

In the Matter of

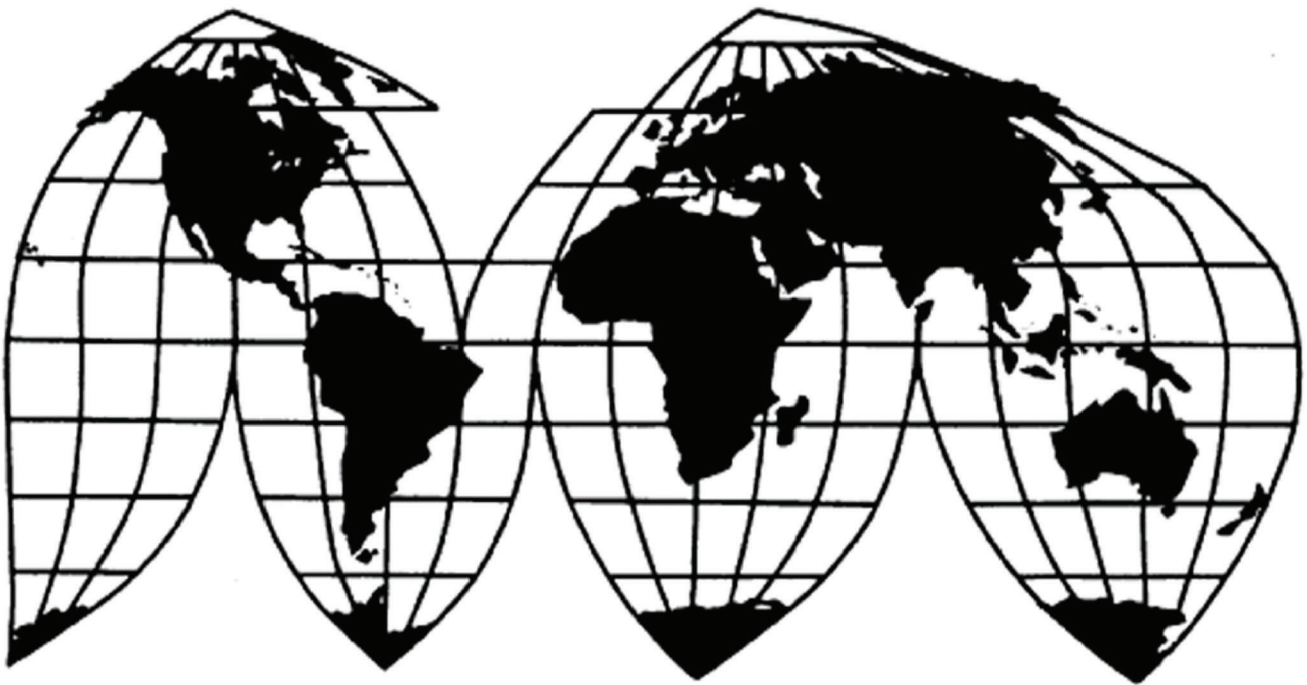
**CERTAIN CHILD RESISTANT CLOSURES
WITH SLIDER DEVICES HAVING A USER
ACTUATED INSERTABLE TORPEDO FOR
SELECTIVELY OPENING THE CLOSURES
AND SLIDER DEVICES THEREFOR**

Investigation No. 337-TA-1171

Publication 5291

March 2022

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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Washington, DC 20436**

U.S. International Trade Commission

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

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THEREFOR**

Investigation No. 337-TA-1171

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

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined to affirm, with modified reasoning, an initial determination (“ID”) of the presiding administrative law judge (“ALJ”) granting summary determination on violation of section 337 by certain defaulting respondents. The Commission has also determined to issue a general exclusion order (“GEO”) barring entry of certain child resistant closures with slider devices having a user actuated insertable torpedo for selectively opening the closures and slider devices therefor that infringe the asserted claims of the three patents at issue in this investigation. This investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3179. 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, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On August 21, 2019, the Commission instituted this investigation based on a complaint filed by Reynolds Presto Products Inc. (“Presto”). 84 *Fed. Reg.* 43616-17 (Aug. 21, 2019). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) (“section 337”) based on the importation into the United States, the sale for importation, or the sale within the United States after importation of certain child resistant closures with slider devices having a user actuated insertable torpedo for

selectively opening the closures and slider devices therefor by reason of infringement of certain claims of U.S. Patent Nos. 9,505,531 (“the ’531 patent”); 9,554,628; and 10,273,058 (“the ’058 patent”) (collectively, the “Asserted Patents”). *Id.* at 43616. The complaint further alleges that a domestic industry exists. *Id.* The Commission’s notice of investigation names six respondents: Dalian Takebishi Packing Industry Co., Ltd. of Dalian, China (“Dalian Takebishi”); Dalian Altma Industry Co., Ltd. of Dalian, Liaoning, China (“Dalian Altma”) (collectively, the “Dalian Respondents”); and Japan Takebishi Co., Ltd., of Tokyo, Japan; Takebishi Co., Ltd., of Shiga, Japan; Shanghai Takebishi Packing Material Co., Ltd., of Shanghai, China; and Qingdao Takebishi Packing Industry Co., Ltd., of Qingdao, China (collectively, the “Unserved Respondents”). *Id.* at 43616-17. It also names the Office of Unfair Import Investigations (“OUII”) as a party. *Id.* at 43617.

On October 7, 2019, the ALJ issued an ID finding the two Dalian Respondents in default. Order No. 7 (Oct. 30, 2019), *unreviewed by* Comm’n Notice (Nov. 26, 2019). On November 19, 2019, the ALJ issued an ID terminating the investigation in part based on Presto’s withdrawal of the complaint as to the Unserved Respondents, which were never served with the complaint. Order No. 10 (Nov. 19, 2019), *unreviewed by* Comm’n Notice (Dec. 18, 2019). That ID also terminated the investigation as to (i) claims 6 and 7 of the ’531 patent and (ii) claims 6 and 7 of the ’058 patent. *Id.*

On November 15, 2019, Presto filed a motion for summary determination that the domestic industry requirement was satisfied and that a violation had been established. Presto’s motion requested immediate entry of a limited exclusion order (“LEO”) against the Dalian Respondents, a GEO, and a 100 percent bond. On November 26, 2019, OUII filed a response to the motion supporting the summary determination motion and the requested GEO and 100 percent bond during the period of Presidential review.

On April 21, 2020, the ALJ issued an ID granting summary determination of violation of section 337 by the Dalian Respondents. The ID also contains the ALJ’s recommendation on remedy and bonding, in which the ALJ recommends issuance of a GEO or, in the alternative, a LEO directed to the Dalian Respondents, and that a 100 percent bond be set for importation during the period of Presidential review.

On May 1, 2020, OUII filed a petition seeking review of portions of the ID’s analysis of the economic prong of the domestic industry requirement. No other party petitioned for review of the ID, and no party filed a response to OUII’s petition.

On June 5, 2020, the Commission determined to review the ID in part with respect to the ID’s analysis of the economic prong of the DI requirement. 85 FR 35662, 35663 (June 11, 2020). The Commission’s notice also requested written submissions on remedy, the public interest, and bonding. *Id.* In particular, the notice requested a response to certain questions regarding whether Presto seeks cease and desist orders against the Dalian Respondents. *Id.* On June 11 and 12, 2020, Presto and OUII, respectively, filed written submissions in response to the Commission’s notice. On June 19, 2020, OUII filed a reply submission. No other submissions were received.

Having examined the record in this investigation, including the ID granting summary determination, and the party's submissions, the Commission has determined to affirm, with modified reasoning, the ID's findings with respect to the economic prong of the domestic industry requirement and, thus, the ID's finding of a violation of section 337. The Commission has also determined that the appropriate remedy in this investigation is a GEO prohibiting the unlicensed entry of certain child resistant closures with slider devices having a user actuated insertable torpedo for selectively opening the closures and slider devices therefor that infringe certain claims of the three patents asserted in the investigation, pursuant to section 337(g)(2) (19 U.S.C. 1337(g)(2)). The Commission has further determined that the bond during the period of Presidential review pursuant to section 337(j) (19 U.S.C. 1337(j)) shall be in the amount of 100 percent of the entered value of the imported articles that are subject to the GEO. The Commission has also determined that the public interest factors enumerated in subsection 337(d)(1) (19 U.S.C. 1337(d)(1)) do not preclude the issuance of the GEO. The Commission's order was delivered to the President and to the United States Trade Representative on the day of its issuance. This investigation is hereby terminated in its entirety.

The Commission vote for these determinations took place on August 27, 2020.

The authority for the Commission's determinations 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', with a stylized flourish at the end.

Lisa R. Barton
Secretary to the Commission

Issued: August 27, 2020

**CERTAIN CHILD RESISTANT CLOSURES WITH SLIDER
DEVICES HAVING A USER ACTUATED INSERTABLE
TORPEDO FOR SELECTIVELY OPENING THE
CLOSURES AND SLIDER DEVICES THEREFOR**

Inv. No. 337-TA-1171

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served via EDIS upon the Commission Investigative Attorney, **Megan Wantland, Esq.**, and the following parties as indicated, on **August 27, 2020**.



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

On Behalf of Complainant Reynolds Presto Products Inc.:

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of Availability for Download

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

In the Matter of

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Investigation No. 337-TA-1171

GENERAL EXCLUSION ORDER

The United States International Trade Commission (“Commission”) has determined that there is a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the unlawful importation, sale for importation, or sale within the United States after importation of certain child resistant closures with slider devices having a user actuated insertable torpedo for selectively opening the closures and slider devices therefor (as defined in paragraph 2 below) that infringe one or more of claims 1, 3, 5, and 8-10 of U.S. Patent No. 9,505,531 (“the ’531 patent”), claims 1, 4, 6-8, 11, 12, 15, and 19 of U.S. Patent No. 9,554,628 (“the ’628 patent”), and claims 1, 3, 5, and 8 of U.S. Patent No. 10,273,058 (“the ’058 patent”) (collectively, the “Asserted Patents”).

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 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 child resistant closures with slider devices having a user actuated insertable torpedo for selectively opening the closures and slider devices therefor.

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

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

1. Child resistant closures with slider devices having a user actuated insertable torpedo for selectively opening the closures and slider devices therefor (as defined in paragraph 2 below) that infringe one or more of claims 1, 3, 5, and 8-10 of the '531 patent, claims 1, 4, 6-8, 11, 12, 15, and 19 of the '628 patent, and claims 1, 3, 5, and 8 of the '058 patent are excluded from entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, for the remaining terms of the Asserted Patents, except under license from, or with the permission of, the patent owner or as provided by law until such date as the Asserted Patents are abandoned, canceled, or rendered invalid or unenforceable.
2. The child resistant closures with slider devices having a user actuated insertable torpedo for selectively opening the closures and slider devices therefor subject to this exclusion order (*i.e.*, “covered articles”) are as follows: reclosable zippers and slider devices for packages, including bags and pouches, that are resistant to opening by young children.

3. Notwithstanding paragraph 1 of this Order, covered articles are entitled to entry into the United States for consumption, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption under bond in the amount of one hundred (100) percent of the entered value of the products, pursuant to subsection (j) of section 337 (19 U.S.C. § 1337(j)) and the Presidential Memorandum for the United States Trade Representative of July 21, 2005 (70 *Fed. Reg.* 43,251), from the day after this Order is received by the United States Trade Representative until such time as the United States Trade Representative notifies the Commission that this Order is approved or disapproved but, in any event, not later than sixty (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 child resistant closures with slider devices having a user actuated insertable torpedo for selectively opening the closures and slider devices therefor 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 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 Secretary shall serve copies of this Order upon each party of record in this investigation and upon CBP.
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 'Lisa R. Barton'.

Lisa R. Barton
Secretary to the Commission

Issued: August 27, 2020

**CERTAIN CHILD RESISTANT CLOSURES WITH SLIDER
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TORPEDO FOR SELECTIVELY OPENING THE
CLOSURES AND SLIDER DEVICES THEREFOR**

Inv. No. 337-TA-1171

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **COMMISSION ORDER** has been served via EDIS upon the Commission Investigative Attorney, **Megan Wantland, Esq.**, and the following parties as indicated, on **August 27, 2020**.



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

On Behalf of Complainant Reynolds Presto Products Inc.:

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Respondents:

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Completed by Complainants

PUBLIC VERSION

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

In the Matter of

**CERTAIN CHILD RESISTANT
CLOSURES WITH SLIDER DEVICES
HAVING A USER ACTUATED
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SELECTIVELY OPENING THE
CLOSURES AND SLIDER DEVICES
THEREFOR**

Investigation No. 337-TA-1171

COMMISSION OPINION

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 (“section 337”), with respect to U.S. Patent Nos. 9,505,531 (“the ’531 patent”), 9,554,628 (“the ’628 patent”), and 10,273,058 (“the ’058 patent”) (collectively, the “Asserted Patents”) on review of the presiding administrative law judge’s (“ALJ”) initial determination (“ID”) (Order No. 12). After considering the public interest, the Commission has also determined that the appropriate form of relief is a general exclusion order (“GEO”) prohibiting the unlicensed importation of articles that infringe certain claims of the Asserted Patents. The Commission has further determined to set a bond during the period of Presidential review in the amount of 100 percent of the entered value of the infringing articles. This opinion sets forth the Commission’s reasoning in support of its determinations. In addition, the Commission adopts the findings in the ID that are not inconsistent with this opinion.

PUBLIC VERSION

I. BACKGROUND

A. Procedural History

On August 21, 2019, the Commission instituted this investigation based on a complaint filed by Reynolds Presto Products Inc. (“Presto”) of Lake Forest, Illinois. 84 Fed. Reg. 43616-17 (Aug. 21, 2019). The complaint, as supplemented, alleges violations of section 337 based on the importation into the United States, the sale for importation, or the sale within the United States after importation of certain child resistant closures with slider devices having a user actuated insertable torpedo for selectively opening the closures and slider devices therefor by reason of infringement of claims 1, 3, and 5-10 of the ’531 patent, claims 1, 4, 6-8, 11, 12, 15, and 19 of the ’628 patent, and claims 1, 3, and 5-8 of the ’058 patent. *Id.* at 43616. The complaint further alleges that a domestic industry (“DI”) exists. *Id.*

The Commission’s notice of investigation names six respondents: (1) Dalian Takebishi of Dalian, China; (2) Dalian Altma of Dalian, Liaoning, China (collectively, the “Dalian Respondents”); and (3) Japan Takebishi Co., Ltd., of Tokyo, Japan; (4) Takebishi Co., Ltd., of Shiga, Japan; (5) Shanghai Takebishi Packing Material Co., Ltd., of Shanghai, China; and (6) Qingdao Takebishi Packing Industry Co., Ltd., of Qingdao, China (collectively, the “Unserved Respondents”). *Id.* at 43616-17. It also names the Office of Unfair Import Investigations (“OUII”) as a party. *Id.* at 43617.

During the course of the investigation, both Dalian Respondents were found in default. Order No. 7 (Oct. 30, 2019), *unreviewed by* Comm’n Notice (Nov. 26, 2019). The Commission also terminated the four Unserved Respondents, which were never served with the complaint and notice of investigation, based on Presto’s withdrawal of the complaint as to those respondents. Order No. 10 (Nov. 19, 2019), *unreviewed by* Comm’n Notice (Dec. 18, 2019). The

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Commission further terminated the investigation as to claims 6 and 7 of the '531 patent and claims 6 and 7 of the '058 patent. *Id.*

On November 15, 2019, Presto moved for summary determination that it had satisfied the DI requirement and that the Dalian Respondents had violated section 337.¹ Presto's motion requested the immediate entry of a limited exclusion order ("LEO") against the Dalian Respondents, a GEO, and a 100 percent bond during the period of Presidential review. ID at 2 (citing CMot. at 1).

On November 26, 2019, OUII filed a response supporting the requested relief. *Id.*² More specifically, OUII argued that Presto had shown that: (i) the importation requirement was satisfied; (ii) the accused products infringe the asserted claims; and (iii) a DI exists with respect to products protected by at least one claim of each Asserted Patent. OResp. at 2-3. OUII also supported Presto's request for a GEO and the imposition of a 100 percent bond during the period of Presidential review. *Id.* at 3-4. No respondent filed a response to Presto's motion. *Id.* at 2.

On April 21, 2020, the ALJ issued a combined initial determination ("ID") and recommended determination ("RD") on remedy and bonding. The ID finds, *inter alia*, that Presto: (i) established the importation requirement (ID at 9-10); (ii) demonstrated that the Dalian Respondents' accused products infringe claims 1, 3, 5, and 8-10 of the '531 patent, claims 1, 4, 6-8, 11, 12, 15, and 19 of the '628 patent, and claims 1, 3, 5, and 8 of the '058 patent (*id.* at 12-

¹ Corrected Complainant's Motion for Summary Determination with Respect to Domestic Industry, Violation and Remedy (Nov. 15, 2019) ("CMot."), memorandum in support thereof ("CMemo."), and statement of facts ("SOF").

² Commission Investigative Staff's Response to Corrected Complainant's Motion for Summary Determination with Respect to Domestic Industry, Violation and Remedy (Nov. 26, 2019) ("OResp.").

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57)³; and (iii) demonstrated that the DI products are protected by at least one claim of each Asserted Patent and that a DI exists in the United States (*id.* at 57-79). The RD recommends that the Commission (i) issue a GEO or, in the alternative, an LEO directed to the Dalian Respondents and (ii) set a 100 percent bond for importation during the period of Presidential review. RD at 79-92. The RD does not recommend issuing cease and desist orders (“CDOs”), which Presto did not request in its underlying motion.

On May 1, 2020, OUII filed a petition seeking review of a “very limited portion” of the ID’s economic prong analysis.⁴ OPet. at 1. OUII argued that:

[T]he Commission should review a statement in the [ID’s] analysis of the economic prong of the [DI] requirement concerning the significance and substantiality of Presto’s investments and, on review, affirm the [ID’s] conclusion with modified reasoning. In OUII’s view, the Commission should not review any other portion of the [ID], particularly here where the [ID’s] findings are based on substantial, reliable, and probative evidence, and the Respondents have already been found in default.

Id. No other party petitioned for review of the ID, and no party filed a response to OUII’s petition.

On June 5, 2020, the Commission determined to review the ID in part with respect to the ID’s analysis of the economic prong of the DI requirement. 85 Fed. Reg. 35662, 35663 (June 11, 2020). The Commission’s notice also requested written submissions on remedy, the public interest, and bonding. *Id.* The notice further enquired as to whether Presto seeks CDOs against the Dalian Respondents. *Id.*

³ See Notice of Errata to Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond (April 22, 2020) (correcting typographical error in list of infringed claims on page 92 of the ID).

⁴ Petition of the Office of Unfair Import Investigations for Limited Review of Order No. 12: Initial Determination Granting Summary Determination (May 1, 2020) (“OPet.”).

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On June 11 and 12, 2020, Presto and OUII, respectively, filed written submissions in response to the Commission’s notice.⁵ On June 19, 2020, OUII filed a reply submission.⁶ No other submissions were received.

