should not be found in default; and

(E) the complainant seeks relief limited solely to that person;

the Commission shall presume the facts alleged in the complaint to be true and shall, upon request, issue an exclusion from entry or a cease and desist order, or both, limited to that person unless, after considering the effect of such exclusion or order upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the Commission finds that such exclusion or order should not be issued.

19 U.S.C. § 1337(g)(1).

As discussed above, the Commission has personal jurisdiction over all the respondents in this investigation. Nevertheless, “[i]n determining whether the issuance of a CDO against a defaulted respondent is appropriate, the Commission considers whether the defaulted respondent maintains commercially significant inventories in the United States or has significant domestic operations that could undercut the remedy provided by an exclusion order.” *Hand Dryers*, Inv. No. 337-TA-1015, Comm’n Op. at 10; *see also Certain Electric Skin Care Devices, Brushes and Chargers Therefore, and Kits Containing the Same*, Inv. No. 337-TA-959, Comm’n Op. at 21-31 (Feb. 13, 2017) (“*Skin Care Devices*”) (discussion of statutory provision and Commission precedent). The Commission’s practice recognizes that inasmuch as a defaulted respondent has chosen not to participate in the investigation, complainants are not able to obtain detailed information in discovery to support a request for a cease and desist order. *See Hand Dryers*, Inv. No. 337-TA-1015, Comm’n Op. at 10.

As to domestic respondents found in default under section 337(g)(1), the Commission has consistently inferred the presence of commercially significant inventories in the United States and granted complainant’s request for relief in the form of a cease and desist order. *See Hand*

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Dryers, Inv. No. 337-TA-1015, Comm’n Op. at 24 (citing *Certain Agricultural Tractors, Lawn Tractors, Riding Lawnmowers, and Components Thereof*, Inv. No. 337-TA-486, Comm’n Op. at 17-18 (July 14, 2003)); *Certain Mobile Device Holders and Components Thereof*, Inv. No. 337-TA-1028, Comm’n Op. at 24 (Mar. 22, 2018) (“*Mobile Devices*”). In this investigation, there are no domestic respondents found in default.

With respect to the foreign respondents found in default under section 337(g)(1), the Commission has declined to presume the presence of domestic inventories in the United States that would support the issuance of a cease and desist order. *Mobile Devices*, Inv. No. 337-TA-1028, Comm’n Op. at 24. Rather, the Commission has examined whether the facts alleged in the complaint and any other record evidence support the inference that the foreign defaulting respondent or its agents maintains a commercially significant inventory and/or engages in significant commercial operations in the United States. *See id.*; *Hand Dryers*, Inv. No. 337-TA-1015, Comm’n Op. at 11.

For example, the Commission has examined “circumstantial evidence of U.S. distribution of infringing products with corresponding supporting documents relating to those sales by foreign defaulting respondents.” *Mobile Devices*, Inv. No. 337-TA-1028, Comm’n Op. at 24-25 (citing *Skin Care Devices*, Comm’n Op. at 31; *Certain Arrowheads with Deploying Blades and Components Thereof and Packaging Therefor*, Inv. No. 337-TA-977, Comm’n Op. at 18-20 (Apr. 28, 2017) (“*Arrowheads*”)).

As discussed below, in this investigation, the evidence supports the issuance of cease and desist orders against two of the three foreign defaulting respondents.

Angkua Environmental and Calux

Complainants argue: “Based on the record evidence, foreign defaulting respondents Calux and Angkua Environmental maintain commercially significant inventories of the accused products and engage in significant commercial activity in the United States.” Mem. at 116. The Staff agrees. *See* Staff Resp. at 44-46.

The evidence supports a CDO against Respondent Angkua Environmental. The evidence demonstrates domestic Amazon inventories containing large quantities of Angkua Environmental’s accused water filter products. *See* Nguyen Decl., ¶¶ 5-6. Additionally, the evidence shows that Angkua Environmental has previously imported commercial quantities of hundreds of the accused “Tier 1” filters for Tier 1 in Zumbrota, Minnesota for sale in the U.S. *See* Compl., Ex. 11 (Arvig Decl.), ¶¶ 8-13 (describing importation and sales of infringing water filters by Water Filters Direct LLC d/b/a/ Tier 1); Compl., Ex. 11 (Arvig Decl.) at Ex. A (invoices and shipping documents).

