

In the Matter of

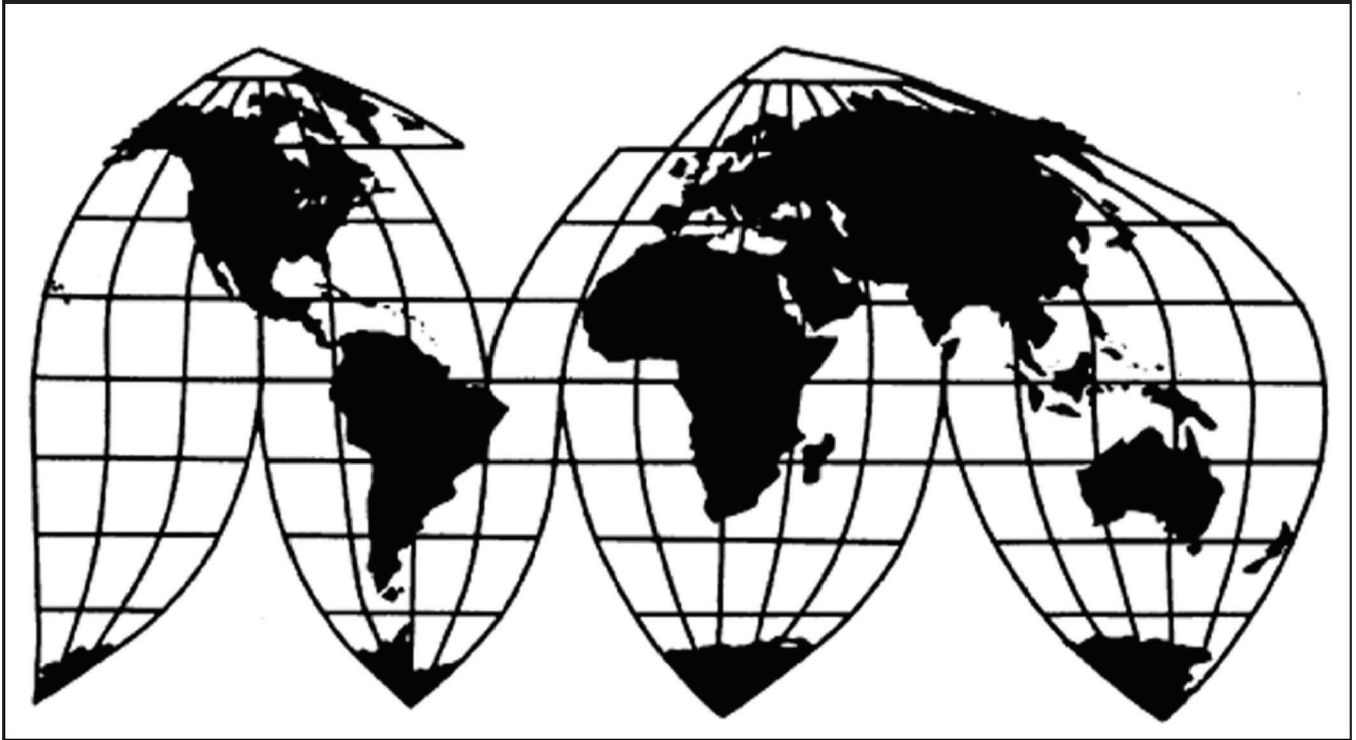
**CERTAIN SHAKER SCREENS FOR
DRILLING FLUIDS, COMPONENTS
THEREOF, AND RELATED MARKETING
MATERIALS**

Investigation No. 337-TA-1184

Publication 5307

March 2022

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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

U.S. International Trade Commission

Washington, DC 20436
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UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN SHAKER SCREENS FOR
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MARKETING MATERIALS**

Investigation No. 337-TA-1184

**NOTICE OF A COMMISSION FINAL DETERMINATION OF VIOLATION OF
SECTION 337; ISSUANCE OF A GENERAL EXCLUSION ORDER; TERMINATION
OF THE INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that there is a violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation. The Commission has issued a general exclusion order (“GEO”) barring entry of certain shaker screens and components thereof that infringe certain claims of three patents asserted in this investigation. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5468. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.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 November 21, 2019, based on a complaint, as amended, filed by M-I L.L.C. of Houston, Texas (“M-I”). 84 FR 64339 (Nov. 21, 2019). The amended complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain shaker screens for drilling fluids, components thereof, and related marketing materials by reason of infringement of: (1) certain claims of U.S. Patent Nos. 7,210,582 (“the ’582 patent”),

7,810,649 (“the ’649 patent”), and 8,925,735 (“the ’735 patent”); and (2) U.S. Trademark Registration Nos. 2,151,736 and 2,744,891. *Id.* The Commission’s notice of investigation named six respondents, including Anping Shengjia Hardware Mesh Co., Ltd. (“SJ Screen”) and Hebei Hengying Wire Cloth Co. Ltd (“Hengying Wire Cloth”) (collectively the “Defaulting Respondents”). *Id.* at 64339-40. The Office of Unfair Import Investigations (“OUII”) is participating in this investigation. *Id.* at 64340.

On February 5, 2020, the Commission found SJ Screen and Hengying Wire Cloth in default. Order No. 10, *unreviewed*, Notice (Mar. 5, 2020). Thereafter, and after the termination of the other remaining respondents by consent order, *see* Order No. 8, *unreviewed*, Notice (Feb. 6, 2020); Order No. 14, *unreviewed*, Notice (Apr. 23, 2020), M-I withdrew all of its trademark-based allegations, as well as claims 2-11 of the ’582 patent; claims 2-7 and 9 of the ’649 patent; and claims 2-9, 13, 16, and 18-19 of the ’735 patent from the investigation. *See* Order No. 19, *unreviewed*, Notice (Sept. 24, 2020). The patent claims remaining in the investigation are claims 1 and 12 of the ’582 patent; claim 1 of the ’649 patent; and claims 1, 12, and 17 of the ’735 patent.

On August 27, 2020, M-I filed a motion for summary determination that the Defaulting Respondents violated section 337 and that M-I satisfies the domestic industry requirement of section 337. The motion sought issuance of a general exclusion order (“GEO”) and imposition of a one hundred percent (100%) bond on accused products imported during the Presidential review period. On September 16, 2020, OUII filed a response supporting M-I’s motion, including the remedial relief requested therein.

On November 19, 2020, the ALJ issued the subject ID granting M-I’s motion and recommending issuance of a GEO and imposition of a bond in the amount of 100 percent of the entered value of infringing products. Specifically, the ID found that (1) the Commission has jurisdiction over the products, the parties, and the investigation; (2) the importation requirement is satisfied; (3) M-I has standing to bring this investigation; (4) all of the remaining asserted claims are infringed by one or more of the Defaulting Respondents’ products; and (5) M-I has satisfied the domestic industry requirement of section 337. Additionally, the ALJ recommended that the Commission issue a GEO and impose a bond in the amount of one hundred percent (100%) of the entered value of infringing articles imported during the period of Presidential review.

On January 4, 2021, the Commission determined to review the ID’s finding that M-I’s investments in plant and equipment and M-I’s employment of labor and capital are significant under section 337(a)(3)(A) and (B). Notice (Jan. 4, 2021). The Commission also sought briefing on remedy, bonding, and the public interest. M-I filed a submission in response on January 19, 2021 and filed a corrected version of that response on January 22, 2021. OUII filed a submission in response on January 19, 2021 and filed a reply submission on January 26, 2021. No submissions were received from the public.

Having reviewed the written submissions and the evidentiary record, the Commission has determined to affirm the ID’s finding that M-I satisfied the economic prong of the domestic

industry requirement on the basis that M-I made significant investments in plant and equipment and significant employment of labor under section 337(a)(3)(A) & (B), 19 U.S.C. 1337(a)(3)(A) & (B), but to vacate the ID's value-added analysis (ID at 65-66).

The Commission has determined that the appropriate remedy in this investigation is a GEO prohibiting the unlicensed importation of certain shaker screens for drilling fluids and components thereof that infringe claims 1 and 12 of the '582 patent; claim 1 of the '649 patent; and claims 1, 12, and 17 of the '735 patent. The Commission has further determined that the public interest factors enumerated in section 337(d), 19 U.S.C. 1337(d), do not preclude issuance of the GEO. Finally, the Commission has determined that a bond in the amount of one hundred (100) percent of the entered value of the imported articles that are subject to the GEO is required to permit temporary importation of the articles in question during the period of Presidential review, 19 U.S.C. 1337(j). The investigation is hereby terminated in its entirety.

The Commission's order and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance. The Commission has also notified the Secretary of the Treasury and Customs and Border Protection of the order.

The Commission vote for these determinations took place on March 18, 2021.

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).

While temporary remote operating procedures are in place in response to COVID-19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the Complainant(s) complete service for any party/parties without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).

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: March 18, 2021

**CERTAIN SHAKER SCREENS FOR DRILLING FLUIDS,
COMPONENTS THEREOF, AND RELATED MARKETING
MATERIALS**

Inv. No. 337-TA-1184

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served via EDIS upon the Commission Investigative Attorney, **Peter Guarnieri, Esq.**, and the following party as indicated, on **March 18, 2021**.



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

On Behalf of Complainant M-I L.L.C.:

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Respondents:

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Completed by Complainant

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC**

In the Matter of

**CERTAIN SHAKER SCREENS FOR
DRILLING FLUIDS, COMPONENTS
THEREOF, AND RELATED
MARKETING MATERIALS**

Inv. No. 337-TA-1184

GENERAL EXCLUSION ORDER

The Commission has determined that there is a violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the unlawful importation, sale for importation, or sale within the United States after importation of certain shaker screens for drilling fluids, and components thereof that infringe one or more of claims 1 and 12 of U.S. Patent No. 7,210,582 (“the ’582 patent”); claim 1 of U.S. Patent No. 7,810,649 (“the ’649 patent”); and claims 1, 12, and 17 of U.S. Patent No. 8,925,735 (“the ’735 patent”).

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determinations on the issues of remedy, the public interest, and bonding. The Commission has determined pursuant to 19 U.S.C § 1337(d), that a general exclusion from entry for consumption is necessary (1) to prevent circumvention of an exclusion order limited to products of named persons and (2) 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 shaker screenings for drilling fluids and components thereof.

The Commission has also determined that the public interest factors enumerated in 19

U.S.C. § 1337(d)(1) do not preclude issuance of a general exclusion order and that the bond during the Presidential review period shall be in the amount of one hundred (100) percent of the entered value for all articles in question.

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

1. Shaker screens for drilling fluids, and components thereof (as defined in paragraph 2 below) that infringe one or more of claims 1 and 12 of the '582 patent, claim 1 of the '649 patent, and claims 1, 12, and 17 of the '735 patent are excluded from entry into the United States for consumption, entry for consumption from a foreign-trade zone, and withdrawal from a warehouse for consumption, for the remaining terms of the patents except under license from, or with the permission of, the patent owner or as provided by law.

2. The shaker screens for drilling fluids, and components thereof, that are subject to this Order (i.e., "covered articles") are as follows: sifting screens (commonly referred to as "shaker screens") that are fitted into drilling mud shakers (also referred to as "shale shakers") to separate solids from liquid drilling muds brought up from down-hole when drilling for oil and gas, and components thereof including the rigid frame over which the wire mesh sieving screen may be fitted.

3. Notwithstanding paragraph 1 of this Order, the aforesaid covered articles are entitled to entry into the United States for consumption, entry for consumption from a foreign-trade zone, and withdrawal from a warehouse for consumption, under bond in the amount of one hundred (100) percent of the entered value of the products pursuant to subsection (j) of Section 337 (19 U.S.C. § 1337(j)), and the Presidential Memorandum for the United States Trade Representative of July 21, 2005 (70 *Fed Reg.* 43251), from the day after this Order is received by the United States Trade Representative and until such time as the United States Trade

Representative notifies the Commission that this Order is approved or disapproved but, in any event, not later than sixty (60) days after the date of receipt of this Order. All entries of covered articles made pursuant to this paragraph are to be reported to U.S. Customs and Border Protection (“CBP”), in advance of the date of the entry, pursuant to procedures CBP establishes.

4. At the discretion of CBP and pursuant to procedures it establishes, persons seeking to import articles that are potentially subject to this Order may be required to certify that they are familiar with the terms of this Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the products being imported are not excluded from entry under paragraph 1 of this Order. At its discretion, CBP may require persons who have provided the certification described in this paragraph to furnish such records or analyses as are necessary to substantiate the certification.

5. 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.

6. 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).

7. The Commission Secretary shall serve copies of this Order upon each party of record in this investigation and upon CBP. While temporary remote operating procedures are in place in response to COVID-19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rule 201.16(a) and 210.7(a)(1) (19 C.F.R. §§ 201.16(a), 210.7(a)(1)), the Commission orders that the Complainant complete service of this Order for any party without

a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).

8. 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 and title.

Lisa R. Barton
Secretary to the Commission

Issued: March 18, 2021

**CERTAIN SHAKER SCREENS FOR DRILLING FLUIDS,
COMPONENTS THEREOF, AND RELATED MARKETING
MATERIALS**

Inv. No. 337-TA-1184

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER, COMMISSION** has been served via EDIS upon the Commission Investigative Attorney, **Peter Guarnieri, Esq.**, and the following party as indicated, on **March 18, 2021**.



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

On Behalf of Complainant M-I L.L.C.:

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Respondents:

Anping Shengjia Hardware Mesh Co., Ltd.
Huangcheng Industrial Zone
Anping County, Hengshui City
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- ☐ Via Hand Delivery
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China 053600

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- ☐ Via Express Delivery
- ☐ Via First Class Mail
- ☒ Other: Service to Be
Completed by Complainant

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**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC**

In the Matter of

**CERTAIN SHAKER SCREENS FOR
DRILLING FLUIDS, COMPONENTS
THEREOF, AND RELATED
MARKETING MATERIALS**

Investigation No. 337-TA-1184

COMMISSION OPINION

On review of the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 20), the Commission has determined that there has been a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, with respect to claims 1 and 12 of U.S. Patent No. 7,210,582 ("the '582 patent"); claim 1 of U.S. Patent No. 7,810,649 ("the '649 patent"); and claims 1, 12, and 17 of U.S. Patent No. 8,925,735 ("the '735 patent"). The Commission has also determined that the appropriate remedy is a general exclusion order ("GEO"), that the public interest considerations do not weigh against this remedy, and has set the bond in the amount of 100 percent of the entered value of the infringing articles during the period of Presidential review. This opinion sets forth the Commission's reasoning in support of its determination. The Commission further adopts the findings in the ID that are not inconsistent with this opinion.

I. BACKGROUND

The Commission instituted this investigation on November 21, 2019, based on a complaint, as amended, filed by M-I L.L.C. of Houston, Texas ("M-I"). 84 Fed. Reg. 64339 (Nov. 21, 2019). The amended complaint alleged violations of section 337 in the importation

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into the United States, the sale for importation, and the sale within the United States after importation of certain shaker screens for drilling fluids, components thereof, and related marketing materials by reason of infringement of certain claims of the '582 patent, the '649 patent, and the '735 patent, and of U.S. Trademark Registration Nos. 2,151,736 and 2,744,891.

Id. The Commission's notice of investigation named six respondents, including Anping Shengjia Hardware Mesh Co., Ltd. and Hebei Hengying Wire Cloth Co. Ltd. (together, the "Defaulting Respondents"). *Id.* at 64339-40. The Office of Unfair Import Investigations ("OUII") is participating in this investigation. *Id.* at 64340.

On February 5, 2020, the Commission found the Defaulting Respondents in default. Order No. 10, *unreviewed*, Notice (Mar. 5, 2020). The Commission subsequently terminated all other respondents by consent orders. *See* Order No. 8, *unreviewed*, Notice (Feb. 6, 2020); Order No. 14, *unreviewed*, Notice (Apr. 23, 2020). Thereafter, M-I withdrew its trademark infringement allegations, as well several claims of the asserted patents from the investigation. *See* Order No. 19, *unreviewed*, Notice (Sept. 24, 2020). The patent claims remaining in the investigation are claims 1 and 12 of the '582 patent; claim 1 of the '649 patent; and claims 1, 12, and 17 of the '735 patent.

On August 27, 2020, M-I filed a motion for summary determination that the Defaulting Respondents violated section 337 and that M-I satisfies the domestic industry requirement of section 337.¹ The motion requested a finding of violation, the issuance of a GEO, and the imposition of a bond in the amount of one hundred percent (100%) of the entered value of

¹ Complainant M-I L.L.C.'s Motion for Summary Determination of Violation and for Recommended Determination on Remedy and Bonding (Aug. 7, 2020) ("MSD").

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infringing products imported during the Presidential review period. On September 16, 2020, OUII filed a response supporting M-I's motion, including the requested relief.

On November 19, 2020, the ALJ issued the subject ID granting M-I's motion and a Recommended Determination on Remedy and Bond ("RD") recommending the issuance of a GEO and the imposition of a bond in the amount of one hundred percent (100%) of the entered value of infringing products subject to the GEO. Specifically, the ID found that (1) the Commission has jurisdiction over the products, the parties, and the investigation; (2) the importation requirement is satisfied; (3) M-I has standing to bring this investigation; (4) all of the remaining asserted claims are infringed by one or more of the Defaulting Respondents' products; and (5) M-I has satisfied the domestic industry requirement of section 337.

On January 4, 2021, the Commission determined to review the ID's finding that M-I's investments in plant and equipment and M-I's employment of labor and capital are significant under section 337(a)(3)(A) and (B). Notice, 86 Fed. Reg. 1523 (Jan. 8, 2021). The Commission also sought briefing on remedy, bonding, and the public interest. M-I filed a submission in response on January 19, 2021, and filed a corrected version of that response on January 22, 2021.² OUII filed a submission in response on January 19, 2021,³ and filed a reply submission on January 26, 2021.⁴ No submissions were received from the public.

² Complainant's Submission on Remedy, the Public Interest, and Bonding (Jan. 19, 2021) ("M-I Sub.").

³ Response of the Office of Unfair Import Investigations to the Commission's Request for Written Submissions on Remedy, the Public Interest, and Bonding (Jan. 19, 2021) ("OUII Sub.").

⁴ Reply Submission of the Office of Unfair Import Investigations to Complainant M-I L.L.C.'s Written Submission on Remedy, The Public Interest, and Bonding (Jan. 26, 2021) ("OUII Reply Sub.").

II. REVIEW

With respect to the issues under review, “the Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, the initial determination of the administrative law judge.” 19 C.F.R. § 210.45(c). The Commission also “may take no position on specific issues or portions of the initial determination,” and “may make any finding or conclusions that in its judgment are proper based on the record in the proceeding.” *Id.*

III. ANALYSIS

The Commission has determined to affirm the ID’s finding that M-I satisfied the economic prong of the domestic industry requirement under section 337(a)(3). Specifically, the Commission finds that M-I made significant investments in plant and equipment and significant employment of labor under section 337(a)(3)(A) and (B), 19 U.S.C. § 1337(a)(3)(A) & (B). The Commission affirms the ID’s findings that M-I’s plant and equipment investments and employment of labor are significant based on: (1) the quantity of the investments and employment; (2) the quality of the investments and employment because they are directly related to the production of the articles in the United States; and (3) a comparison of M-I’s domestic and foreign activities. ID at 61-66; *see also* MSD Ex. 1 (Conf. Supp. Decl. of David Wilson); MSD Ex. 4 (Decl. of Alan Ratliff); Complaint Ex. 35 (Conf. Decl. of David Wilson). The Commission, however, finds the manner in which the ID analyzed value-added was flawed and therefore vacates that portion of the ID. *See* ID at 65-66. Accordingly, the Commission affirms the ID’s finding that M-I showed that a domestic industry exists related to articles protected by the asserted patents.

A. Remedy

If the Commission finds a violation of section 337, the Commission shall “direct that the articles concerned, imported by any person violating the provision, be excluded from entry into

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the United States.” 19 U.S.C. § 1337(d)(1). Such a remedy is “limited to persons determined to be violating this section,” (*i.e.*, a limited exclusion order, or “LEO”) 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). If the Commission finds that at least one of these provisions is satisfied, the Commission may issue a GEO against all infringing products regardless of the source.

The Commission finds that the appropriate remedy in this investigation is to issue a GEO with respect to the '649, '735, and '582 patents. The Commission finds that the RD reasonably concluded that an LEO with respect to those patents would likely be circumvented based on evidence that: (1) there is a strong demand for the infringing products; (2) the importation and sale of the infringing products is profitable; (3) there are existing domestic marketing and distribution networks for the infringing products; (4) infringing goods are sold on large, online marketplaces; (5) it is difficult to identify the source of the goods because they are shipped in generic packaging; and (6) manufacturers often use resellers and intermediaries with unclear ties to the original manufacturer to distribute infringing product and many sellers appear to conceal the identifying information of the manufacturers of their goods, making it possible for manufacturers to evade an LEO. RD, Order 20 at 69-75. The Commission also finds that the RD reasonably found that: (1) there was a widespread pattern of violation based on infringement of the '649 and '735 patents by the Defaulting Respondents and the four other respondents previously terminated by consent order; (2) the evidence shows that thirteen nonparties are selling in the United States shaker screens that appear to infringe the '649 and/or the '735

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patents; and (3) the use of generic packaging and intermediary importers made it difficult to identify the source of the infringing products. *Id.* at 75-79. Accordingly, the Commission has determined that a GEO is warranted with respect to the '649, '735, and '582 patents.⁵

B. The Public Interest

Section 337 requires the Commission, upon finding a violation of section 337, to issue a remedy “unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.” 19 U.S.C. § 1337(d)(1). The statute requires the Commission to consider and make findings on the public interest in every case in which a violation is found regardless of the quality or quantity of public interest information supplied by the parties. 19 U.S.C. § 1337(d)(1). Thus, the Commission publishes a notice inviting the parties as well as interested members of the public and interested government agencies to gather and present evidence on the public interest at multiple junctures in the proceeding. 19 U.S.C. § 1337(d)(1).

The Commission finds no evidence in the record indicating that a GEO would have an adverse impact 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, or United States consumers. The record in this investigation contains no evidence that the products at issue, shaker screens, raise particular public health and welfare concerns. The presence of non-

⁵ The RD declined to reach the issue of whether there was a widespread violation with respect to the '582 patent pursuant to 19 U.S.C. § 1337(d)(2)(B) because it already found that the issuance of a GEO with respect to the '582 patent was appropriate pursuant to 19 U.S.C. § 1337(d)(2)(A). RD, Order No. 20 at 79.

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infringing products made by domestic competitors demonstrates that exclusion is unlikely to negatively impact competitive conditions in the economy. The record in this investigation also contains no evidence that exclusion would negatively impact the production of like and directly competitive articles by M-I or its domestic competitors. Finally, continued shaker screen production by M-I and its domestic competitors makes it unlikely that exclusion will negatively impact United States consumers of shaker screens, as those consumers will continue to have the ability to purchase the products. Thus, based on the record of this investigation, and after considering the public interest factors, the Commission has determined to issue a GEO.

C. Bonding

When the Commission enters an exclusion order, a respondent may continue to import and sell its products during the 60-day period of Presidential review under a bond in an amount determined by the Commission to be “sufficient to protect the complainant from any injury.” 19 U.S.C. § 1337(j)(3); *see also* 19 C.F.R. § 210.50(a)(3). When reliable price information is available in the record, the Commission has often set the bond in an amount that would eliminate the price differential between the domestic product and the imported, infringing product. *See Certain Microsphere Adhesives, Processes for Making Same, & Prods. Containing Same, Including Self-stick Repositionable Notes*, Inv. No. 337-TA-366, USITC Pub. No. 2949, Comm’n Op. at 24 (Jan. 16, 1996). The Commission also has used a reasonable royalty rate to set the bond amount where a reasonable royalty rate could be ascertained from the evidence in the record. *See, e.g., Certain Audio Digital-to-Analog Converters & Prods. Containing Same*, Inv. No. 337-TA-499, Comm’n Op. at 25 (Mar. 3, 2005). Where the record establishes that the calculation of a price differential is impractical or there is insufficient evidence in the record to determine a reasonable royalty, the Commission has imposed a one hundred percent bond. *See, e.g., Certain Liquid Crystal Display Modules, Prods. Containing Same, & Methods Using the*

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Same, Inv. No. 337-TA-634, Comm’n Op. at 6-7 (Nov. 24, 2009). The complainant, however, bears the burden of establishing the need for a bond. *Certain Rubber Antidegradants, Components Thereof & Prods. Containing Same*, Inv. No. 337-TA-533, USITC Pub. No. 3975, Comm’n Op. at 40 (July 21, 2006).

The RD recommends that the Commission set the bond rate at one hundred percent (100%) of the entered value of the articles subject to the GEO. RD at 81. The RD found that a bond could not be based on pricing differentials because the Defaulting Respondents failed to participate in discovery. *Id.* at 80-81. M-I and OUII agree with the RD and contend that the bond rate should be set at one hundred percent of the entered value for all covered products due to the Defaulting Respondents’ failure to participate in discovery. M-I Sub. at 15; OUII Init. Sub. at 22. OUII further argues that a price differential is not practical because infringing shakers are sold for a wide range of prices. OUII Init. Sub. at 22-23.

The Commission finds that the appropriate bond rate is one hundred percent (100%) of the entered value of the articles subject to the GEO. When pricing information or royalty information is insufficient, the Commission has set a bond rate of one hundred percent of entered value. *Certain Ink Cartridges and Components Thereof*, Inv. No. 337-TA-946, Comm’n Op. at 18 (June 29, 2016). Here, the parties demonstrated that they could not obtain sufficient pricing information or royalty information due to the Defaulting Respondents’ failure to participate in discovery. Accordingly, the Commission has determined to set the bond during the period of Presidential review at one hundred percent (100%) of the entered value of the infringing products subject to the GEO.

IV. CONCLUSION

For the reasons set forth herein, the Commission determines that M-I has established a violation of section 337 by the Defaulting Respondents with respect to claims 1 and 12 of the '582 patent, claim 1 of the '649 patent, and claims 1, 12, and 17 of the '735 patent. Accordingly, the investigation is terminated with a finding of a violation of section 337. After considering the public interest, the Commission determines that the appropriate remedy is to issue a GEO with respect to those patent claims, and that the bond during the period of Presidential review is set in the amount of one hundred percent (100%) of the entered value of the infringing products subject to the GEO.

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: March 31, 2021

**CERTAIN SHAKER SCREENS FOR DRILLING FLUIDS,
COMPONENTS THEREOF, AND RELATED MARKETING
MATERIALS**

Inv. No. 337-TA-1184

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **COMMISSION OPINION** has been served via EDIS upon the Commission Investigative Attorney, **Peter Guarnieri, Esq.**, and the following parties as indicated, on **March 31, 2021**.



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

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Respondents:

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China 053600

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- ☐ Via Express Delivery
- ☐ Via First Class Mail
- ☒ Other: Service to Be
Completed by Complainant

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN SHAKER SCREENS FOR
DRILLING FLUIDS, COMPONENTS
THEREOF, AND RELATED
MARKETING MATERIALS**

Inv. No. 337-TA-1184

**NOTICE OF A COMMISSION DETERMINATION TO REVIEW-IN-PART AN
INITIAL DETERMINATION GRANTING SUMMARY DETERMINATION OF
VIOLATION OF SECTION 337; REQUEST FOR WRITTEN SUBMISSIONS ON
REMEDY, THE PUBLIC INTEREST, AND BONDING**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part an initial determination (“ID”) (Order No. 20) issued by the presiding administrative law judge (“ALJ”) granting a motion for summary determination of violation of section 337. The Commission requests written submissions from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding, under the schedule set forth below.