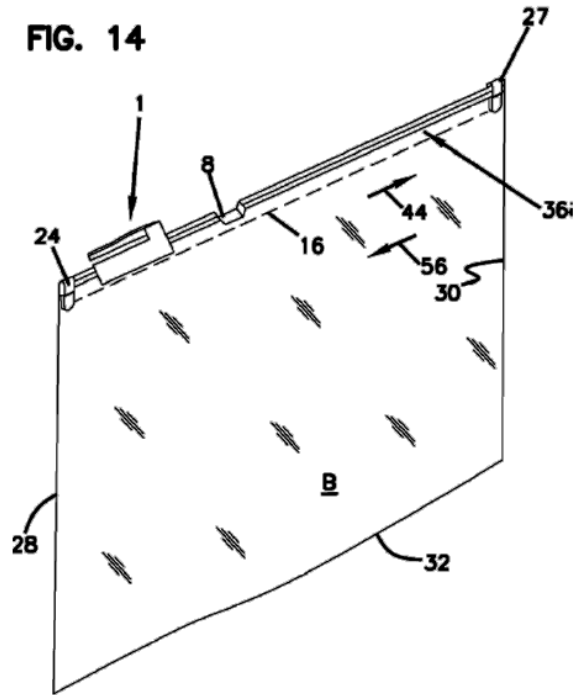
B. The Asserted Patents

Presto’s three asserted patents—the ’531, ’628, and ’058 patents—are each titled “Child Resistant Slider Having Insertable Torpedo and Methods” and all share the same specification. ID at 4 (citing Compl. Exs. 1-3). The patents generally disclose “a zipper closure system that may be incorporated into flexible bags and pouches to make it difficult for children to access the contents of the packages, particularly packages containing hazardous or otherwise dangerous contents.” *Id.* (citing ’531 patent at Abstract, 1:38-45). Further, “[t]o open the bag, a slider is moved to the vicinity of a notch and a tab is moved or flexed in such a way that a torpedo comes between the interlocking track profiles of the zipper causing the tracks to separate when the slider is moved.” *Id.* (citing ’531 patent at 1:45-50).

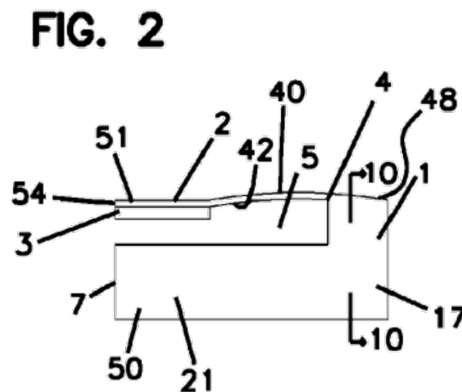
Figure 14 of the Asserted Patents’ shared specification, which is reproduced below, “shows an [exemplary] embodiment of the invention incorporated into bag **B** with the zipper closure **36** having notch **8** and slider **1**”:

⁵ Complainant’s Written Submission to the Commission on the Issue of Remedy (June 11, 2020) (“CSub.”); and Response of the Office of Unfair Import Investigations to the Commission’s Request for Written Submissions on Remedy, the Public Interest, and Bonding (June 12, 2020) (“OSub.”).

⁶ Reply Submission of the Office of Unfair Import Investigations on Remedy, the Public Interest, and Bonding (June 19, 2020).



Id. at 4-5 (reproducing '531 patent, Fig. 14). Figure 2 of the shared specification, which is reproduced below, “shows an embodiment of the claimed slider 1 having a flexible tab 2 with torpedo 3”:



Id. at 5 (reproducing '531 patent, Fig. 5).

C. The Accused Products

The accused products are child-resistant zippers for opening and closing plastic bags. *Id.* at 6. “To open the zipper, a tab must be held down to engage a torpedo and separate the zipper

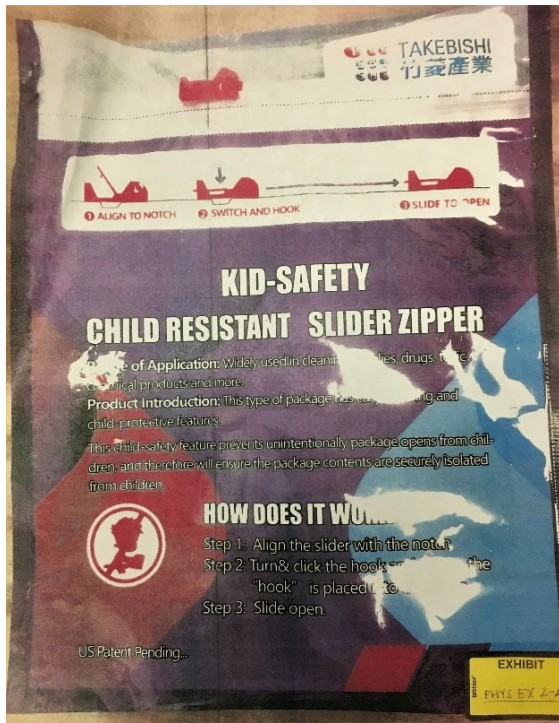
PUBLIC VERSION

tracks.” *Id.* Images of Physical Exhibits 1 and 2 to the complaint, which exemplify the accused products, are reproduced below:



Id. (citing Compl. Phys. Ex. 1).

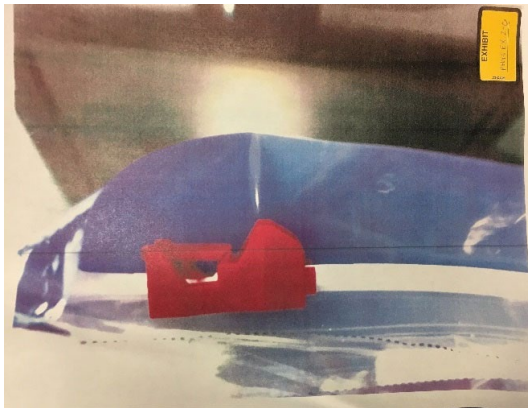
Physical Exhibit 2 – Sample of Accused Product



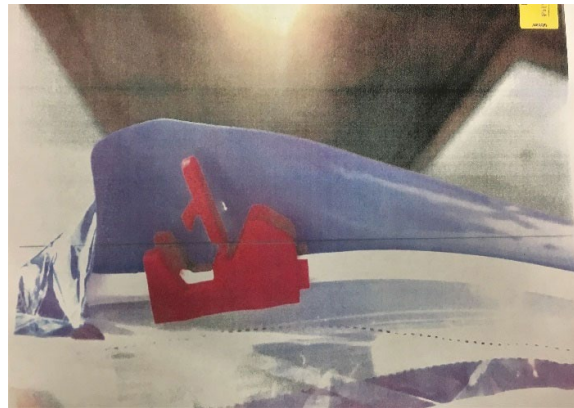
Front



Back



Top View 1
(red slider with a torpedo on
a white zipper track)



Top View 2
(torpedo flexed upward from
the zipper track)

Id. at 7 (citing Compl. Phys. Ex. 2; *see also* OResp. at 7-8).

D. The Domestic Industry Products

The DI products, which practice the asserted claims, are child-resistant zippers for opening and closing plastic bags. *See id.* at 8. Presto manufactures the tracks for child-resistant

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bags, and its contractors produce the sliders used on the tracks. *Id.* (citing Petkovsek Aff.⁷ ¶ 5; Hansen Decl.⁸ ¶ 5). *Id.* Presto grants its customers permission to incorporate the patented slider closure in their packaging. *Id.* (citing CMemo. at 98 n.5). The following image is an exemplary DI product that was produced with Presto's permission:



Id. (citing Thomas Decl.⁹ Ex. 1 at 1).

⁷ Affidavit of Greg Petkovsek, attached as Exhibit 6 to Presto's motion ("Petkovsek Aff."). Mr. Petkovsek is Presto's Director of Research & Development. Petkovsek Aff. ¶ 1.

⁸ Declaration of Brad Hansen Concerning the Economic Prong of Domestic Industry, attached as Confidential Exhibit 11 to the complaint ("Hansen Decl."). Mr. Hansen is President of Presto's Specialty Business Unit. Hansen Decl. ¶ 1.

⁹ Declaration of Toby Thomas, attached as Exhibit 2 to Presto's motion ("Thomas Decl."). Presto retained Mr. Thomas as an expert witness in this investigation. Thomas Decl. ¶ 1.

II. LEGAL STANDARDS

A. Standard on Review

Commission Rule 210.45(c) provides that “[o]n review, the Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, the initial determination of the [ALJ]” and that “[t]he Commission also may make any findings or conclusions that in its judgment are proper based on the record in the proceeding.” *See* 19 C.F.R. § 210.45(c). In addition, as explained in *Certain Polyethylene Terephthalate Yarn & Prods. Containing Same*, “[o]nce the Commission determines to review an initial determination, the Commission reviews the determination under a *de novo* standard.” Inv. No. 337-TA-457, Comm’n Op., 2002 WL 1349938, at *5 (June 18, 2002) (citations omitted). This is “consistent with the Administrative Procedure Act which provides that once an initial agency decision is taken up for review, ‘the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.’” *Id.* (citing 5 U.S.C. § 557(b)).

B. Summary Determination

Under Commission Rule 210.18, summary determination “shall be rendered if [the] pleadings and any depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a summary determination as a matter of law.” 19 C.F.R. § 210.18(b).

“[I]n deciding a motion for summary judgment, ‘the evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor.’” *Liebel-Flarsheim Co. v. Medrad, Inc.*, 481 F.3d 1371, 1377 (Fed. Cir. 2007) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)). “The summary judgment movant has the initial responsibility of identifying the legal basis of its motion, and of pointing to those portions of the record that it believes demonstrate the absence of a genuine issue of material fact.” *Novartis Corp. v. Ben*

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Venue Labs., Inc., 271 F.3d 1043, 1046 (Fed. Cir. 2001) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)).

C. Violation of Section 337(a)(1)(B)

Section 337(a)(1)(B) provides that the Commission has authority to investigate and adjudicate unfair trade practices relating to “[t]he importation into the United States, the sale for importation, or the sale within the United States after importation . . . of articles that . . . infringe a valid and enforceable United States patent.” 19 U.S.C. § 1337(a)(1)(B). Thus, a violation of section 337(a)(1)(B) requires a showing of: (1) importation; (2) infringement of a valid and enforceable patent; and (3) an industry in the United States relating to the articles protected by the asserted patent. *See* 19 U.S.C. § 1337(a)(1)(B), (a)(2), and (a)(3).

D. Domestic Industry: Technical and Economic Prongs

When a section 337 investigation is based on allegations of patent infringement, the complainant must show that an industry “relating to the articles protected by the patent . . . exists or is in the process of being established” in the United States. 19 U.S.C. § 1337(a)(2). This domestic industry requirement of section 337 is often described as having a “technical prong” and a “economic prong.” *InterDigital Commc’ns, LLC v. Int’l Trade Comm’n*, 707 F.3d 1295, 1298 (Fed. Cir. 2013).

The “technical prong” requires that the complainant practice the patented invention. *Crocs, Inc. v. Int’l Trade Comm’n*, 598 F.3d 1294, 1306-07 (Fed. Cir. 2010). The test for determining whether the technical prong is met through the practice of the patent “is essentially same as that for infringement, *i.e.*, a comparison of domestic products to the asserted claims.” *Alloc, Inc. v. Int’l Trade Comm’n*, 342 F.3d 1361, 1375 (Fed. Cir. 2003). It is sufficient that the domestic industry product practices at least one valid claim of each patent that serves as a basis for relief; it is not necessary for the complainant to practice the same claims it is asserting against

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the respondent. *Certain Male Prophylactic Devices*, Inv. No. 337-TA-546, Comm’n Op. at 38 (Aug. 1, 2007).

The “economic prong” requires, with respect to the products protected by a patent, either: (a) “significant investment in plant and equipment”; (b) “significant employment of labor or capital”; or (c) “substantial investment in [the patent’s] exploitation, including engineering, research and development, or licensing.” 19 U.S.C. § 1337(a)(3). The Commission has clarified that its decisions as to the existence of a domestic industry are not based on the amount of an investment divorced from the circumstances of a particular case. Rather, the Commission evaluates the significance or substantiality of domestic industry expenditures “based on a proper contextual analysis in the relevant timeframe such as in the context of” the complainant’s or its licensee’s “operations, the marketplace, or the industry in question.” *Certain Solid State Storage Drives, Stacked Elecs. Components, & Prods. Containing Same*, Inv. No. 337-TA-1097, Comm’n Op., 2018 WL 4300500, at *18 (June 29, 2018).

The Commission has also explained that this contextual analysis can reflect “a number of factors and approaches.” *Certain Magnetic Data Storage Tapes & Cartridges Containing the Same*, Inv. No. 337-TA-1012, Comm’n Op., 2018 WL 8648372, at *75 (Apr. 2, 2018). The Commission has “sought to place the value of domestic investments in the context of the relevant marketplace, such as by comparing a complainant’s domestic expenditures to its foreign expenditures or considering the value added to the product from a complainant’s activities in the United States.” *Certain Carburetors & Prods. Containing Such Carburetors*, Inv. No. 337-1123, Comm’n Op., 2019 WL 5622443, at *12 (Oct. 28, 2019) (“*Carburetors*”). Section 337(a)(3) does not require a minimum monetary expenditure, nor does it obligate the complainant “to define or quantify the industry itself in absolute mathematical terms.” *Certain Stringed Musical*

Instruments & Components Thereof, Inv. No. 337-TA-586, Comm’n Op., 2008 WL 2139143, at *14 (May 16, 2008) (“*Stringed Instruments*”).

III. DOMESTIC INDUSTRY

The ID grants Presto’s motion for a summary determination of violation of section 337. The Commission determined to review the ID only with respect to its economic prong analysis. 85 Fed. Reg. 35662, 35663 (June 11, 2020). The Commission did not request further briefing from the parties on this issue. *Id.*

A. The ID

The ID finds that Presto “proffered substantial, reliable, and probative evidence showing that Presto satisfies the economic prong of the [DI] requirement under section 337(a)(3)(A), (B), and (C)” with respect to each of the patents in suit. ID at 74; *see also* 19 U.S.C. § 1337(g)(2).

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

As to plant investments, the ID finds that Presto “invested in significant domestic facility space dedicated to its production of child-resistant closures.” *Id.* The ID finds that Presto (i) “has facilities in [] that manufacture all the track for its child-resistant closures,” *id.* (citing Petkovsek Aff. ¶ 18), and (ii) “contracts the manufacture [of] the slider portion of the closure from [],” *id.* (citing Hansen Decl. ¶ 5). In addition, the “[] [] and the [] for the child-resistant closures.” *Id.* (citing Hansen Decl. ¶ 8).

As to equipment investments, the ID finds that that “Presto spent [] on equipment for these plants,” as shown in the following table:

[

]

Id. at 74-75; Mitra Decl.¹⁰ Ex. E. Further, because all of this equipment “is used exclusively for producing child-resistant closures under Presto’s authority,” the ID finds that “investments in that machinery are investments related to articles protected by the asserted patents within the meaning of section 337(a)(3)(A).” *Id.* at 75 (citing Mitra Decl. Ex. E).

The ID also finds that Presto’s investments in building insertion machines—*i.e.*, machines for inserting the slider devices onto the reclosable track—is “an investment in equipment related to articles protected by the asserted patents.” *Id.* (citing Presto’s First Suppl. Interrog. Resps.¹¹ at 23-30 (Interrog. No. 6); Athans Aff.¹² ¶ 8). It appears the ID may have inadvertently omitted this investment from its summary table on page 78, reproduced below, of

¹⁰ Declaration of Sudip K. Mitra, attached as Exhibit 9 to Presto’s motion (“Mitra Decl.”). Mr. Mitra is counsel for Presto. Mitra Decl. ¶ 1.

¹¹ Complainant’s Supplemental Answers to Commission Investigative Staff’s First Set of Interrogatories (Nos. 1-21) (Oct. 4, 2019), attached as Exhibit 10 to Presto’s motion (“Presto’s First Suppl. Interrog. Resps.”).

¹² Affidavit of John Athans, attached as Exhibit 3 to Presto’s motion (“Athans Aff.”).

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investments in the articles protected by the Asserted Patents under section 337(a)(3)(A). *See id.* at 78.

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

The ID finds that the evidence shows that (i) Presto’s suppliers, [], employ “[]” in the U.S. to make [] sliders for incorporation into the DI products, *id.* at 76 (citing Mitra Decl. Ex. F; Hansen Decl. ¶ 8), and (ii) Presto [] employs “[]” in the U.S. to make track for the DI products, *id.* at 76-77 (citing Mitra Decl. Ex. F; Hansen Decl. ¶ 8). The ID finds that “this is an employment of labor related to articles protected by the asserted patents within the meaning of section 337(a)(3)(B).” *Id.* at 76-77.

3. Engineering, Research and Development, and Licensing (Subsection 337(a)(3)(C))

The ID finds that the evidence shows that Presto “spent [approximately] [] in research and development related to child-resistant closures.” *Id.* at 77 (citing Presto’s Second Suppl. Interrog. Resps.¹³ at 42-45 (Interrog. No. 8)). The ID finds “these expenditures to be relevant under section 337(a)(3)(C).” *Id.*

4. Whether Presto’s Domestic Investments Are Significant and Substantial

The ID finds that, “based on the undisputed, substantial, reliable, and probative evidence outlined above,” Presto met its burden of showing that a DI exists in the U.S. under sections 337(a)(3)(A), (B), and (C). *Id.* at 78. Specifically, the ID finds that the “evidence demonstrates that Presto is a domestic company with minimal operations abroad and that all of its products are

¹³ Complainant’s Second Supplemental Answers to Commission Investigative Staff’s First Set of Interrogatories (Nos. 1-21) (Nov. 11, 2019) (“Presto’s Second Suppl. Interrog. Resps.”), attached as Exhibit 11 to Presto’s motion.

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made domestically.” *Id.* (citing Petkovsek Aff. ¶ 5; Hansen Aff.¹⁴ ¶ 3; Hansen Decl. ¶ 5). The ID provides the following table summarizing Presto’s investments and expenditures in the articles protected by the Asserted Patents, according to sub-prongs A, B, and C:

[

]

Id.

The ID concludes that “the magnitude and quantity of these expenses and investments alone is significant and substantial *in any context*.” *Id.* (emphasis added) (citing *Lelo Inc. v. Int’l Trade Comm’n*, 786 F.3d 879 (Fed. Cir. 2015)).¹⁵ The ID also noted that “even when considering the qualitative significance of Presto’s domestic expenditures in context, its investments, employments, and activities are clearly significant and substantial.” *Id.* at 78-79 (citing *Stringed Instruments*).¹⁶

B. OUII’s Petition

OUII petitioned for review of a “very limited portion” of the ID’s economic prong analysis concerning the significance and substantiality of Presto’s investments and submitted that, on review, the Commission should affirm the ID’s conclusion with modified reasoning.

¹⁴ Affidavit of Bradford Hansen, attached as Exhibit 4 to Presto’s motion (“Hansen Aff.”). As noted above, Mr. Hansen is President of Presto’s Specialty Business Unit. Hansen Aff. ¶ 1.

¹⁵ In *Lelo*, the Federal Circuit explained that “[t]he plain text of § 337 requires a quantitative analysis in determining whether a petitioner has demonstrated a ‘significant investment in plant and equipment’ or ‘significant employment of labor or capital.’” *Lelo*, 786 F.3d at 883.

¹⁶ In *Stringed Instruments*, the Commission explained that analyzing the significance of the complainant’s investment “will depend on the industry in question, and the complainant’s relative size.” *Stringed Instruments*, Comm’n Op., 2008 WL 2139143, at *14

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OPet. at 1. Specifically, OUII asserted that one sentence from the ID—“It is further determined that the magnitude and quantity of these expenses and investments alone is significant and substantial in any context.”—could be taken out of context in subsequent investigations. *Id.* at 5-6 (quoting ID at 78 (OUII’s emphasis)).

In OUII’s view, “this statement is overly broad, and does not acknowledge Commission decisions in which domestic investments must be evaluated, not in *any* context, but in the context of the [c]omplainant’s operations, the relevant marketplace, or the industry in question.” *Id.* at 6 (citing *Carburetors*, Comm’n Op., 2019 WL 5622443, at *11-12). That is, per OUII, “rather than rely on the absolute value of the domestic expenditures, context is ‘necessary to understand whether the value of [the] domestic activities is significant or substantial.’” *Id.* (quoting *Carburetors*, Comm’n Op., 2019 WL 5622443, at *13).