The evidence also shows that Angkua Environmental has previously imported commercial quantities of thousands of the accused “Eternawater” filters for Brixton Holdings, LLC in Suwanee, Georgia for Brixton for sale in the U.S. *See* Compl., Ex. 12 (Sebree Decl.), ¶¶ 11-17, 21, 26; Compl., Ex. 12 (Sebree Decl.) at Exs.1-2. In each case, the infringing products that were imported by Angkua Environmental were specially branded for the U.S. retailer or reseller. *See* Compl., Ex. 11 (Arvig Decl.), ¶ 7 (describing sales of “Tier I” and other brand name filters); Compl., Ex. 12 (Sebree Decl.), ¶ 5 (describing sales of filters under the brand name “Eternawater” and other brand names); *see also Skin Care Devices*, Comm’n Op. at 32 (“relabeling or rebadging versions of infringing products” is evidence of involvement in U.S. business operations). Thus, the evidence shows that it is reasonable to infer that Angkua

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Environmental has commercially significant domestic inventory and significant U.S. business operations.

The evidence also supports a CDO against respondent Calux. The evidence shows that Calux has previously imported commercial quantities of thousands of the accused “Mist by Clearwater” filters for AGA Imports, LLC (“AGA”) to sell in the U.S. *See* Compl., Ex. 10 (Grazi Decl.), ¶¶ 22-23 (describing sales of filters manufactured by Calux and Pureza, imported by AGA, and advertised by AGA on Amazon.com, Jet.com, Walmart.com and Ebay.com). The infringing products that were imported by Calux were specially branded for this U.S. retailer or reseller. *See* Compl., Ex. 10 (Grazi Decl.), ¶ 6.

The evidence demonstrates that in April 2018, Calux advertised on Alibaba its ability to supply commercial quantities of 20,000 pieces a month of replacements for the ULTRAWF and WF3CB filters under either Calux’s or an OEM brand name of the purchaser’s choosing. *See* Compl., Ex. 25 (advertising replacement water filters with “Supply Ability: 20000 Piece/Pieces per Month ULTRAWF Refrigerator Water Filter” from the “Port: Shenzhen”). The evidence shows four sales on Alibaba in July and August 2018 by Calux of commercial quantities of water filters all for delivery to addresses in the U.S. *See* Mem. Ex. B. (Ramos Decl.) at Ex. E (Alibaba LLC 004) (see sales by “caluxwell” for “refrigerator air filter” sales to both an “MRX STORE” and to a zip code in Texas).

The evidence shows that, at least from 2017 through November 2018, Pureza has supplied generic (unlabeled) accused water filters to Calux. *See* Mem. Ex. G (Respondent Ningbo Pureza Limited’s Responses and Objections to Complainants’ First Set of Interrogatories) at Response to Interrogatory No. 15. For example, in 2017, Pureza provided Calux with 62,000 units of these (unlabeled) accused water filters intended for the U.S. market.

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See id. at Response to Interrogatory No. 6. However, the Electrolux refrigerators that use the ULTRAWF and WF3CB filters are only sold in the U.S. and Canada. *See* Nguyen Decl., ¶ 9. The relevant consumer market for the infringing replacement filters that Calux is advertising on Alibaba exists only in the U.S. and Canada. *Id.*, ¶¶ 9-10. (describing the market for ULTRAWF and WF3CB water filters as 99.6% of the U.S. market and 0.40% of the Canadian market for side-by-side refrigerator models sold by Electrolux). Accordingly, the evidence strongly suggests that Calux sources the filters from Pureza for the U.S. market. *Id.*

The evidence shows that complainants' counsel, Mr. Todd Bayne, sought to purchase water filters directly from Calux over the Alibaba platform in April 2018. Calux's representative, Ms. Cao, asked why Mr. Bayne did not instead purchase the water filters directly from Amazon. *See* Am. Compl., Ex. 37 (Bayne Decl.) at Ex. A (asking "[W]hy don't you directly buy from amazon but buy from the china factory? if just because price reason, I can see many seller in amazon with good price."). Ms. Cao sent Mr. Bayne an Amazon link for his future product purchases. *See* Am. Compl., Ex. 37 (Bayne Decl.), ¶ 6. Thus, the evidence shows that it is reasonable to infer that Calux has significant U.S. business operations and either currently has commercially significant domestic inventory and/or could stockpile such inventories to circumvent an exclusion order.