FOR FURTHER INFORMATION CONTACT: Benjamin S. Richards, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436, telephone (202) 708-5453. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.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 November 21, 2019, based on a complaint, as amended, filed by M-I L.L.C. of Houston, Texas (“M-I”). 84 FR 64339 (Nov. 21, 2019). The amended complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain shaker screens for drilling fluids, components thereof, and related marketing materials by reason of infringement of: (1) certain claims of U.S. Patent Nos. 7,210,582 (“the ’582 patent”), 7,810,649 (“the ’649 patent”), and (“the ’735 patent”)); and (2) U.S. Trademark Registration

Nos. 2,151,736 and 2,744,891. *Id.* The Commission’s notice of investigation named six respondents, including Anping Shengjia Hardware Mesh Co., Ltd. (“SJ Screen”) and Hebei Hengying Wire Cloth Co. Ltd (“Hengying Wire Cloth”) (collectively the “Defaulting Respondents”). *Id.* at 64339-40. The Office of Unfair Import Investigations (“OUII”) is participating in this investigation. *Id.* at 64340.

On February 5, 2020, the Commission found SJ Screen and Hengying Wire Cloth in default. Order No. 10, *unreviewed*, Notice, EDIS Doc. ID 704161 (Mar. 5, 2020). Thereafter, and after the termination of the other remaining respondents by consent order, *see* Order No. 8, *unreviewed*, Notice, EDIS Doc. ID 701736 (Feb. 6, 2020); Order No. 14, *unreviewed*, Notice, EDIS Doc. ID 708798 (Apr. 23, 2020), M-I withdrew all of its trademark-based allegations, as well as claims 2-11 of the ’582 patent; claims 2-7 and 9 of the ’649 patent; and claims 2-9, 13, 16, and 18-19 of the ’735 patent from the investigation. *See* Order No. 19, *unreviewed*, Notice, EDIS Doc. ID 720447 (Sept. 24, 2020).

On August 27, 2020, M-I filed a motion for summary determination that the Defaulting Respondents violated section 337 and that M-I satisfies the domestic industry requirement of section 337. The motion sought issuance of a general exclusion order (“GEO”) and imposition of a one hundred percent (100%) bond on accused products imported during the Presidential review period. On September 16, 2020, OUII filed a response supporting M-I’s motion, including the remedial relief requested therein.

On November 19, 2020, the ALJ issued the subject ID granting M-I’s motion and recommending issuance of a GEO and imposition of a bond in the amount of 100 percent of the entered value of infringing products. Specifically, the ID found that (1) the Commission has jurisdiction over the products, the parties, and the investigation; (2) the importation requirement is satisfied; (3) M-I has standing to bring this investigation; (4) all of the remaining asserted claims are infringed by one or more of the Defaulting Respondents’ products; and (5) M-I has satisfied the domestic industry requirement of section 337. Additionally, the ALJ recommended that the Commission issue a GEO and impose a bond in the amount of one hundred percent (100%) of the entered value of infringing articles imported during the period of Presidential review.

The Commission has determined to review the ID’s finding that M-I’s investments in plant and equipment and M-I’s employment of labor and capital are significant under section 337(a)(3)(A) and (B). The Commission has determined not to review the remainder of the ID.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia*, (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States and/or (2) cease and desist orders that could result in the respondents 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 (Dec. 1994).

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order 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, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

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

In its initial submission, Complainant is also requested to identify the remedy sought and Complainant and OUII are requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to state the dates that the Asserted Patents expire, the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on January 19, 2021. Reply submissions must be filed no later than the close of business on January 26, 2021. 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. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1184) in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures*, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary, (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission

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

The Commission vote for this determination took place on January 4, 2021.

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: January 4, 2021

**CERTAIN SHAKER SCREENS FOR DRILLING FLUIDS,
COMPONENTS THEREOF, AND RELATED MARKETING
MATERIALS**

Inv. No. 337-TA-1184

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served via EDIS upon the Commission Investigative Attorney, **Peter Guarnieri, Esq.**, and the following party as indicated, on **January 4, 2021**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
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- ☐ Via Express Delivery
- ☐ Via First Class Mail
- ☒ Other: Email Notification
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UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN SHAKER SCREENS FOR
DRILLING FLUIDS, COMPONENTS
THEREOF, AND RELATED MARKETING
MATERIALS**

INV. NO. 337-TA-1184

**ORDER NO. 20: INITIAL DETERMINATION GRANTING COMPLAINANT'S
MOTION FOR SUMMARY DETERMINATION OF VIOLATION,
RECOMMENDED DETERMINATION ON REMEDY AND
BONDING**

(November 19, 2020)

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TABLE OF ABBREVIATIONS

Complaint	Complainant M-I L.L.C.'s Amended Complaint (Nov. 7, 2019) (EDIS Doc. ID 693645)
MSD	Complainant M-I L.L.C.'s Motion for Summary Determination of Violation Confidential Version EDIS Doc. ID 718323 (Aug. 27, 2020) Public Version EDIS Doc. ID 718842 (Sept. 3, 2020)
Response	Commission Investigative Staff's Response to Complainant's Motion for Summary Determination of Violation Confidential Version EDIS Doc. ID 719809 (Sept. 16, 2020) Public Version EDIS Doc. ID 719945 (Sept. 16, 2020)

I. INTRODUCTION

Before me now is a motion by complainant M-I L.L.C. ("M-I" or "Complainant") for summary determination that there has been a violation of 19 U.S.C. § 1337 based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain shaker screens for drilling fluids that infringe one or more claims of Complainant's patents. For the foregoing reasons, the motion for summary determination is granted.

A. Procedural History

On October 18, 2019, M-I filed a complaint alleging violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain shaker screens for drilling fluids, components thereof, and related marketing materials, by reason of infringement of one or more of claims 1-12 of U.S. Patent No. 7,210,582 ("the '582 patent"); claims 1-7 and 9 of U.S. Patent No. 7,810,649 ("the '649 patent"); claims 1-9, 12, 13, and 16-19 of U.S. Patent No. 8,925,735 ("the '735 patent")

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(collectively, the “Asserted Patents”); and U.S. Trademark Registration Nos. 2,151,736 (“the ’736 trademark”) and 2,744,891 (“the ’891 trademark”).

On November 18, 2019, the Commission instituted this investigation to determine:

(a) whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1-12 of the '582 patent; claims 1-7 and 9 of the '649 patent; and claims 1-9, 12, 13, and 16-19 of the '735 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337; and

(b) whether there is a violation of subsection (a)(1)(C) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of the '736 trademark and the '891 trademark, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

84 Fed. Reg. 64339 (Nov. 21, 2019).

The plain language description of the accused products or category of accused products is “sifting screens (commonly referred to as ‘shaker screens’) that are fitted into drilling mud shakers (also referred to as ‘shale shakers’) to separate solids from liquid drilling muds brought up from down-hole when drilling for oil and gas, components thereof including the rigid frame over which the wire mesh sieving screen may be fitted, and related marketing materials.” *Id.*

The complaint names as respondents Hebei GN Solids Control Co., Ltd. (“Hebei GN Solids”) and GN Solids America LLC (“GN Solids America”) (collectively “the GN Solids Respondents” or “GNS”); Anping Shengjia Hardware Mesh Co., Ltd. (“SJ Screen”); Hebei Hengying Wire Cloth Co., Ltd. (“Hengying Wire Cloth”); and Xi’an Brightway Energy Equipment Co., Ltd. (“Xi’an Brightway”) and Brightway Solids Control Co., Ltd. (“Brightway Solids”) (collectively “the Brightway Respondents”).

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The Commission investigative staff (“Staff”) is a party to this investigation. 84 Fed. Reg. at 64340.

On January 17, 2020, I terminated the Brightway Respondents based on a consent order stipulation. *See* Order No. 8, *not reviewed*, EDIS Doc. ID 701736 (Feb. 6, 2020).

On February 5, 2020, I found SJ Screen and Hengying Wire Cloth in default. Order No. 10, *not reviewed*, EDIS Doc. ID 704161 (Mar. 5, 2020).

On March 30, 2020, I terminated the GN Solids Respondents based on a consent order stipulation. *See* Order No. 14, *not reviewed*, EDIS Doc. ID 708798 (Apr. 23, 2020).

Later, Complainant withdrew all trademark infringement allegations and allegations based on claims 2-11 of the ’582 patent; claims 2-7 and 9 of the ’649 patent; claims 2-9, 13, 16, and 18-19 of the ’735 patent. *See* Order No. 19, *not reviewed*, EDIS Doc. ID 720447 (Sept. 24, 2020). The remaining allegations in the investigation are infringement of claims 1 and 12 of the ’582 patent; claim 1 of the ’649 patent; and claims 1, 12, and 17 of the ’735 patent.

Complainant filed an unopposed motion for summary determination that SJ Screen and Hengying Wire Cloth violated section 337 and that Complainant satisfies the domestic industry requirement of section 337. Motion Docket No. 1184-016 (EDIS Doc. ID 718323) (“MSD”). The motion also seeks a recommended determination that the Commission issue a general exclusion order pursuant to 19 U.S.C. § 1337(d)(2)(A) and (B) covering “all shaker screens for drilling fluids and components thereof that infringe the Asserted Patents” and setting a bond of 100% on accused products imported during the presidential review period. *Id.* at 163, 176-177.

B. The Parties

1. Complainant

Complainant M-I L.L.C. is a limited-liability company organized under the laws of Delaware. Its principal place of business is 5950 N. Course Drive, Houston, TX 77072. Compl.

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¶ 12. Complainant is the owner of the entire right and title to, and interest in, the Asserted Patents. Compl. Ex. 4 ('582 patent assignment), Compl. Ex. 5 ('649 patent assignment), Compl. Ex. 6 ('735 patent assignment).

2. Respondents

Of the six respondents named in the complaint, four were terminated from this investigation through consent orders and two were found in default. No respondent remains active in the investigation.

a) Terminated Respondents

On January 17, 2020, I terminated Xi'an Brightway and Brightway Solids based on entry into a consent order. *See* Order No. 8, *not reviewed*, EDIS Doc. ID 701736 (Feb. 6, 2020).

On March 30, 2020, I terminated Hebei GN Solids and GN Solids America based on entry into a consent order. *See* Order No. 14, *not reviewed*, EDIS Doc. ID 708798 (Apr. 23, 2020).

b) Defaulting Respondents

Respondents SJ Screen and Hengying Wire Cloth (collectively the "Defaulting Respondents") filed elections of default and accordingly were determined to be in default. Order No. 10, *not reviewed*, EDIS Doc. ID 704161 (Mar. 5, 2020).

(1) SJ Screen

SJ Screen is a Chinese corporation with a principal place of business at Huangcheng Industrial Zone, Anping County, Hengshui City, China 053600. Compl. at ¶ 15.

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(2) Hengying Wire Cloth

Hengying Wire Cloth is a Chinese corporation with its principal place of business located at No. 17 Jing Wu Road, High and New Tech Development Zone, Anping County, Hebei Province, China 053600. Compl. at ¶ 16.

C. The Technology at Issue

The Asserted Patents are directed to shaker screens for removing unwanted debris from the drilling fluid or “mud” used in oil and gas drilling. Compl. at ¶ 19. These screens are disposable components of “shale shakers,” vibratory separating machines that serve as the first step in reclaiming drilling fluids for reuse. *Id.* at ¶¶ 20-21.

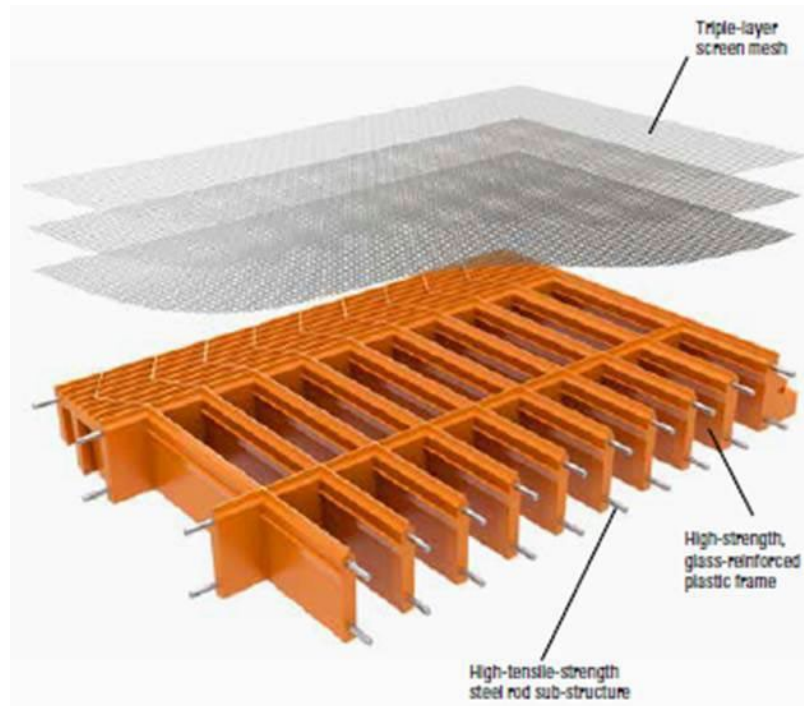


Morgenthaler Decl. at Ex. 9 at MI-ITC-00004670 (shaker screen being placed into a shale shaker).

The shaker screens generally comprise woven wire mesh (*e.g.*, the “Triple-layer screen mesh” in the figure below) fitted over a frame (*e.g.*, the orange frame in the figure below). The wire mesh comes in different sizes, where the size difference refers to the spaces between the

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wires. MSD Ex. 5 (Declaration of Michael Morgenthaler) (hereinafter “Morgenthaler Decl.”) at ¶ 65. The patents are directed to shaker screens that include a composite frame and layers of wire screen mesh.



Morgenthaler Decl. at Ex. 7, p. 4.

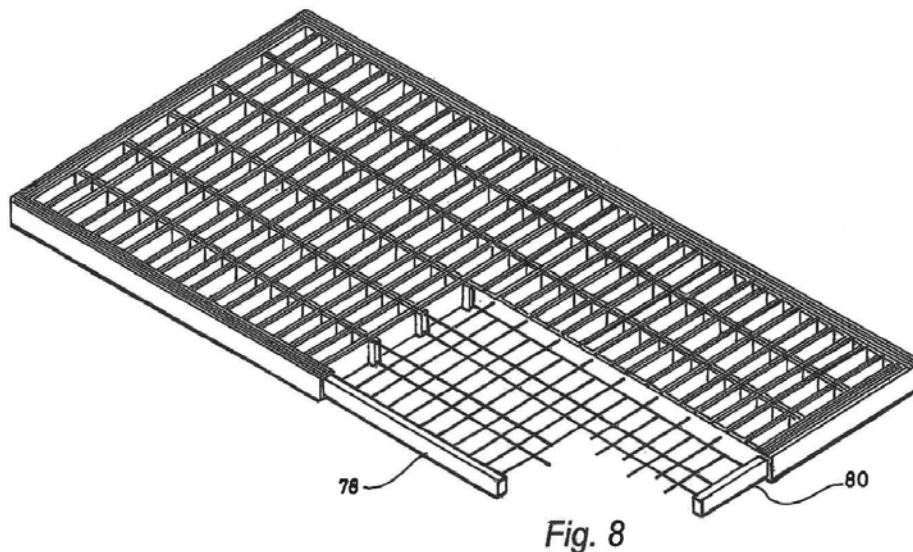
D. The Asserted Patents

The '582 patent is entitled “Screen and Screen Frame for Improved Screen to Shaker Placement, Handling and Retention.” '582 patent at Cover. The named inventor of the '582 patent is Russel Riddle, and the assignee listed on the '582 patent is Complainant. *Id.* The '582 patent is generally directed to a support frame for a shaker screen. '582 patent at 1:8-20. The support frame of the invention in the '582 patent includes braces and support members that increase the friction between the shaker screen and the mechanism holding the shaker screen in place inside the shale shaker. '582 patent at 3:53-67. That increased friction “increases the static frictional

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energy required to loosen [shaker screen] during the shaking process,” thus reducing the risk that the screen could become detached from the shaker during use. *Id.* at 3:60-67.

The '649 patent is entitled “Sifting Screens.” '649 patent at Cover. The named inventor of the '649 patent is Graham Alexander Robertson, and the assignee of the '649 patent is Complainant. *Id.* The '649 patent is generally directed to a molded plastic frame with ribs that are reinforced with two spaced apart layers of orthogonal intersecting metal wires, as well as a rectilinear box frame to reinforce the edges of the frame. '649 patent 2:17-32. One embodiment of such a frame is shown below:

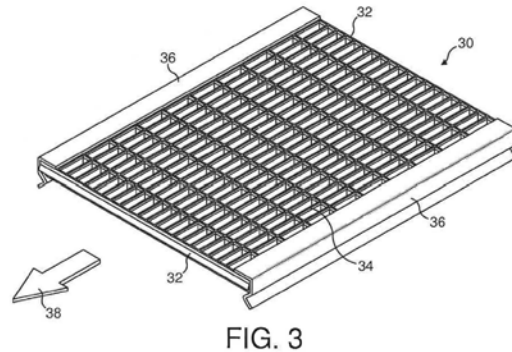
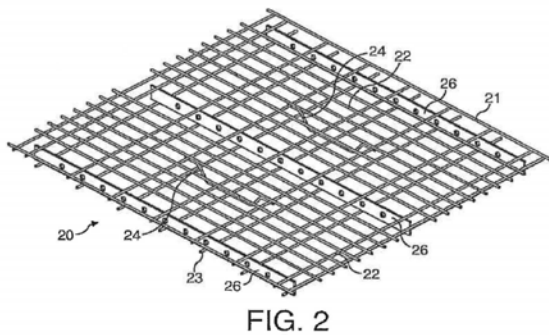


'649 patent, Fig. 8.

The '735 patent is entitled “Sifting Screen.” '735 patent at Cover. The named inventors are Graham Robertson, Brian Carr, and Eric Cady, and the assignee listed on the '735 patent is Complainant. *Id.* The '735 patent is generally directed to a screen frame, to which woven wire mesh is to be attached, adapted for use in a shaker to separate solids from a liquid/solid mixture during the production process of hydrocarbons. '735 patent at 1:53-55. The '735 patent describes a rectangular frame with reinforcing “ribs,” including at least one metal rib embedded in plastic,

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along with an array of metal wires embedded in plastic ribs that are also attached to the metal rib. '735 patent at 3:60-67; *see id.* at Fig. 2 (screen with metal rib (26) and steel wires (22)) and Fig. 3 (screen encased in plastic) (below).



E. The Domestic Industry Products

Complainant contends its M-I SWACO Venom Shaker Screens (“Venom” line), M-I SWACO Mongoose Shaker Screens (“Mongoose” line), and M-I SWACO MD Shaker Screens (“MD” line) (collectively, “Domestic Industry Products”) are domestically manufactured articles protected by the Asserted Patents. MSD at 94.

Complainant asserts that the Venom line shaker screens practice claims 1-12 of the '582 patent. MSD at 94. Complainant asserts that the Mongoose line shaker screens practice claims 1-7 and 9 of the '649 patent. *Id.* And Complainant asserts that the MD line of shaker screens practice at least claims 1-9, 12, 13, and 16-19 of the '735 patent. *Id.* at 95. Complainant contends that the Domestic Industry Products within each line are identical to one another with respect to those features covered by the Asserted Patents. MSD at 95.

F. The Accused Products

The following respondents and Accused Products are alleged to infringe one or more of the Asserted Claims. *See* Compl. at ¶ 4:

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Patent No.	Claim(s)	Respondent(s)	Accused Products
'582 patent	1, 12	Hengying Wire Cloth	HSZ-2 King Cobra/ Cobra family of shaker screens (Morgenthaler Decl., ¶ 371)
'649 patent	1	SJ Screen	SJ-M/M Mongoose Replacement family of shaker screens (Morgenthaler Decl., ¶ 352)
		Hengying Wire Cloth	XR/XL Mongoose Replacement family of shaker screens (Morgenthaler Decl., ¶ 430) HSZ-1 Mongoose Replacement Family of shaker screens (including Model Nos. HSZ-1/1 and HSZ-1/2) (Morgenthaler Decl., ¶ 482)
'735 patent	1, 12, 17	Hengying Wire Cloth	MD Replacement family of shaker screens (Morgenthaler Decl., ¶ 504)

II. JURISDICTION & IMPORTATION

A. Subject Matter Jurisdiction

Section 337 confers subject matter jurisdiction on the Commission to investigate, and if appropriate, to provide a remedy for, unfair acts and unfair methods of competition in the importation of articles into the United States and the sale of such articles. *See* 19 U.S.C. §§ 1337(a)(1)(B) and (a)(2). The complaint alleges a violation of section 337, and the Commission has subject matter jurisdiction over the issues raised in the complaint. *See Amgen, Inc. v. Int'l Trade Comm'n*, 902 F.2d 1532, 1536 (Fed. Cir. 1990).

B. Personal Jurisdiction

No party has contested personal jurisdiction. The Defaulting Respondents appeared in this investigation before filing notices of intent to default. *See* Notice of Appearance of Adduci, Mastriani Schaumberg, LLP on behalf of Anping Shengjia Hardware Mesh Co., Ltd. (EDIS Doc. ID 701160); Notice of Appearance of Adduci, Mastriani Schaumberg, LLP on Behalf of Hebei

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Hengying Wire Cloth Co., Ltd. (EDIS Doc. ID 701164). By appearing, the Defaulting Respondents consented to personal jurisdiction. *See Certain Pocket Lighters*, Inv. No. 337-TA-1142, Final Initial Determination (Feb. 12, 2020) (EDIS Doc. ID 702325) at 12, *not reviewed in pertinent part*, EDIS Doc. ID 708631.

C. In Rem Jurisdiction

No party has contested the Commission's *in rem* jurisdiction over the accused products. I have determined the Commission has *in rem* jurisdiction over the Accused Products. *See* 19 U.S.C. § 1337(d); *Sealed Air Corp. v. Int'l Trade Comm'n*, 645 F.2d 976, 985–86 (C.C.P.A. 1981) (the Commission has jurisdiction over imported goods).

D. Importation

A single importation of an accused product is sufficient to satisfy the importation requirement of section 337. *Certain Trolley Wheel Assemblies*, Inv. No. 337-TA-161, USITC Publ'n No. 1605, Comm'n Op. at 7–8 (August 29, 1984) (deeming the importation requirement satisfied by the importation of a single product of no commercial value). Complainant submitted substantial un rebutted evidence showing the Accused Products sold by each of the Defaulting Respondents were imported. *See* Compl. ¶¶ 63-66, 95, 98, 99, 101-103; Compl. Exs. 32, 33, 34; Compl. Ex. 40 at ¶¶ 6,7; Compl. Exs. 40-G, 40-K, 40-L; MSD Ex. 3 (Declaration of Robert Palmer) at ¶¶ 1-5 (“Palmer MSD Decl.”); MSD Ex. 11 at RIMMCO_0262_265, RIMMCO_0001-25 at 19.

Additionally, the Brightway Respondents and GN Solids Respondents stated in their consent order stipulations that their respective accused products were imported into the United States. Order No. 8 at Ex. A (Brightway Consent Order Stipulation); Order No. 14 at Ex. A (GN Solids Consent Order Stipulation).

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E. Standing

The evidence of record demonstrates that Complainant, as owner of the Asserted Patents by assignment, has standing to bring its complaint. Compl. Ex. 4 ('582 patent assignment), Compl. Ex. 5 ('649 patent assignment), Compl. Ex. 6 ('735 patent assignment). Accordingly, I find that Complainant has standing in this investigation.

III. INFRINGEMENT

Complainant has shown by undisputed, substantial evidence that the Defaulting Respondents each infringe various Asserted Claims of the Asserted Patents, as described below.

“An infringement analysis entails two steps. The first step is determining the meaning and scope of the patent claims asserted to be infringed. The second step is comparing the properly construed claims to the device accused of infringing.” *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed. Cir. 1995) (*en banc*) (internal citations omitted), *aff'd*, 517 U.S. 370 (1996). Here, there is no dispute the claim terms should be understood by their plain and ordinary meaning, and I apply that plain meaning in my infringement analysis. *See* MSD at 9-10, Response at 13, 15.

To support a finding of infringement, the record must show the accused device comprises every element of the asserted patent claims or its equivalent. *Uniloc USA, Inc. v. Microsoft Corp.*, 632 F.3d 1292, 1301 (Fed. Cir. 2011). In a section 337 investigation, the complainant bears the burden of proving infringement of the asserted patent claims by a preponderance of the evidence. *See Spansion, Inc. v. Int'l Trade Comm'n*, 629 F.3d 1331, 1349 (Fed. Cir. 2010). This standard “requires proving that infringement was more likely than not to have occurred.” *Warner-Lambert Co. v. Teva Pharm. USA, Inc.*, 418 F.3d 1326, 1341 n.10 (Fed. Cir. 2005).

A. Representative Products

For its infringement proofs, Complainant relies on the testimony of its expert, Mr. Michael Morgenthaler, whose qualification as an expert is undisputed. *See* MSD at 10-11; Response at 25.

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Mr. Morgenthaler compared a representative member of each “family” of accused shaker screens to each limitation of each Asserted Claim. Morgenthaler Decl. at ¶¶ 351, 370. Mr. Morgenthaler opines that the only structural difference between different shaker screens within a shaker screen “family” is the size of the wire mesh. *Id.* Mr. Morgenthaler further opines, correctly, that none of the claims of the Asserted Patents “depend upon the type of wire mesh utilized.” *Id.* at ¶ 350.

Expert testimony that one model is sufficiently representative of other differing models may be sufficient to support a determination that articles are covered by the asserted patents if the testimony explains a reasonable basis in the record for that conclusion. *Spansion, Inc. v. Int’l Trade Comm’n*, 629 F.3d 1331, 1351 (Fed Cir. 2010) (expert’s methodology of selecting representative products that span the range of values for those parameters that most directly affect the claimed movement was reasonable and well thought out). I find that Mr. Morgenthaler has laid out a reasonable basis for his opinion that the Accused Products he examined are representative of their respective shaker screen “families.” Morgenthaler Decl. at ¶ 350.