OUII asserts that, instead of providing a quantitative analysis involving the context of Presto’s investments and expenditures, the ID finds “that certain investments and expenditures are merely related or relevant to the domestic products.” *Id.* OUII agreed, however, with the ID’s conclusion that Presto has a DI within the meaning of section 337(a)(3)(A) because “the evidence demonstrates that Presto’s investments in plant and equipment are both qualitatively and quantitatively significant.” *Id.* at 7 (citing ID at 74-75, 78).¹⁷

C. Analysis

The Commission has determined to affirm with modified reasoning the ID’s finding that Presto satisfies the economic prong of the domestic industry requirement. Specifically, the

¹⁷ OUII explained in a footnote that it “does not dispute the [ID’s] factual findings concerning the investment and expenditure totals under section 337(a)(3)(B) and (C).” *Id.* at 8 n.5 (citing ID at 78). “Nevertheless, OUII maintains the view that there are insufficient facts on which the investments and expenditures in these categories (*i.e.*, (B) and (C)) may be quantitatively analyzed.” *Id.* (citing OResp. at 39-40 n.23). “Such [an] analysis is unnecessary, however, because Presto has satisfied the [DI] requirement under subprong (A).” *Id.*

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Commission (i) affirms with modified reasoning the ID's finding that Presto's investments in plant and equipment satisfy section 337(a)(3)(A), and (ii) takes no position on the ID's findings that Presto satisfies the economic prong under section 337(a)(3)(B) or (C).

As to Presto's investments in plant and equipment, the evidence shows that Presto has [] that manufacture all the track for its domestic industry products and that Presto's [] that manufacture all the sliders used in these products. ID at 74; CMemo. at 70. The ID finds, and the Commission agrees, that Presto's [] between [] in equipment used at these []—which are “used exclusively for producing the [domestic industry products] under Presto's authority”—are properly credited under section 337(a)(3)(A). ID at 74-75

The Commission also clarifies that Presto's asserted investments, circa [], for the [] insertion machines (which Presto's customers use to insert sliders onto the reclosable tracks to make the domestic industry products) are properly credited under section 337(a)(3)(A). *See id.* at 75; OResp. at 37 (citing CMemo. at 71, 74-75; SOF at ¶¶ 48-49; Athans Aff. ¶ 8).¹⁸ Presto reported the total value of the [], and it further explained that [] parts were sourced domestically. *Id.* at 71, 74. Presto discounted the value of the insertion machines by excluding the value of the foreign sourced parts, which yielded a []. *Id.* (relying solely on Presto's investments in domestically sourced parts for the machines). While a complainant is not normally required to segregate the value of foreign-

¹⁸ Although the ID expressly finds that these investments are “related to articles protected by the asserted patents,” these investments were not incorporated into the final sum reported in the ID's summary table. *See* ID at 75, 78.

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sourced components of its domestic equipment investments, *see* 19 U.S.C. § 1337(a)(3)(A), the Commission will credit the discounted investments that Presto has claimed here.

The Commission therefore relies on Presto’s track manufacturing equipment ([]), its contractors’ slider manufacturing equipment ([]), and the [] insertion machines (which Presto provides to its customers to put together the closures) in concluding that Presto has satisfied the domestic industry requirement under section 337(a)(3)(A). These investments are summarized in the following table:

Equipment Category	Investment Amount (USD)	Percentage of Investment Claimed by Presto (%)	Investment Amount Claimed by Presto (USD)	Investment Amount the Commission has Credited (USD)
Equipment to manufacture sliders and track	\$[]	[]%	\$[]	\$[]
[] insertion machines	\$[]	[]%	\$[]	\$[]
Totals	\$[]	[]%	\$[]	\$[]

See CMemo. at 74-75; SOF at ¶ 55.

As to the ID’s analysis of whether Presto’s investments are significant, the Commission strikes the ID’s statement that “[i]t is further determined that the magnitude and quantity of these expenses and investments *alone is significant and substantial in any context.*” ID at 78 (emphasis added). This language erroneously suggests that the absolute magnitude of investments can be dispositive of the economic prong determination, with no context-dependent considerations. This would be contrary to Federal Circuit precedent and prior Commission decisions. *See Lelo*, 786 F.3d at 883-84 (noting that the Commission “[has] found that the word ‘significant’ denote[s] ‘an assessment of the *relative* importance of the domestic activities’”) (quoting *Certain Concealed Cabinet Hinges & Mounting Plates*, Inv. No. 337-TA-289, 1990 WL

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10608981, Comm’n Op., at *11 (Jan. 8, 1990)); *Printing Devices*, Comm’n Op. at 31 (recognizing that “the magnitude of the investment cannot be assessed without consideration of the nature and importance of the complainant’s activities to the patented products in the context of the marketplace or industry in question”); *Certain Movable Barrier Operator Sys. & Components Thereof*, Inv. No. 337-TA-1118, Comm’n Order Vacating and Remanding Order No. 38 at 5 (Apr. 22, 2020) (“Order No. 38 does not appropriately evaluate the relative significance of [complainant’s] investments in labor and capital or plant and equipment, as opposed to their absolute value”); *Carburetors*, Comm’n Op. at 8-10.

Nevertheless, the Commission agrees with the ID’s ultimate conclusion that the record evidence demonstrates that Presto’s investments in plant and equipment are quantitatively significant. The undisputed evidence shows that, since [], Presto’s investments led to the domestic manufacture of all the tracks ([]) and all the sliders ([]) that have been used in the domestic industry products. OResp. at 35-36 (citing CMemo. at 69-72, 74; SOF ¶¶ 47, 51-53; Hansen Decl. ¶ 5; Petkovsek Decl. ¶ 5).¹⁹ The Commission therefore determines that Presto’s investments are significant within the context of Presto’s operations.

Consequently, the Commission has determined to affirm with modified reasoning the ID’s finding that Presto has shown, through substantial, reliable, and probative evidence, that its investments are significant under section 337(a)(3)(A). The Commission takes no position on

¹⁹ Presto states that the only non-U.S. parts related to Presto’s domestic industry products are “off-the-shelf parts (i.e., bowls or funnels) used in manufacturing to allow the customer to sort the slider components of the [domestic industry] [p]roducts prior to inserting them onto the track.” Athans Aff. ¶ 3.

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the ID’s findings that Presto satisfies the economic prong under section 337(a)(3)(B) or (C).

Beloit Corp. v. Valmet Oy, 742 F.2d 1421, 1423 (Fed. Cir. 1984).²⁰

Accordingly, the Commission has determined that undisputed, substantial, reliable, and probative evidence supports the ID’s conclusion that Presto demonstrated a violation of section 337. *See* ID at 10 (finding the importation requirement satisfied), 13-57 (finding the asserted claims infringed), 58-74 (finding the technical prong of the DI requirement satisfied); *see also supra* at 18-21 (determining to affirm with modified reasoning the finding that the economic prong of the DI requirement is satisfied).

IV. REMEDY, THE PUBLIC INTEREST, AND BONDING

A. Remedy

The Commission has “broad discretion in selecting the form, scope, and extent of the remedy.” *Viscofan, S.A. v. Int’l Trade Comm’n*, 787 F.2d 544, 548 (Fed. Cir. 1986).

1. General Exclusion Order

Where, as here, no respondent appeared to contest the complainant’s allegations, the Commission may issue a GEO if “a violation is established by substantial, reliable, and probative evidence” and “the requirements of subsection (d)(2)” of section 337 are met, subject to consideration of the public interest. 19 U.S.C. § 1337(g)(2). Section 337(d)(2), in turn, provides:

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

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

²⁰ While Commissioner Schmidlein agrees with the majority, she notes that she takes no position with respect to prongs (B) and (C) for reasons of administrative efficiency.

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

19 U.S.C. § 1337(d)(2).

The Commission agrees with the ALJ's recommendation to issue a GEO against infringing products. Specifically, undisputed, substantial, reliable, and probative evidence supports a finding that Presto demonstrated a violation of section 337. In addition, the Commission finds that the requirements of section 337(d)(2) are met and that a GEO is warranted in this investigation.

a. Circumvention of a Limited Exclusion Order

The Commission finds that a GEO is necessary to prevent circumvention of an LEO. *See* RD at 80-84; 19 U.S.C. § 1337(d)(2)(A).

The undisputed record demonstrates the Dalian Respondents' use of alter egos and sham corporate entities with respect to the infringing products supports "a conclusion that the Dalian [R]espondents intend to circumvent lawful enforcement of Presto's patent rights." RD at 83. The Commission also agrees with the RD that the Dalian Respondents "likely will use different corporate names and addresses to circumvent exclusion orders limited to specific corporate entities." *Id.* (citing *Certain Ground Fault Circuit Interrupters & Prods. Containing Same*, Inv. No. 337-TA-739, Comm'n Op. at 88-89 (June 8, 2012) (a GEO was appropriate based on evidence that named respondents would likely circumvent an LEO by changing their corporate identity); *Certain Cases for Portable Elec. Devices*, Inv. No. 867, Comm'n Op. at 9 (June 20, 2014) (a GEO was appropriate where there was evidence of "companies operating under fake names and fake addresses").

Presto's un rebutted evidence also shows that (i) the "cost of manufacturing the accused product in Asia is low," (ii) "the costs to make relevant molds in China 'are between one-fourth

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and one-half of the U.S. costs,” (iii) “the setup to begin commercial production of infringing goods in China can cost as little as \$80,000,” and (iv) the “molds for producing the accused products are portable and easily transferred between entities.” *Id.* at 84 (citing Athans Aff. ¶¶ 9-14; Petkovsek Aff. ¶¶ 7-9). Therefore, the Commission agrees with the RD that “[t]hese facts support Presto’s un rebutted assertion that the persons behind the Dalian [R]espondents could easily circumvent limited exclusion orders by setting up new companies that continue the infringing course of conduct.” *Id.* (citing *Certain Toner Cartridges, & Components Thereof*, Inv. No. 337-TA-918, Comm’n Op., 2015 WL 13817122, at *4 (Oct. 1, 2015) (“*Toner Cartridges*”) (noting that “if only LEOs are issued, operations could be easily replicated”)).

The evidence also shows that (i) “a product obtained from the Dalian [R]espondents [] lacks any visible origin or identification marker,” (ii) “the Dalian [R]espondents advertise [that] their zipper closures may be incorporated into third-party packages,” (iii) “[f]inished goods incorporating infringing closures would have no indication of their connection to the Dalian [R]espondents,” and (iv) “finished packages may be sold in a ‘hooded’ arrangement, where an infringing track and slider is obscured until the hood is torn off by a consumer.” *Id.* at 85 (citing Complaint Phys. Ex. 1 (packaging labeled with “Blank Brand”); Herrington Report²¹ ¶ 42; Hansen Aff. ¶ 10). Therefore, the Commission agrees with the RD that the “evidence supports a conclusion that an exclusion order limited to the Dalian respondents could be circumvented by goods lacking any marking that would connect the infringing articles to the Dalian [R]espondents.” *Id.* (citing *Toner Cartridges*, Comm’n Op. at *5-7).

²¹ Expert Report of Ryan N. Herrington, attached as Exhibit 7 to Presto’s motion (“Herrington Report”). Mr. Herrington was retained to “evaluate the likely economic effects of Complainant’s proposed general exclusion order.” Herrington Report ¶ 4.

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Thus, the Commission determines that the criteria for obtaining a GEO under section 337(d)(2)(A) are satisfied because the “record contains substantial, reliable, and probative evidence that the Dalian [R]espondents are likely [to] circumvent a limited exclusion order using corporate alter egos, by setting up new companies at little cost, or both.” *Id.*; accord OSub. at 6-8.

b. Pattern of Violation and Difficulty Identifying the Source of Infringing Goods

The Commission likewise finds that a GEO should issue because there is a pattern of violation and because it is difficult to identify the source of the infringing products. *See* RD at 85-89; 19 U.S.C. § 1337(d)(2)(B).

The record contains “undisputed, substantial, reliable, and probative evidence that infringing goods are being widely sold for importation into the United States without authorization from Presto.” RD at 86. Specifically, the Commission agrees with the RD that the online marketplace Alibaba.com contains listings by three non-party manufacturers²² based in China that offer to sell plastic bags with child-resistant zipper closures “that are identical in all material respects to the [DI] products protected by the asserted patents.” *Id.* (citing Herrington Report ¶¶ 34, 70; Hardy Aff.²³ ¶¶ 3-4, 13-16). Further, these Alibaba listings all advertise that the company has an “FDA” certification or that their products can “pass FDA,” which are

²² These three non-party manufactures are: (1) Qingdao Jintiandi Plastic Packaging Co., Ltd., which is based in Shandong, China, and “requires an order minimum of 100,000 bags and claims it can supply 100,000 bags per day”; (2) Shantou Changxing Packaging Co., Ltd., which is based in Guangdong, China, and “requires an order minimum of 20,000 pieces and claims it can supply 10 million bags per month”; and (3) Shenzhen Rishanhong Plastic Packaging Products Co., Ltd., which is based in Guangdong, China, and “requires an order minimum of 10,000 bags and claims it can supply 200,000 bags per day.” RD at 86-87.

²³ Affidavit of Paul Hardy, attached as Exhibit 5 to Presto’s motion (“Hardy Aff.”). Mr. Hardy is Presto’s Manager of International Sales. Hardy Aff. ¶ 1.

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references to the U.S. Food and Drug Administration. *Id.* at 86-87 (citing Herrington Report ¶¶ 71, 76-77).

The evidence also shows that Presto employees encountered infringing products from a fourth Chinese manufacturer, Qingdao RAJ Packaging Products Co., Ltd. (“RAJ”), at a trade show in Germany in September 2019. *Id.* at 87 (citing Herrington Report ¶ 39; Hardy Aff. ¶¶ 17-18). Like the Alibaba listings, record evidence show that this manufacturer’s products have sliders that “are identical in all material respects to the [DI] products protected by the asserted patents” and its website displays the logo for the FDA. *Id.* at 87 (citing Herrington Report ¶ 39; Hardy Aff. ¶¶ 16-17).

The Commission agrees that, by advertising “FDA” certification, “the Alibaba listings and the RAJ website demonstrate that the products offered for sale through those channels are intended for importation into the United States.” *Id.* Thus, “the evidence supports a conclusion that thousands of infringing bags are sold for importation into the United States without authorization from Presto,” which “is a pattern of violation of section 337.” *Id.* The Commission also agrees that the actions of the Dalian Respondents “are also part of a pattern of violation of section 337.” *Id.* at 87-88.

In addition, the evidence “supports a conclusion that identifying the source of imported zipper enclosures is difficult.” *Id.* at 88. Specifically, the evidence shows that “child-resistant zipper enclosures can be incorporated into finished goods without any indication of the source of an infringing track and slider” and “the Dalian [R]espondents are likely to circumvent a limited exclusion order by using alternative corporate entities.” *Id.* (citing *Toner Cartridges*, Comm’n Op. at *5-7; *Certain Sildenafil or Any Pharmaceutically Acceptable Salt Thereof, such as Sildenafil Citrate, & Prods. Containing Same*, Inv. No. 337-TA-489, Comm’n Op. at 7-8 (July

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23, 2004) (“*Sildenafil*”) (Public Version)). Further, the Commission agrees with the RD that the “quick removal of online evidence after an importer catches wind of legal proceedings” also makes it difficult to identify the source of infringing goods. *Id.* at 89 (referencing several Alibaba listings that are identified in Presto’s motion as offering infringing products for sale that had been taken down before the RD issued on April 21, 2020).

Thus, the Commission finds that the criteria for obtaining a GEO under section 337(d)(2)(B) are satisfied because “Presto has established by substantial, reliable, and probative evidence a pattern of violation of section 337 by sources that are difficult to identify.” *Id.* at 89; *accord* OSub. at 8-9.

2. Cease and Desist Orders

Section 337 provides that in addition to, or in lieu of, the issuance of an exclusion order, the Commission may issue a CDO as a remedy for violation of section 337. *See* 19 U.S.C. § 1337(f), (g).

The RD does not recommend issuing CDOs against the Dalian Respondents because, among other things, Presto did not request them. RD at 90.

On review, the Commission inquired as to whether Presto desired CDOs against the Dalian Respondents. 85 Fed. Reg. 35662, 35663 (June 11, 2020). In response, Presto confirmed that it “is not seeking a CDO against the Dalian Respondents.” CSub. at 2.

In light of Presto’s position, the Commission has determined not to issue CDOs against the Dalian Respondents.

B. Public Interest

Before issuing a GEO, the Commission must consider “the effect of such exclusion or order upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States

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consumers.” *See* 19 U.S.C. § 1337(d)(1). The statute “does not require the Commission to determine that a remedial order would advance the public interest factors but rather requires the Commission to consider whether issuance of such an order will adversely affect the public interest factors.” *Certain Loom Kits for Creating Linked Articles*, Inv. No. 337-TA-923, Comm’n Op., 2015 WL 5000874, *9 (June 26, 2015) (“*Loom Kits*”) (citation omitted).

With respect to the first public interest factor, the Commission finds that excluding the infringing products would not adversely affect the public health and welfare. To the contrary, it would help “ensure compliance with important child safety standards for children within the United States.” *See* CSub. at 6. For example, unlike “Presto’s domestic industry products [that] have been tested for, and comply with federal guidelines for child resistance[,] . . . [t]here is no evidence, much less any guarantee, that infringing child-resistant products from China comply with any U.S. regulations on safety or testing.” *Id.* at 5-6; *accord* OSub. at 13-14 (citing Presto’s Public Interest Statement at 2-4 (July 17, 2017) (“Presto’s PI Statement”)).

Nor does the record evidence suggest any adverse effect on the second (competitive conditions in the U.S. economy), third (production of like or directly competitive articles in the U.S.), or fourth (U.S. consumers) public interest factors. *See* OSub. at 13 (“OUII is not aware of any evidence that would indicate that the issuance of [a GEO] would be contrary to [these factors].”); *id.* at 14 (“Presto also explains that it manufactures products that are directly competitive with the accused products and could seamlessly replace any excluded products. And . . . Presto indicates there is a sufficient supply of competitive, non-infringing alternatives already available to the U.S. market, ensuring that consumers have and will continue to have access to like or directly competitive products and will not be negatively impacted by an exclusion order.” (citing Presto’s PI Statement at 3-4)); CSub. at 6 (Presto “is currently the *only*

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domestic supplier of child resistant slider products subject to this investigation, *i.e.*, child resistant closures with slider devices having a user actuated insertable torpedo for selectively opening the closures and slider devices therefor.”) (emphasis in original). Thus, the record indicates that there is a sufficient supply of competitive, non-infringing alternatives already available to the U.S. market, ensuring that consumers have, and will continue to have, access to like or directly competitive products and will not be negatively impacted by an exclusion order.

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

During the 60-day period of Presidential review under section 337(j), “articles directed to be excluded from entry under subsection (d) . . . shall . . . be entitled to entry under bond prescribed by the Secretary in an amount determined by the Commission to be sufficient to protect the complainant from any injury.” *See* 19 U.S.C. § 1337(j)(3). “The Commission typically sets the bond based on the price differential between the imported infringing product and the domestic industry article or based on a reasonable royalty. However, where the available pricing or royalty information is inadequate, the bond may be set at one hundred (100) percent of the entered value of the infringing product.” *Loom Kits*, Comm’n Op., 2015 WL 5000874, *11 (citations omitted). The Commission has set a 100 percent bond in cases where respondents have defaulted and provided no discovery regarding pricing, precluding any reliable determination of an appropriate bond amount. *See id.* at *12.