Dakon

Complainants argue:

Based on the record evidence, foreign defaulting respondents Dakon sells the Accused Products on the online retailer Alibaba under the seller name "Dakon Ma". This evidence shows that Dakon has participated in marketing and sales efforts on the internet directed towards consumers in the United States. As with Calux and Angkua Environmental, these same facts also support an inference that the Defaulting Respondents engage in significant commercial activity in the United States.

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level of a reasonable royalty rate could be ascertained. *See Certain Integrated Circuit Telecommunication Chips and Products Containing Same, Including Dialing Apparatus*, Inv. No. 337-TA-337, Comm'n Op. at 41 (1995). A 100 percent bond has been required when no effective alternative existed. *See Certain Flash Memory Circuits and Products Containing Same*, Inv. No. 337-TA-382, USITC Pub. No. 3046, Comm'n Op. at 26-27 (July 1997) (a 100% bond imposed when price comparison was not practical because the parties sold products at different levels of commerce, and the proposed royalty rate appeared to be *de minimis* and without adequate support in the record).

Complainants argue:

None of the Respondents participated in this Investigation and, therefore, provided no discovery relating to pricing or royalty information. Further, the infringing imported products are sold at various prices and likely differ depending on customer and volume purchased. Therefore, inasmuch as no reliable price differentiation can be determined, the Commission should set a bond rate at 100% of the entered value of the infringing products. Complainants further submits, pursuant to 19 U.S.C. §§ 1337(e), (j)(3) and 19 C.F.R. § 210.50(a)(3), the proposed bond is necessary and sufficient to protect it from further injury.

Mem. at 121.

The Staff agrees. *See Staff Resp.* at 47.

A bond of 100% is appropriate in this investigation. Inasmuch as the evidence shows that the sales were made online at various price points and quantities, calculating an average price would be difficult. Given this state of the evidentiary record, and the fact that all of the affected respondents have defaulted rather than provide discovery, a bond value of 100% is appropriate. Under these circumstances, the administrative law judge recommends that the defaulting respondents be required to post a bond of 100% of entered value during the 60-day Presidential

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review period. This amount should be sufficient to prevent any harm to complainants during the Presidential review period.

VI. Initial Determination and Order

It is the initial determination of the administrative law judge that complainants' Motion No. 1126-18 for summary determination of violation of section 337 by the defaulting respondents is granted.

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

Further, it is recommended that the Commission issue a GEO, issue certain CDOs discussed above, and that a 100 percent bond be established for importation during the Presidential review period.


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

To expedite service of the public version, each party is hereby ordered to file with the Commission Secretary no later than July 19, 2019, a copy of this initial and recommended determination with brackets to show any portion considered by the party (or its suppliers of information) to be confidential, accompanied by a list indicating each page on which such a bracket is to be found. At least one copy of such a filing shall be served upon the office of the undersigned, and the brackets shall be marked in red. If a party (and its suppliers of information)

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considers nothing in the initial determination to be confidential, and thus makes no request that any portion be redacted from the public version, then a statement to that effect shall be filed.²⁰

So ordered.

A handwritten signature in black ink, appearing to read 'D. Shaw', written over a horizontal line.

David P. Shaw
Administrative Law Judge

Issued: July 11, 2019

²⁰ Confidential business information (“CBI”) is defined in accordance with 19 C.F.R. § 201.6(a) and § 210.5(a). When redacting CBI or bracketing portions of documents to indicate CBI, a high level of care must be exercised in order to ensure that non-CBI portions are not redacted or indicated. Other than in extremely rare circumstances, block-redaction and block bracketing are prohibited. In most cases, redaction or bracketing of only discrete CBI words and phrases will be permitted.

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **Order No. 17 (Initial Determination)** has been served by hand upon the Commission Investigative Attorney, **Claire Comfort, Esq.**, and the following parties as indicated, on **AUG 07 2019**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
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Washington, DC 20436

FOR COMPLAINANT ELECTROLUX HOME PRODUCTS, INC.:

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

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