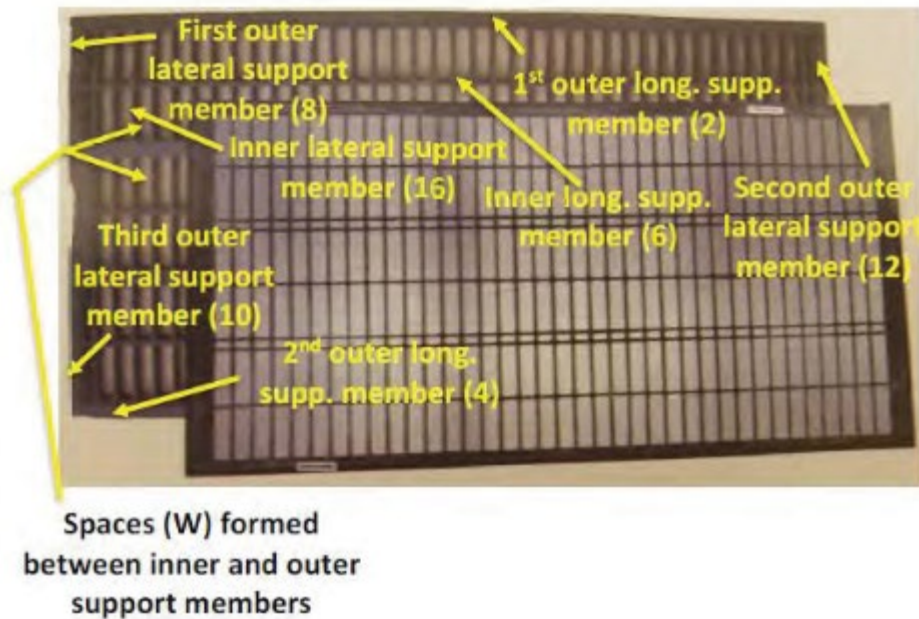
B. Defaulting Respondent’s Accused Products

1. ’582 patent, claims 1 and 12

a) Hengying Wire Cloth HSZ-2 King Cobra/Cobra family

Asserted independent claims 1 and 12 the ’582 patent are both apparatus claims directed to a frame for a shaker screen. ’582 patent at 4:57-58, 6:54-56. Mr. Morgenthaler’s declaration provides a detailed element-by-element analysis showing that the accused shaker screens in the HSZ-2 King Cobra/Cobra family meet every limitation of asserted claims 1 and 12. Morgenthaler Decl. at ¶¶ 371-427. An exemplary figure from Mr. Morgenthaler’s analysis concerning claim 1 is reproduced below.

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Morgenthaler Decl. at ¶ 397 (Fig. 22).

Based on Mr. Morgenthaler's thorough analysis, I find that shaker screens in the accused HSZ-2 King Cobra/Cobra comprise every element of claims 1 and 12 of the '582 patent. I therefore find Complainant has established by substantial evidence that HSZ-2 King Cobra/Cobra shaker screens sold by Hengying Wire Cloth infringe claims 1 and 12 of the '582 patent.

2. '649 patent, claim 1

Asserted independent claim 1 of the '649 patent is an apparatus claim directed to "[a] frame over which woven wire mesh is to be stretched and secured to form a sieving screen which can be used to screen solids from drilling mud recovered from down-hole when drilling for oil or gas." '649 patent at 6:2-5. Complainant asserts infringement of claim 1 by the XR/XL Mongoose Replacement family and the HSZ-1 Mongoose Replacement family of shaker screens sold by Hengying Wire Cloth, as well as the SJ-M-M Mongoose Replacement family of shaker screens sold by SJ Screen.

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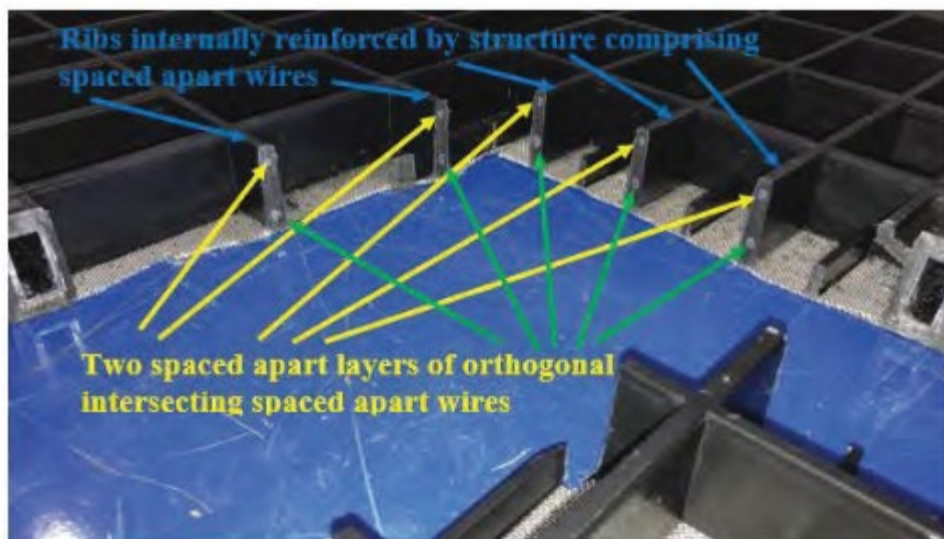
a) Hengying Wire Cloth XR/XL Mongoose Replacement family and HSZ-1 Mongoose Replacement family

Mr. Morgenthaler's declaration provides a detailed element-by-element analysis to show that every limitation of asserted claim 1 of the '649 patent is present in the accused XR/XL Mongoose Replacement family and HSZ-1 Mongoose Replacement family of shaker screens sold by Hengying Wire Cloth. Morgenthaler Decl. at ¶¶ 430-445, 448-463, 466-481, 486-502. Exemplary figures from Mr. Morgenthaler's analysis are reproduced below:

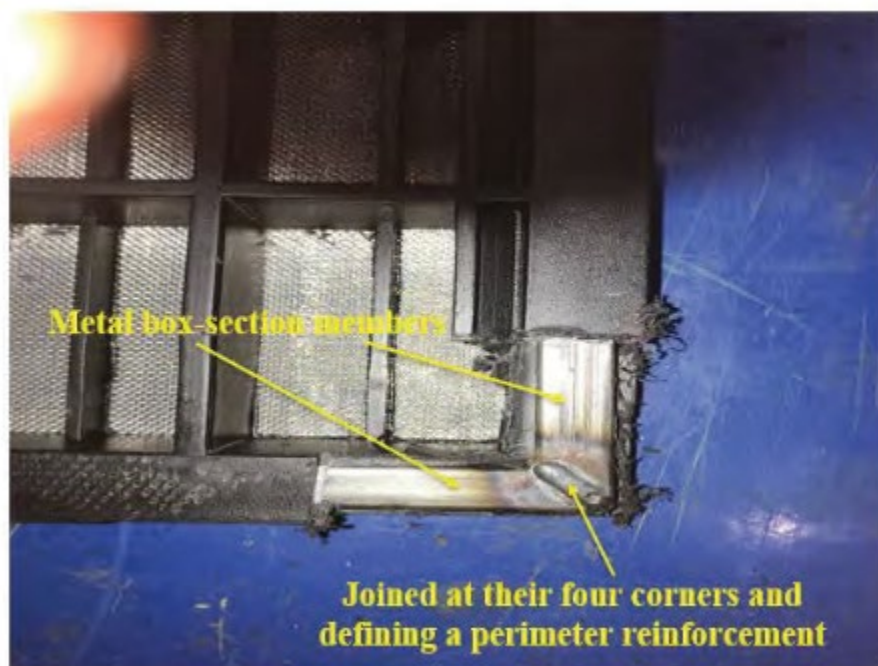


Morgenthaler Decl. at ¶ 435 (Fig. 7).

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Id. at ¶ 437 (Fig. 8).



Id. at ¶ 440 (Fig. 12).

Based on Mr. Morgenthaler's thorough analysis, I find that every element of claim 1 of the '694 patent is found in the accused XR/XL Mongoose Replacement family and HSZ-1 Mongoose Replacement family shaker screens. I therefore find Complainant has established by substantial

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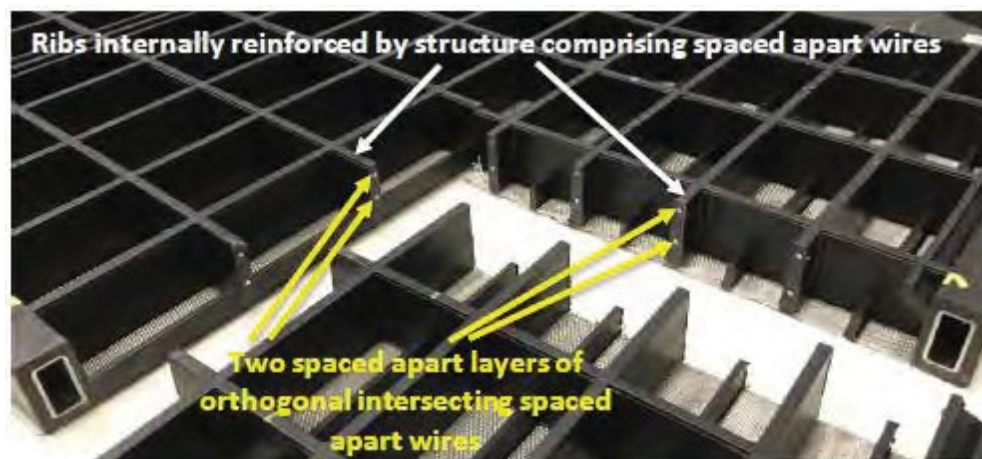
evidence that Hengying Wire Cloth shaker screens in the XR/XL Mongoose Replacement family and HSZ-1 Mongoose Replacement family infringe claim 1 of the '694 patent.

b) SJ Screen SJ-M/M Mongoose Replacement family

Mr. Morgenthaler's declaration provides a detailed element-by-element analysis to show that every limitation of asserted claim 1 of the '649 patent is present in the accused SJ-M/M Mongoose Replacement family of shaker screens sold by SJ Screen. Morgenthaler Decl. at ¶¶ 354-369. Exemplary figures from Mr. Morgenthaler's analysis are reproduced below:



Id. at ¶ 359 (Fig. 9).



Id. at ¶ 360 (Fig. 10).



Id. at ¶ 364 (Fig. 16).

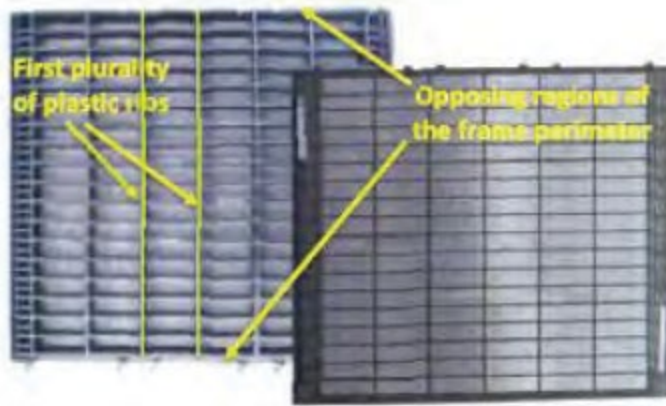
Based on Mr. Morgenthaler's thorough analysis, I find that every element of claim 1 of the '694 patent is found in the accused SJ-M/M Mongoose Replacement family of shaker screens. I therefore find Complainant has established by substantial evidence that SJ Screen shaker screens in the SJ-M/M Mongoose Replacement family infringe claim 1 of the '649 patent.

3. '735 patent, claims 1, 12, and 17

a) Hengying Wire Cloth MD Replacement family

Asserted independent claims 1, 12, and 17 the '735 patent are all apparatus claims directed to a frame for a shaker screen. '735 patent at 4:23-24, 5:1-2, 6:4-5. Complainant contends Hengying Wire Cloth shaker screens in the MD Replacement family infringe each of those claims. MSD at 68-74. Mr. Morgenthaler's declaration provides a detailed element-by-element analysis showing that shaker screens in the MD Replacement family comprise every limitation of asserted claims 1, 12, and 17 of the '735 patent. Morgenthaler Decl. at ¶¶ 507-543. An exemplary figure from Mr. Morgenthaler's analysis is reproduced below:

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Id. at ¶ 512 (Fig. 4).

Based on Mr. Morgenthaler’s thorough analysis, I find that Hengying Wire Cloth shaker screens in the MD Replacement family comprise every claim element of claims 1, 12, and 17 of the ’735 patent. I therefore find Complainant has established by substantial evidence that Hengying Wire Cloth shaker screens in the MD Replacement family infringe claims 1, 12, and 17 of the ’735 patent.

4. Conclusion

Complainant has presented substantial, reliable, and undisputed evidence that respondent Hengying Wire Cloth’s accused XR/XL Mongoose Replacement shaker screens and HSZ-1 Mongoose Replacement shaker screens and respondent SJ Screen’s accused SJ-M/M Mongoose Replacement shaker screens infringe claim 1 of the ’649 patent. Complainant has also presented substantial, reliable, and undisputed evidence that respondent Hengying Wire Cloth’s accused HSZ-2 King Cobra/Cobra Shaker screens infringe claims 1 and 12 of the ’582 patent, and its accused MD Replacement shaker screens infringe claims 1, 12, and 17 of the ’735 patent. Based on the undisputed evidence, I conclude Complainant is entitled to summary determination to that effect.

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C. Non-Respondent Hebei BO STAR and Terminated Respondents

In addition to showing infringement by the defaulted respondents discussed above, Complainant presented evidence of alleged infringement by products of the terminated respondents GNS and Brightway, as well as by products of non-respondent Hebei BO STAR Petrochemical Ltd./Hebei BO STAR Petrochemical Equipment Co. (“BO STAR”). MSD at 74-76-93 and Morgenthaler Decl. at ¶¶ 183-349 (GNS), 563-602 (Brightway), 544-562 (BO STAR). This evidence will be addressed in my recommendation on remedy below, *infra* part VI.A.2, as it is relevant to demonstrating a pattern of violation of section 337. *See Certain Luxury Vinyl Tile and Components Thereof*, 337-TA-1155, Comm’n Op. at 6-8 (Oct. 5, 2020) (EDIS Doc. ID 721148).

IV. DOMESTIC INDUSTRY

For a patent-based complaint, a violation of section 337 can be found “only if an industry in the United States, relating to the articles protected by the patent . . . , exists or is in the process of being established.” 19 U.S.C. § 1337(a)(2). This domestic industry requirement of section 337 is often described as having an economic prong and a technical prong. *InterDigital Commc’ns, LLC v. Int’l Trade Comm’n*, 707 F.3d 1295, 1298 (Fed. Cir. 2013); *Certain Stringed Musical Instruments & Components Thereof*, Inv. No. 337-TA-586, USITC Publ’n No. 4120, Comm’n Op. at 12-14 (May 16, 2008). The complainant bears the burden of establishing that the domestic industry requirement is satisfied. *See Certain Toner Cartridges*, 337-TA-1174, Initial Determination at 93 (July 23, 2020) (EDIS Doc. ID 716848), *not reviewed*, EDIS Doc. ID 719096.

A. Technical Prong

The technical prong of the domestic industry requirement is satisfied when the complainant in a patent-based section 337 investigation establishes that it is practicing or exploiting the patents

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at issue. *See* 19 U.S.C. § 1337(a)(2) and (3); *Certain Microsphere Adhesives, Process for Making Same & Prods. Containing Same, Including Self-Stick Repositionable Notes*, Inv. No. 337-TA-366, USITC Publ’n No.2949, Comm’n Op. at 8 (Jan. 16, 1996). “The test for satisfying the ‘technical prong’ of the industry requirement is essentially [the] same as that for infringement, *i.e.*, a comparison of domestic products to the asserted claims.” *Alloc, Inc. v. Int’l Trade Comm’n*, 342 F.3d 1361, 1375 (Fed. Cir. 2003).

To prevail, the patentee must establish by a preponderance of the evidence that the domestic product practices one or more claims of the patent. It is sufficient to show that the product practices any claim of that patent, not necessarily an asserted claim of that patent. *See Certain Male Prophylactic Devices*, Inv. No. 337-TA-546, USITC Publ’n No. 4005, Comm’n Op. at 38 (Aug. 1, 2007) (“*Male Prophylactic Devices*”). Expert testimony that one model is sufficiently representative of other differing models may be sufficient to support a determination that articles are protected by the asserted patents if the testimony explains a reasonable basis in the record for that conclusion. *See Spansion, Inc. v. Int’l Trade Comm’n*, 629 F.3d 1331, 1351 (Fed Cir. 2010) (expert’s methodology of selecting representative products that span the range of values for those parameters that most directly affect the claimed movement was reasonable and well thought out).

As discussed above, *supra* Part I.E, Complainant contends three families of shaker screens practice the Asserted Patents: the “Venom” line, the “Mongoose” line, and the “MD” line (collectively, “Domestic Industry Products”). MSD at 94; Morgenthaler Decl. at ¶¶ 66-68.

Complainant presents evidence that the Venom line shaker screens practice at least claims 1 and 12 of the ’582 patent. MSD at 94. Complainant presents evidence that the Mongoose line shaker screens practice at least claim 1 of the ’649 patent. *Id.* And Complainant presents evidence

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that the MD line of shaker screens practice at least claims 1, 12, and 17 of the '735 patent. *Id.* at 95.

Complainant's expert, Mr. Morgenthaler, opined that each of the Domestic Industry Products within a given family are identical to one another with respect to those features covered by the Asserted Patents. MSD at 95; Morgenthaler Decl. at ¶¶ 65, 69-70, 128-129, 145-146; Morgenthaler Exs. 8, 10, 11. Because Mr. Morgenthaler's declaration explains a reasonable basis for this opinion, and because his testimony is unopposed, I find his declaration establishes that the units Mr. Morgenthaler analyzed in his domestic industry claim charts are representative of each asserted domestic industry product line. *See* Morgenthaler Decl. at ¶ 65 ("I have studied physical samples of each of the covered domestic industry products, namely the composite shaker screens included in each of the M-I SWACO Venom, M-I SWACO Mongoose and M-I SWACO MD families of shaker screens. I understand from my experience with shaker screens that the composite frames utilized in each of the M-I SWACO Venom, M-I SWACO Mongoose and M-I SWACO MD families of shaker screens are identical with respect to their respective families").

1. The Venom line practices at least claim 1 of the '582 patent

Complainant asserts that its Venom line of shaker screens practices claims 1 and 12 of the '582 patent. The undisputed evidence demonstrates that each shaker screen in the Venom line practices at least claim 1 of the '582 patent, so I need not address the evidence relating to claim 12. *Male Prophylactic Devices*, Comm'n Op. at 38. I address each limitation of claim 1 below.

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- a) [Preamble]: A support frame for a shaker screen, the frame comprising

The preamble is not limiting, as it is not relied upon to define the scope of the invention.

In any event, the Venom line shaker screens include a “support frame for a shaker screen.” *See* Morgenthaler Decl. at ¶¶ 71-72.



MSD at 96 (Figs. 1 and 2).

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- b) **1[a] a first outer longitudinal support member, wherein the first outer longitudinal support member has a first end and a second end;**

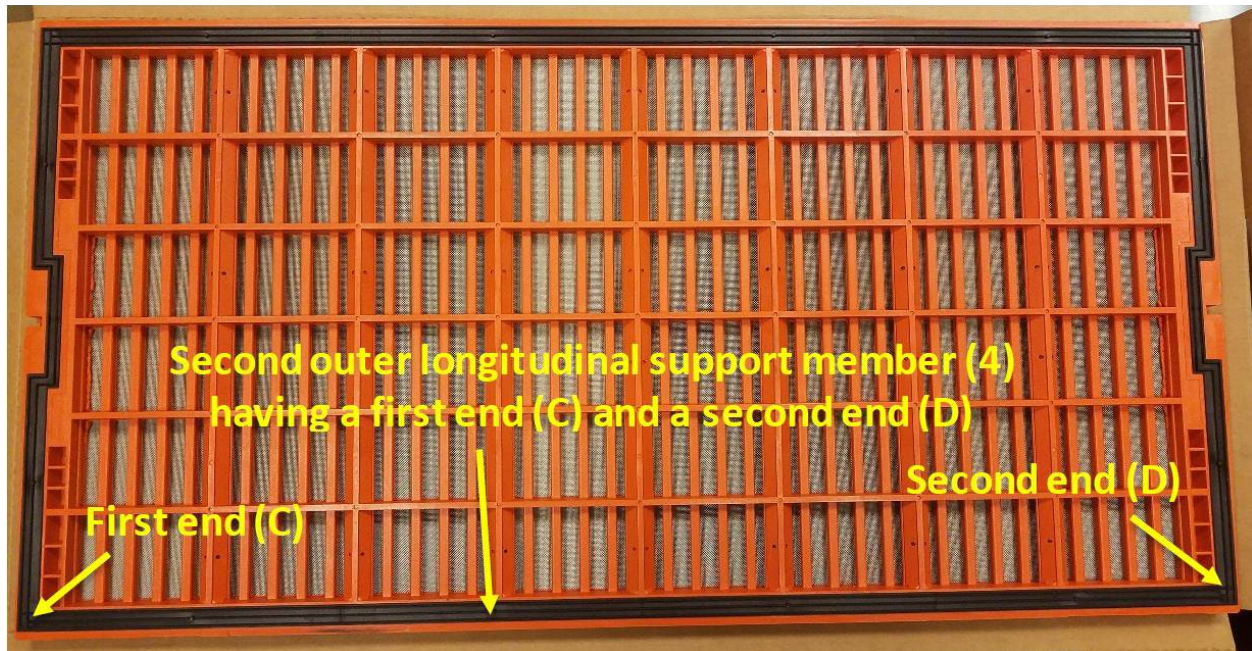
The Venom line shaker screens include “a first outer longitudinal support member (2) having a first end (A) and a second end (B)” as required by element 1[a]. *See* Morgenthaler Decl. at ¶¶ 73-74.



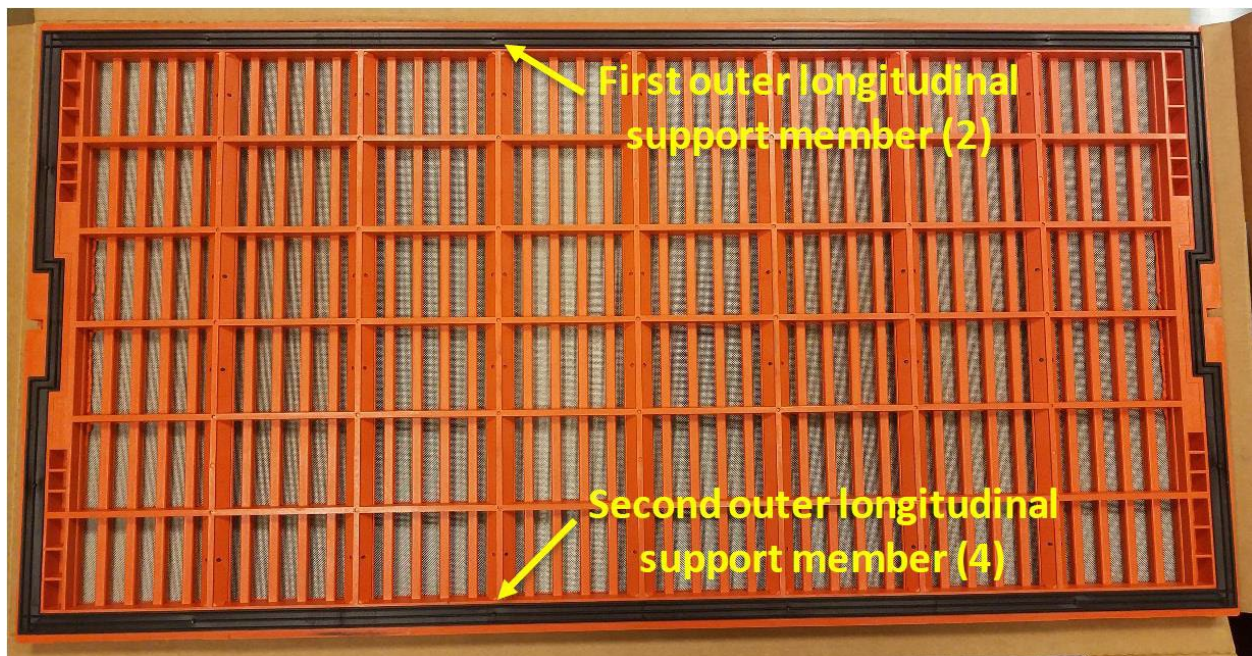
MSD at 98 (Fig. 4).

- c) **1[b] a second outer longitudinal support member, wherein the second outer longitudinal support member has a first end and a second end, and wherein the second outer longitudinal support member is spaced apart from and substantially parallel to the first outer longitudinal support member**

The Venom line shaker screens include “a second outer longitudinal support member, wherein the second outer longitudinal support member has a first end and a second end, and wherein the second outer longitudinal support member is spaced apart from and substantially parallel to the first outer longitudinal support member” as required by element 1[b]. *See* Morgenthaler Decl. at ¶¶ 75-76.



MSD at 99 (Fig. 5).

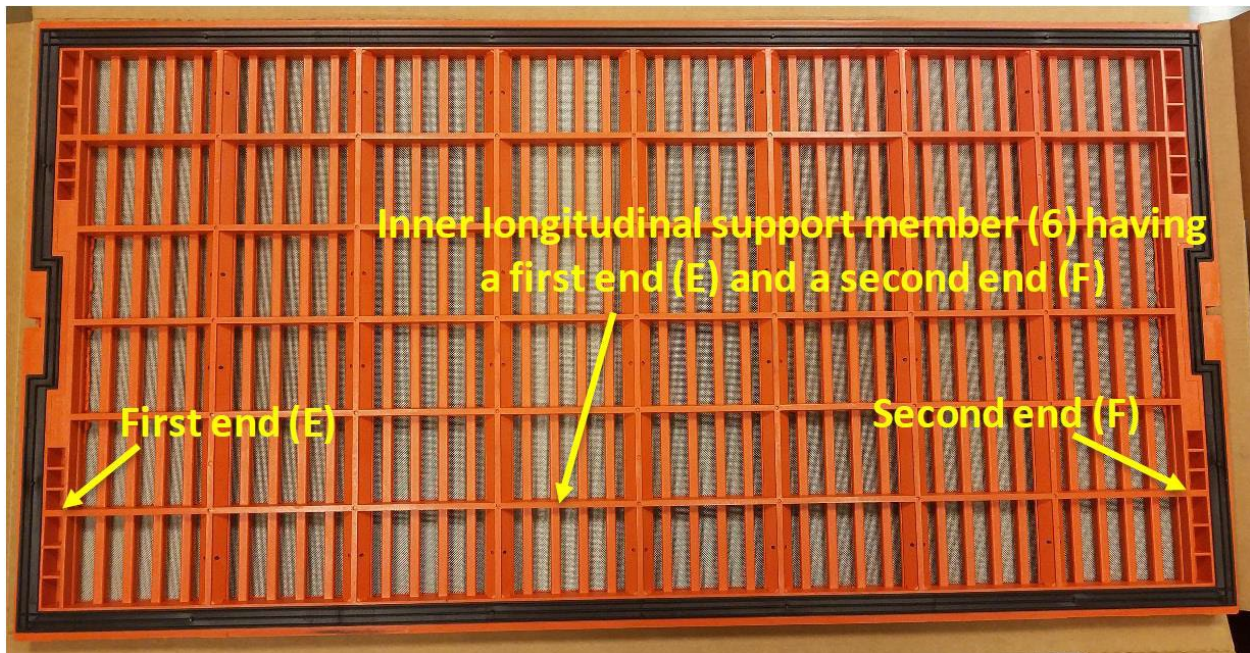


Id. (Fig. 6).