The RD recommends that the Commission set the bond amount at 100 percent of the entered value of the accused products. RD at 91-92. The Commission agrees. As the RD notes, because “[t]here was no discovery from respondents in this investigation as all respondents were either terminated or found in default without participating in discovery,” the record “lacks

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reliable evidence upon which to base a bond amount.” *Id.* at 91. Thus, the RD recommends that a 100 percent bond is necessary “to ensure that [Presto] is protected ‘from any injury’ if a respondent attempts to import accused articles during the Presidential review period.” *Id.* at 91-92; *accord* OSub. at 14-15 (“Given the state of the evidentiary record . . . and the fact that the Dalian Respondents have defaulted (rather than provide any discovery), OUII agrees with the ALJ’s recommendation that a bond of one hundred percent (100%) of the entered value of the accused products is appropriate . . .”).

Thus, the Commission has determined to set the bond during the period of Presidential review in the amount of 100 percent of the entered value of the infringing articles.

V. CONCLUSION

For the reasons set forth herein, the Commission has determined that Presto has established a violation of section 337 with respect to claims 1, 3, 5, and 8-10 of the ’531 patent, claims 1, 4, 6-8, 11, 12, 15, and 19 of the ’628 patent, and claims 1, 3, 5, and 8 of the ’058 patent. After considering the public interest, the Commission has also determined that the appropriate remedy is a GEO directed against infringing child resistant closures with slider devices having a user actuated insertable torpedo for selectively opening the closures and slider devices therefor. The Commission has further determined to impose a bond in the amount of 100 percent of the entered value of the infringing articles for importation that occurs during the period of Presidential review.

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: September 18, 2020

**CERTAIN CHILD RESISTANT CLOSURES WITH SLIDER
DEVICES HAVING A USER ACTUATED INSERTABLE
TORPEDO FOR SELECTIVELY OPENING THE
CLOSURES AND SLIDER DEVICES THEREFOR**

Inv. No. 337-TA-1171

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, **Megan Wantland, Esq.**, and the following parties as indicated, on **September 18, 2020**.



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

On Behalf of Complainant Reynolds Presto Products Inc.:

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- ☐ Via Hand Delivery
- ☐ Via Express Delivery
- ☐ Via First Class Mail
- ☒ Other: Email Notification
of Availability for Download

Respondents:

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Room 101, Unit 2, No. 125 ChangChun Road
XiGang District, Dalian
China 116011

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

Dalian Altma Industry Co., Ltd.
No. 36, North Fuquan Road, Economic and Technological
Development Zone, Dalian, Liaoning
China 116100

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

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN CHILD RESISTANT CLOSURES
WITH SLIDER DEVICES HAVING A USER
ACTUATED INSERTABLE TORPEDO
FOR SELECTIVELY OPENING THE
CLOSURES AND SLIDER DEVICES
THEREFOR**

Investigation No. 337-TA-1171

**NOTICE OF COMMISSION DETERMINATION TO REVIEW IN PART AN INITIAL
DETERMINATION GRANTING COMPLAINANT'S MOTION FOR SUMMARY
DETERMINATION OF A VIOLATION OF SECTION 337; SCHEDULE FOR FILING
WRITTEN SUBMISSIONS ON REMEDY, THE PUBLIC INTEREST, AND BONDING**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that, on April 21, 2020, the presiding administrative law judge ("ALJ") issued an initial determination ("ID") in the above-captioned investigation, granting summary determination on violation of section 337 that included a recommended determination on remedy and bonding. On April 22, 2020, the ALJ issued a Notice of Errata thereto. The Commission has determined to review the ID in part. The Commission requests briefing from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3179. 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, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On August 21, 2019, the Commission instituted this investigation based on a complaint filed by Reynolds Presto Products Inc. ("Presto"). 84 *Fed. Reg.* 43616-17 (Aug. 21, 2019). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) ("section 337") based on the importation into the United States, the sale for importation, or the sale within the United States after importation of certain child resistant closures with slider devices having a user actuated insertable torpedo for

selectively opening the closures and slider devices therefor by reason of infringement of certain claims of U.S. Patent Nos. 9,505,531 (“the ’531 patent”); 9,554,628; and 10,273,058 (“the ’058 patent”) (collectively, the “Asserted Patents”). *Id.* at 43616. The complaint further alleges that a domestic industry exists. *Id.* The Commission’s notice of investigation names six respondents: Dalian Takebishi Packing Industry Co., Ltd. of Dalian, China (“Dalian Takebishi”); Dalian Altma Industry Co., Ltd. of Dalian, Liaoning, China (“Dalian Altma”) (together, the “Dalian Respondents”); Japan Takebishi Co., Ltd., of Tokyo, Japan; Takebishi Co., Ltd., of Shiga, Japan; Shanghai Takebishi Packing Material Co., Ltd., of Shanghai, China; and Qingdao Takebishi Packing Industry Co., Ltd., of Qingdao, China. *Id.* at 43616-17. It also names the Office of Unfair Import Investigations (“OUII”) as a party. *Id.* at 43617.

On October 7, 2019, the ALJ issued an ID finding the Dalian Respondents in default. Order No. 7 (Oct. 30, 2019), *unreviewed by* Comm’n Notice (Nov. 26, 2019). On November 19, 2019, the ALJ issued an ID terminating the investigation based on Presto’s withdrawal of the complaint as to the other four respondents (Japan Takebishi Co., Ltd.; Takebishi Co., Ltd.; Shanghai Takebishi Packing Material Co., Ltd.; and Qingdao Takebishi Packing Industry Co., Ltd.). Order No. 10 (Nov. 19, 2019), *unreviewed by* Comm’n Notice (Dec. 18, 2019). That ID also terminated the investigation as to (i) claims 6 and 7 of the ’531 patent and (ii) claims 6 and 7 of the ’058 patent. *Id.*

On November 15, 2019, Presto filed a motion for summary determination that the domestic industry requirement was satisfied and that a violation had been established. Presto’s motion requested immediate entry of a limited exclusion order against the Dalian Respondents, a general exclusion order (“GEO”), and a 100 percent bond. On November 26, 2019, OUII filed a response to the motion supporting the summary determination motion and the requested GEO and 100 percent bond.

On April 21, 2020, the ALJ issued the subject ID granting summary determination of violation of section 337 by the Dalian Respondents. The ID also contains the ALJ’s recommendation on remedy and bonding, in which the ALJ recommends issuance of a GEO or, in the alternative, a limited exclusion order directed to each of the Dalian Respondents, and that a 100 percent bond be set for importation during the Presidential review period.

On May 1, 2020, OUII filed a petition seeking review of portions of the ID’s analysis of the economic prong of the domestic industry requirement. No other party petitioned for review of the ID, and no party filed a response to OUII’s petition.

The Commission has determined to review the ID in part with respect to the ID’s analysis of the economic prong of the domestic industry requirement. The Commission has determined not to review the remaining findings in the ID. The Commission is not requesting any briefing on the issue under review.

In connection with the final disposition of this investigation, the statute authorizes issuance of: (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) one or more cease and desist orders (“CDOs”) that could result in the Dalian Respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in

receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (December 1994). In addition, if a party seeks issuance of any CDOs, the written submissions should address that request in the context of recent Commission opinions, including those in *Certain Arrowheads with Deploying Blades and Components Thereof and Packaging Therefor*, Inv. No. 337-TA-977, Comm'n Op. (Apr. 28, 2017) and *Certain Electric Skin Care Devices, Brushes and Chargers Therefor, and Kits Containing the Same*, Inv. No. 337-TA-959, Comm'n Op. (Feb. 13, 2017). The written submissions should respond to the following:

1. Is Presto still seeking CDOs against the Dalian Respondents?
2. If Presto is still seeking CDOs, please address the following questions:
 - a. Can the Commission grant CDOs if a complainant has not argued for them in its remedy briefing before the ALJ? Has the Commission ever granted CDOs under such circumstances?
 - b. What prejudice have the Dalian Respondents suffered as a result of Presto seeking CDOs in its complaint but not requesting them before the ALJ?
 - c. Please identify with citations to the record any information regarding commercially significant inventory in the United States as to each respondent against whom a CDO is sought. If Presto also relies on other significant domestic operations that could undercut the remedy provided by an exclusion order, identify with citations to the record such information as to each respondent against whom a CDO is sought.
 - d. In relation to the infringing products, please identify any information in the record, including allegations in the pleadings, that addresses the existence of any domestic inventory, any domestic operations, or any sales-related activity directed at the United States for each respondent against whom a CDO is sought.
 - e. Please discuss any other basis upon which the Commission could enter a CDO.

The statute requires the Commission to consider the effects of any remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and/or CDO 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 *Fed. Reg.* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

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

In its initial written submission, Presto is also requested to submit proposed remedial orders for the Commission's consideration. Presto is further requested to identify the date the Asserted Patents expire, to provide the HTSUS subheadings under which the subject articles are imported, and to supply identification information for all known importers of the subject articles.

Initial written submissions, including proposed remedial orders, must be filed no later than close of business on **June 12, 2020**. Reply submissions must be filed no later than the close of business on **June 19, 2020**. No further submissions on any of 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 *Fed. Reg.* 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1171) 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. 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^[1], solely for cybersecurity purposes. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on [EDIS](#).

^[1] All contract personnel will sign appropriate nondisclosure agreements.

The Commission vote for these determinations took place on June 5, 2020.

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', with a large, stylized loop at the end.

Lisa R. Barton
Secretary to the Commission

Issued: June 5, 2020

**CERTAIN CHILD RESISTANT CLOSURES WITH SLIDER
DEVICES HAVING A USER ACTUATED INSERTABLE
TORPEDO FOR SELECTIVELY OPENING THE
CLOSURES AND SLIDER DEVICES THEREFOR**

Inv. No. 337-TA-1171

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served via EDIS upon the Commission Investigative Attorney, **Megan Wantland, Esq.**, and the following parties as indicated, on **June 5, 2020**.



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

On Behalf of Complainant Reynolds Presto Products Inc.:

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- ☐ Via Express Delivery
- ☐ Via First Class Mail
- ☒ Other: Email Notification
of Availability for Download

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

In the Matter of

**CERTAIN CHILD RESISTANT
CLOSURES WITH SLIDER DEVICES
HAVING A USER ACTUATED
INSERTABLE TORPEDO FOR
SELECTIVELY OPENING THE
CLOSURES AND SLIDER DEVICES
THEREFOR**

Inv. No. 337-TA-1171

**ORDER NO. 12: INITIAL DETERMINATION
GRANTING SUMMARY DETERMINATION ON VIOLATION OF SECTION 337
AND RECOMMENDED DETERMINATION ON REMEDY AND BONDING**

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I. BACKGROUND

A. Institution of the Investigation and Procedural History

By publication of a notice in the *Federal Register* on August 21, 2019, pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, the Commission instituted this investigation to determine:

whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1, 3, and 5–10 of [U.S. Patent No. 9,505,531 (“the ’531 patent”)]; claims 1, 4, 6–8, 11, 12, 15, and 19 of [U.S. Patent No. 9,554,628 (“the ’628 patent”)]; and claims 1, 3, and 5–8 of [U.S. Patent No. 10,273,058 (“the ’058 patent”)]; and whether an industry in the United States exists as required by subsection (a)(2) of section 337

84 Fed. Reg. 43616 (Aug. 21, 2019) (“Notice of Investigation”).

The Notice of Investigation named Reynolds Presto Products Inc. of Lake Forest, Illinois, as the complainant (“Presto”) and the following companies as respondents:

- Dalian Takebishi Packing Industry Co., Ltd., of Dalian, China;
- Dalian Altma Industry Co., Ltd., of Dalian, Liaoning, China;
- Japan Takebishi Co., Ltd., of Tokyo, Japan;
- Takebishi Co., Ltd., of Shiga, Japan;
- Shanghai Takebishi Packing Material Co., Ltd., of Shanghai, China;
- Qingdao Takebishi Packing Industry Co., Ltd., of Qingdao, China.

Id. at 43616–17. The Office of Unfair Import Investigations (“Staff”) was also named as a party to this investigation. *Id.* at 43617.

A 12-month target date for completion of this investigation was set for August 21, 2020. Order No. 3 (Sept. 5, 2019).

PUBLIC VERSION

On November 15, 2019, Presto filed the pending Corrected Complainant's Motion for Summary Determination with Respect to Domestic Industry, Violation and Remedy ("Mot.") with a memorandum in support ("Memo."). Motion Docket No. 1171-006 (EDIS Doc. No. 694487). In its motion, Presto requests:

- 1) "summary determination of a violation of 19 U.S.C. § 1337";
- 2) a finding Presto "has met the domestic industry requirement of 19 U.S.C. § 1337(a)(2)";
- 3) "immediate entry of a Limited Exclusion Order against" the defaulting respondents;
- 4) "imposition of a 100% bond"; and
- 5) "a recommendation for entry of a General Exclusion order."

Mot. at 1. No respondent filed a response to the pending motion. Staff filed a response to the pending motion ("Staff Resp.") supporting the requested relief. EDIS Doc. No. 694236.

On November 26, 2019, the Commission affirmed that respondents Dalian Takebishi Packing Industry Co., Ltd., and Dalian Altma Industry Co., Ltd. (collectively, "the Dalian respondents"), had defaulted in the investigation. Order No. 7 (Oct. 30, 2019), *aff'd*, Notice of a Commission Determination Not to Review an Initial Determination Finding the Dalian Respondents in Default (Nov. 26, 2016).

On December 18, 2019, the Commission affirmed an initial determination terminating the investigation with respect to claims 6 and 7 of the '531 patent and claim 6 and 7 of the '058 patent. Order No. 10 (Nov. 19, 2019), *aff'd*, Notice of Commission Determination Not to Review an Initial Determination Terminating the Investigation as to Certain Asserted Claims and Named Respondents (Dec. 18, 2019). The Commission also affirmed the termination of the investigation with respect to respondents Japan Takebishi Co., Ltd.; Takebishi Co., Ltd.; Shanghai Takebishi

Packing Material Co., Ltd.; and Qingdao Takebishi Packing Industry Co., Ltd.; as those respondents were never served. *Id.*

B. The Private Parties

1. Complainant Reynolds Presto Products Inc.

Presto is a privately held company organized under the laws of the State of Delaware with its principal place of business in Lake Forest, Illinois. EDIS Doc. No. 682496 (“Complaint”) ¶ 5. Presto is a wholly owned and privately held company of the Rank Group. Expert Report of Ryan N. Herrington (“Herrington Report”) ¶ 7.¹ Presto owns by assignment the entire right, title, and interest in the asserted patents. Complaint ¶¶ 35, 39, 43; Complaint Ex. 14 (Assignment Agreement).

Presto manufactures many products, including slider closures for resealable bags. Affidavit of Bradford Hansen (“Bradford Aff.”)² ¶ 7. Presto makes the plastic tracks for its closure mechanism at facilities in Wisconsin and obtains most of the plastic sliders used on the tracks from U.S. manufacturers. Mot. Ex. 9.

2. The Dalian Respondents

The Dalian respondents—Dalian Takebishi Packing Industry Co., Ltd. (“Dalian Takebishi”), and Dalian Altma Industry Co., Ltd. (“Dalian Altma”)—are the only remaining respondents in the investigation. The record contains evidence that Dalian Takebishi “specialize[s] in producing zipper tape” and is located in Dalian, China. Herrington Report ¶ 13. The record

¹ The Expert Report of Ryan N. Herrington is attached as Exhibit 7 to the pending motion. Mr. Herrington was retained to “evaluate the likely economic effects of Complainant’s proposed general exclusion order.” Mot. Ex. 7 ¶ 4.

² The Affidavit of Bradford Hansen is attached as Exhibit 4 to the pending motion. Mr. Hansen is the President of the Specialty Business Unit of Presto. Mot. Ex. 4 ¶ 1.

indicates that Dalian Altma, also based in Dalian, China, “manufactures and trades slitting machines, printing machines, and edge trim winders, among other products.” Herrington Report ¶ 14. Dalian Altma also goes by the name Takebishi (Dalian) Industrial Co., Ltd., an entity that has the same address and contact information as Dalian Altma. *Id.*

C. The Asserted Patents

Presto asserts three utility patents in this investigation: the '531, '628, and '058 patents. The asserted patents are each titled “Child Resistant Slider Having Insertable Torpedo and Methods” and share the same named inventor and the same specification. *See* Complaint Exs. 1–3. The patents generally disclose a zipper closure system that may be incorporated into flexible bags and pouches to make it difficult for children to access the contents of the packages, particularly packages containing hazardous or otherwise dangerous contents. *See, e.g.*, '531 patent at Abstract; *see also id.* at 1:38–45. To open the bag, a slider is moved to the vicinity of a notch and a tab is moved or flexed in such a way that a torpedo comes between the interlocking track profiles of the zipper causing the tracks to separate when the slider is moved. *Id.* at 1:45–50.

Figure 14 of the '531 patent, reproduced below, shows an example embodiment of the invention incorporated into bag B with the zipper closure 36 having notch 8 and slider 1:

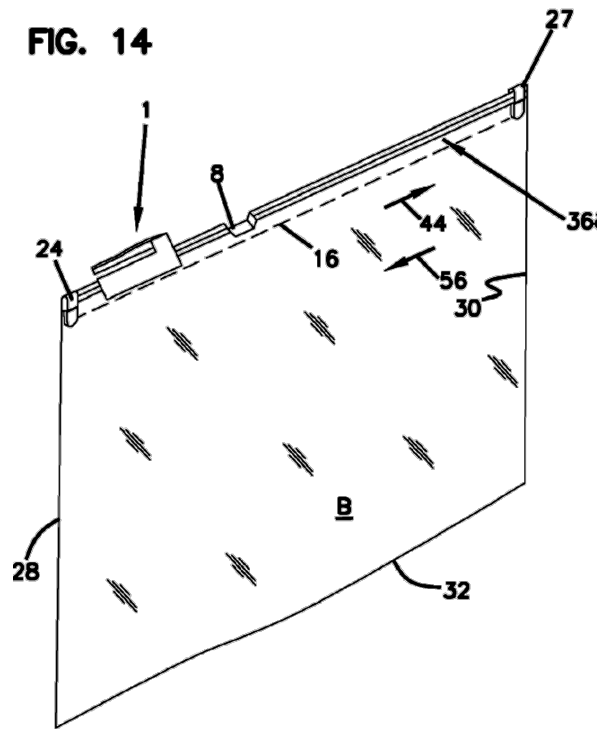
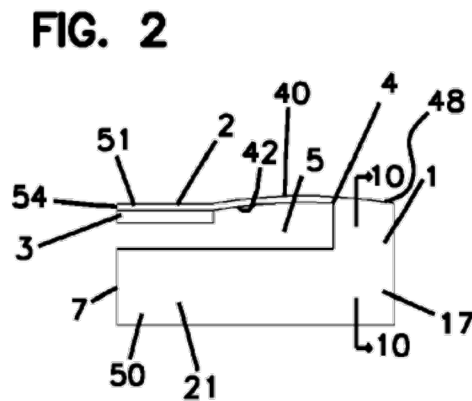


Figure 2 of the '531 patent, reproduced below, shows an embodiment of the claimed slider 1 having a flexible tab 2 with torpedo 3:



The remaining issues in the investigation concern claims 1, 3, 5, and 8–10 of the '531 patent; claims 1, 4, 6–8, 11, 12, 15, and 19 of the '628 patent; and claims 1, 3, 5, and 8–10 of the '058 patent.