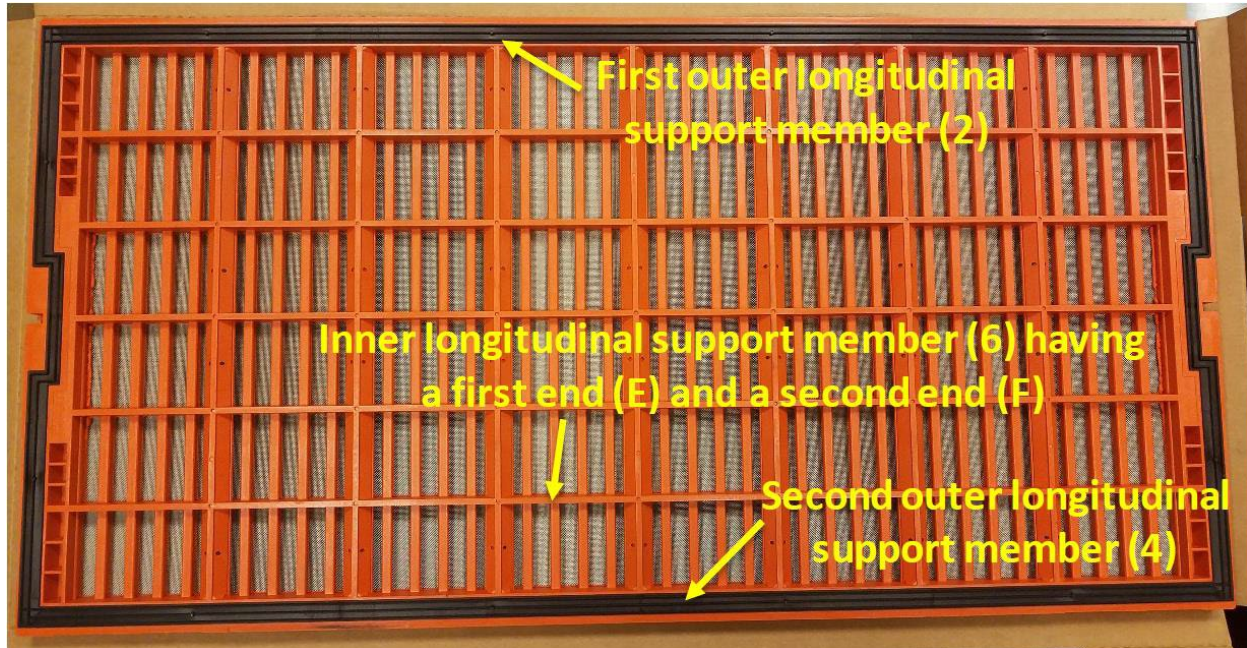
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- d) **1[c] one or more inner longitudinal support member (6), wherein each of the one or more inner longitudinal support member has a first end and a second end, and wherein each of the one or more inner longitudinal support member is positioned between and substantially parallel to the first outer longitudinal support member and the second outer longitudinal support member**

The Venom line shaker screens include “one or more inner longitudinal support member (6), wherein each of the one or more inner longitudinal support member has a first end and a second end, and wherein each of the one or more inner longitudinal support member is positioned between and substantially parallel to the first outer longitudinal support member and the second outer longitudinal support member,” as required by element 1[c]. See Morgenthaler Decl. at ¶¶ 77-78.



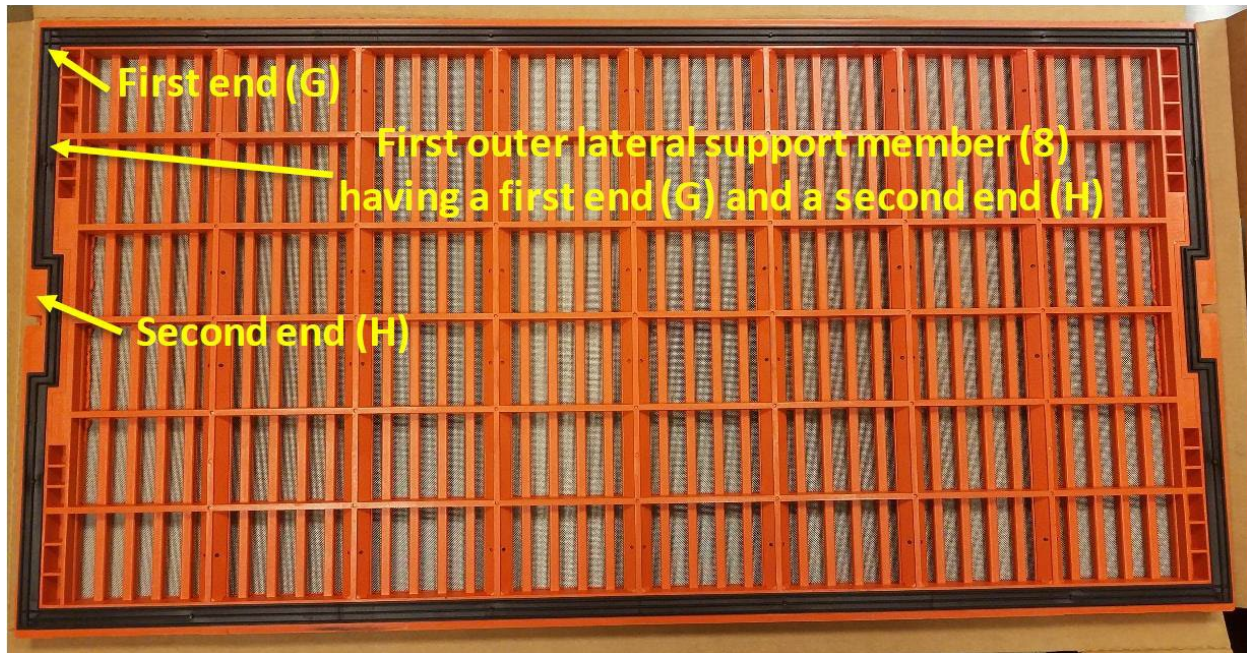
MSD at 100 (Fig. 7).



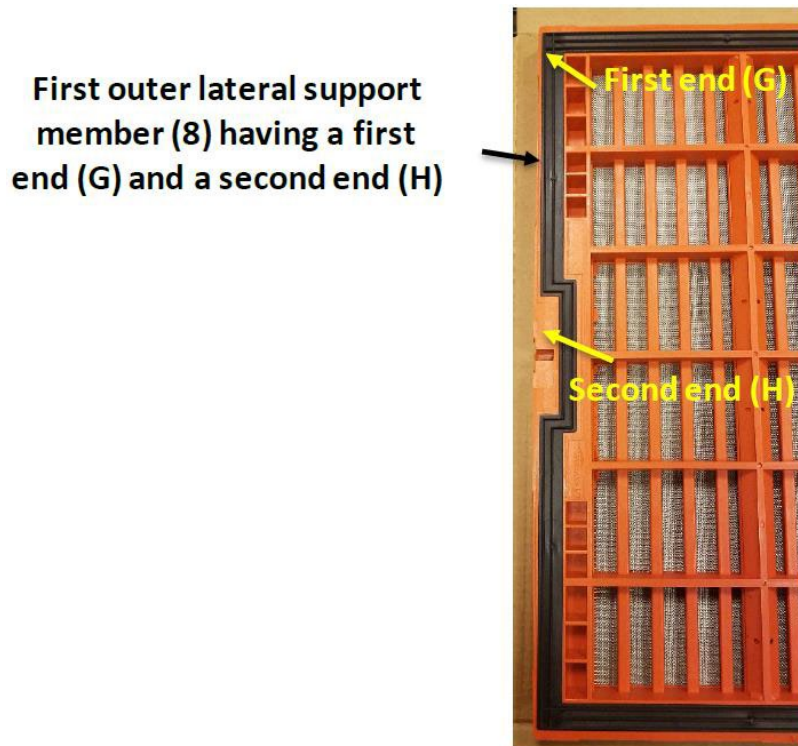
MSD at 101 (Fig. 8).

- e) **1[d] a first outer lateral support member, wherein the first outer lateral support member has a first end and a second end, and wherein the first end of the first outer lateral support member is connected to the first end of the first outer longitudinal support member, and wherein the first outer lateral support member is substantially perpendicular to the first outer longitudinal support member**

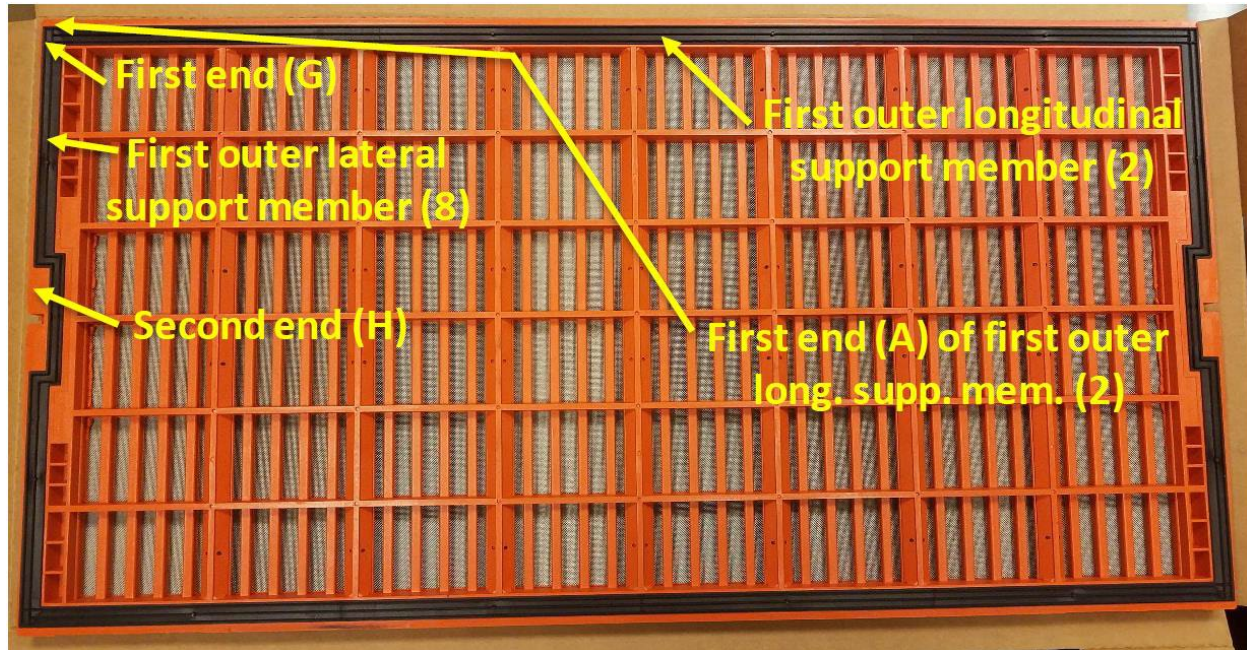
The Venom line shaker screens include “a first outer lateral support member, wherein the first outer lateral support member has a first end and a second end, and wherein the first end of the first outer lateral support member is connected to the first end of the first outer longitudinal support member, and wherein the first outer lateral support member is substantially perpendicular to the first outer longitudinal support member,” as required by element 1[d]. *See Morgenthaler Decl. at ¶¶ 79-80.*



MSD at 102 (Fig. 9).



Id. (Fig. 10).



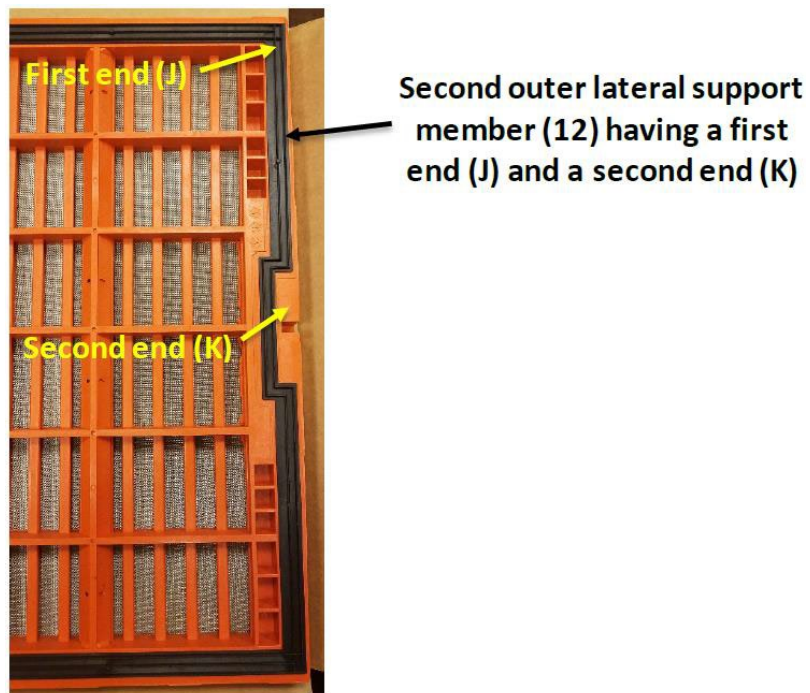
Id. at 103 (Fig. 11).

- f) **1[e] a second outer lateral support member (12), wherein the second outer lateral support member has a first end and a second end, and wherein the first end of the second outer lateral support member is connected to the second end of the first outer longitudinal support member, and wherein the second outer lateral support member is substantially perpendicular to the first outer longitudinal support member**

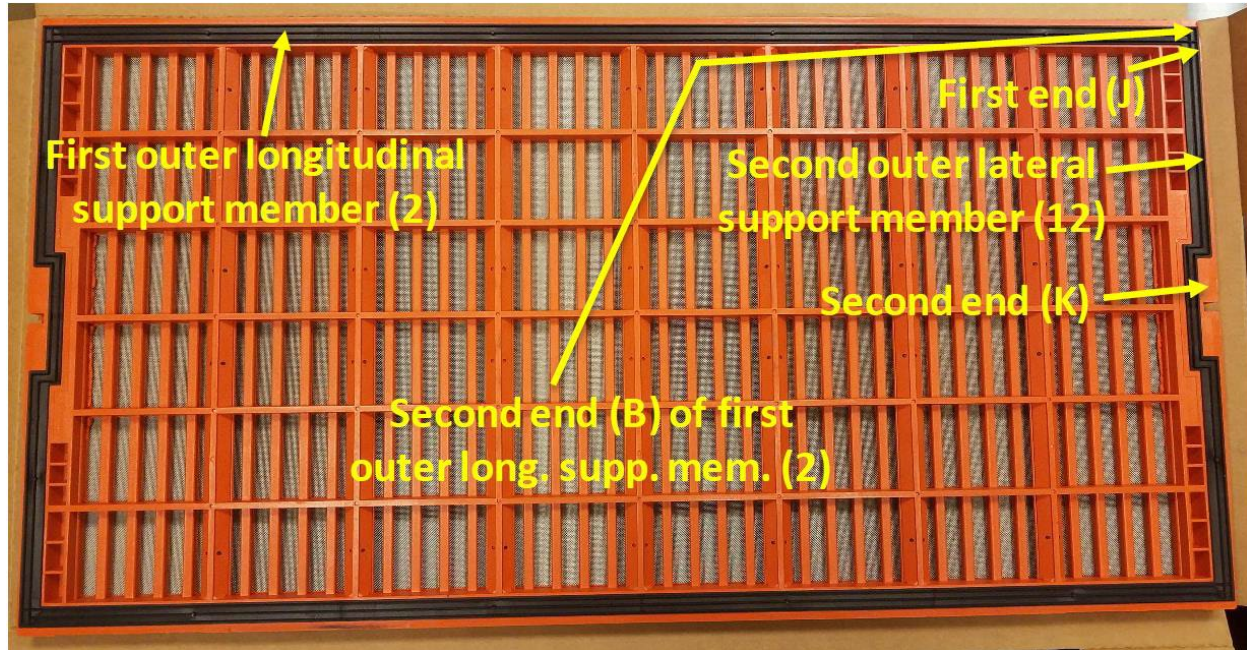
The Venom line shaker screens include “a second outer lateral support member, wherein the second outer lateral support member has a first end and a second end, and wherein the first end of the second outer lateral support member is connected to the second end of the first outer longitudinal support member, and wherein the second outer lateral support member is substantially perpendicular to the first outer longitudinal support member,” as required by element 1[e]. *See* Morgenthaler Decl. at ¶¶ 81-82.



MSD at 104 (Fig. 12)



Id. (Fig. 13).



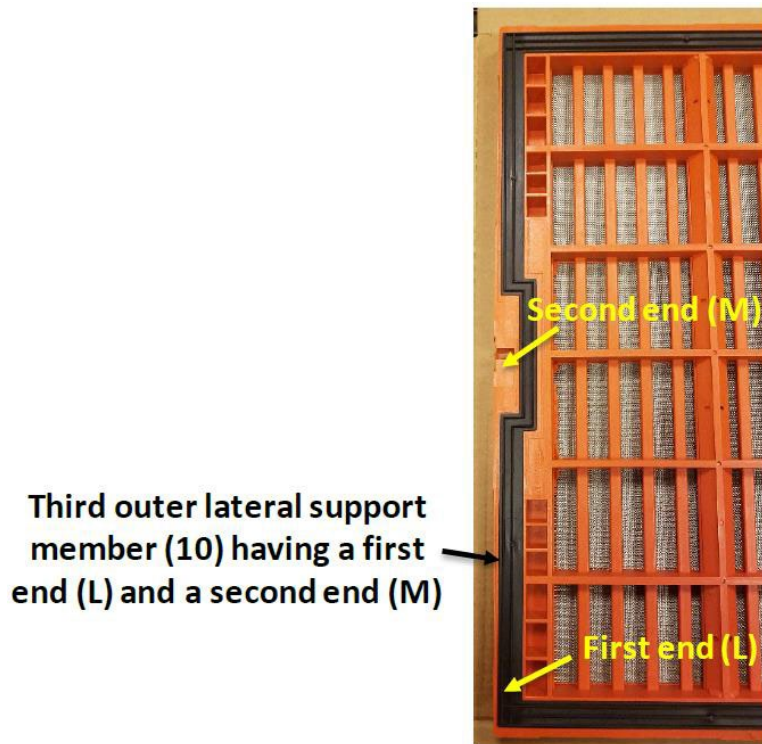
Id. at 105 (Fig. 14).

- g) **1[f] a third outer lateral support member, wherein the third outer lateral support member has a first end and a second end, and wherein the first end of the third outer lateral support member is connected to the first end of the second outer longitudinal support member, and wherein the third outer lateral support member is substantially perpendicular to the second outer longitudinal support member**

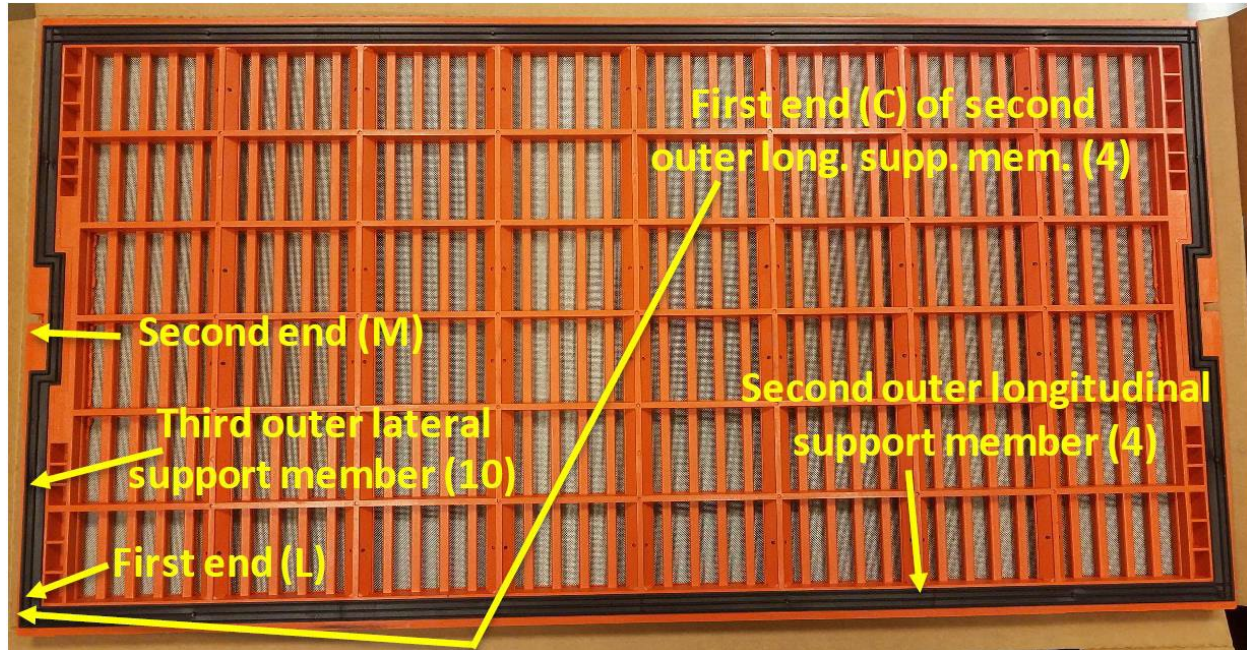
The Venom line shaker screens include “a third outer lateral support member, wherein the third outer lateral support member has a first end and a second end, and wherein the first end of the third outer lateral support member is connected to the first end of the second outer longitudinal support member, and wherein the third outer lateral support member is substantially perpendicular to the second outer longitudinal support member,” as required by element 1[f]. *See Morgenthaler Decl.* at ¶¶ 83-84.



MSD at 106 (Fig. 15).



Id. (Fig. 16)



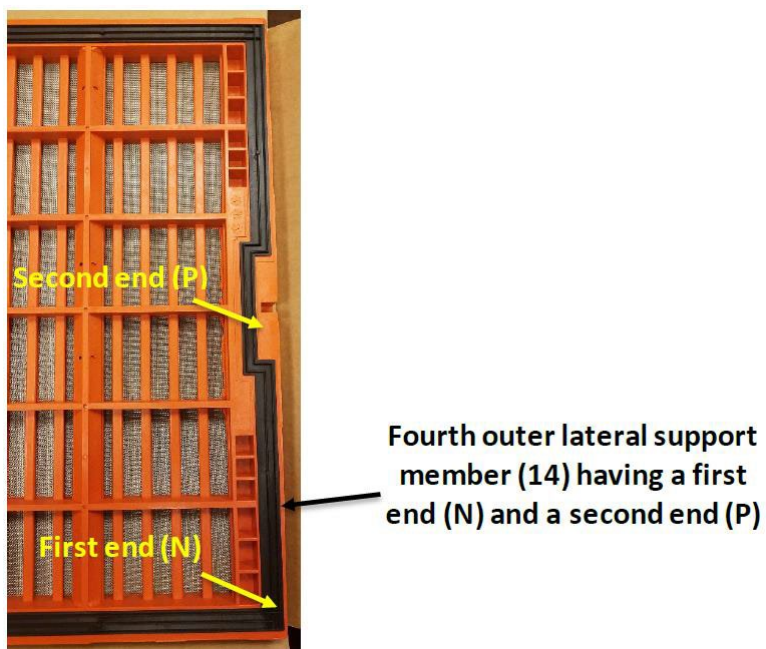
Id. at 107 (Fig. 17).

- h) **1[g] a fourth outer lateral support member, wherein the fourth outer lateral support member has a first end and a second end, and wherein the first end of the fourth outer lateral support member is connected to the second end of the second outer longitudinal support member, and wherein the fourth outer lateral support member is substantially perpendicular to the second outer longitudinal support member**

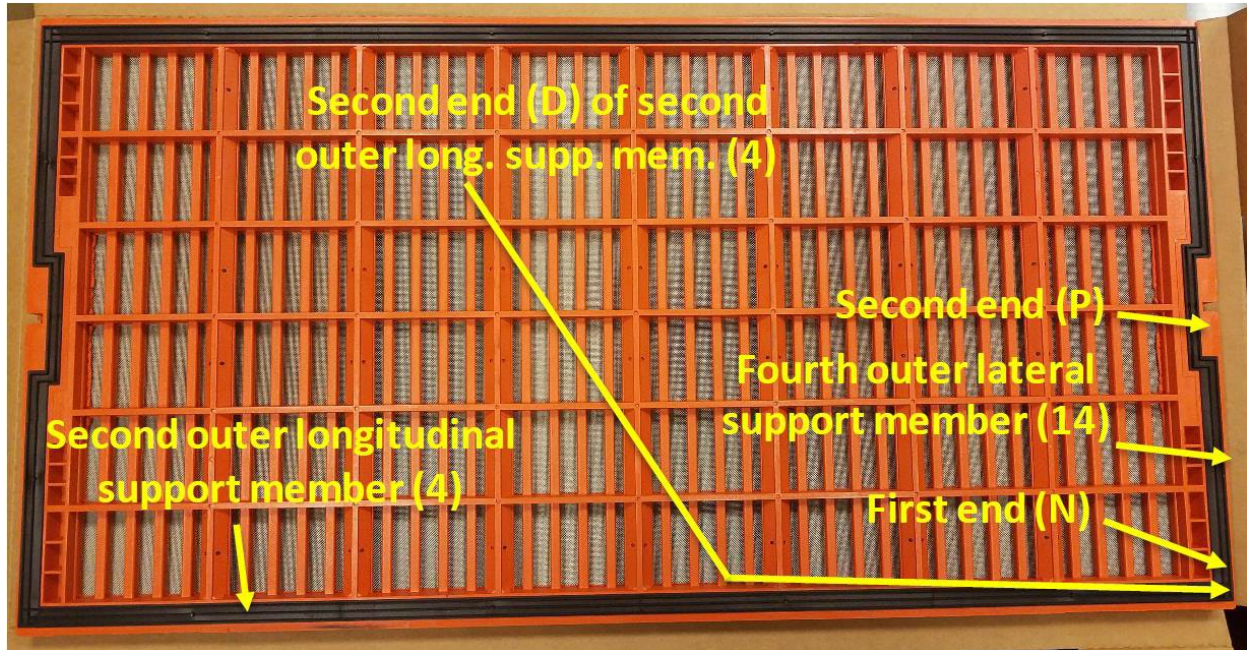
The Venom line shaker screens include “a fourth outer lateral support member, wherein the fourth outer lateral support member has a first end and a second end, and wherein the first end of the fourth outer lateral support member is connected to the second end of the second outer longitudinal support member, and wherein the fourth outer lateral support member is substantially perpendicular to the second outer longitudinal support member,” as required by limitation 1[g]. See Morgenthaler Decl. at ¶¶ 85-86.



MSD at 108 (Fig. 18).



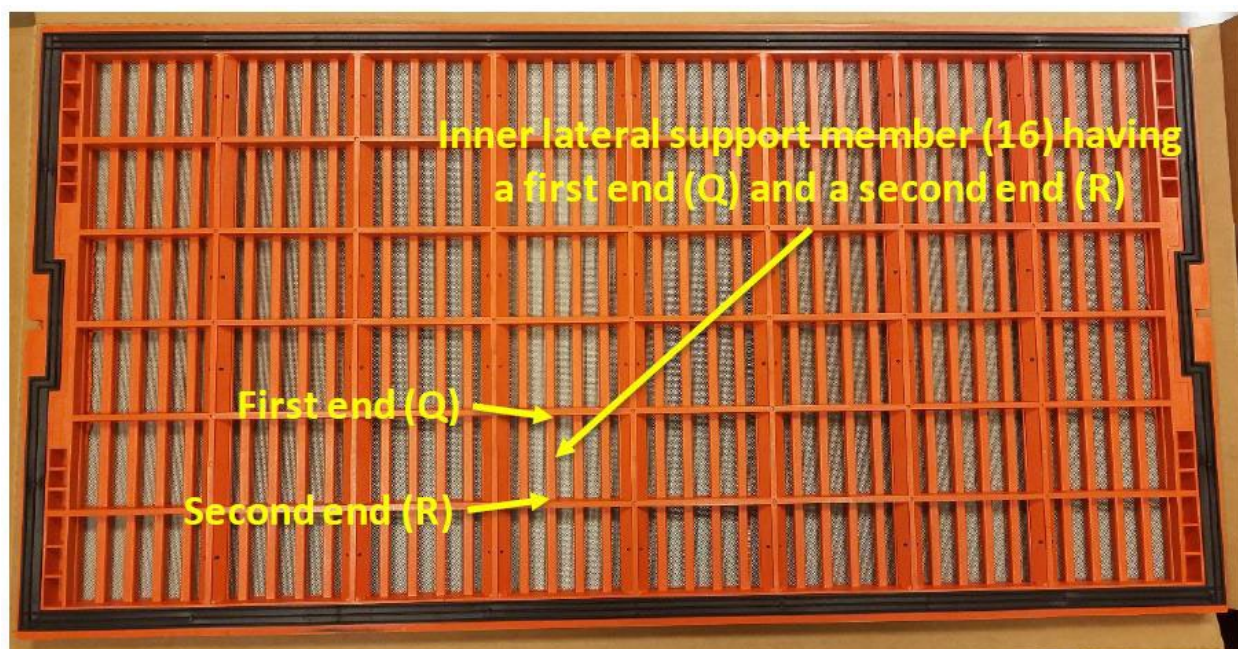
Id. (Fig. 19).



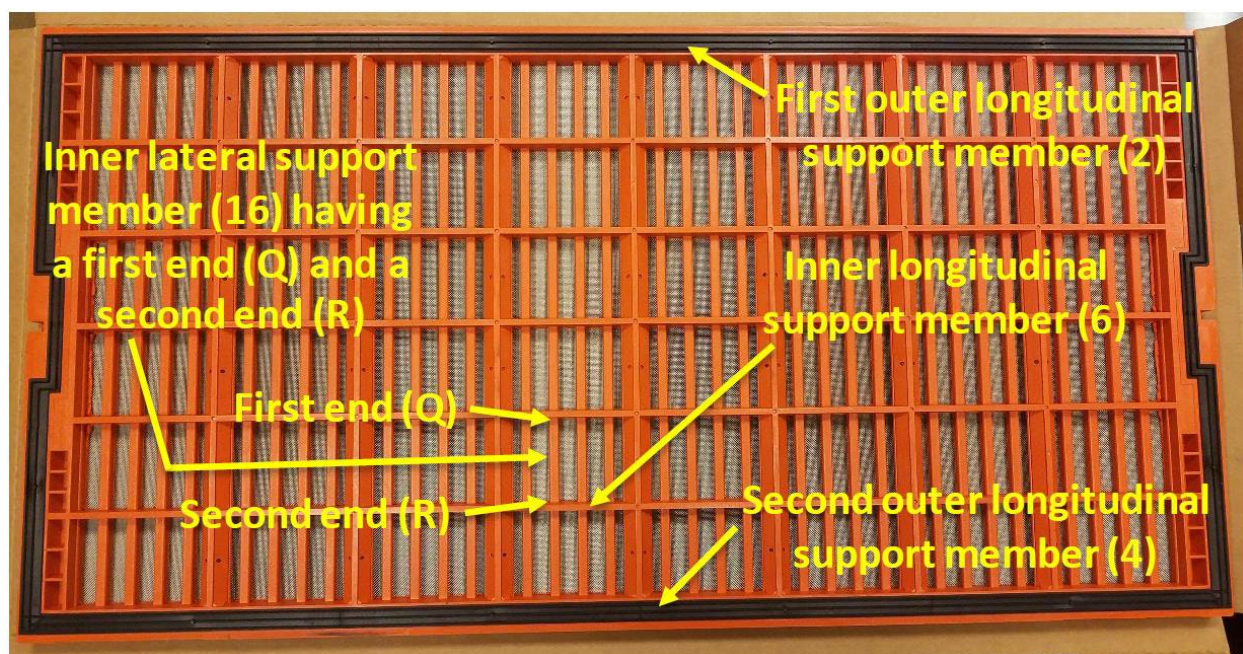
Id. at 109 (Fig. 20).

- i) **1[h] one or more inner lateral support member, wherein each of the one or more inner lateral support member has a first end and a second end, and wherein each of the one or more inner lateral support member is positioned between and substantially perpendicular to the first outer longitudinal support member and the second outer longitudinal support member, and wherein at least the first or second end of each of the one or more inner lateral support member is connected to the one or more inner longitudinal support member;**

The Venom line shaker screens include “one or more inner lateral support member, wherein each of the one or more inner lateral support member has a first end and a second end, and wherein each of the one or more inner lateral support member is positioned between and substantially perpendicular to the first outer longitudinal support member and the second outer longitudinal support member, and wherein at least the first or second end of each of the one or more inner lateral support member is connected to the one or more inner longitudinal support member,” as required by limitation 1[h]. *See* Morgenthaler Decl. at ¶¶ 87-88.



MSD at 110 (Fig. 21).

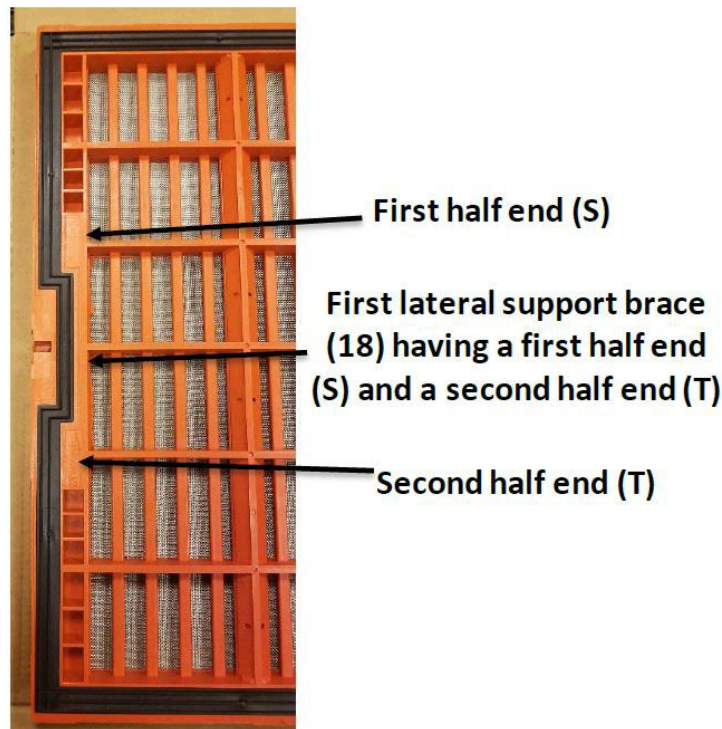


Id. (Fig. 22).

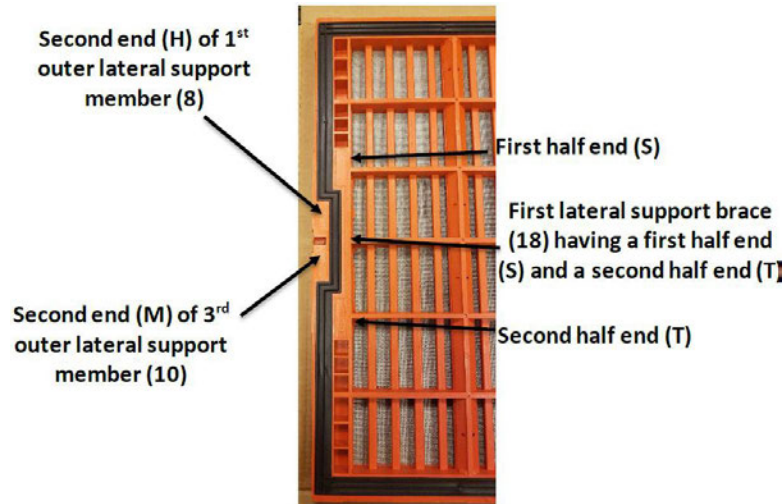
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- j) **1[i] a first lateral support brace, wherein the first lateral support brace has a first half end and a second half end, and wherein the first half end of the first lateral support brace is located inward of and connected to the second end of the first outer lateral support member, and wherein the second half end of the first lateral support brace is located inward of and connected to the second end of the third outer lateral support member; and**

The Venom line shaker screens include “a first lateral support brace, wherein the first lateral support brace has a first half end and a second half end, and wherein the first half end of the first lateral support brace is located inward of and connected to the second end of the first outer lateral support member, and wherein the second half end of the first lateral support brace is located inward of and connected to the second end of the third outer lateral support member,” as required by limitation 1[i]. *See* Morgenthaler Decl. at ¶¶ 89-90.



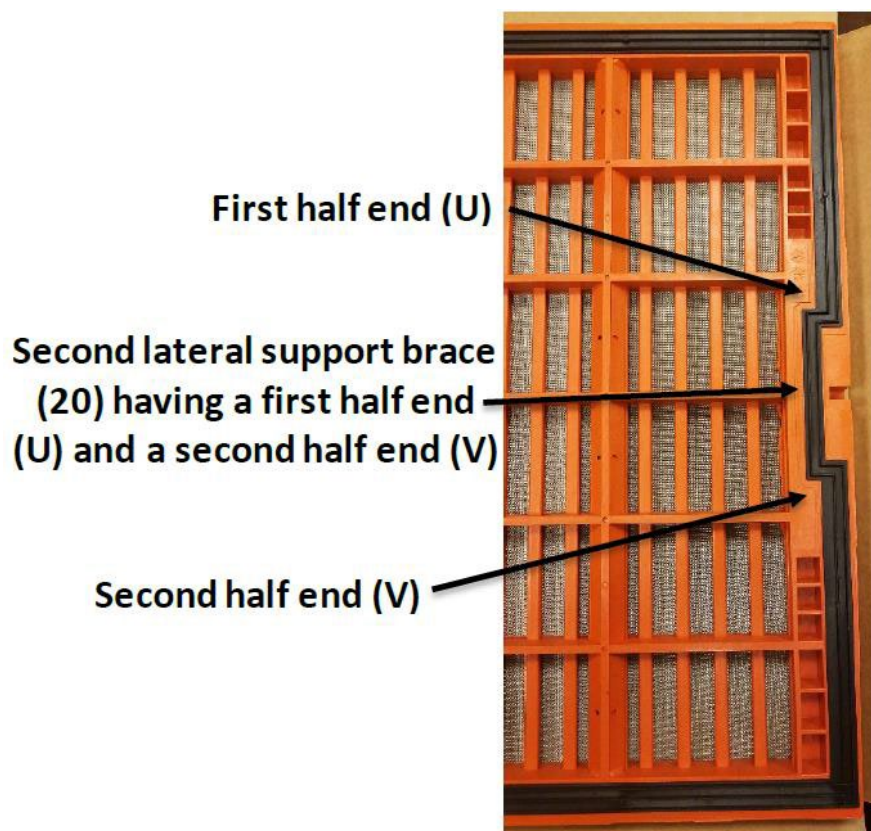
MSD at 111 (Fig. 23).



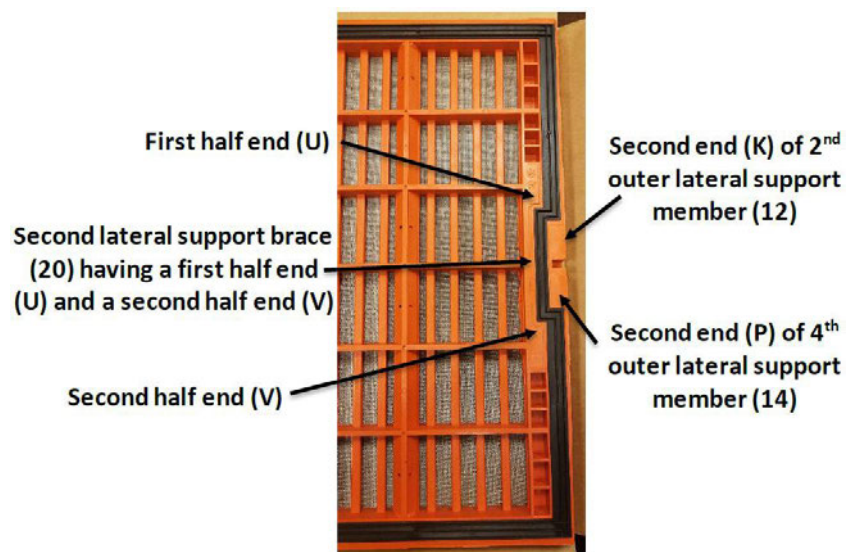
Id. at 112 (Fig. 24).

- k) **1[j]** a second lateral support brace, wherein the second lateral support brace has a first half end and a second half end, and wherein the first half end of the second lateral support brace is located inward of and connected to the second end of the second outer lateral support member, and wherein the second half end of the second lateral support brace is located inward of and connected to the second end of the fourth outer lateral support member;

The Venom line shaker screens include “a second lateral support brace, wherein the second lateral support brace has a first half end and a second half end, and wherein the first half end of the second lateral support brace is located inward of and connected to the second end of the second outer lateral support member, and wherein the second half end of the second lateral support brace is located inward of and connected to the second end of the fourth outer lateral support member,” as required by claim limitation 1[j]. *See* Morgenthaler Decl. at ¶¶ 91-92.



MSD at 113 (Fig. 25).

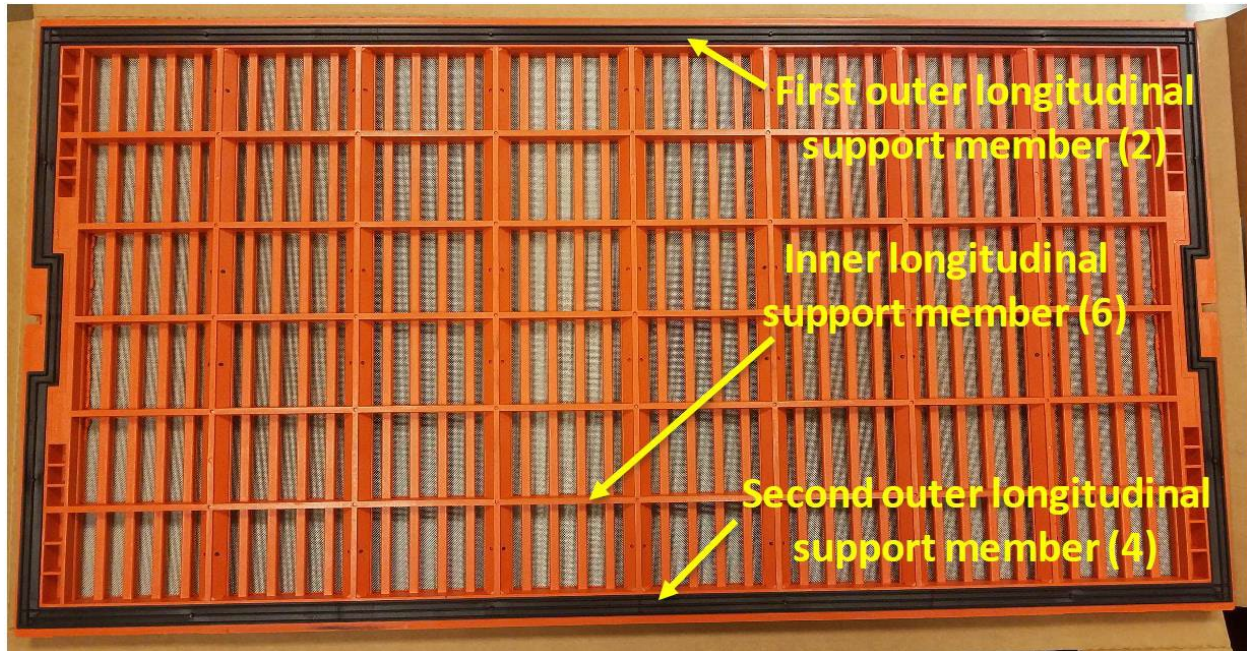


Id. at 114 (Fig. 26).

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- l) 1[k] wherein the one or more inner longitudinal support member is spaced apart from the first and second outer longitudinal support member;**

The Venom line shaker screens have “one or more inner longitudinal support member[s]” that are “spaced apart from the first and second outer longitudinal support member,” as required by claim limitation 1[k]. *See Morgenthaler Decl. at ¶¶ 93-94.*



MSD at 115 (Fig. 27).

- m) 1[l] wherein the one or more inner lateral support member is spaced apart from and substantially parallel to the first, second, third, and fourth outer lateral support members; and**

The Venom line shaker screens have “one or more inner lateral support member[s]” that are “spaced apart from and substantially parallel to the first, second, third, and fourth outer lateral support members,” as required by claim limitation 1[l]. *See Morgenthaler Decl. at ¶¶ 95-96.*

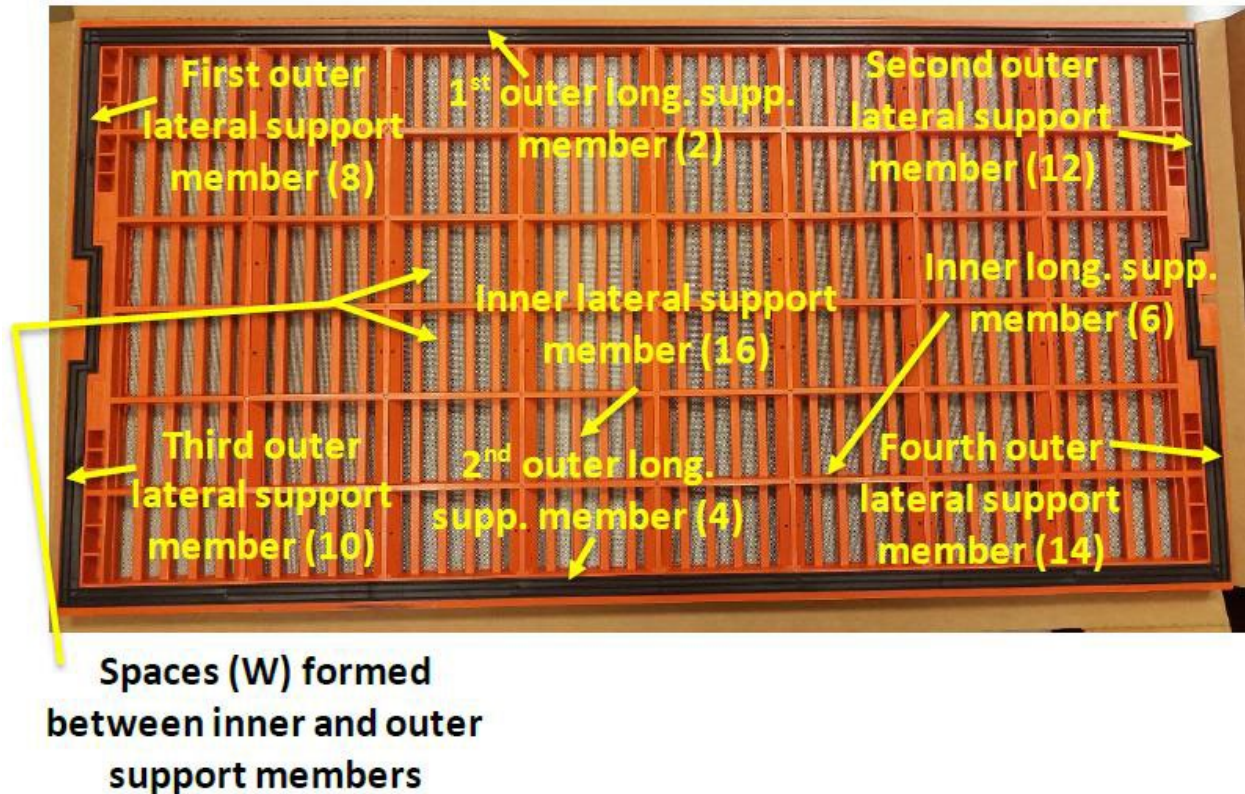


MSD at 116 (Fig. 28).

- n) **1[m] wherein material passing through the shaker screen passes through the spaces formed between the inner and outer longitudinal support members and the inner and outer lateral support members.**

When the Venom line shaker screens are in operation, “material passing through the shaker screen passes through the spaces (W) formed between the inner and outer longitudinal support members and the inner and outer lateral support members,” as required by claim limitation 1[m].

See Morgenthaler Decl. at ¶¶ 97-98; see MSD at 117 (Fig. 29) (below).



2. The Mongoose line practices at least claim 1 of the '649 patent

The undisputed evidence demonstrates that each shaker screen in the Mongoose line practices at least claim 1 of the '649 patent. I address each claim limitation below.

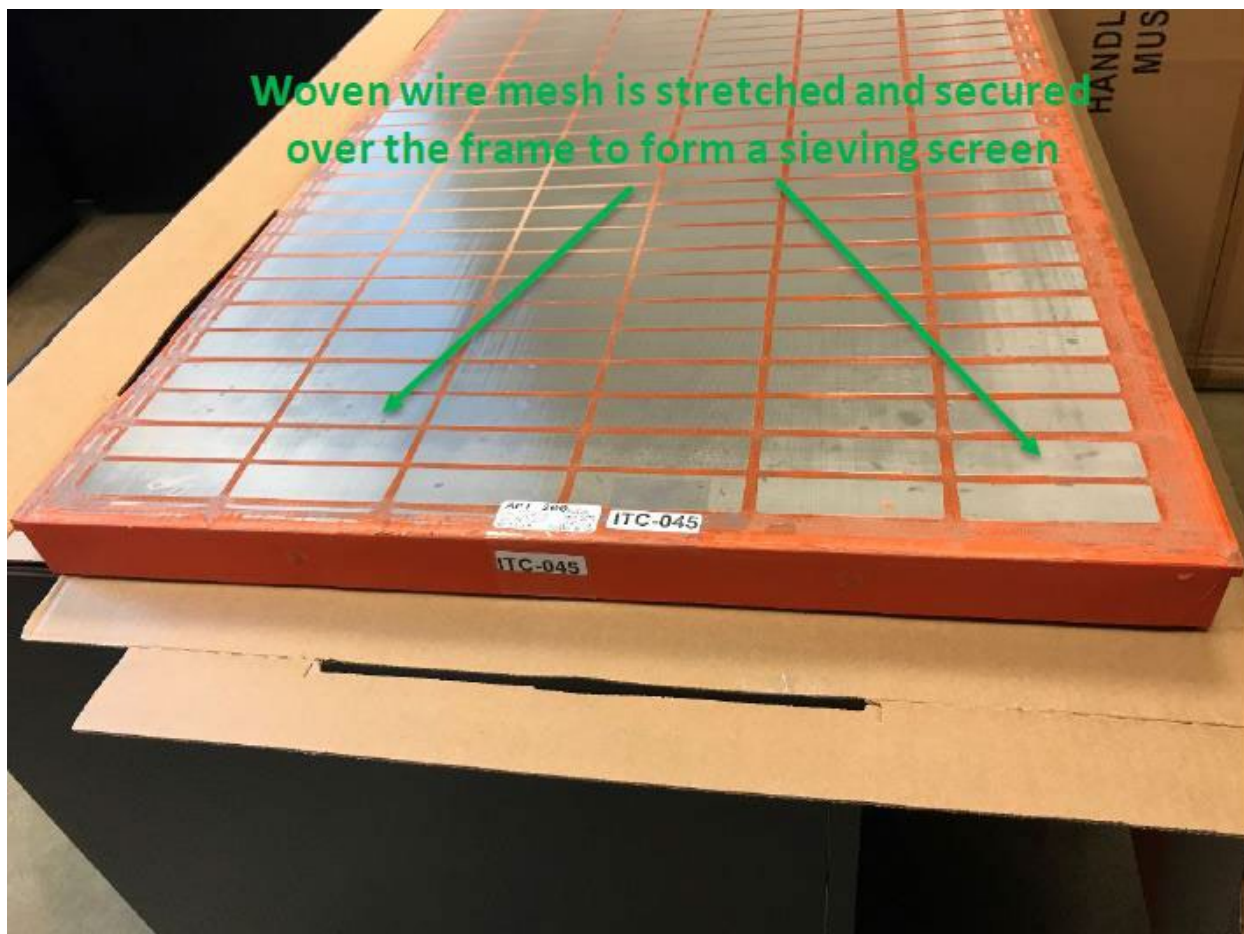
- a) **[Preamble]: A frame over which woven wire mesh is to be stretched and secured to form a sieving screen which can be used to screen solids from drilling mud recovered from down-hole when drilling for oil or gas comprising**

The preamble is not limiting, as it is not relied upon to define the scope of the invention. In any event, the Mongoose line shaker screens include a “frame over which woven wire mesh is to be stretched and secured to form a sieving screen which can be used to screen solids from drilling mud recovered from down-hole when drilling for oil or gas.” *See Morgenthaler Decl. at ¶¶ 130-131.*

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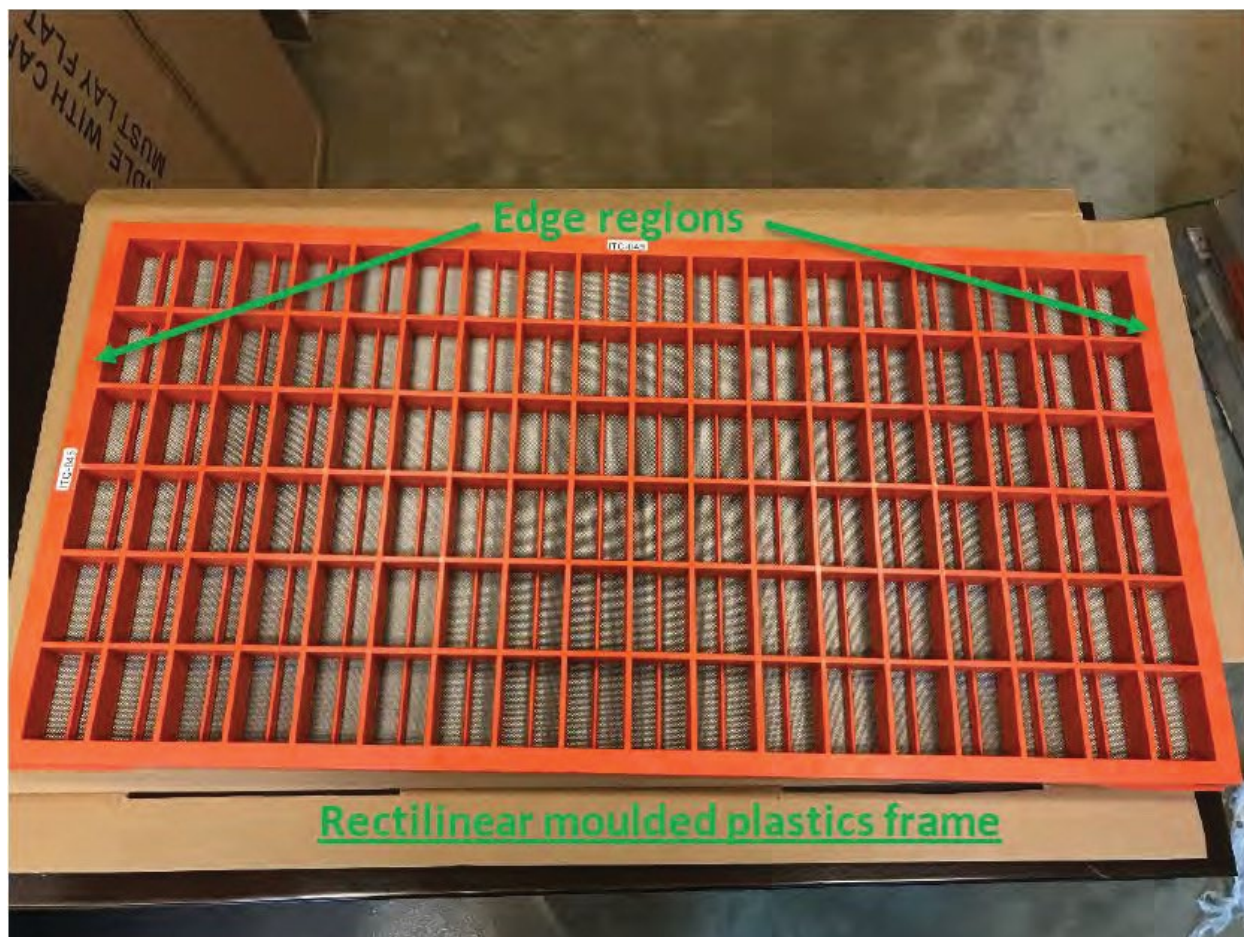
MSD at 118 (Fig. 1).