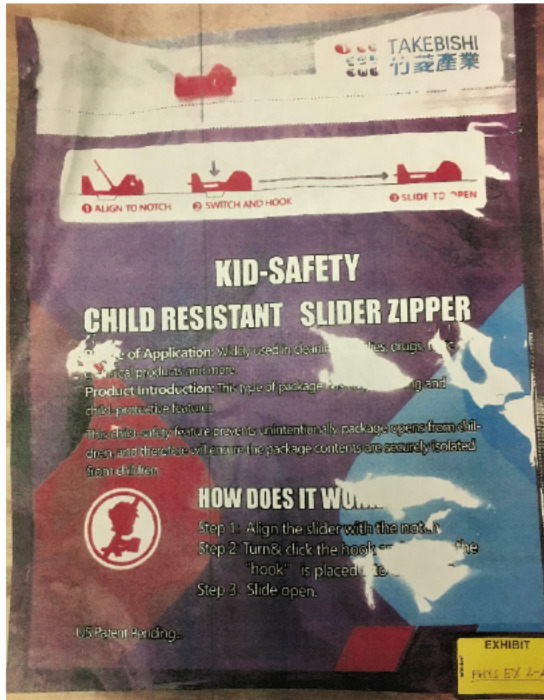
D. The Accused Products

The accused products in this investigation are child-resistant zippers for opening and closing plastic bags. To open the zipper, a tab must be held down to engage a torpedo and separate the zipper tracks. Physical Exhibits 1 and 2 of the Complaint, shown below, exemplify the accused products:



Complaint Phys. Ex. 1.

Physical Exhibit 2 – Sample of Accused Product



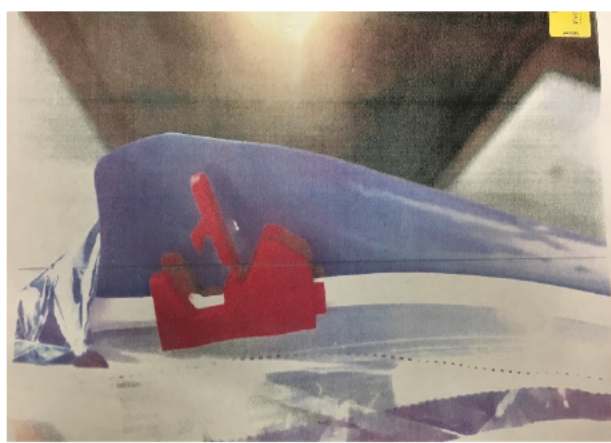
Front



Back



Top View 1
(red slider with a torpedo on
a white zipper track)



Top View 2
(torpedo flexed upward from
the zipper track)

Complaint Phys. Ex. 2; see also Staff Resp. at 7–8.

E. The Domestic Industry Products

As discussed in more detail herein, Presto manufactures track for use with the patented inventions in Wisconsin, and manufacturers in New York produce the sliders used on those tracks. Affidavit of Greg Petkovsek (“Petkovsek Aff.”)³ ¶ 5; Declaration of Brad Hansen Concerning the Economic Prong of Domestic Industry (“Hansen Decl.”)⁴ ¶ 5. Presto’s customers receive permission from Presto to incorporate the patented slider closure in their packaging. Memo. at 98 n.5. One example of a domestic industry product produced in this way is a child-resistant package for laundry detergent, shown below:



Declaration of Toby Thomas (“Thomas Decl.”), Exhibit 1 at 1.⁵

³ The Affidavit of Greg Petkovsek is attached as Exhibit 6 to the pending motion.

⁴ The Affidavit of Bradford Hansen is attached as Exhibit 4 to the pending motion.

⁵ The Declaration of Toby Thomas is attached as Exhibit 2 to the pending motion. Mr. Thomas was retained by Presto as an expert witness. Mot. Ex. 2 at 1.

II. LEGAL STANDARD FOR SUMMARY DETERMINATION

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

III. IMPORTATION AND JURISDICTION

A. Importation

It has long been recognized that importing just one accused product can satisfy the importation requirement of section 337. *See Certain Trolley Wheel Assemblies*, Inv. No. 337-TA-161, Comm’n Op. at 7–8, USITC Pub. No. 1605 (Nov. 1984) (deeming the importation requirement satisfied by the importation of a single product of no commercial value).

Here, there is no factual dispute that the accused articles have been imported into the United States. Witnesses provided unrebutted testimony that the accused products were present at two trade shows within the United States: the 2017 Global Pouch West Show in Anaheim, California, and the 2019 Global Pouch Forum, in Rosemont, Illinois. *See* Declaration of Thomas Morsheimer (“Morsheimer Decl.”)⁶; Herrington Report ¶ 14; Complaint Exs. 9 and 22. The photographs below show the Dalian Altma / Takebishi (Dalian) Industrial Co., Ltd., booth at the 2019 Global Pouch Forum and an accused product offered for sale at that booth:

⁶ The Declaration of Thomas Morsheimer is attached as Exhibit 24 to the Complaint. Mr. Morsheimer is the Market Development Manager for the Fresh-Lock® / Slide-Rite® business unit of Presto. Complaint Ex. 24 ¶ 1.



Complaint Ex. 9.

I find that Presto has presented substantial, reliable, and probative evidence that the importation requirement of section 337 has been satisfied.

B. Subject Matter Jurisdiction

No party has contested the Commission's subject matter jurisdiction over this investigation. Section 337 of the Tariff Act prohibits the sale for importation and importation of articles that infringe a valid and enforceable patent if an industry exists in the United States relating to articles protected by the patent. 19 U.S.C. §§ 1337(a)(1)–(2). Presto's Complaint states a cause of action under section 337. Specifically, Presto has alleged that the Dalian respondents are selling for importation and have imported certain child-resistant slider closures that infringe the asserted patents. *See* Complaint at 8–48. The Commission, therefore, has subject matter jurisdiction over this investigation.

C. In Rem Jurisdiction

In section 337, Congress granted the Commission in rem jurisdiction over imported articles. *See Sealed Air Corp. v. Int’l Trade Comm’n*, 645 F.2d 976, 985–86 (C.C.P.A. 1981). As noted above, the record demonstrates that the accused products have been imported into the United States. Morsheimer Decl. ¶¶ 3–9; Herrington Report ¶¶ 13–18; *supra* Part III.A. No party has contested the Commission’s in rem jurisdiction over the accused products. Accordingly, I find the Commission has in rem jurisdiction over the articles accused in this investigation.

D. Personal Jurisdiction

By filing the Complaint and participating in the investigation, Presto has consented to personal jurisdiction at the Commission. *See Certain Cutting Tools for Flexible Plastic Conduit and Components Thereof*, 337-TA-344, Initial Determination at 4, *not reviewed*, Comm’n Determination Not to Review an Initial Determination Finding a Violation of Section 337, (October 28, 1993), USITC Pub. No. 2719 (Jan. 1994).

Representatives of the Dalian respondents have personally entered the United States on at least two occasions to import and offer the accused products for sale at trade shows. *See supra* Part III.A. The intentional and systematic contacts of the Dalian respondents with the United States give the Commission personal jurisdiction over the Dalian respondents. *Certain Pocket Lighters*, 337-TA-1142, Initial Determination at 12–13 (Feb. 12, 2020) (public version Mar. 30, 2020, EDIS Doc. ID 706458); *Certain Minoxidil Powder, Salts & Compositions for Use in Hair Treatment*, 337-TA-267, Order No. 9 (Aug. 6, 1987) (“[E]stablishing that a foreign respondent has made two or more shipments of a product to the United States would be adequate to subject it to the jurisdiction of this agency.”). The Dalian respondents have all been given notice of this investigation at least through service of the Complaint and Notice of Investigation, hand delivery

of a cease and desist letter, and email correspondence with Presto's counsel. *See* Complaint Ex. 24 ¶ 7 (hand delivery of letter); *id.* at Ex. 17 (cease and desist letter); *id.* at Ex. 22 (email correspondence).

No party has contested the Commission's personal jurisdiction over it. Based on the record evidence, I find that the Commission has personal jurisdiction over all parties, including the Dalian respondents.

IV. INFRINGEMENT

Presto seeks a finding that the imported accused products infringe various claims of the '531 patent; the '628 patent; and the '058 patent. Under 35 U.S.C. §271(a), making, using, offering to sell, selling, or importing a patented invention without consent of the patent owner infringes the rights of the patent owner. Literal infringement of a claim occurs "when every limitation recited in the claim appears in the accused device, i.e., when the properly construed claim reads on the accused device exactly." *Amhil Enters., Ltd. v. Wawa, Inc.*, 81 F.3d 1554, 1562 (Fed. Cir. 1996).

Only those claim terms that are in controversy need to be construed, and only to the extent necessary to resolve the controversy. *O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008); *Vanderlande Indus. Nederland BV v. Int'l Trade Comm'n*, 366 F.3d 1311, 1323 (Fed. Cir. 2004); *Vivid Tech., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999). Here, no party has raised a dispute as to the meaning of the asserted claims. *See* EDIS Doc. No. 690581; *see also* Order No. 5 (Oct. 8, 2019) (modifying the procedural schedule in light of the parties' claim construction agreement). Accordingly, I need not construe any particular claim term.

Importing an article that infringes patent rights is unlawful under section 337. 19 U.S.C. § 1337(a)(1)(B)(1). The complainant in a section 337 investigation bears the burden of proving

infringement of the asserted patent claims by a preponderance of the evidence. *Enercon GmbH v. Int'l Trade Comm'n*, 151 F.3d 1376, 1384 (Fed. Cir. 1998).

A. U.S. Patent No. 9,505,531

Presto seeks a finding that the accused products infringe claims 1, 3, 5, and 8–10 of the '531 patent. *See* Memo. at 11. Claims 1, 3, 5, and 8 are apparatus claims, while claims 9 and 10 are claims to a method of operating a zippered bag. In support of the pending motion, Presto submitted the Declaration of Toby Thomas, which included claim charts showing infringement of claims 1, 3, 5, and 8–10. *See* Thomas Decl. Ex. 4. I evaluate that evidence below.



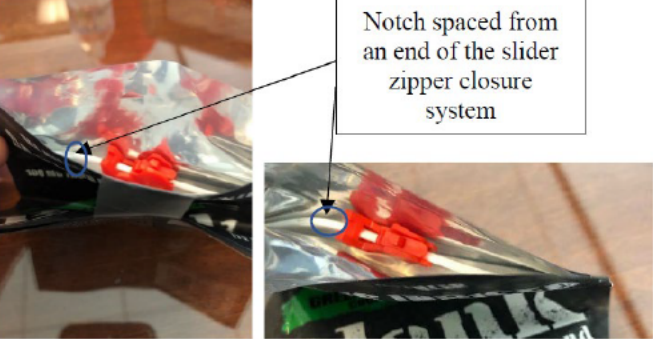


1. Claim 1

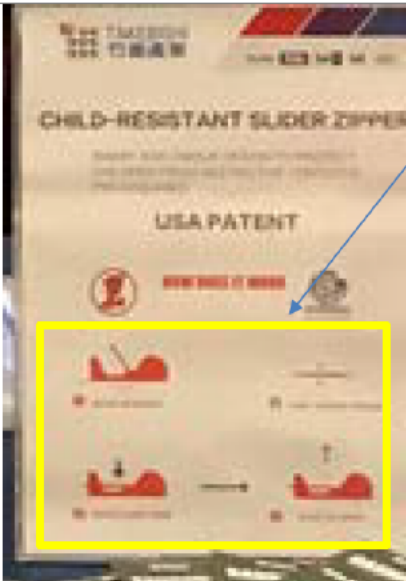

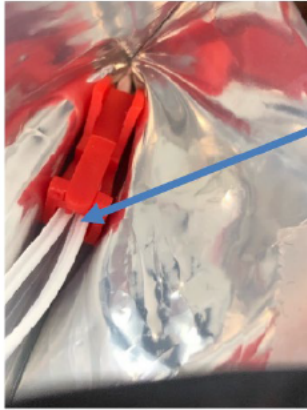
Independent claim 1 of the '531 patent recites:

1. A child resistant slider zipper closure system comprising:
 - (a) a reclosable zipper closure with a male track and a female track having complementary profiles for interlocking and unlocking;
 - (b) a notch defined by the complementary profiles; the notch being spaced from an end of the slider zipper closure system; and
 - (c) a slider being slidably located on the zipper closure, the slider including a flexible tab with a torpedo; when the slider is moved into a vicinity of the notch, the tab being selectively moveable into a position to be between the male track and female track and result in separation of the interlocking complementary profiles as the slider is moved in an opening direction along the zipper closure.

The Thomas Declaration shows each element of claim 1 of the '531 patent in the accused products:

Table 1. '531 Claim 1 Infringement Chart

Claim 1 Limitation	Element in Accused Product
1. A child resistant slider zipper closure system comprising:	 <p data-bbox="1263 443 1409 478">Zipper Closure</p>
(a) a reclosable zipper closure with a male track and a female track having complementary profiles for interlocking and unlocking;	 <p data-bbox="1182 625 1393 688">Track with interlocking profiles</p>
(b) a notch defined by the complementary profiles; the notch being spaced from an end of the slider zipper closure system; and	 <p data-bbox="1117 877 1328 993">Notch spaced from an end of the slider zipper closure system</p>
(c) a slider being slidably located on the zipper closure,	 <p data-bbox="1214 1234 1393 1308">Slider slidably located on zipper closure</p>
the slider including a flexible tab with a torpedo;	 <p data-bbox="1027 1402 1117 1434">torpedo</p> <p data-bbox="816 1770 1101 1822">Shown with flexible tap with torpedo flexed upward</p>

Claim 1 Limitation	Element in Accused Product
<p>when the slider is moved into a vicinity of the notch, the tab being selectively moveable into a position to be between the male track and female track</p>	<div data-bbox="753 279 1156 856">  </div> <div data-bbox="1177 300 1404 745"> <p>Advertisement demonstrating the tab being selectively moveable into a position to be between the male track and female track and result in separation of the interlocking complementary profiles as the slider is moved in an opening direction along the zipper closure</p> </div> <div data-bbox="753 863 1198 1192">  </div> <div data-bbox="1247 884 1393 968"> <p>Torpedo in notch</p> </div>
<p>and result in separation of the interlocking complementary profiles as the slider is moved in an opening direction along the zipper closure.</p>	<div data-bbox="753 1213 1058 1619">  </div> <div data-bbox="1166 1213 1404 1375"> <p>torpedo separates complementary profiles as the slide is moved in an opening direction</p> </div>

Thomas Decl. Ex. 4 at 1–3.

Based on this undisputed, substantial, reliable, and probative evidence, I find Presto has demonstrated infringement of claim 1 of the '531 patent.

2. Claim 3

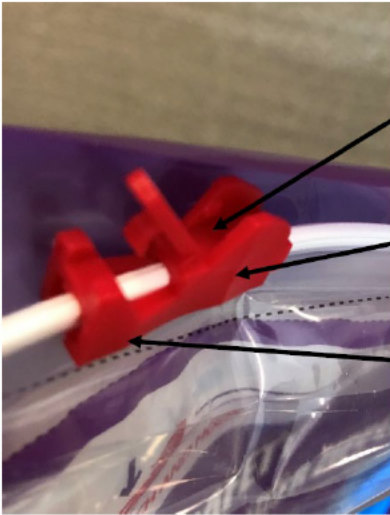
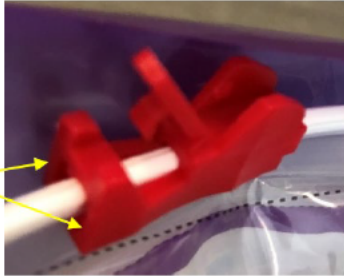
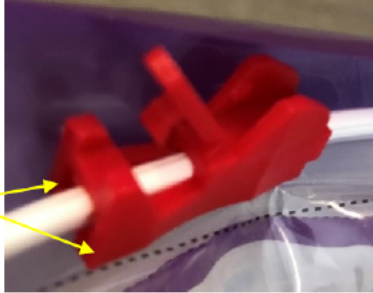
Claim 3 of the '531 patent depends from claim 1 as follows:

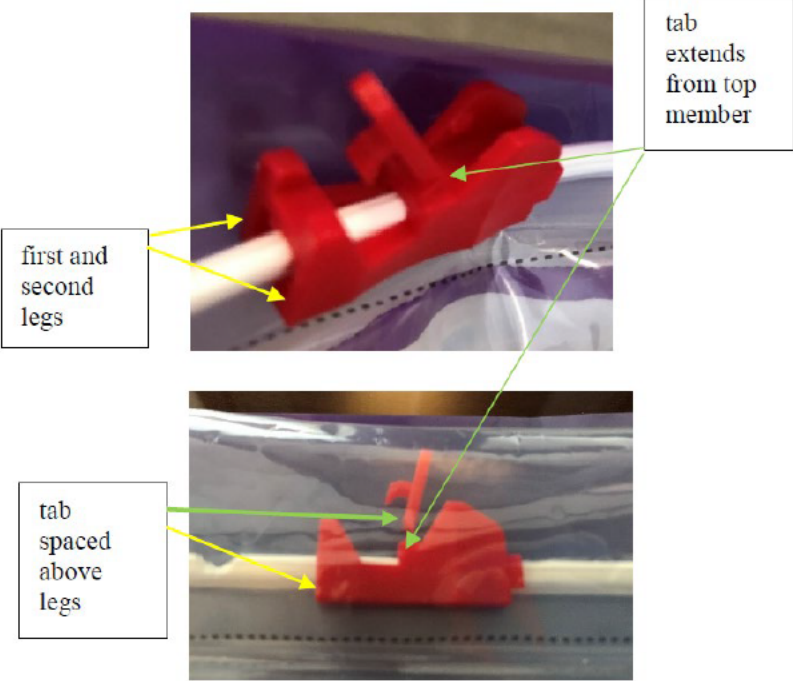
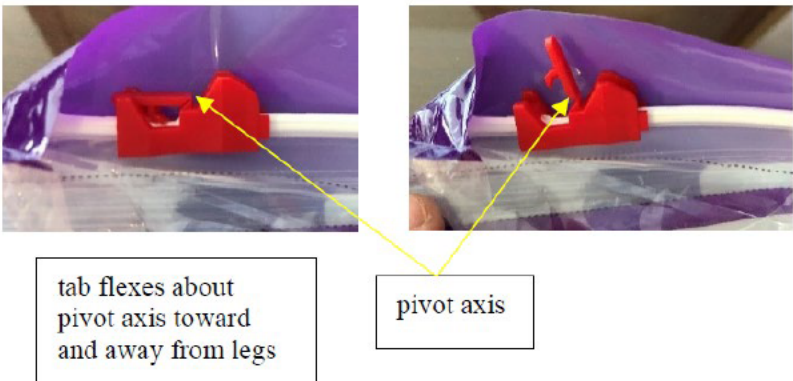
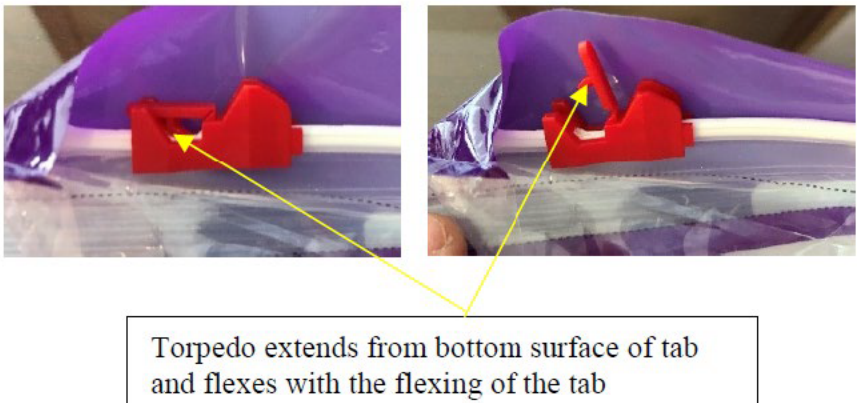
3. A child resistant slider zipper closure system according to claim 1 wherein:
 - (a) the slider includes a base having a top member and a bottom member; the bottom member including first and second legs;
 - (i) the base adapted to move along top edges of the tracks with the first and second legs straddling the tracks;
 - (ii) the tab extending from the top member of the base and spaced above the first and second legs of the base; the tab being constructed and arranged to flex relative to the base about a pivot axis in a direction toward and away from the first and second legs; and
 - (iii) the torpedo extending from a bottom surface of the tab and flexing toward and away from the first and second legs with flexing of the tab.

The Thomas Declaration shows each element of claim 3 of the '531 patent in the accused products:

Table 2. '531 Claim 3 Infringement Chart

Claim 3 Limitation	Element in Accused Product
3. A child resistant slider zipper closure system according to claim 1 wherein:	For claim 1, see Table 1.

Claim 3 Limitation	Element in Accused Product
(a) the slider includes a base having a top member and a bottom member;	 <p>top member</p> <p>base</p> <p>bottom member</p>
the bottom member including first and second legs;	 <p>first and second legs</p>
(i) the base adapted to move along top edges of the tracks with the first and second legs straddling the tracks;	<p>slider base is on the top edges of the tracks with the first and second legs straddling the tracks</p> 

Claim 3 Limitation	Element in Accused Product
<p>(ii) the tab extending from the top member of the base and spaced above the first and second legs of the base;</p>	 <p>tab extends from top member</p> <p>first and second legs</p> <p>tab spaced above legs</p>
<p>the tab being constructed and arranged to flex relative to the base about a pivot axis in a direction toward and away from the first and second legs; and</p>	 <p>tab flexes about pivot axis toward and away from legs</p> <p>pivot axis</p>
<p>(iii) the torpedo extending from a bottom surface of the tab and flexing toward and away from the first and second legs with flexing of the tab.</p>	 <p>Torpedo extends from bottom surface of tab and flexes with the flexing of the tab</p>

Thomas Decl. Ex. 4 at 4–6.

Based on this undisputed, substantial, reliable, and probative evidence, I find Presto has demonstrated infringement of claim 3 of the '531 patent.

3. Claim 5

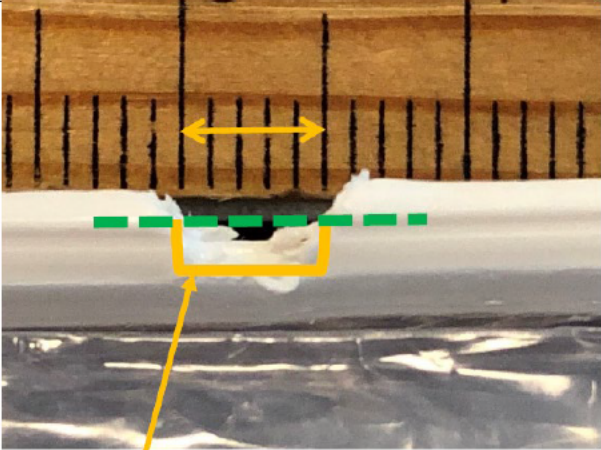
Claim 5 of the '531 patent depends from claim 1 as follows:

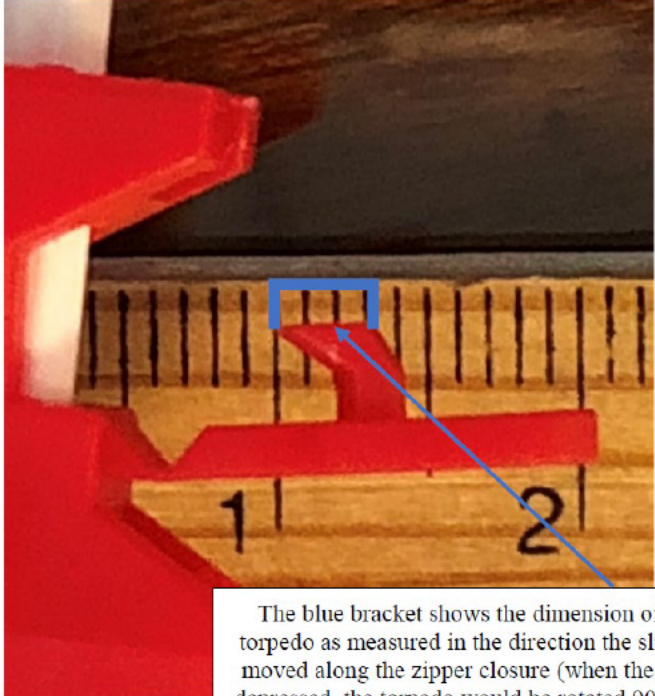
5. A child resistant slider zipper closure system according to claim 1 wherein:

(a) the notch has a length longer than a length of the torpedo.

The Thomas Declaration shows the additional limitation of claim 5 of the '531 patent in the accused products:

Table 3. '531 Claim 5 Infringement Chart

Claim 5 Limitation	Element in Accused Product
5. A child resistant slider zipper closure system according to claim 1 wherein:	For claim 1, see Table 1.
(a) the notch has a length longer than a length of the torpedo.	 <p data-bbox="672 1583 1386 1738">The yellow bracket shows the dimension of the notch between the complementary interlocking profiles (which are approximately midway up the track, as shown by the dotted green line) as measured in the direction the slider is moved along the zipper closure. The dimension is measured at 5 mm.</p>

Claim 5 Limitation	Element in Accused Product
	 <p data-bbox="873 871 1398 1094">The blue bracket shows the dimension of the torpedo as measured in the direction the slider is moved along the zipper closure (when the tab is depressed, the torpedo would be rotated 90° from its current position, but it has been flipped up to better show the torpedo). As shown, the dimension is 3 mm.</p>

Thomas Decl. Ex. 4 at 6–7.

Based on this undisputed, substantial, reliable, and probative evidence, I find Presto has demonstrated infringement of claim 5 of the '531 patent.


4. Claim 8

Claim 8 of the '531 patent depends from claim 1 as follows:

8. A child resistant slider zipper closure system according to claim 1 wherein:
 - (a) the male track includes a male profile, the female track includes a female profile, and the male and female profiles have complementary cross-sections for interlocking and for unlocking.

The Thomas Declaration shows the additional limitation of claim 8 of the '531 patent in the accused products:

Table 4. '531 Claim 8 Infringement Chart

Claim 8 Limitation	Element in Accused Product
8. A child resistant slider zipper closure system according to claim 1 wherein:	For claim 1, see Table 1.
(a) the male track includes a male profile, the female track includes a female profile, and the male and female profiles have complementary cross-sections for interlocking and for unlocking.	<div data-bbox="553 667 902 846" style="border: 1px solid black; padding: 5px; display: inline-block;">Complementary male and female interlocking profiles</div> 

Thomas Decl. Ex. 4 at 8.

Based on this undisputed, substantial, reliable, and probative evidence, I find Presto has demonstrated infringement of claim 8 of the '531 patent.

5. Claim 9

Independent claim 9 is directed to a “method of operating a zippered bag,” as follows:

9. A method of operating a zippered bag having an openable and recloseable mouth; the method comprising:

(a) providing a zippered bag having first and second panels each having a top forming the mouth, a bottom, and first and second opposing sides, the first and second panels being joined to each other along their respective bottoms, their respective first opposing sides, and their respective second opposing sides; a recloseable zipper closure including a male track and female track with complementary profiles for interlocking and unlocking; one profile being in proximity to the top of the first panel, and the other profile being in proximity to the top of the second panel; the complementary

profiles interlocking to close the mouth and unlocking to open the mouth; the zipper closure including a notch spaced from the first side; a slider located on the zipper closure; and

(b) opening the mouth by:

(i) moving the slider to the notch;

(ii) pressing down on a flexible tab on the slider to position a torpedo on the tab between the male track and female track; and

(iii) while pressing, moving the slider in an opening direction along the zipper closure to result in separation of the interlocking profiles.

To show infringement of a method claim, it is Presto's burden to prove that it is more likely than not that "one person somewhere in the United States had performed the claimed method" using the accused products. *See Lucent Techs., Inc. v. Gateway, Inc.*, 580 F.3d 1301, 1318 (Fed. Cir. 2009).

Here, Presto has adduced evidence of accused products on display at two trade shows in the United States, in 2017 and 2019. Morsheimer Decl. ¶¶ 5–6; Complaint Exs. 9 and 22. The goods displayed at the 2017 show in Anaheim, California, listed instructions for carrying out the method of claim 9, as shown in the image below:



Complaint Phys. Ex. 2. The instructions state:

HOW DOES IT WORK

Step 1: Align the slider with the notch



Step 2: Turn& [stet.] click the hook and ensure the “hook” is placed in the notch

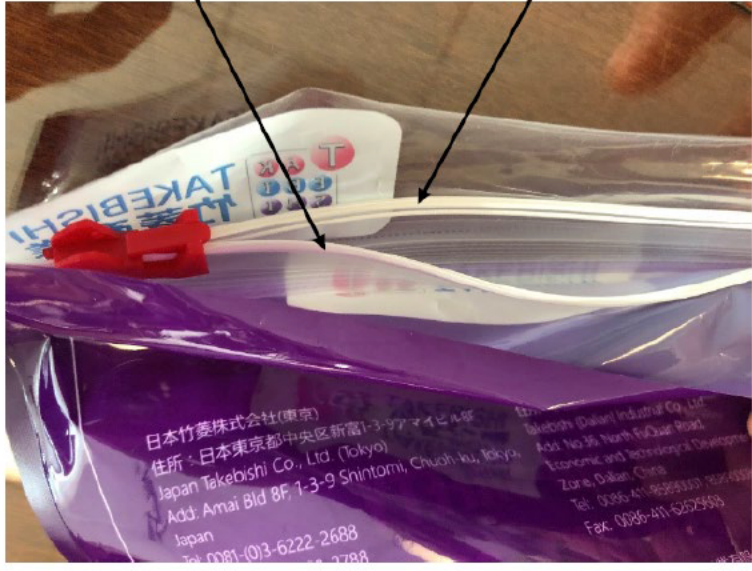
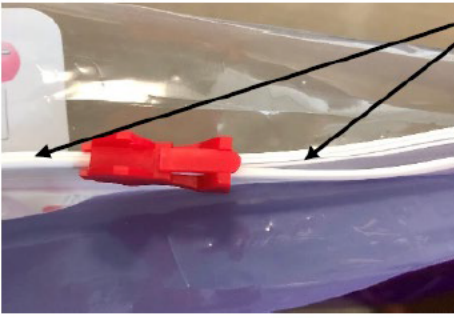
Step 3: Slide open


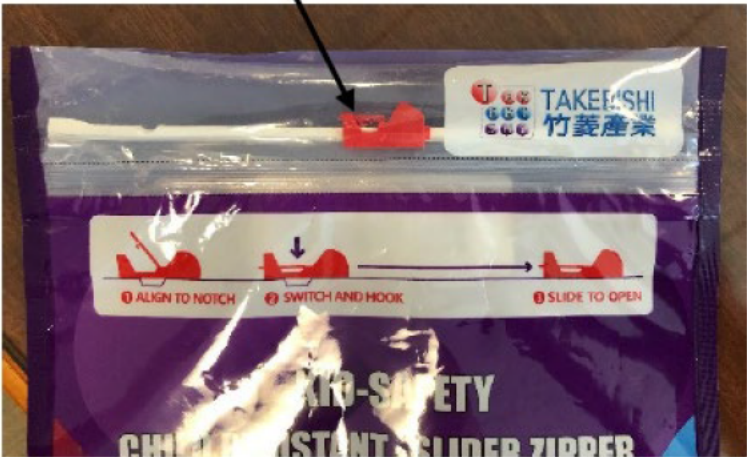
Id. The booth at the 2019 trade show in Rosemont, Illinois, had a sign with similar “HOW DOES IT WORK” instructions for operating the accused products. Complaint Ex. 9 (sign on right side of table).


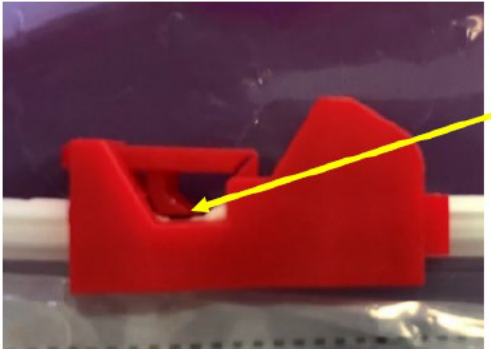
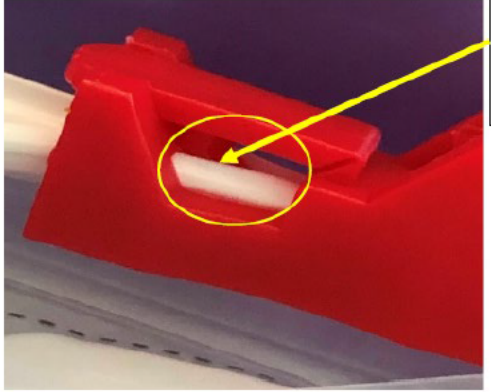
Presto also submitted the Thomas Declaration, which shows how the elements of the accused products are used to perform each step of claim 9 of the '531 patent:

Table 5. '531 Claim 9 Infringement Chart

Claim 9 Limitation	Element in Accused Product Used to Infringe
<p>9. A method of operating a zippered bag having an openable and recloseable mouth; the method comprising:</p>	 <p>openable and recloseable mouth</p> <p>teaches method of operating zippered bag</p>
<p>(a) providing a zippered bag having first and second panels each having a top forming the mouth, a bottom, and first and second opposing sides, the first and second panels being joined to each other along their respective bottoms, their respective first opposing sides, and their respective second opposing sides;</p>	 <p>first and second panels form a mouth</p> <p>bag is zippered</p> <p>Panels joined along bottom, first and second opposing sides</p>

Claim 9 Limitation	Element in Accused Product Used to Infringe
<p>a recloseable zipper closure including a male track and female track with complementary profiles for interlocking and unlocking; one profile being in proximity to the top of the first panel, and the other profile being in proximity to the top of the second panel;</p>	<div data-bbox="698 315 933 420">male track proximate the top of the first panel</div> <div data-bbox="1071 315 1307 420">female track proximate the top of the second panel</div> 
<p>the complementary profiles interlocking to close the mouth and unlocking to open the mouth;</p>	 <div data-bbox="1144 1050 1388 1186">complementary profiles interlock to open or close the mouth</div>

Claim 9 Limitation	Element in Accused Product Used to Infringe
<p>the zipper closure including a notch spaced from the first side;</p>	<p>notch spaced from first side</p> 
<p>a slider located on the zipper closure; and</p>	<p>slider on the zipper</p> 

Claim 9 Limitation	Element in Accused Product Used to Infringe
<p>(b) opening the mouth by:</p> <p>(i) moving the slider to the notch;</p> <p>(ii) pressing down on a flexible tab on the slider to position a torpedo on the tab between the male track and female track; and</p> <p>(iii) while pressing, moving the slider in an opening direction along the zipper closure to result in separation of the interlocking profiles.</p>	<div data-bbox="646 289 1133 583">  <p data-bbox="1157 300 1393 447">Bag instructs to align with notch, depress the tab to position the torpedo, and slide</p> </div> <div data-bbox="646 594 1133 940">  <p data-bbox="1157 678 1393 741">Torpedo fits in notch</p> </div> <div data-bbox="646 993 1133 1381">  <p data-bbox="1157 1003 1369 1119">Torpedo separates profiles while notch is held down into profiles</p> </div>

Thomas Decl. Ex. 4 at 10-8 to 10-12.

The undisputed evidence submitted by Presto is sufficient to find that the patented method of claim 9 has been performed in the United States without authorization from Presto. A representative of Dalian Altma displayed an accused product designed to perform the patented method at two trade shows in the United States. Complaint Exs. 9 and 22. The accused product displayed a one show had instructions for performing the method written upon it. Morsheimer

Decl. ¶¶ 5–6; Complaint Phys. Ex. 2. The table at the other trade show had a sign with instructions for performing the claimed method. Complaint Ex. 9. The record thus shows it is more likely than not that Dalian Altma imported accused products into the United States and its representatives demonstrated the patented method at the Anaheim and Rosemont trade shows using those products. I also find it more likely than not that visitors to the Dalian Altma booths at the trade shows also performed the method using the accused products. I therefore find Presto has demonstrated infringement of claim 9 of the '531 patent by substantial, reliable, and probative evidence. *See Certain Blood Cholesterol Testing Strips and Associated Systems Containing the Same*, Inv. No. 337-TA-1116, Comm'n Op. at 25 (Apr. 16, 2020) (“*Cholesterol Testing Strips*”) (finding a violation of section 337 based on infringement of a method claim where respondent imported an accused product into the United States and used it to perform the claimed method).

6. Claim 10

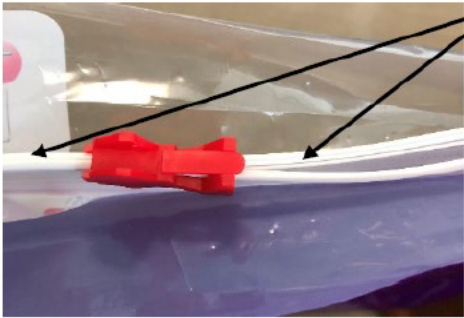
Method claim 10 depends from claim 9 as follows:

10. A method according to claim 9 further including:

(a) closing the mouth by moving the slider in a closing direction along the track to interlock the profiles.

The Thomas Declaration shows how the accused products are used to perform the additional step recited in claim 10:

Table 6. '531 Claim 10 Infringement Chart

Claim 10 Limitation	Element in Accused Product Used to Infringe
10. A method according to claim 9 further including:	For claim 9, see Table 5 and discussion above.
(a) closing the mouth by moving the slider in a closing direction along the track to interlock the profiles.	 <div data-bbox="1157 449 1403 657" style="border: 1px solid black; padding: 5px;"> complementary profiles interlock to open or close the mouth depending on direction of movement of slider </div>

Thomas Decl. Ex. 4 at 10-12 to 10-13.

For the reasons discussed above in connection with claim 9, and in view of the substantial, reliable, and probative evidence submitted in connection with claim 10, I find Presto has demonstrated infringement of claim 9 of the '531 patent. *See Cholesterol Testing Strips*, Comm'n Op. at 25.

B. U.S. Patent No. 9,554,628

Presto seeks a finding that the accused products infringe claims 1, 4, 6–8, 11, 12, 15, and 19 of the '628 patent. *See Memo.* at 25. In support of the pending motion, Presto submitted the Declaration of Toby Thomas, which included claim charts showing each limitation of the asserted claims present in the accused products. *See Thomas Decl. Ex. 5.* I evaluate that evidence below.