Id. at 119 (Fig. 3).

- b) 1[a] a rectilinear moulded plastics frame having edge regions by which it is secured in place in a shaker;**

The Mongoose line shaker screens include “a rectilinear moulded plastics frame having edge regions by which it is secured in place in a shaker,” as required by element 1[a]. *See* Morgenthaler Decl. at ¶¶ 132-133.

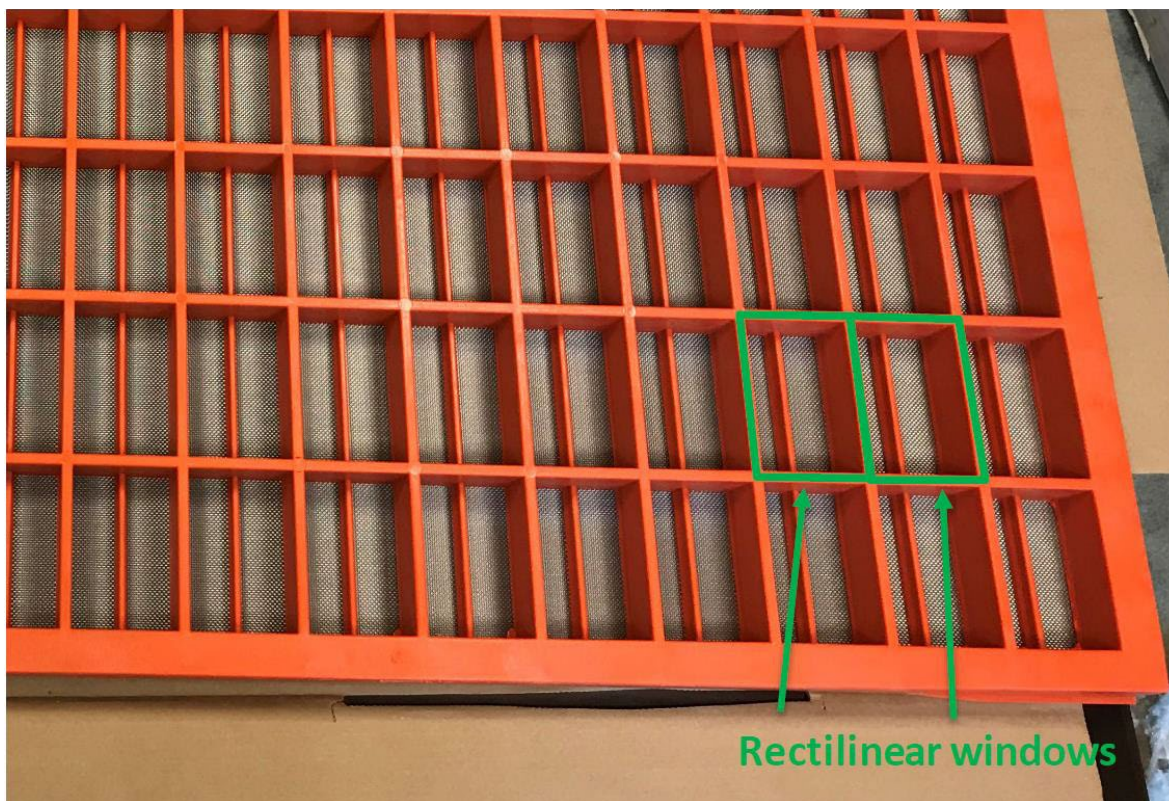


MSD at 121 (Fig. 5).

- c) **1[b] defining a plurality of rectilinear windows formed by an orthogonal array of intersecting ribs also of moulded plastics material**

The Mongoose line shaker screens include a rectilinear moulded plastic frame “defining a plurality of rectilinear windows formed by an orthogonal array of intersecting ribs also of moulded plastics material,” as required by element 1[b]. *See* Morgenthaler Decl. at ¶¶ 134-135.

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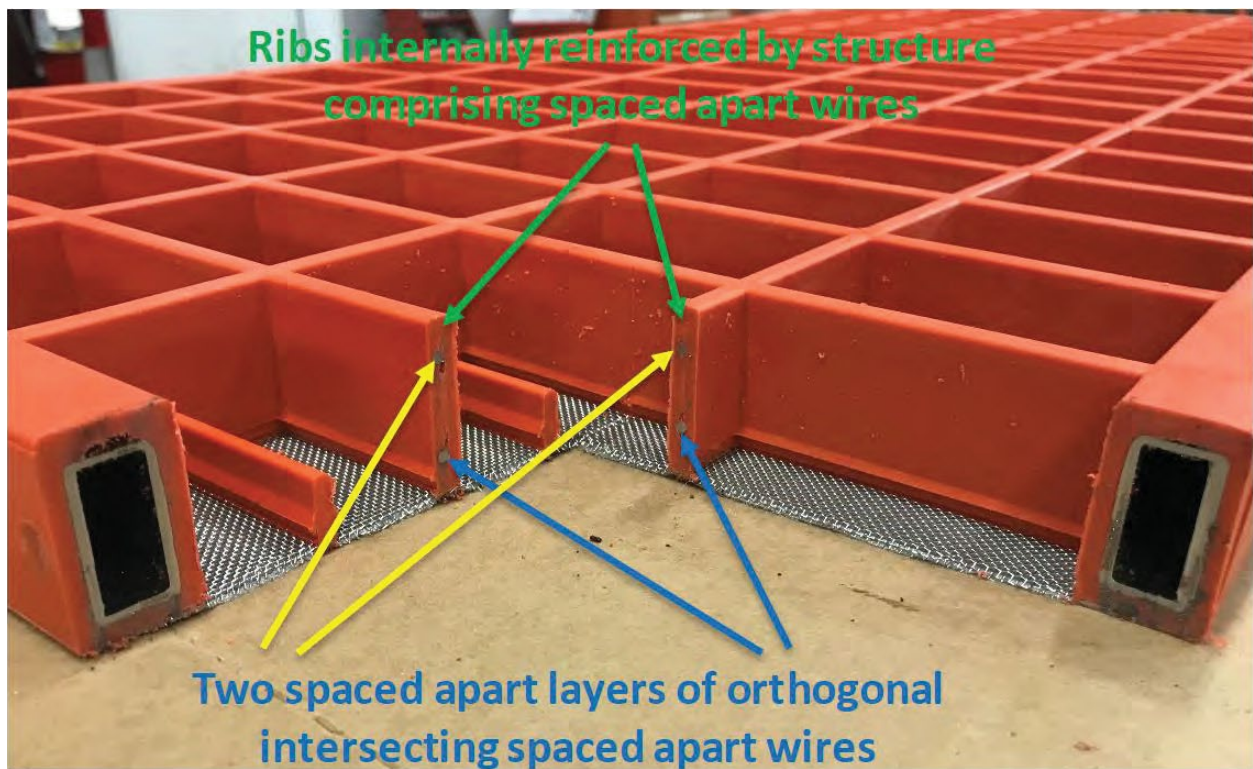
MSD at 122 (Figs. 6 and 7).

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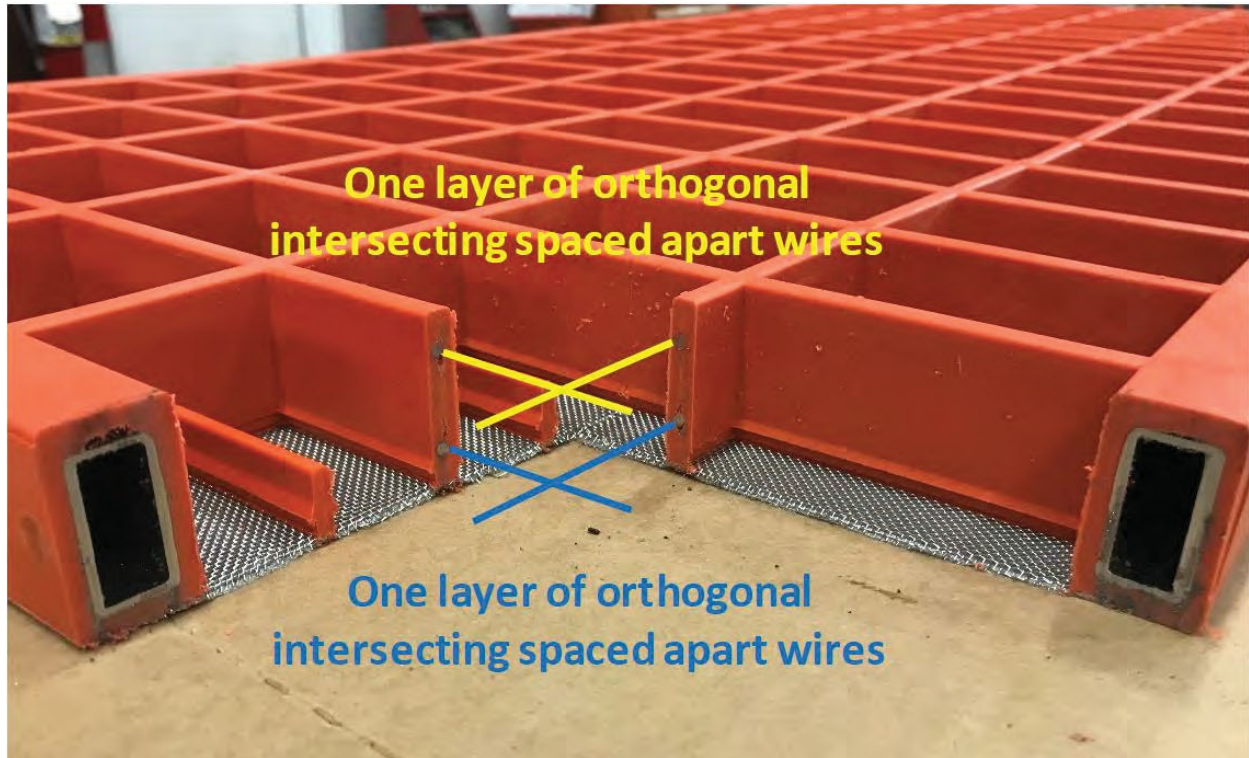
- d) 1[c] at least some of which are internally reinforced by a structure comprising two spaced apart layers of orthogonal intersecting spaced apart wires, running parallel to the length and breadth of the rectilinear shape of the frame within the ribs to increase their rigidity, wherein

The Mongoose line shaker screens include a rectilinear molded plastic frame defining a plurality of rectilinear windows formed by an orthogonal array of intersecting ribs also of molded plastics material, “at least some of which are internally reinforced by a structure comprising two spaced apart layers of orthogonal intersecting spaced apart wires, running parallel to the length and breadth of the rectilinear shape of the frame within the ribs to increase their rigidity.”

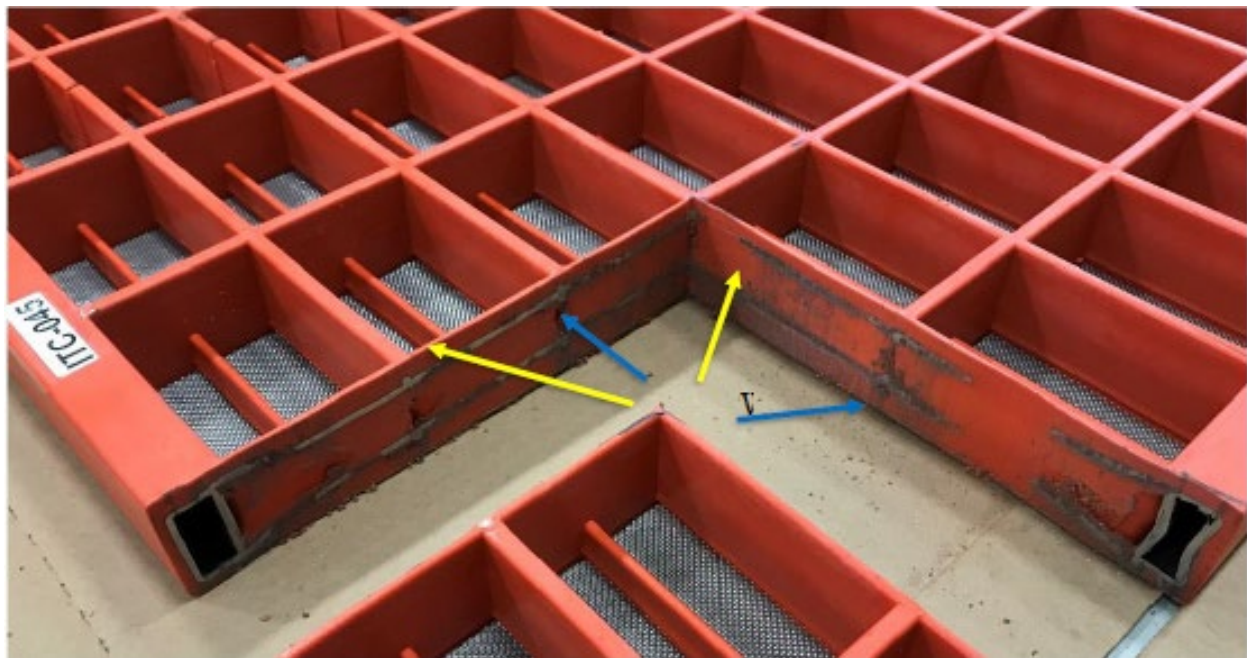
Limitation 1[c] is met. Morgenthaler Decl. at ¶¶ 136-137.



MSD at 83 (Fig. 8).



Id. at 84 (Fig. 9).

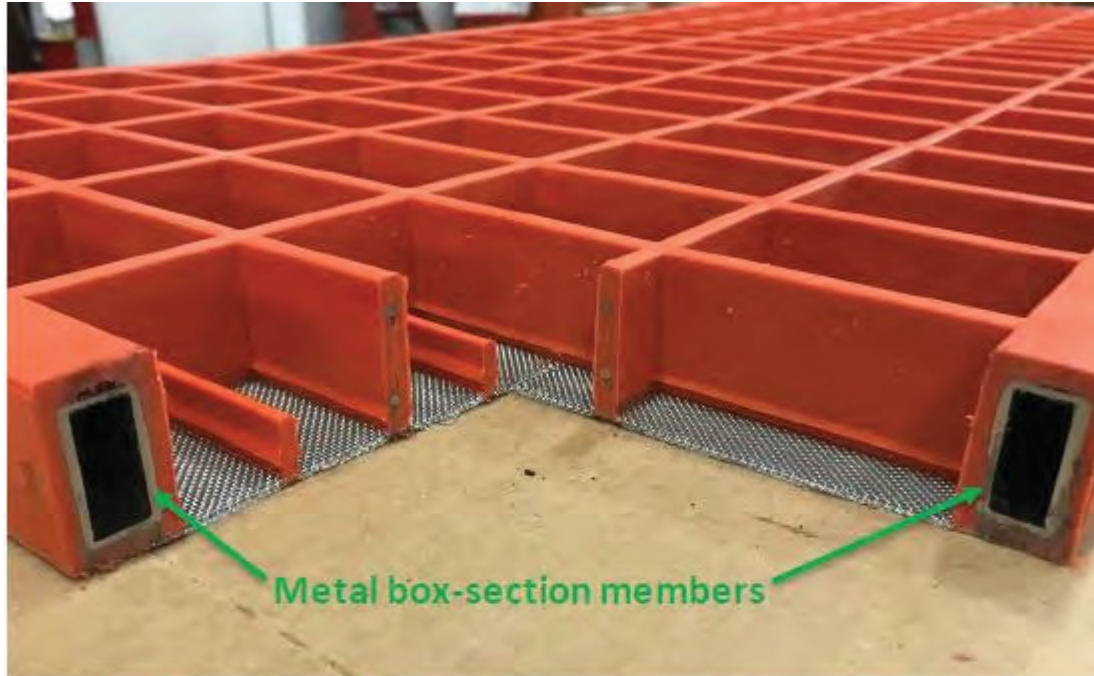


Id. (Fig. 10).

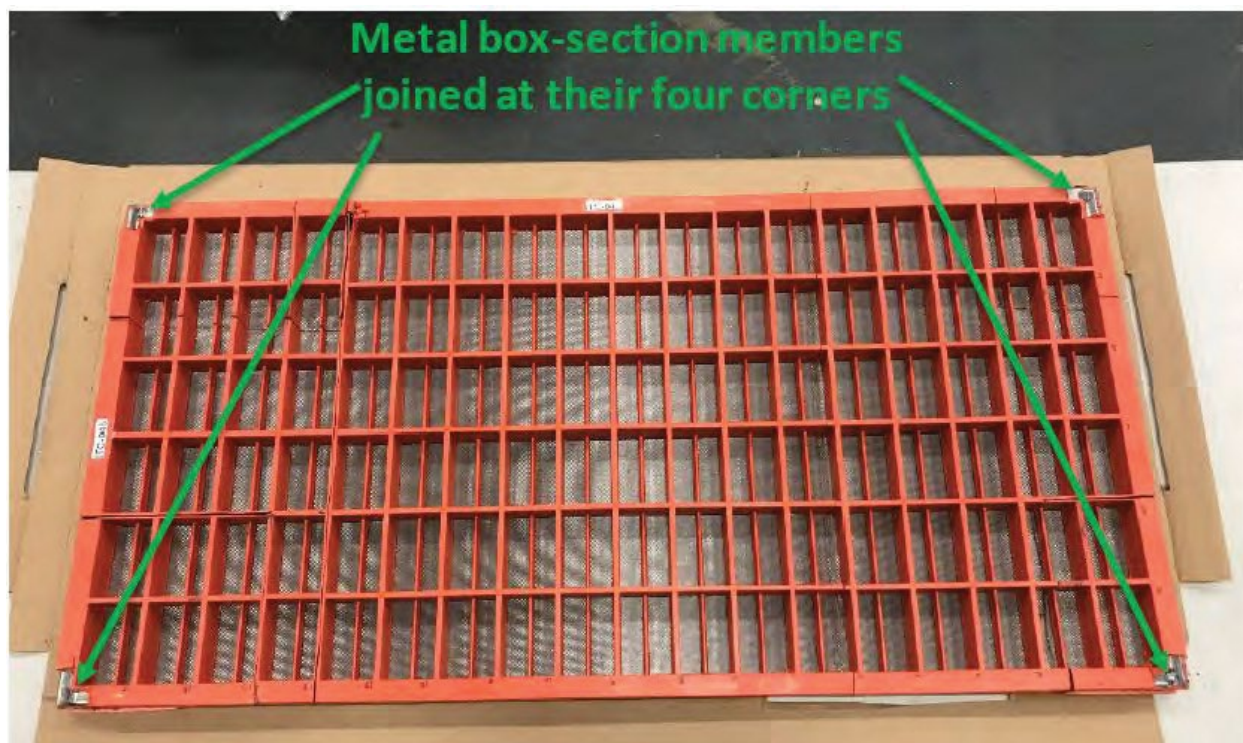
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- e) **1[d] [wherein] the edge regions of the frame are reinforced internally by metal box-section members joined at their four corners and defining a perimeter reinforcement and**

The Mongoose line shaker screens include “edge regions of the frame [that] are reinforced internally by metal box-section members joined at their four corners and defining a perimeter reinforcement,” as required by limitation 1[d]. Morgenthaler Decl. at ¶¶ 138-140.



MSD at 126 (Figs. 12 (above) and 13 (below)).



Id. at 128 (Fig. 15); *see also id.* at 129-131 (Figs. 16-19).

f) 1[e] [wherein] the ends of the wires are secured to the box-section member, and

The Mongoose line shaker screens include two spaced apart layers of orthogonally intersecting spaced apart wires wherein “the ends of the wires are secured to the box-section member,” as required by limitation 1[e]. Morgenthaler Decl. at ¶¶ 141-142.

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MSD at 134 (Figs. 22 (above) and 23 (below)); *see also id.* at 135-136 (Figs. 24-26).

- g) **1[f] wherein the ends of the two layers of wires are secured to the upper and lower faces of the perimeter reinforcement.**

The Mongoose line shaker screens include two spaced apart layers of orthogonally intersecting spaced apart wires wherein “the ends of the two layers of wires are secured to the

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upper and lower faces of the perimeter reinforcement,” as required by limitation 1[f].
Morgenthaler Decl. at ¶¶ 143-144.



MSD at 139 (Figs. 29 (above) and 30 (below)).



Id. at 141-142 (Fig. 33).

3. The MD Line Practices at Least One Claim of the '735 patent

Complainant asserts that its MD line of shaker screens practices claims 1, 12, and 17 of the '735 patent. The undisputed evidence demonstrates that each shaker screen in the MD line practices at least claim 1 of the '735 patent, so I need not address the evidence relating to claims 12 and 17. *Male Prophylactic Devices*, Comm'n Op. at 38. I will address each claim limitation below.

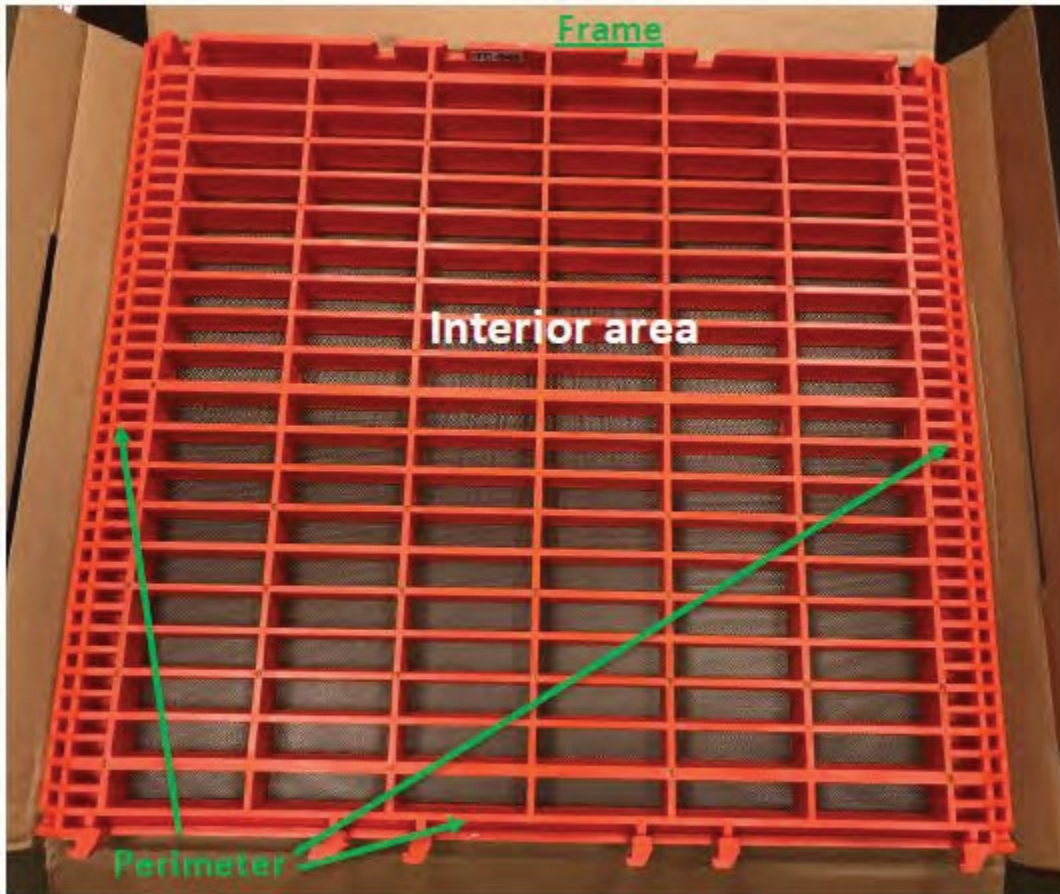
a) [Preamble] An apparatus comprising

The preamble is not limiting, as it is not relied upon to define the scope of the invention. In any event, each MD line shaker screen is an apparatus.

b) 1[a] a frame having a perimeter defining an interior area

The MD line shaker screens include “a frame having a perimeter defining an interior area,” as required by limitation 1[a]. Morgenthaler Decl. at ¶¶ 149-150.

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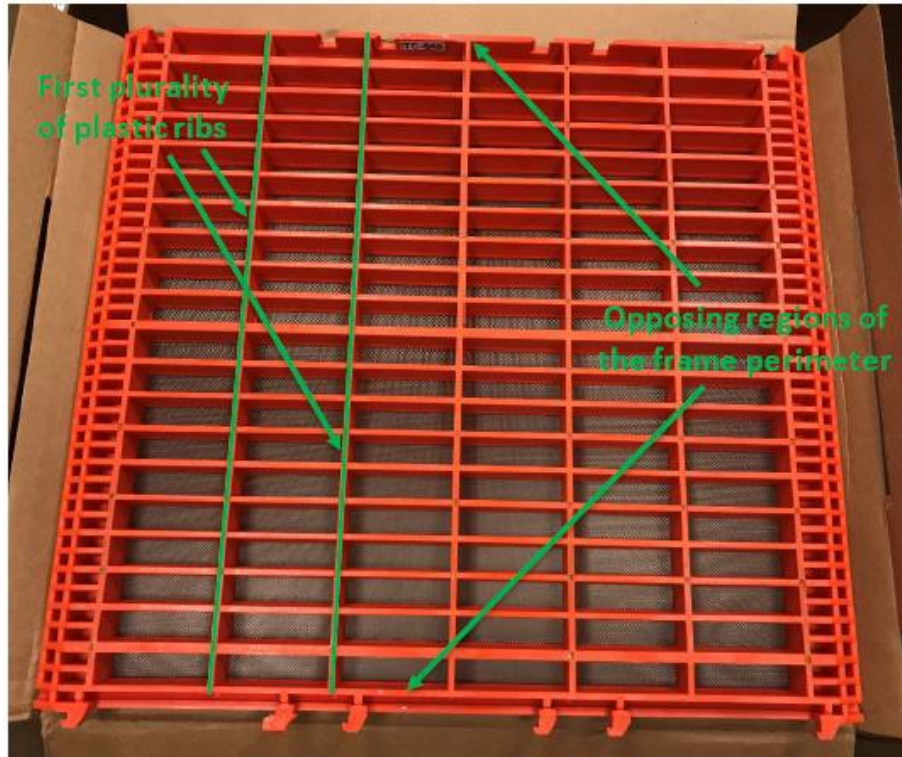


MSD at 145 (Fig. 3).