1. Claim 1

Independent claim 1 of the '628 patent recites:

1. A slider for a zipper closure having a male track and a female track with complementary profiles for interlocking and unlocking; the slider comprising:

(a) a base having a top member and a bottom member; the bottom member including first and second legs each terminating in an end wall;

(i) the base adapted to move along top edges of the tracks with the first and second legs straddling the tracks;

(b) a tab extending from the top member of the base and being spaced above the first and second legs of the base such that there is a cavity of open volume in between, the cavity being leg-free, sidewall-free, and free of other slider structure so that the open volume of the cavity extends from the end wall between the tab and the first and second legs; the tab being constructed and arranged to flex relative to the base about a pivot axis in a direction toward and away from the first and second legs;

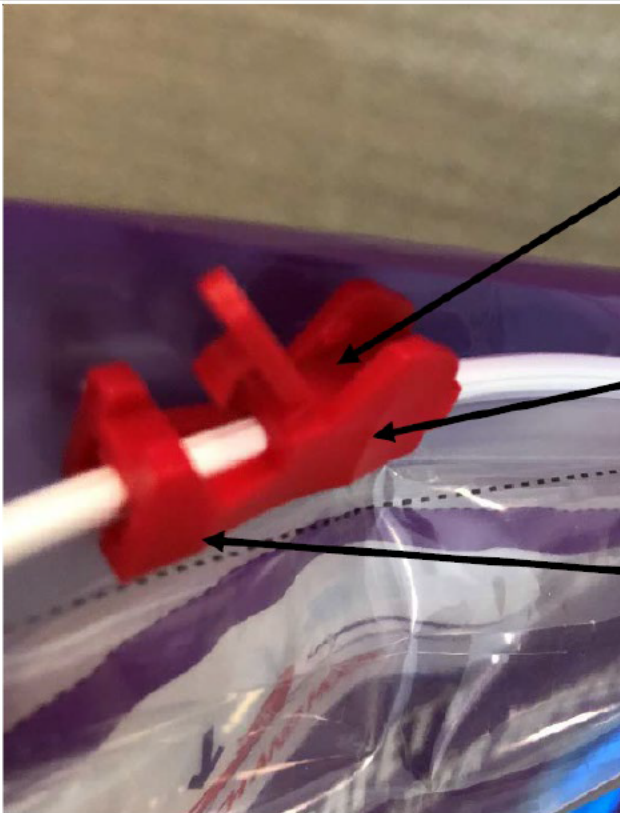

(c) a torpedo extending from a bottom surface of the tab and moving toward and away from the first and second legs with flexing of the tab; the torpedo being selectively moveable into a position to be between the male track and female track and result in separation of the interlocking profiles as the slider is moved in an opening direction along the zipper closure; and

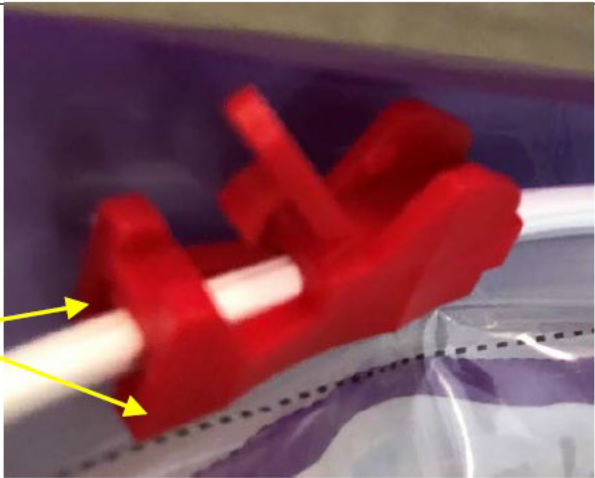
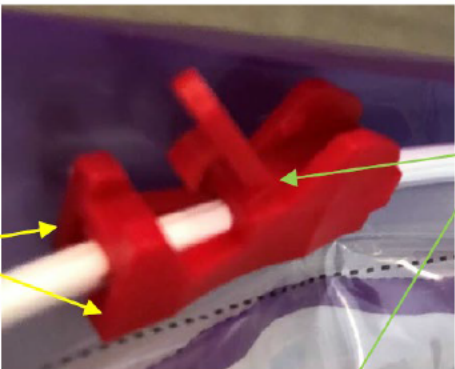
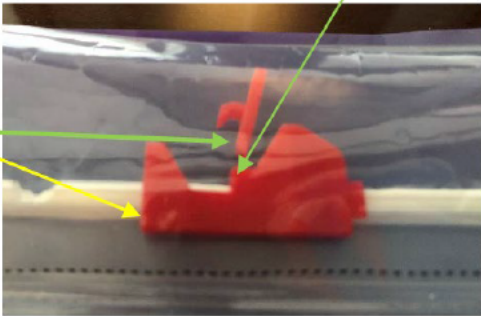
(d) the first and second legs having internal surfaces spaced sufficiently close together to press the profiles into interlocking relationship as the slider is moved in a closing direction along the zipper closure.

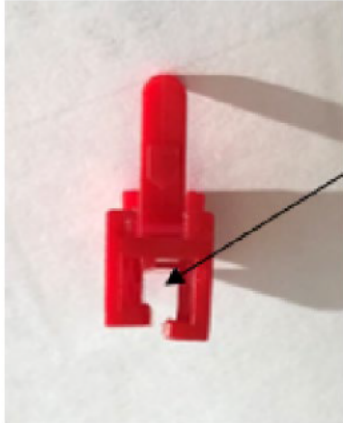
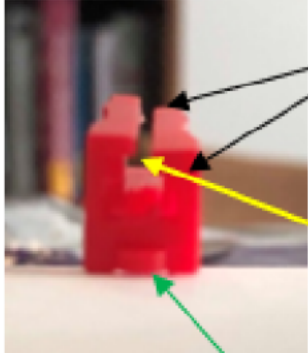
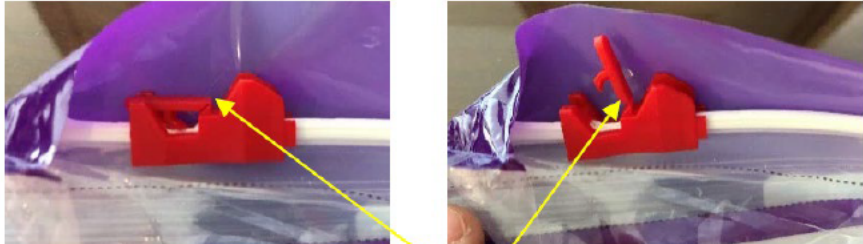
The Thomas Declaration shows each element of claim 1 of the '628 patent in the accused products:

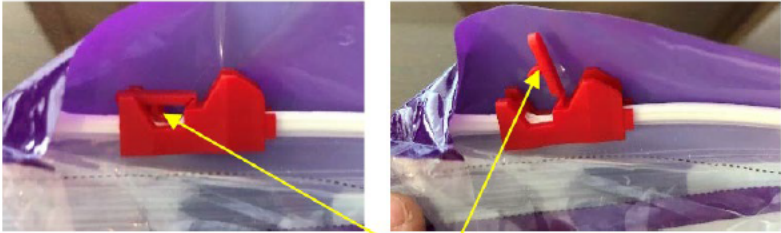


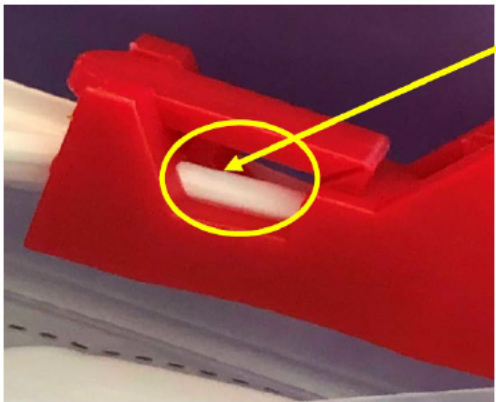
Table 7. '628 Claim 1 Infringement Chart

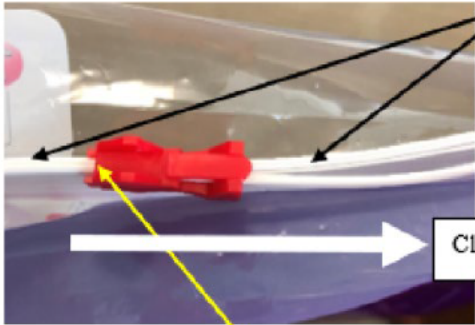
Claim 1 Limitation	Element in Accused Product
1. A slider for a zipper closure having a male track and a female track with complementary profiles for interlocking and unlocking; the slider comprising:	<div data-bbox="550 1394 1055 1677"> </div> <div data-bbox="1084 1381 1377 1591"> <p>Accused product includes a slider to open and close interlocking profiles</p> </div>

Claim 1 Limitation	Element in Accused Product
<p>(a) a base having a top member and a bottom member;</p>	 <p>top member</p> <p>base</p> <p>bottom member</p>
<p>the bottom member including first and second legs each terminating in an end wall;</p>	<p>first and second legs terminating in end wall</p> 

Claim 1 Limitation	Element in Accused Product
(i) the base adapted to move along top edges of the tracks with the first and second legs straddling the tracks;	<div data-bbox="558 310 764 814"><p>slider base is on the top edges of the tracks with the first and second legs straddling the tracks</p></div> 
(b) a tab extending from the top member of the base and being spaced above the first and second legs of the base	 <div data-bbox="1240 842 1398 1005"><p>tab extends from top member</p></div> <div data-bbox="548 1087 706 1215"><p>first and second legs</p></div>  <div data-bbox="570 1360 727 1528"><p>tab spaced above legs</p></div>

Claim 1 Limitation	Element in Accused Product
<p>such that there is a cavity of open volume in between, the cavity being leg-free, sidewall-free, and free of other slider structure</p>	 <p>cavity of open volume that is leg-free, sidewall-free, and free of other slider structure</p>
<p>so that the open volume of the cavity extends from the end wall between the tab and the first and second legs;</p>	 <p>End walls</p> <p>Open volume extends along slider from end wall to end wall between tab and legs</p> <p>tab</p>
<p>the tab being constructed and arranged to flex relative to the base about a pivot axis in a direction toward and away from the first and second legs;</p>	 <p>tab flexes about pivot axis toward and away from legs</p> <p>pivot axis</p>

Claim 1 Limitation	Element in Accused Product
(c) a torpedo extending from a bottom surface of the tab and moving toward and away from the first and second legs with flexing of the tab;	 <p data-bbox="706 562 1305 646">Torpedo extends from bottom surface of tab and flexes with the flexing of the tab</p>
the torpedo being selectively moveable into a position to be between the male track and female track and result in separation of the interlocking profiles as the slider is moved in an opening direction along the zipper closure; and	 <p data-bbox="1114 663 1360 827">Bag instructs to align with notch, depress the tab to position the torpedo, and slide</p>  <p data-bbox="1114 1058 1351 1136">Torpedo fits in notch</p>  <p data-bbox="1089 1339 1333 1467">Torpedo separates profiles while notch is held down into profiles</p>

Claim 1 Limitation	Element in Accused Product
<p>(d) the first and second legs having internal surfaces spaced sufficiently close together to press the profiles into interlocking relationship as the slider is moved in a closing direction along the zipper closure.</p>	 <p>complementary profiles interlock to open or close the mouth depending on direction of movement of slider</p> <p>Closing direction</p> <p>Track forced together by spacing of legs</p>

Thomas Decl. Ex. 5 at 1–6.

Based on this undisputed, substantial, reliable, and probative evidence, I find Presto has demonstrated infringement of claim 1 of the '628 patent.

2. Claim 4

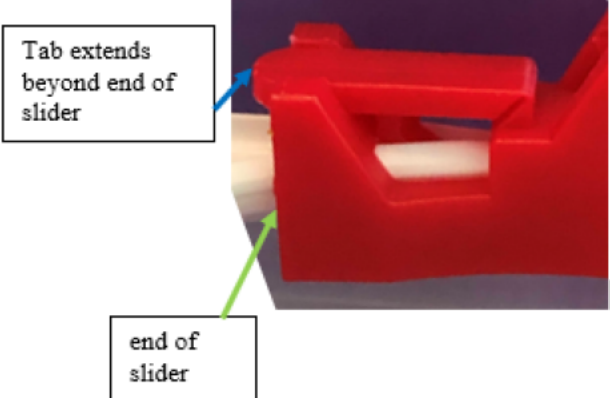
Claim 4 of the '628 patent depends from claim 1 as follows:

4. A slider according to claim 1 wherein:

(a) the tab has an end extending beyond an end of the slider.

The Thomas Declaration shows the additional limitation of claim 4 of the '628 patent in the accused products:

Table 8. '628 Claim 4 Infringement Chart

Claim 4 Limitation	Element in Accused Product
4. A slider according to claim 1 wherein:	For claim 1, see Table 7.
(a) the tab has an end extending beyond an end of the slider.	

Thomas Decl. Ex. 5 at 7.

Based on this undisputed, substantial, reliable, and probative evidence, I find Presto has demonstrated infringement of claim 4 of the '628 patent.

3. Claim 6

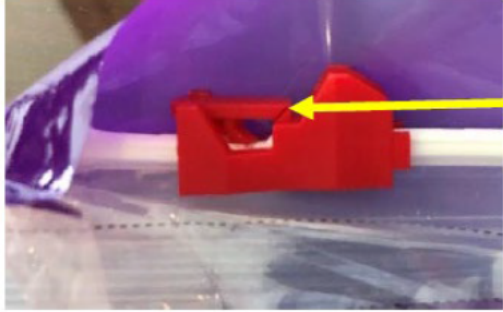
Claim 6 of the '628 patent depends from claim 1 as follows:

6. A slider according to claim 1 wherein:

(a) the tab extends in a horizontal direction relative to the base.

The Thomas Declaration shows the additional limitation of claim 6 of the '628 patent in the accused products:

Table 9. '628 Claim 6 Infringement Chart

Claim 6 Limitation	Element in Accused Product
6. A slider according to claim 1 wherein:	For claim 1, see Table 7.
(a) the tab extends in a horizontal direction relative to the base.	 <div data-bbox="1166 520 1396 636" style="border: 1px solid black; padding: 5px; display: inline-block;">Tab extends horizontally</div>

Thomas Decl. Ex. 5 at 7.

Based on this undisputed, substantial, reliable, and probative evidence, I find Presto has demonstrated infringement of claim 6 of the '628 patent.

4. Claim 7

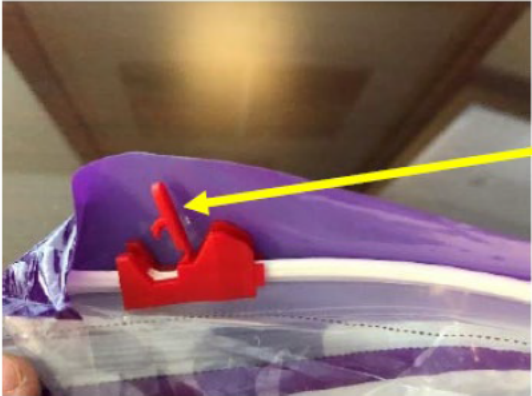
Claim 7 of the '628 patent depends from claim 1 as follows:

7. A slider according to claim 1 wherein:

(a) the tab extends in an upward direction from the base.

The Thomas Declaration shows the additional limitation of claim 7 of the '628 patent in the accused products:

Table 10. '628 Claim 7 Infringement Chart

Claim 7 Limitation	Element in Accused Product
7. A slider according to claim 1 wherein:	For claim 1, see Table 7.
(a) the tab extends in an upward direction from the base.	 <div data-bbox="1170 520 1406 642" style="border: 1px solid black; padding: 5px; display: inline-block;">Tab extends upward</div>

Thomas Decl. Ex. 5 at 8.

Based on this undisputed, substantial, reliable, and probative evidence, I find Presto has demonstrated infringement of claim 7 of the '628 patent.

5. Claim 8

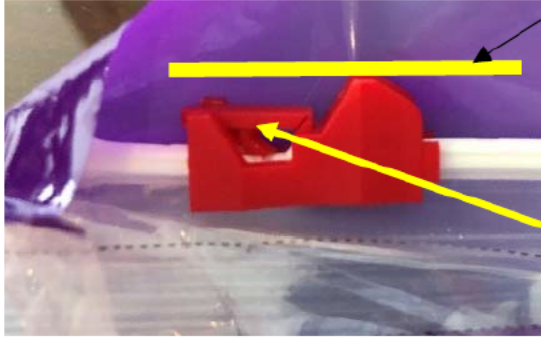
Claim 8 of the '628 patent depends from claim 1 as follows:

8. A slider according to claim 1 wherein:

(a) the tab extends in a downward direction from the base.

The Thomas Declaration shows the additional limitation of claim 8 of the '628 patent in the accused products:

Table 11. '628 Claim 8 Infringement Chart

Claim 8 Limitation	Element in Accused Product
8. A slider according to claim 1 wherein:	For claim 1, see Table 7.
(a) the tab extends in a downward direction from the base.	<p data-bbox="532 436 974 457">the topmost surface of the base.</p>  <div data-bbox="1112 447 1401 611">Yellow horizontal line along the topmost surface of the base</div> <div data-bbox="1112 657 1385 821">The tab is positioned below the yellow horizontal line</div>

Thomas Decl. Ex. 5 at 8.

Based on this undisputed, substantial, reliable, and probative evidence, I find Presto has demonstrated infringement of claim 8 of the '628 patent.

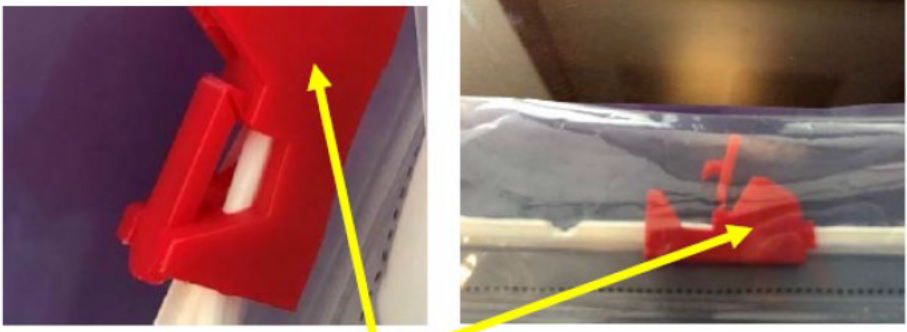
6. Claim 11

Claim 11 of the '628 patent depends from claim 1 as follows:

11. A slider according to claim 1 wherein the slider is molded a single piece.

The Thomas Declaration shows the additional limitation of claim 11 of the '628 patent in the accused products:

Table 12. '628 Claim 11 Infringement Chart

Claim 11 Limitation	Element in Accused Product
11. A slider according to claim 1	For claim 1, see Table 7.
wherein the slider is molded a single piece.	 <p data-bbox="699 877 1211 951">Slider is a single molded piece</p>

Thomas Decl. Ex. 5 at 8–9.

Based on this undisputed, substantial, reliable, and probative evidence, I find Presto has demonstrated infringement of claim 11 of the '628 patent.