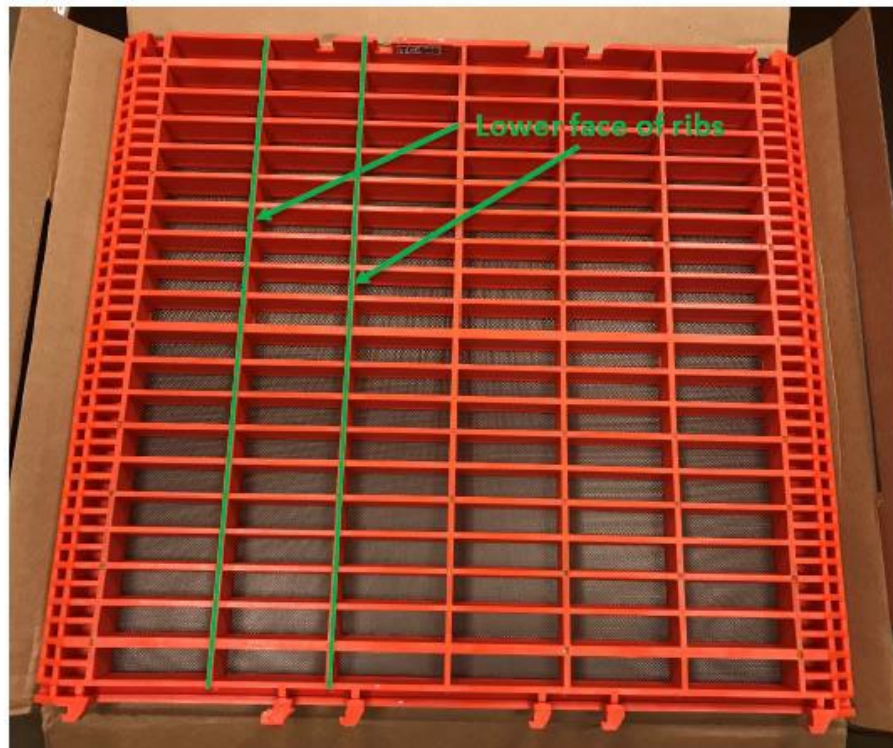
- c) **1[b] a first plurality of plastic ribs extending between opposing regions of the perimeter of the frame, the first plurality of plastic ribs having an upper face and a lower face**

The MD line shaker screens include “a first plurality of plastic ribs extending between opposing regions of the perimeter of the frame, the first plurality of plastic ribs having an upper face and a lower face,” as required by limitation 1[b]. Morgenthaler Decl. at ¶¶ 151-152.

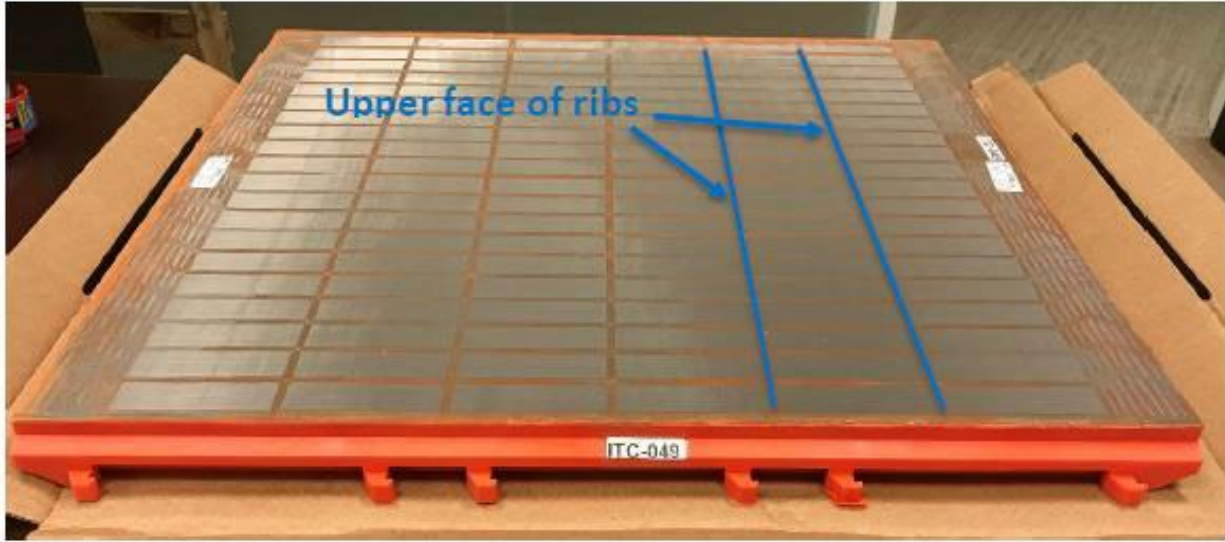
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MSD at 146 (Fig. 4).



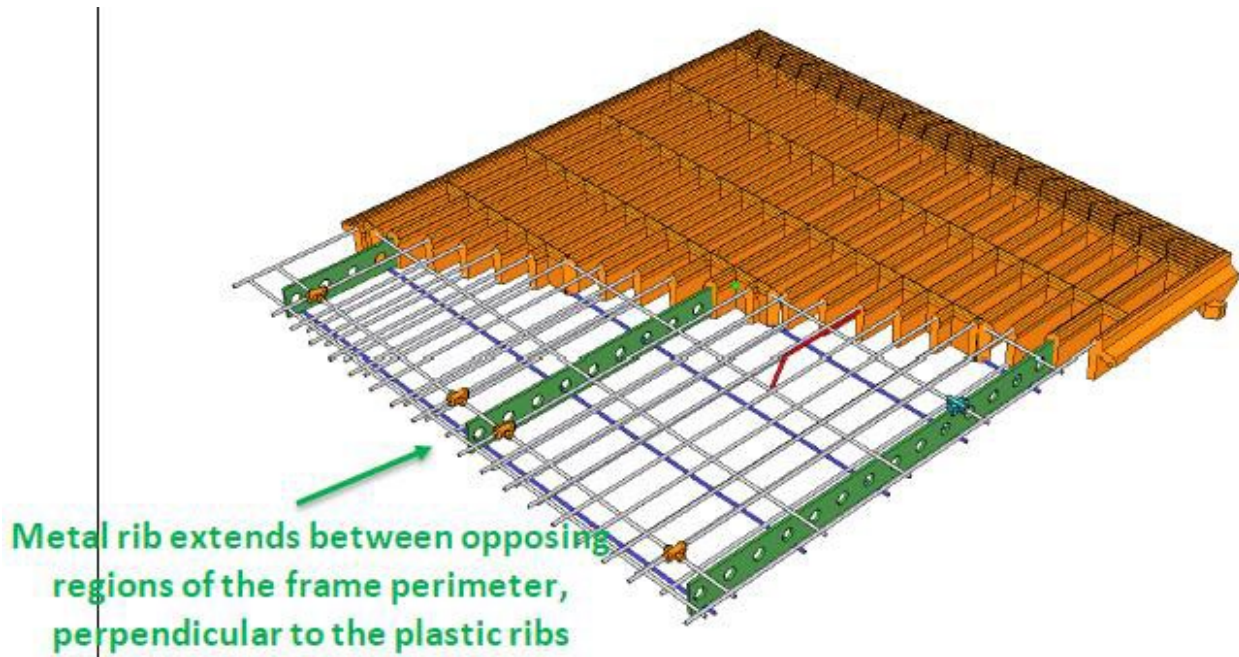
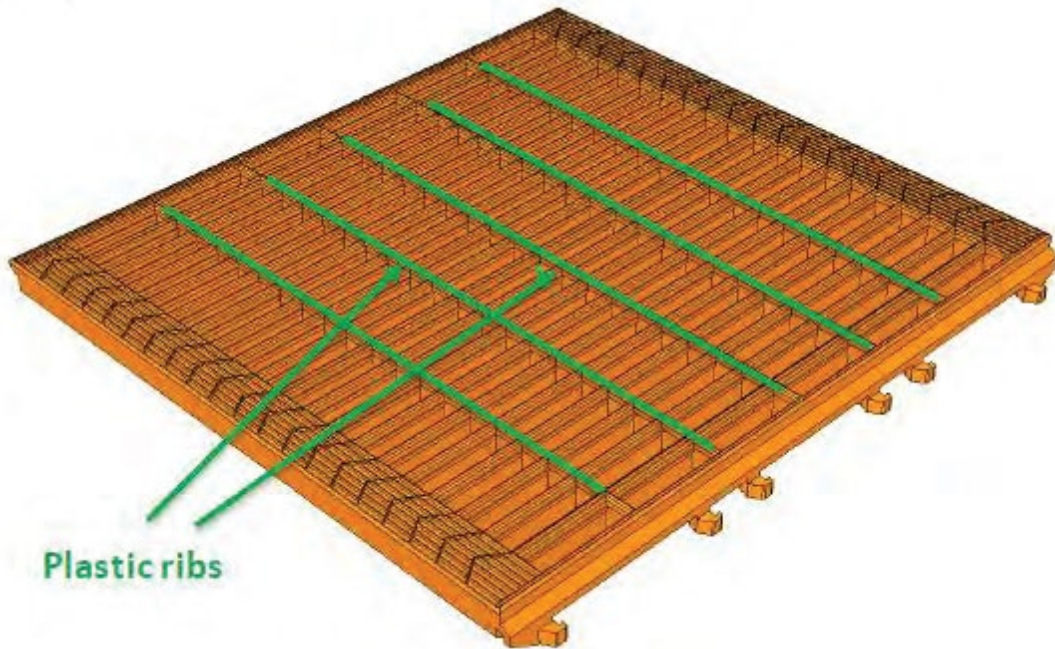
Id. at 147 (Fig. 5).



Id. (Fig. 6).

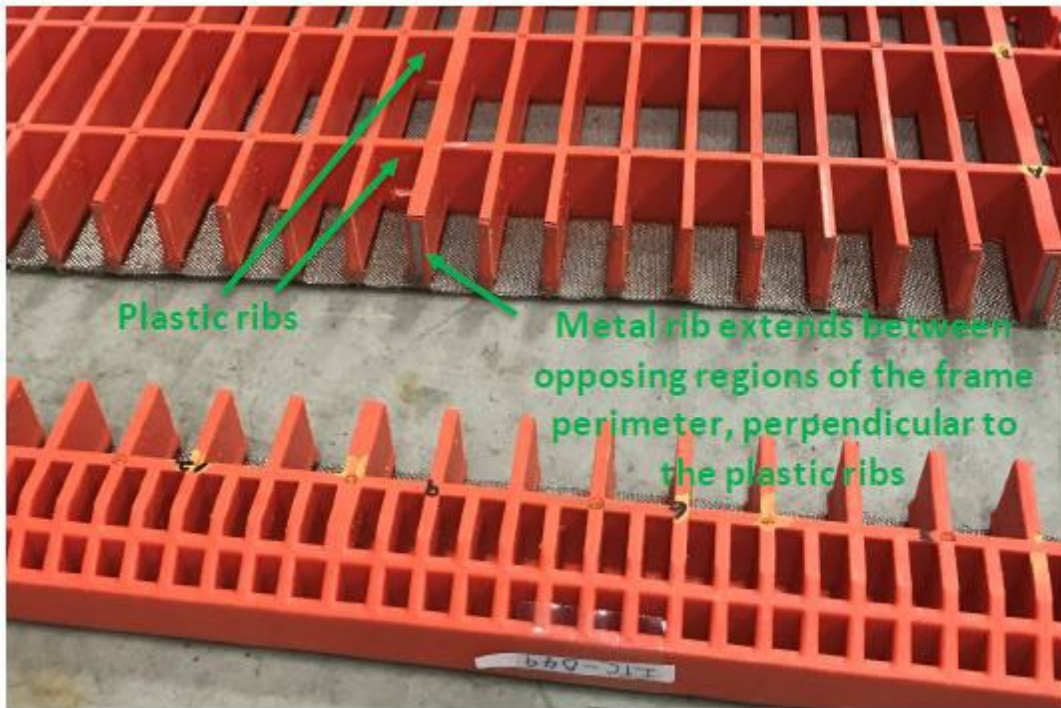
- d) **1[c] a metal rib extending between opposing regions of the perimeter of the frame within the interior area of the frame perpendicular to the first plurality of plastic ribs and extending from the upper face to the lower face of the first plurality of plastic ribs; wherein the metal rib has a first side and a second side; wherein the second side is located in a position opposite the first side; and**

The MD line shaker screens include “a metal rib extending between opposing regions of the perimeter of the frame within the interior area of the frame perpendicular to the first plurality of plastic ribs and extending from the upper face to the lower face of the first plurality of plastic ribs; wherein the metal rib has a first side and a second side; wherein the second side is located in a position opposite the first side,” as required by limitation 1[c]. Morgenthaler Decl. at ¶¶ 153-154.



MSD at 148-149 (Figs. 7 (above) and 8 (below)).

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Id. at 151 (Figs. 10 (above) and 11 (below)).

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- e) **1[d] wherein the metal rib has a first side and a second side; wherein the second side is located in a position opposite the first side**

The MD line shaker screens include a metal rib that “has a first side and a second side; wherein the second side is located in a position opposite the first side,” as required by limitation 1[d]. Morgenthaler Decl. at ¶¶ 155-156.



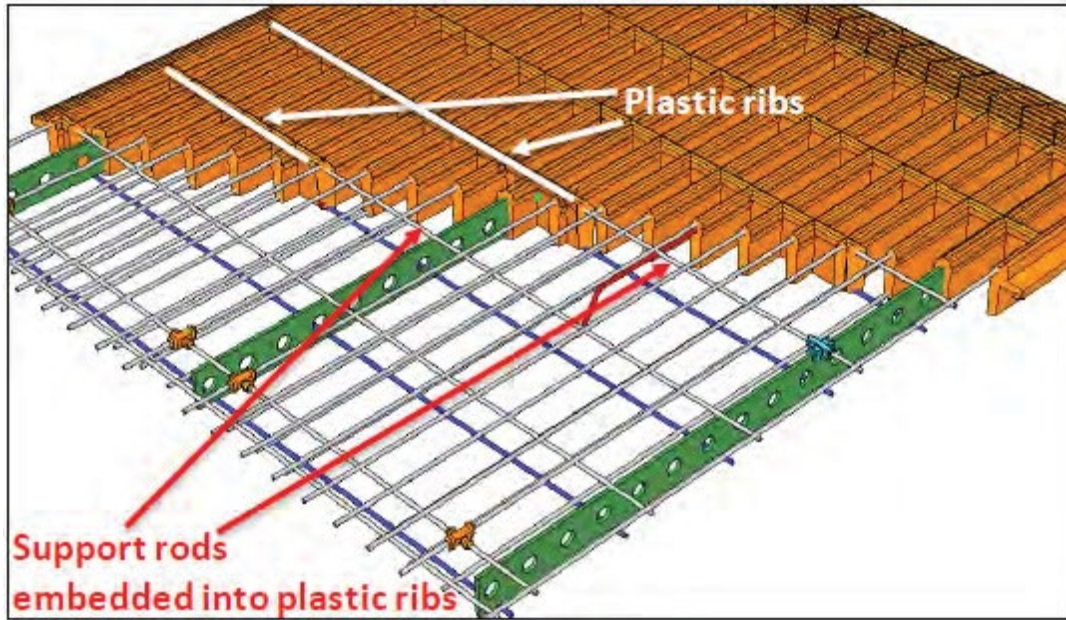
MSD at 152 (Fig. 12).

- f) **1[e] a first plurality of support rods embedded into the first plurality of plastic ribs; wherein the first plurality of support rods are attached to the metal rib and embedded into the first plurality of plastic ribs.**

The MD line shaker screens include “a first plurality of support rods embedded into the first plurality of plastic ribs; wherein the first plurality of support rods are attached to the metal rib

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and embedded into the first plurality of plastic ribs,” as required by limitation 1[d]. Morgenthaler Decl. at ¶¶ 157-158.



MSD at 154 (Fig. 14); *see also id.* at 155-157 (Figs. 15-18).

4. Conclusion

Based on the analysis above, I find that each of the Domestic Industry Products practices at least one claim of each of the Asserted Patents.

B. Economic Prong

Having determined that Complainant has met its burden to show its products practice the Asserted Patents, I next turn to the so-called “economic prong” of the domestic industry requirement. Section 337(a)(3) sets forth the following economic criteria for determining the existence of a domestic industry:

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

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Given that the statutory criteria are listed in the disjunctive, satisfaction of any one of them will be sufficient to meet the economic prong of the domestic industry requirement. *See Certain Variable Speed Wind Turbines and Components Thereof*, Inv. No. 337-TA-376, USITC Publ’n No. 3003, (Nov. 1996), Comm’n Op. at 15.

As discussed below, Complainant has proffered substantial, reliable, and probative evidence showing that its domestic activities satisfy the economic prong of the domestic industry requirement under section 337(a)(3)(A) and (B) with respect to the Asserted Patents.

1. Plant and Equipment

The evidence shows that Complainant has invested in domestic plant and equipment to manufacture articles protected by the asserted patents. Complainant operates a [REDACTED] facility in Florence, Kentucky (“Florence Facility”), where it makes the Domestic Industry Products. Exhibit 4 (Declaration of Alan Ratliff¹) at ¶¶ 23-25 (hereinafter “Ratliff Decl.”). Undisputed evidence shows that Complainant has incurred costs for rent, repairs, utilities, and taxes for the Florence Facility, as well as capital expenses for manufacturing equipment used in that facility. *Id.* at ¶ 26 & StoneTurn Ex. 1; Ex. 1 (Declaration of David Wilson) at ¶ 4 (hereinafter “Wilson Decl.”). Because the Florence Facility produces articles other than the Domestic Industry Products, Complainant has separately identified and claimed only those investments related to the production of the Domestic Industry Products. To determine the relevant amounts, Complainant first allocated its expenditures on rent, repairs, utilities, and property taxes for the Florence Facility based on the square footage of the facility that is used for manufacturing the Domestic Industry

¹ Mr. Ratliff is a retained financial expert with “more than 30 years of experience in client service advising attorneys and their clients on the economic related, accounting and valuation issues in disputes and investigations.” Ratliff Decl. at ¶ 2. Based on his listed qualifications, Mr. Ratliff is qualified to provide expert opinion concerning M-I’s domestic expenditures related to articles protected by the Asserted Patents. *Id.* at ¶¶ 1-4 and Appendix A.

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Products. Ratliff Decl. at ¶¶ 24-28; *id.* Tbl. 3; Wilson Decl. at ¶ 4; *see Certain Toner Cartridges*, 337-TA-1174, Initial Determination at 111 (DI premised, in part, on allocation of costs based on square footage). Complainant then allocated that investment among the Domestic Industry Products based on ratios of total unit sales. Ratliff Decl. at ¶ 27.

Complainant has also invested in capital equipment for manufacture of the Domestic Industry Products. For example, M-I has invested in [REDACTED], among other equipment. *See* Ratliff Decl. at ¶¶ 29-32 & StoneTurn Ex. 2; Wilson Decl. at ¶ 7 & MI-ITC-00009197. Complainant allocates portions of these equipment costs to each Domestic Industry Product based on the proportional sales of each Domestic Industry Product. Ratliff Decl. at ¶ 32. Complainant acknowledges that [REDACTED] of the products produced using this equipment are not protected by the Asserted Patents. *Id.* Complainant's expert opines that, given the high level of use Complainant would get out of the machines even absent manufacture of the non-covered products, Complainant would have purchased the equipment solely to manufacture the Domestic Industry Products anyway. *Id.* Under these circumstances, it is appropriate to credit the full cost of the equipment in question to the complainant's domestic industry. *See Certain Magnetic Data Storage Tapes and Cartridges Containing the Same*, Inv. No. 337-TA-1012, USITC Publ'n No. 4956, Comm'n Op. at 114-115 (Mar. 8, 2018) (*citing Certain Biometric Scanning Devices, Components Thereof, Associated Software, & Prods. Containing the Same*, Inv. No. 337-TA-720, USITC Publ'n No. 4366, Initial Determination, at 6-7 (Feb. 16, 2011), *unreviewed in relevant part*, ("[C]omplainant was required to invest in the space for each product regardless of whether the space is used to manufacture the other product.")).

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The undisputed record shows the following cost allocations with respect to each Domestic Industry Product for the years from 2016 to 2019:

Domestic Industry Product	Allocated Rent, Repairs, Utilities, and Taxes for Florence Facility	Capital Equipment	Total Investments in Plant and Equipment
Venom Line ('582 patent)	██████████	██████████	██████████
Mongoose Line ('649 patent)	██████████	██████████	██████████
MD Line ('735 patent)	██████████	██████████	██████████

Ratliff Decl. at ¶¶ 19, 24-28 (Florence Facility); *id.* Tbl. 3 (same); *id.* at ¶¶ 29-33 (Capital Equipment); *id.* Tbl. 4 (Capital Equipment); *id.* ¶ 18 (Total); *id.* Tbl. 1.

2. Labor and Capital

The undisputed evidence shows that between January 1, 2016, and October 18, 2019, Complainant invested significantly in domestic labor related to an industry in articles protected by the Asserted Patents and made significant expenditures of capital related to that industry.

M-I employs at least [REDACTED] who design, develop, and manufacture its Mongoose, MD, and Venom line shaker screens at its Florence Facility. Compl. Ex. 35 (10/9/19 Decl. of David Wilson) at ¶ 14; Ratliff Decl. at ¶ 34. Complainant's labor investments include expenditures on [REDACTED] Ratliff Decl. at ¶ 36. After applying the same unit-sales-based allocation used for plant and equipment above, M-I's labor investments with respect to each of the DI articles are as follows:

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Domestic Industry Product	Manufacturing Labor	R&D Labor ²	Total Investments in Labor
Venom Line ('582 patent)			
Mongoose Line ('649 patent)			
MD Line ('735 patent)			

Ratliff Decl. ¶¶ 35-39; *id.* Tbls. 5-6.

3. Complainant's Domestic Industry Investments Are Significant

M-I argues its domestic industry investments are significant under a “value added” analysis put forward by their economic expert, Mr. Ratliff. MSD at 161-163; *see Male Prophylactic Devices*, Comm’n Op. at 43. Staff, for its part, contends that a value-added analysis is appropriate but apparently disagrees with how Mr. Ratliff performed that analysis, taking “no position” on Mr. Ratliff’s numbers. Response at 49. Staff provides its own value-added analysis. *Id.* at 47-51.

I find that Complainant’s value-added analysis shows its domestic investments related to the patented articles are significant. *See Male Prophylactic Devices*, Comm’n Op. at 43. It is undisputed that Mr. Ratliff’s analysis considered the incremental value added by the domestic production activities compared to the value of the inputs to those production activities. Ratliff Decl. at ¶ 41. Staff has presented no evidence that Mr. Ratliff deviated from his stated methodology and has presented no legal authority that his methodology was inappropriate.

² Staff “takes no position” on the propriety of crediting “R&D Labor” expenditures claimed by Complainant. Response at 46 n. 22. However, no evidence contradicts the evidence provided by Mr. Ratliff that Complainant spent these sums “to develop and design the patented shaker screens.” Ratliff Decl., StoneTurn Ex. 3, at Note(c). Such R&D labor expenses can appropriately be credited under section 337(a)(3)(B), and I do so here. *See Certain Digital Video Receivers and Hardware and Software Components Thereof*, USITC Publ’n No. 4931, Inv. No. 337-TA-1001, USITC Publ’n No. 4931, Comm’n Op. at 35 (Dec. 6, 2017) (crediting R&D, engineering, and tech support expenses under 19 U.S.C. § 1337(a)(3)(B)). I additionally find, however, that M-I’s investment is significant even if these expenditures are not credited.

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The table below shows the relevant figures for calculating the value added to the domestic industry products by Complainant's domestic activities:

Domestic Industry Product	Domestic Costs	Foreign Costs	Total Cost	Avg. Sale Price (Market Value)	Domestic Value Add \$ Per Unit (%)
Venom Line ('582 patent)					
Mongoose Line ('649 patent)					
MD Line ('735 patent)					

See Ratliff Decl. at ¶¶ 40-47 and StoneTurn Exhibit 4. These value-added amounts, ranging from demonstrate the significance of Complainant's domestic investment. See *Male Prophylactic Devices*, Comm'n Op. at 43 (finding significance under value-add analysis with value added of 34%).

Moreover, as shown in the chart above, M-I's domestic investments dwarf its expenditure on foreign inputs to the Domestic Industry Products. See Ratliff Decl. at ¶ 46. This further confirms the significance of M-I's domestic investments.

Staff's alternative analysis is generally consistent with this finding. Under Staff's analysis, domestic investments constitute of the total cost of production for the Venom Line, of the total cost of production for the Mongoose Line, and of the total cost of production for the MD Line. Response at 48-49 (citing Wilson Decl. at MI-ITC-00009198; Ratliff Decl. at ¶ 19 & StoneTurn Ex. 5).

I additionally find that the investments identified by Complainant are qualitatively significant, as they all are direct investments in the domestic manufacture of the protected articles.

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See Certain Collapsible Sockets for Mobile Elec. Devices & Components Thereof, Inv. 337-TA-1056, USITC Publ'n No. 4978, Comm'n Op. at 20 (Jul. 9, 2018).

I find, based on the undisputed, substantive, reliable, and probative evidence explained above, that M-I has met its burden of showing that a domestic industry exists related to articles protected by the Asserted Patents, as defined in both section 337(a)(3)(A) and (B). For the relevant period from 2016 to 2019, those total investments are as follows:

Domestic Industry Product	Total Investments in Plant and Equipment	Total Investments in Labor	Total Domestic Expenditure
Venom Line ('582 patent)			
Mongoose Line ('649 patent)			
MD Line ('735 patent)			

V. CONCLUSIONS OF LAW

1. The Commission has personal jurisdiction over the parties, subject-matter jurisdiction over the investigation, and *in rem* jurisdiction over the accused products.
2. The importation requirement of section 337 is satisfied with respect to the Accused Products.
3. The accused Hengying Wire Cloth "HSZ-2 King Cobra / Cobra" family of shaker screens infringe claims 1 and 12 of U.S. Patent No. 7,210,582.
4. The accused Hengying Wire Cloth "XR/XL Mongoose Replacement" and "HSZ-1 Mongoose Replacement" families of shaker screens infringe claim 1 of U.S. Patent No. 7,810,649.
5. The accused SJ Screen "SJ-M/M Mongoose Replacement" family of shaker screens infringe claim 1 of U.S. Patent No. 7,810,649.
6. The accused Hengying Wire Cloth "MD Replacement" family of shaker screens infringe claims 1, 12, and 17 of U.S. Patent No. 8,925,735.
7. A domestic industry exists within the United States related to articles protected by U.S. Patent No. 7,210,582.

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8. A domestic industry exists within the United States related to articles protected by U.S. Patent No. 7,810,649.
9. A domestic industry exists within the United States related to articles protected by U.S. Patent No. 8,925,735.
10. A violation of section 337 has occurred based on the importation and sale of articles that infringe the asserted claims of U.S. Patent No. 7,210,582.
11. A violation of section 337 has occurred based on the importation and sale of articles that infringe the asserted claims of U.S. Patent No. 7,810,649.
12. A violation of section 337 has occurred based on the importation and sale of articles that infringe the asserted claims of U.S. Patent No. 8,925,735.

VI. RECOMMENDED DETERMINATION ON REMEDY & BOND

I must issue a recommended determination concerning the appropriate remedy in the event that the Commission finds a violation of section 337 and I must recommend the amount of bond to be posted for importation during any Presidential review of the Commission's action. *See* 19 C.F.R. § 210.42(a)(1)(ii).

A. General Exclusion Order

The Commission “focus[es] principally on the statutory language itself” when determining whether to issue a general exclusion order. *Certain Ground Fault Cir. Interrupters & Prod. Containing Same*, Inv. No. 337-TA-615, USITC Publ’n No. 4146, Comm’n Op. at 25 (Mar. 26, 2009) (“*Ground Fault Cir. Interrupters I*”). Under section 337(d)(2), a general exclusion order is warranted in either of two circumstances: (1) when “an exclusion order limited to products of named persons” would be circumvented, or (2) when “there is a pattern of violation of this section and it is difficult to identify the source of infringing products.” 19 U.S.C. § 1337(d)(2)(A) and (B); *Certain Cigarettes & Packaging Thereof*, Inv. No. 337 TA-643, Comm’n Op. at 24 (Oct. 1, 2009) (“*Cigarettes*”).

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When some respondents default without appearing but other respondents appear and contest the complaint, section 337(d)(2) specifies additional conditions for issuing a general exclusion order. *Pocket Lighters*, Inv. No. 337-TA-1142, Initial Determination at 40 (Pub. Vers.) (Feb. 12, 2020) (EDIS Doc. ID 706458), *not reviewed in pertinent part*, EDIS Doc. ID 708631. A general exclusion order under section 337(d)(2) must rest upon a violation established by substantial, reliable, and probative evidence. *Id.*

In the present investigation, some of the respondents appeared in, and contested, the investigation, while other respondents failed to appear. *See supra* part I.B.2. Under these circumstances, issuance of a general exclusion order is appropriately considered under section 337(d)(2). *See, e.g., Certain Toner Cartridges*, 337-TA-1174, Initial Determination at 137 (issuing a general exclusion order under section 337(d)(2) in similar circumstances).

1. Circumvention of Limited Exclusion Orders

A limited exclusion order restricts the activities of named respondents but not others. *Kyocera Wireless Corp. v. Int’l Trade Comm’n*, 545 F.3d 1340, 1356-57 (Fed. Cir. 2008). If the evidence shows that named respondents would circumvent a limited exclusion order, a general exclusion order is appropriate. *See Certain Ground Fault Cir. Interrupters & Prod. Containing Same*, Inv. No. 337-TA-739, Comm’n Op. at 88-89, (June 8, 2012) (EDIS Doc. ID 482482) (“*Ground Fault Cir. Interrupters II*”) (finding a general exclusion order was appropriate based on evidence that named respondents would circumvent a limited exclusion order by changing their corporate identity); *Certain Elec. Paper Towel Dispensing Devices*, Inv. No. 337-TA-718, USITC Publ’n No. 4359, Comm’n Op. at 16 (Jan. 20, 2012) (“*Towel Dispensers*”) (affirming ALJ’s finding of likelihood of circumvention where “conditions are ripe for circumvention of a limited exclusion order.”); *see also Towel Dispensers, Recommended Determination*, Order No. 36, at 3-4

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(July 12, 2011). Here, there is substantial evidence that a general exclusion order is necessary to prevent respondents named in this investigation from circumventing a limited exclusion order.

In considering whether conditions are ripe for circumvention, the Commission has considered the following factors:

- (a) whether there is a strong demand for the infringing products;
- (b) whether the importation and sale of infringing products can be extremely profitable;
- (c) whether extensive domestic marketing and distribution networks already exist which allow foreign manufacturers to widely distribute infringing products throughout the United States;
- (d) whether large online marketplaces have emerged which provide both foreign manufacturers and domestic retailers a dedicated, flexible way to sell to consumers;
- (e) the difficulty in identifying the sources of infringing products, including the ability to package infringing products in unmarked, generic packaging; and
- (f) the ability of manufacturers to 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, Inv. No. 337-TA-730, Comm’n Op., at 4–5 (Feb. 24, 2012) (EDIS Doc. ID 472746). Each of these factors is met here.

a) There is strong demand for the infringing products

Substantial, un rebutted evidence shows that there is a strong demand for shaker screens that practice the Asserted Patents. Brigitte Echols, the manager of intellectual property enforcement for Complainant, submitted sworn testimony that M-I enjoyed robust sales of domestic industry shaker screens prior to the introduction into the market of infringing imported screens. MSD Ex. 2 (Declaration of Brigitte Echols) at ¶¶ 1, 5 (“Echols Decl.”). Similarly, Mr. Wilson submitted testimony that gas and oil drilling operations “consume hundreds of shaker screens in connection with a particular shale shaker over the lifecycle of a large-scale drilling

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operation,” demonstrating that demand for shaker screens will remain high as long as oil and gas drilling continue. Wilson Decl. at ¶ 9.

b) The importation and sale of infringing products is extremely profitable

Undisputed, substantial evidence shows that the importation and sale of infringing shaker screens is extremely profitable. Mr. Wilson submitted sworn testimony that “M-I’s profit margin on the sale of shaker screens can exceed 50%, depending on the model.” Wilson Decl. at ¶ 10. Mr. Yuelang Liu, CEO of Brightway, likewise testified that “the costs of designing and manufacturing standard shaker screens are relatively low,” and “[t]he equipment raw materials and labor required to manufacture shaker screens are easy to obtain and relatively inexpensive.” MSD Ex. 6 (Declaration of Yuelang Liu) at ¶ 5 (“Liu Decl.”). Mr. Liu went on to explain that in addition to low start-up costs, shaker screens have “high [profit] margins.” *Id.* at ¶ 6. Complainant’s consultant Mr. Palmer similarly testified that “resellers can enjoy a substantial profit margin on the resale of shaker screens, which incentivizes the formation of companies to enter the market.” Palmer MSD Decl. at ¶ 12.

c) Extensive domestic marketing and distribution networks already exist

Substantial, undisputed evidence also demonstrates that there exists an extensive domestic marketing and distribution network for infringing goods. As noted above, *supra* part II.D, the defaulting respondents import infringing shaker screens into the United States.

Undisputed evidence shows that foreign companies sell shaker screens through informal but well-established sales channels, including at U.S. trade exhibitions (such as the Offshore Technology Conference) and over various peer-to-peer messaging platforms like WhatsApp or Skype. Palmer MSD Decl. at ¶¶ 7-9; MSD Ex. 3-E (WhatsApp correspondence with Hengying

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Wire Cloth representative); MSD Ex. 3-F (Seaco Oilfield Equipment Co. Website showing the company may be reached via WhatsApp); Liu Decl. at ¶ 8 (shaker screens “are often sold in individualized purchases and via quotes that are provided in person, via email, at trade shows, or other direct messaging”).

d) Infringing goods are sold on large, online marketplaces

M-I has presented undisputed evidence that infringing products are sold through multiple online marketplaces, including Alibaba and ERUI International, and that setting up seller accounts on these platforms is fast and easy. Palmer MSD Decl. at ¶¶ 10-12. Because such online marketplaces have low barriers to entry and can allow sellers of infringing goods to quickly reestablish themselves under new names, the sale of infringing goods through online platforms can indicate that remedial orders will be circumvented. *See, e.g., Certain Toner Cartridges*, 337-TA-1174, Initial Determination at 138.

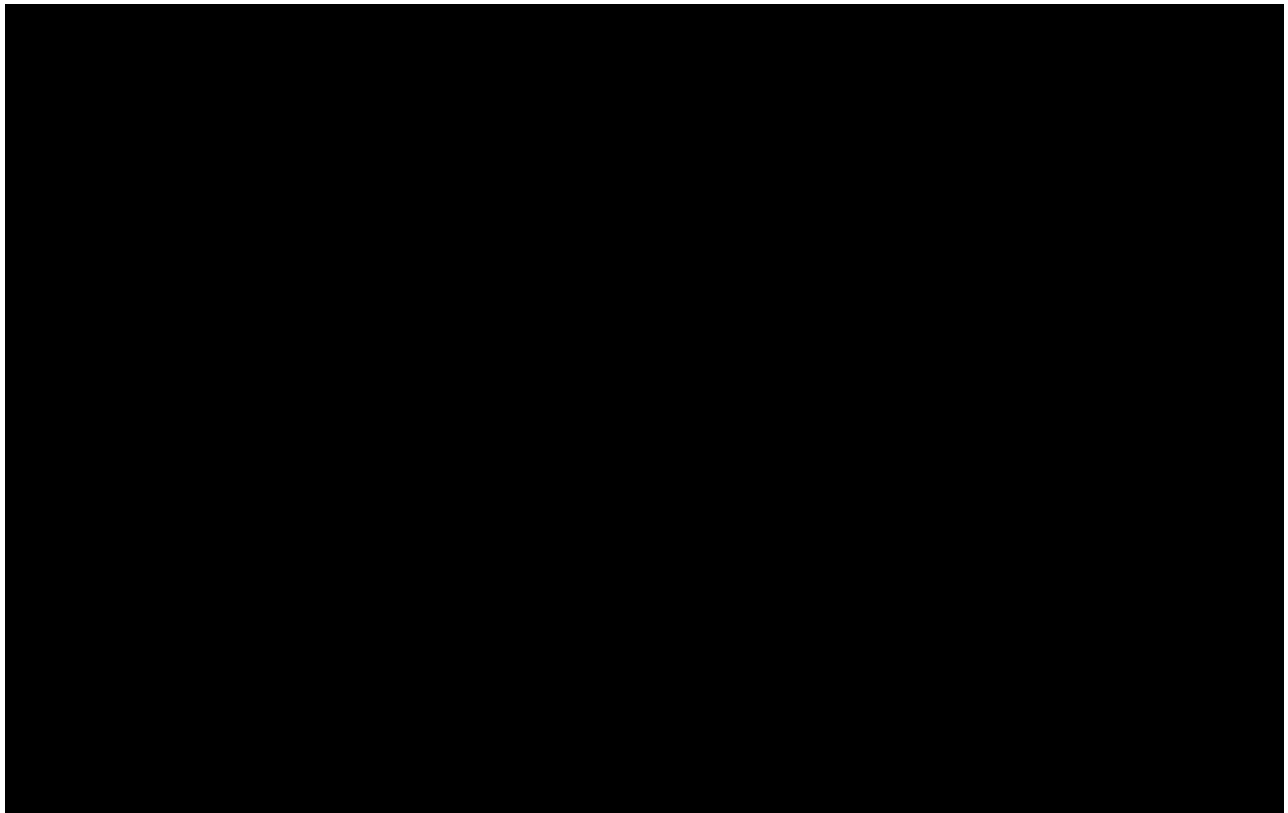
e) It is difficult to identify the sources of infringing products

Substantial, undisputed evidence also show that shaker screen sellers and manufacturers often package the screens in unmarked or generic packaging, making it difficult to identify the source of the product. *See* Liu Decl. at ¶ 7 (“[I]t is difficult to identify the source of shaker screens that are produced in China because the screens themselves and the packaging are in many instances not marked with any source identifier”). For example, [REDACTED]

[REDACTED]

[REDACTED]

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Further, undisputed evidence also shows that at least one non-party, [REDACTED]



[REDACTED] and the products were shipped in generic packaging:



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f) Manufacturers can easily evade a limited exclusion order through shell companies with unclear ties to the original manufacturer

Undisputed evidence shows that manufacturers of shaker screens often use resellers and intermediaries with unclear ties to the original manufacturer to distribute infringing products. For example, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Mr. Liu of Brightway provided testimony that there are “dozens of companies in China that produce shaker screens, and such companies continue to form on a regular basis,” and that “many of these companies export shaker screens to the United States either themselves *or through intermediaries*.” Liu Decl. at ¶ 3 (emphasis added). The numerosity of manufacturers and the regularity with which they use intermediary importers would render a limited exclusion order edentulous.

The record also reflects that many sellers of shaker screens appear to conceal identifying information of the manufacturer of their goods. *See* Palmer Decl. at ¶ 9 (identifying multiple instances of identifying contact information for sellers and manufacturers omitted from brochures and webpages of shaker screen sellers); MSD Ex. 3-D (H Screening brochure). The record further shows multiple examples of foreign companies obscuring the legal identity of the entities manufacturing, selling, and importing shaker screens through website and email aliases. MSD Ex. 3-B at MI-ITC-00009845 (showing Anping Guangming Metal Products Co. Ltd. uses the website “www.rock-shakerscreen.com” and its sales representative uses the email addresses “william@autoplansearch.com” and “mytrade_mytrade@everychina.com”). This evidence shows an industry practice of obfuscating the true source of shaker screens, both at the retail and

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manufacturing level. *See Certain Indus. Automation Sys. & Components Thereof Including Control Sys., Controllers, Visualization Hardware, Motion & Motor Control Sys., Networking Equip., Safety Devices, & Power Supplies*, Inv. No. 337-TA-1074, USITC Publ'n No. 4982, Comm'n Op. at 7 (Apr. 23, 2019) ("Respondents' use of multiple different entities to sell and import products supports a finding that a limited exclusion order would be easily circumvented.").

g) Conclusion on Likelihood of Circumvention

Taken together, I find that the substantial, un rebutted evidence outlined above shows that a general exclusion order is necessary in this case to prevent the circumvention of a limited exclusion order. Thus, if the Commission finds a violation of section 337, I recommend it enter a general exclusion order directed at articles that infringe the '649, '735, and '582 patents under 19 U.S.C. § 1337(d)(2)(A).

2. Pattern of Violation of Section 337 and Difficulty Identifying Source

Additionally, and independently, I find the record shows (1) an undisputed pattern of violation of section 337 through the importation and sale of articles that infringe the asserted claims of the '649 and '735 patents,³ and (2) it is difficult to identify the source of infringing goods. 19 U.S.C. § 1337(d)(2)(B). I review that record evidence below.

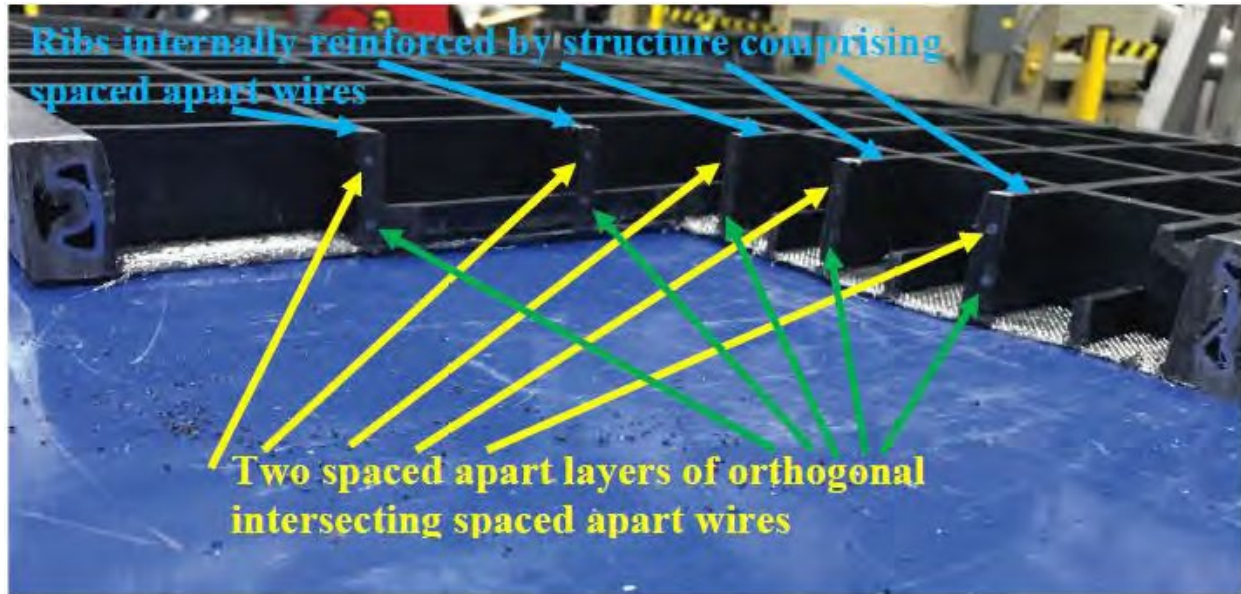
Taking the second factor first, I have already determined it is often difficult to identify the source of shaker screens that infringe the '649 and '735 patent claims. *See supra* parts VI.A.1.e) (discussing generic packaging) and VI.A.1.f) (discussing obfuscated supply chains and use of intermediary importers). Therefore, with respect to the asserted claims of the '649 and '735

³ Complainant also appears to report a pattern of violation of its '582 patent rights. I have already determined that the Commission should enter a general exclusion order directed to articles that infringe the '582 patent under section 1337(d)(2)(A). I therefore need not make a finding as to whether M-I has shown a pattern of violation of its rights in the '582 patent.

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patents, Complainant has shown “is difficult to identify the source of infringing products.” 19 U.S.C. § 1337(d)(2)(B).

I next examine whether there exists a pattern of violation of section 337 based on infringement of Complainant’s ’649 and ’735 patent rights. In addition to evidence about the products of the two Defaulting Respondents determined above to infringe the ’649 and ’735 patents, *see supra* part III.B, Complainant’s expert Mr. Morgenthaler put forward a detailed, element-by-element analysis showing how products sold by the four terminated respondents infringe the asserted claims of the ’649 and ’735 patents. MSD at 74-76, 92-93; Morgenthaler Decl. at ¶¶ 183-349 (explaining how Hebei GN Solids and GN Solids America shaker screens infringe all three Asserted Patents), 563-602 (explaining how Xi’an Brightway and Brightway Solids shaker screens infringe the ’735 patent). Mr. Morgenthaler also showed that the products of non-party BO STAR infringe the ’649 patent. Morgenthaler Decl. at ¶¶ 544-562 (explaining how BO STAR’s shaker screens infringe the ’649 patent). Mr. Morgenthaler’s annotation of the BO STAR Mongoose Replacement Shaker Screen is exemplary of how these other shaker screens meet the elements of various asserted patent claims:



Id. at ¶ 554 (Fig. 8) (BO STAR Mongoose Replacement Shaker Screen infringement analysis under claim element 1[c] of the '649 patent).

The record evidence regarding products of non-party BO STAR and regarding products subject to consent orders is material to determining whether there is a pattern of violation of section 337. *Certain Luxury Vinyl Tile & Components Thereof*, 337-TA-1155, Comm'n Op. at 6-8 (considering products subject to a consent order for the limited purpose of determining whether there is a pattern of violation of section 337).⁴ These analyses show that, in addition to the two Defaulting Respondents who violated section 337, the four terminated respondents appear to infringe the '735 patent and the '649 patent and BO STAR appears to infringe the '649 patent. *See Certain Coaxial Cable Connectors & Components Thereof and Prod. Containing Same*, 337-TA-650, USITC Publ'n No. 4283, Initial Determination at 121, 125-126 (Oct. 13, 2009).

⁴ My analysis here does not alter the terms of the consent orders entered in this investigation or the stipulations leading to those orders, in which the terminated respondents admitted no infringement. Order No. 8 at Ex. A, ¶ 10 (Brightway Consent Order Stipulation); Order No. 14 at Ex. A, ¶ 8 (GN Solids Consent Order Stipulation).

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Beyond the seven violating entities discussed above, Complainant put forward substantial evidence that numerous other non-parties sell what appear to be infringing shaker screens over a variety of online sales platforms:

Non-Party	Evidence of violation	DI Shaker Screen Copied
Anping County Xinghuo Metal Mesh Factory	• Morgenthaler Decl., ¶ 607 • MSD, Ex. 3-G, at MI-ITC-00009631	MD ('735 patent)
Shandong Zhuo Hong Petroleum	• Morgenthaler Decl., ¶ 608 • MSD, Ex. 3-G, at MI-ITC-00009639	Mongoose ('649 patent)
Dongying Jintan Petroleum Technology	• Morgenthaler Decl., ¶ 609 • MSD, Ex. 3-G, at MI-ITC-00009643	Mongoose ('649 patent)
Shandong Seaco Machinery Equipment	• Morgenthaler Decl., ¶ 610 • MSD, Ex. 3-G, at MI-ITC-00009663	Mongoose ('649 patent)
Hebei Meihua Hardware Mesh Co., Ltd.	• Morgenthaler Decl., ¶ 611 • MSD, Ex. 3-G, at MI-ITC-00009669	MD ('735 patent)
Xi'an Kosun Machinery Co., Ltd.	• Morgenthaler Decl., ¶ 612 • MSD, Ex. 3-G, at MI-ITC-00009671	Mongoose ('649 patent)
Puyang Zhongshi Group Co., Ltd.	• Morgenthaler Decl., ¶ 613 • MSD, Ex. 3-G, at MI-ITC-00009696	Mongoose ('649 patent)
Anping County De Xiang Rui Wire Cloth Co., Ltd.	• Morgenthaler Decl., ¶ 614 • MSD, Ex. 3-G, at MI-ITC-00009701	Mongoose ('649 patent)
Dongying Oilman Machinery Equipment	• Morgenthaler Decl., ¶ 615 • MSD, Ex. 3-G, at MI-ITC-00009719	Mongoose ('649 patent)
Hebei Ruihao Metal Products Co.	• Morgenthaler Decl., ¶ 616 • MSD, Ex. 3-G, at MI-ITC-00009731	Mongoose ('649 patent)
Qingdao Xinran River Industrial and Trading Co., Ltd.	• Morgenthaler Decl., ¶ 617 • MSD, Ex. 3-G, at MI-ITC-00009741	Mongoose ('649 patent)

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Dongying Lake Petroleum Technology	• Morgenthaler Decl., ¶ 618 • MSD, Ex. 3-G, at MI-ITC-00009752	Mongoose ('649 patent)
KERUI (available on Erui.com)	• Morgenthaler Decl., ¶¶ 619-620 • MSD, Ex. 3-G, at MI-ITC-00009809-9811 • MSD, Ex. 3-G, at MI-ITC-00009799-9800	MD ('735 patent) Mongoose ('649 patent)

Finally, Complainant also argues that its “efforts to enforce its intellectual property rights” are suggestive of a widespread pattern of violation. MSD at 173. For this proposition, M-I relies on two cases it filed in China, relating to technology covered by the '649 and '735 patents. *Id.*; *see also* Echols Decl. at ¶ 7. Although efforts to enforce the asserted intellectual property in other countries can be indicative of a pattern of violation, *see Certain Elec. Skin Care Devices, Brushes & Chargers Therefore, and Kits Containing the Same*, Inv. No. 337-TA-959, USITC Publ’n No. 4923, Comm’n Op. at 18 (Feb. 13, 2017), I find the Chinese litigation is at best weak evidence of a pattern of violation of U.S. patent rights. *See* Response at 63-64. I have no basis in this record for evaluating the technology at issue in the Chinese litigation. Accordingly, I do not rely on the litigation in China to support my recommendation on remedy.

In sum, I find that M-I has established a pattern of violation of section 337 as to the '649 and '735 patents, and that the source of the infringing goods is difficult to ascertain. I therefore recommend that the Commission, should it find a violation, enter a general exclusion order directed at articles that infringe the '649 and '735 patents under 19 U.S.C. § 1337(d)(2)(B).

With respect to the '582 patent, I have already recommended that the Commission enter a general exclusion order directed at articles that infringe the '582 patent under section 1337(d)(2)(A). I therefore make no finding with respect to M-I’s claims concerning a pattern of violation of the '582 patent.

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B. Limited Exclusion Orders

Section 337(d) provides that “[i]f the Commission determines, as a result of an investigation under this section, that there is a violation of this section, it shall direct that the articles concerned, imported by any person violating the provision of this section, be excluded from entry into the United States. . . .” 19 U.S.C. § 1337(d). The undisputed evidence supports a determination that Hengying Wire Cloth and SJ Screen have violated section 337, so the condition precedent for limited exclusion orders against those entities has been satisfied. Should the Commission find a violation and determine not to issue a general exclusion order, I recommend that the Commission issue limited exclusion orders directed to respondents Hengying Wire Cloth and SJ Screen. All other respondents are subject to consent orders entered earlier in this investigation.

C. Bond During Presidential Review

In the event that the Commission determines to issue a remedy, the Commission must determine the amount of bond to be required of a respondent during the 60-day Presidential review period. *See* 19 U.S.C. §1337(j)(3). The purpose of the bond is to protect the complainant from any injury. *See* 19 C.F.R. §§ 210.42(a)(1)(ii), 210.50(a)(3).

When reliable price information is available, the Commission has often set the bond by eliminating the differential between the domestic product and the imported, infringing product. *See Microsphere Adhesives, Processes for Making Same, & Prods. Containing Same, Including Self-Stick Repositionable Notes*, Inv. No. 337-TA-366, USITC Publ’n No. 2949, Comm’n Op. at 24 (Dec. 8, 1995). However, where it is difficult or impossible to calculate a bond based upon price differentials, and particularly where a respondent fails to provide discovery, the Commission has set the bond at 100 percent of the entered value of the infringing imported product. *See, e.g.,*

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Certain Toner Cartridges, 337-TA-1174, Initial Determination at 146.

Given that the remaining respondents defaulted and failed to provide discovery into their pricing, a bond of 100% of the entered value of shaker screens is appropriate. *See, e.g., Video Game Sys. & Wireless Controllers & Components Thereof*, Inv. No. 337-TA-770, Comm'n Op. at 5 (Oct. 28, 2013) (EDIS Doc. ID 520573). This amount should be enough to prevent any harm to Complainant during the period of Presidential review.

VII. INITIAL DETERMINATION

I hereby certify to the Commission this Initial Determination and the Recommended Determination.

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

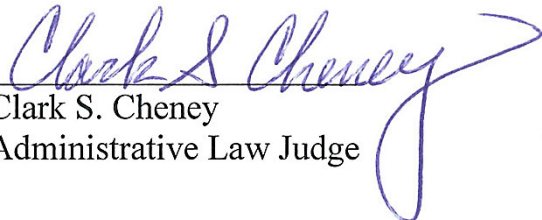
Pursuant to 19 C.F.R. § 210.42(h), this Initial Determination shall become the determination of the Commission unless a party files a petition for review pursuant to 19 C.F.R. § 210.43(a) or the Commission, pursuant to 19 C.F.R. § 210.44, orders on its own motion a review of the Initial Determination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

Within seven days of the date of this document, the parties must jointly submit a statement to Cheney337@ustic.gov stating whether or not each seeks to have any portion of this document redacted from the public version. Should any party seek to have any portion of this document redacted from the public version thereof, the parties shall attach a copy of a **joint** proposed public version of this document indicating with red brackets any portion asserted to contain confidential

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business information.⁵ To the extent possible, the proposed redactions should be made electronically, in a PDF of the issued order, using the “Redact Tool” within Adobe Acrobat, wherein the proposed redactions are submitted as “marked” but not yet “applied.” The parties’ submission concerning the public version of this document should not be filed with the Commission Secretary.

SO ORDERED.


Clark S. Cheney
Administrative Law Judge

⁵ If the parties submit excessive redactions, they may be required to provide an additional written statement, supported by declarations from individuals with personal knowledge, justifying each proposed redaction and specifically explaining why the information sought to be redacted meets the definition for confidential business information set forth in Commission Rule 201.6(a). 19 C.F.R. § 201.6(a).

**CERTAIN SHAKER SCREENS FOR DRILLING FLUIDS,
COMPONENTS THEREOF, AND RELATED MARKETING
MATERIALS**

Inv. No. 337-TA-1184

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **INITIAL DETERMINATION** has been served via EDIS upon the Commission Investigative Attorney, **Peter Guarnieri, Esq.**, and the following party as indicated, on **December 8, 2020**.



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

On Behalf of Complainant M-I L.L.C.:

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- ☐ Via Hand Delivery
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