7. Claim 12

Independent claim 12 of the '628 patent recites:

12. A slider for a zipper closure having a male track and a female track with complementary profiles for interlocking and unlocking; the slider comprising:

(a) a base having a top member and a bottom member; the bottom member including first and second legs;

(i) the base adapted to move along top edges of the tracks with the first and second legs straddling the tracks;


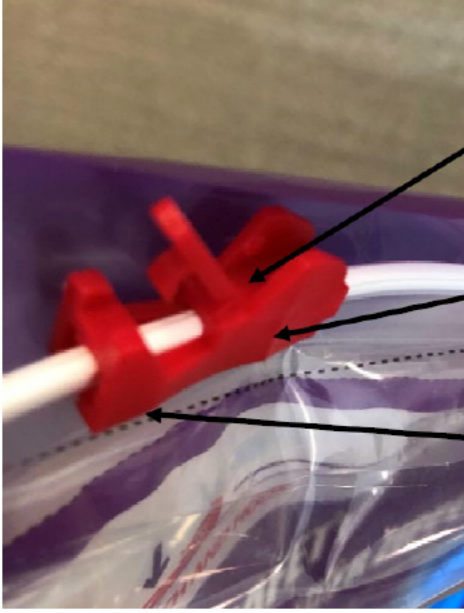
(b) a tab extending from the top member of the base and being spaced above the first and second legs of the base; the tab being constructed and arranged to flex relative to the base about a pivot axis in a direction toward and away from the first and second legs, and the tab extending in a downward direction from the base;


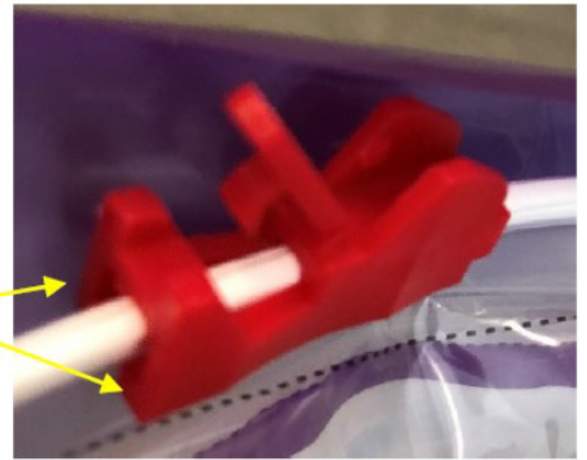
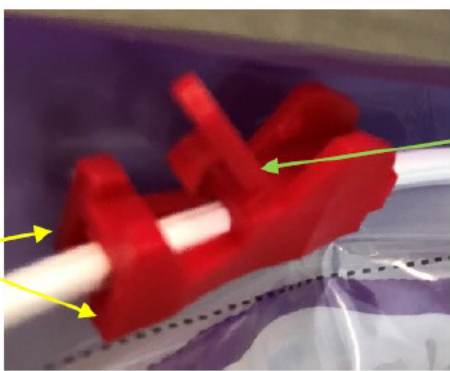
(c) a torpedo extending from a bottom surface of the tab and moving toward and away from the first and second legs with flexing of the tab; the torpedo being selectively moveable into a position to be between the male track and female track and result in separation of the interlocking profiles as the slider is moved in an opening direction along the zipper closure; and

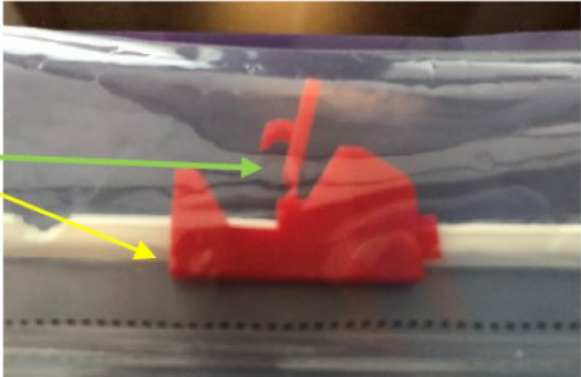
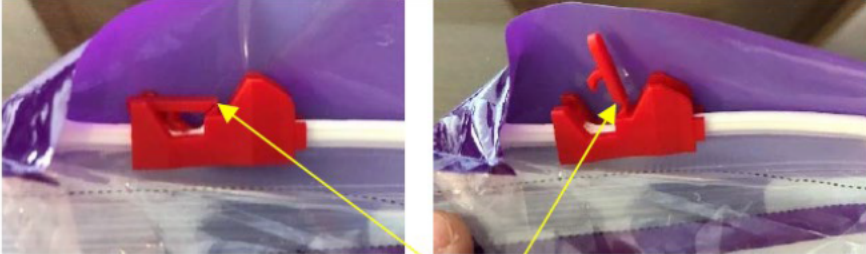
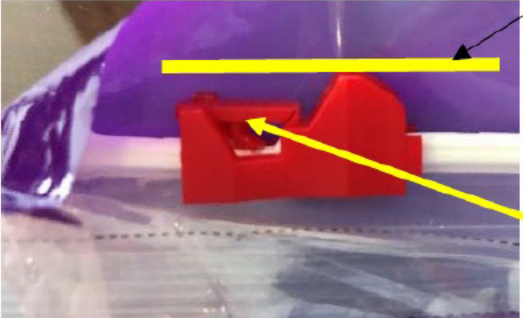
(d) the first and second legs having internal surfaces spaced sufficiently close together to press the profiles into interlocking relationship as the slider is moved in a closing direction along the zipper closure.

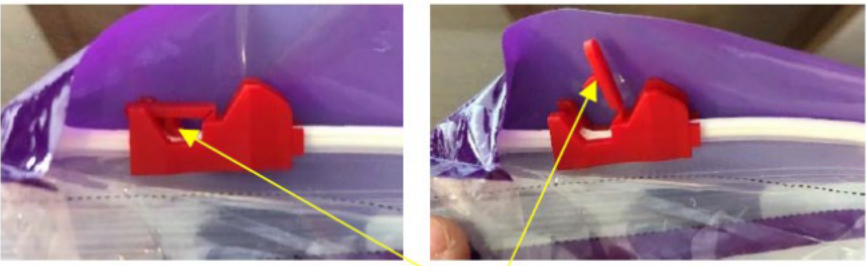

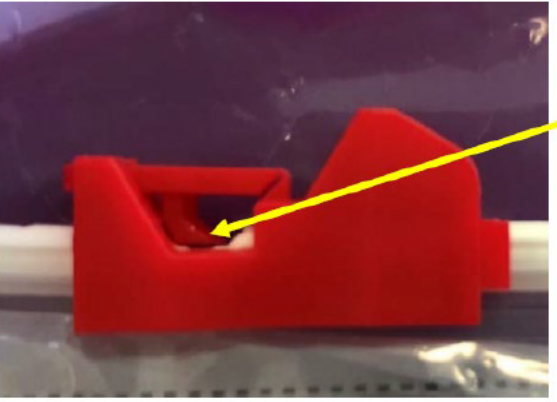
The Thomas Declaration shows each element of claim 12 of the '628 patent in the accused products:

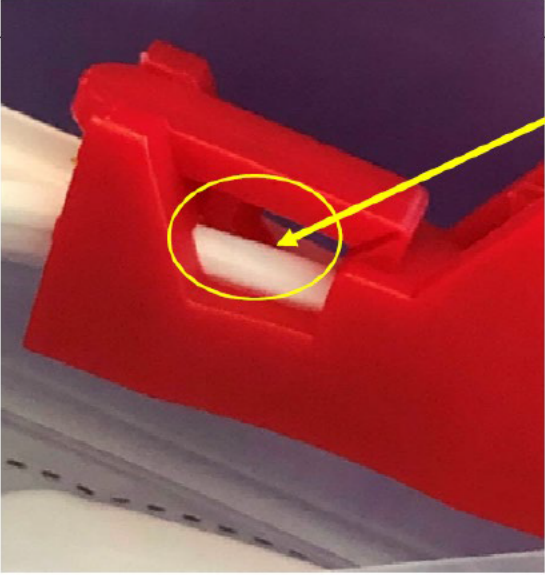
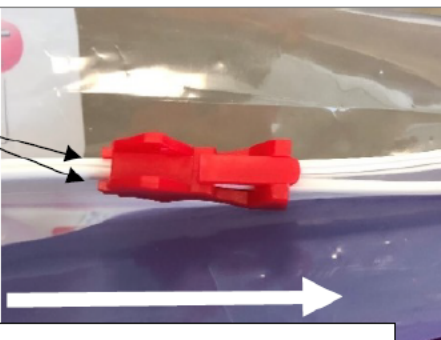
Table 13. '628 Claim 12 Infringement Chart

Claim 12 Limitation	Element in Accused Product
12. A slider for a zipper closure having a male track and a female track with complementary profiles for interlocking and unlocking; the slider comprising:	 <div data-bbox="1101 873 1401 1087" style="border: 1px solid black; padding: 5px;"> <p>Accused product includes a slider to open and close interlocking profiles</p> </div>
(a) a base having a top member and a bottom member;	 <div data-bbox="1149 1297 1287 1377" style="border: 1px solid black; padding: 2px;">top member</div> <div data-bbox="1149 1465 1247 1520" style="border: 1px solid black; padding: 2px;">base</div> <div data-bbox="1149 1587 1287 1667" style="border: 1px solid black; padding: 2px;">bottom member</div>

Claim 12 Limitation	Element in Accused Product
the bottom member including first and second legs;	<div data-bbox="548 590 753 751">first and second legs</div> 
(i) the base adapted to move along top edges of the tracks with the first and second legs straddling the tracks;	<div data-bbox="548 800 753 1272">slider base is on the top edges of the tracks with the first and second legs straddling the tracks</div> 
(b) a tab extending from the top member of the base and being spaced above the first and second legs of the base;	<div data-bbox="570 1535 727 1656">first and second legs</div>  <div data-bbox="1235 1335 1390 1499">tab extends from top member</div>

Claim 12 Limitation	Element in Accused Product
	<div data-bbox="565 409 760 604" style="border: 1px solid black; padding: 5px; display: inline-block;">tab spaced above legs</div> 
the tab being constructed and arranged to flex relative to the base about a pivot axis in a direction toward and away from the first and second legs,	 <div data-bbox="548 961 865 1115" style="border: 1px solid black; padding: 5px; display: inline-block;">tab flexes about pivot axis toward and away from legs</div> <div data-bbox="954 982 1136 1066" style="border: 1px solid black; padding: 5px; display: inline-block;">pivot axis</div>
and the tab extending in a downward direction from the base;	 <div data-bbox="1117 1192 1393 1339" style="border: 1px solid black; padding: 5px; display: inline-block;">Yellow horizontal line along the topmost surface of the base</div> <div data-bbox="1101 1392 1377 1549" style="border: 1px solid black; padding: 5px; display: inline-block;">The tab is positioned below the yellow horizontal line</div>

Claim 12 Limitation	Element in Accused Product
<p>(c) a torpedo extending from a bottom surface of the tab and moving toward and away from the first and second legs with flexing of the tab;</p>	<div data-bbox="548 289 1409 552">  </div> <div data-bbox="678 594 1344 699"> <p>Torpedo extends from bottom surface of tab and flexes with the flexing of the tab</p> </div>
<p>the torpedo being selectively moveable into a position to be between the male track and female track and result in separation of the interlocking profiles as the slider is moved in an opening direction along the zipper closure; and</p>	<div data-bbox="548 709 1101 1056">  </div> <div data-bbox="1117 720 1393 909"> <p>Bag instructs to align with notch, depress the tab to position the torpedo, and slide</p> </div> <div data-bbox="548 1087 1101 1486">  </div> <div data-bbox="1117 1171 1393 1266"> <p>Torpedo fits in notch</p> </div>

Claim 12 Limitation	Element in Accused Product
	 <div data-bbox="1128 325 1398 485"> <p>Torpedo separates profiles while notch is held down into profiles</p> </div>
<p>(d) the first and second legs having internal surfaces spaced sufficiently close together to press the profiles into interlocking relationship as the slider is moved in a closing direction along the zipper closure.</p>	<div data-bbox="537 898 873 1094"> <p>internal surfaces of legs close the profiles when moved in closing direction (shown here left to right)</p> </div>  <div data-bbox="959 1188 1360 1247"> <p>Closing direction (left to right)</p> </div>

Thomas Decl. Ex. 5 at 9–15.

Based on this undisputed, substantial, reliable, and probative evidence, I find Presto has demonstrated infringement of claim 12 of the '628 patent.

8. Claim 15

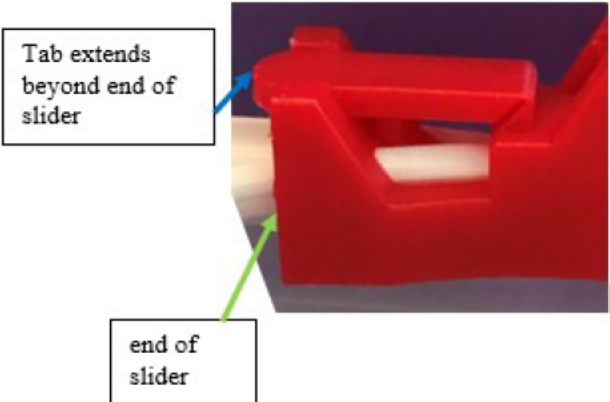
Claim 15 of the '628 patent depends from claim 12 as follows:

15. A slider according to claim 12 wherein:

(a) the tab has an end extending beyond an end of the slider.

The Thomas Declaration shows the additional limitation of claim 15 of the '628 patent in the accused products:

Table 14. '628 Claim 15 Infringement Chart

Claim 15 Limitation	Element in Accused Product
15. A slider according to claim 12 wherein:	For claim 12, see Table 13.
(a) the tab has an end extending beyond an end of the slider.	

Thomas Decl. Ex. 5 at 15.

Based on this undisputed, substantial, reliable, and probative evidence, I find Presto has demonstrated infringement of claim 15 of the '628 patent.

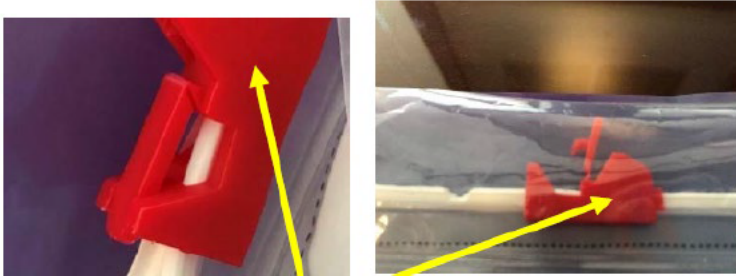
9. Claim 19

Claim 19 of the '628 patent depends from claim 12 as follows:

19. A slider according to claim 12 wherein the slider is molded as a single piece.

The Thomas Declaration shows the additional limitation of claim 19 of the '628 patent in the accused products:

Table 15. '628 Claim 19 Infringement Chart

Claim 19 Limitation	Element in Accused Product
19. A slider according to claim 12	For claim 12, see Table 13.
wherein the slider is molded as a single piece.	 <p>Slider is a single molded piece</p>

Thomas Decl. Ex. 5 at 15–16.

Based on this undisputed, substantial, reliable, and probative evidence, I find Presto has demonstrated infringement of claim 19 of the '628 patent.

C. U.S. Patent No. 10,273,058

Presto seeks a finding that the accused products infringe claims 1, 3, 5, and 8 of the '058 patent. *See* Memo. at 39. In support of the pending motion, Presto submitted the Declaration of Toby Thomas, which included claim charts showing each limitation of claims 1, 5, and 8 present in the accused products. *See* Thomas Decl. Ex. 6. I evaluate that evidence below.

1. Claim 1


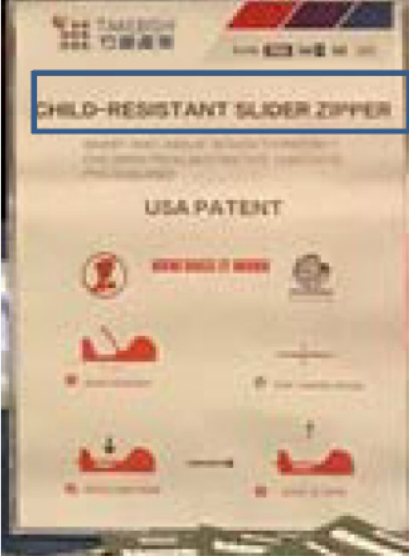

Independent claim 1 of the '058 patent recites:

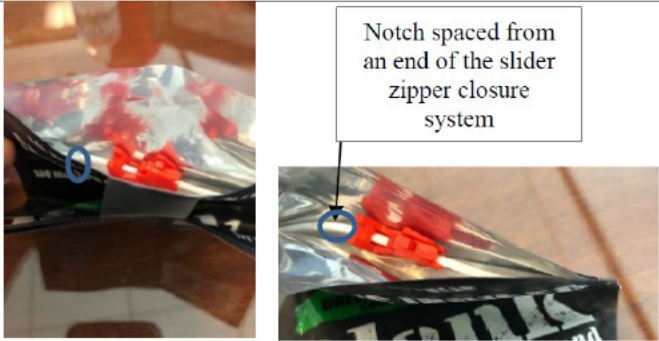
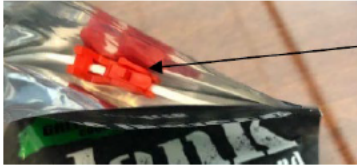
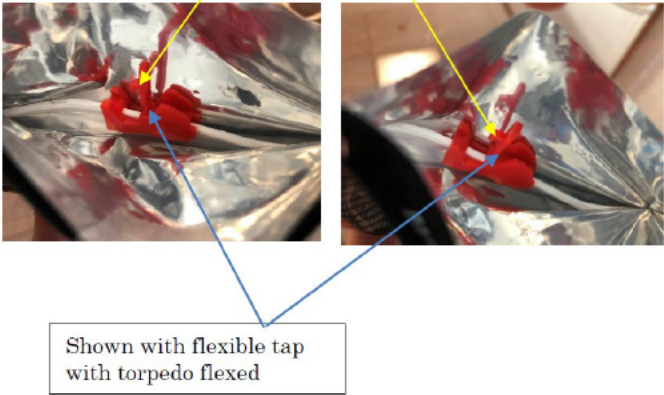
1. A child resistant slider zipper closure system comprising:
 - (a) a reclosable zipper closure with a male track and a female track having complementary profiles for interlocking and unlocking;
 - (b) a notch in the zipper closure; the notch being spaced from an end of the slider zipper closure system; and

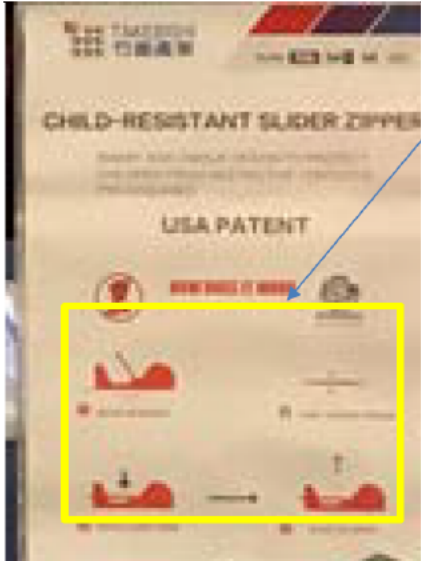

(c) a slider being slidably located on the zipper closure, the slider including a flexible tab with a torpedo; when the slider is moved into a vicinity of the notch, the tab being selectively moveable into a position to insert the torpedo between the male track and female track and result in separation of the interlocking complementary profiles as the slider is moved in an opening direction along the zipper closure.



The Thomas Declaration shows each element of claim 1 of the '058 patent in the accused products:

Table 16. '058 Claim 1 Infringement Chart

Claim 1 Limitation	Element in Accused Product
<p>1. A child resistant slider zipper closure system comprising:</p>	<div data-bbox="748 764 1122 936">  </div> <div data-bbox="1182 816 1404 905"> <p>Zipper closure system</p> </div> <div data-bbox="748 947 1154 1499">  </div> <div data-bbox="1182 1104 1404 1205"> <p>Advertised as "child-resistant slider zipper"</p> </div>
<p>(a) a reclosable zipper closure with a male track and a female track having complementary profiles for interlocking and unlocking;</p>	<div data-bbox="748 1535 1122 1703">  </div> <div data-bbox="1166 1524 1404 1598"> <p>Track with interlocking profiles</p> </div>

Claim 1 Limitation	Element in Accused Product
(b) a notch in the zipper closure; the notch being spaced from an end of the slider zipper closure system; and	 <p>Notch spaced from an end of the slider zipper closure system</p>
(c) a slider being slidably located on the zipper closure,	 <p>Slider slidably located on zipper closure</p>
the slider including a flexible tab with a torpedo;	 <p>torpedo</p> <p>Shown with flexible tap with torpedo flexed</p>

Claim 1 Limitation	Element in Accused Product
<p>when the slider is moved into a vicinity of the notch, the tab being selectively moveable into a position to insert the torpedo between the male track and female track</p>	<div data-bbox="743 283 1161 840">An advertisement for a "CHILD-RESISTANT SLIDER ZIPPER" featuring a "USA PATENT". It shows a red slider with a tab and a torpedo. A yellow box highlights the torpedo, and a blue arrow points to the tab.</div> <div data-bbox="1185 294 1404 724"><p>Advertisement demonstrating the tab being selectively moveable into a position to be between the male track and female track and result in separation of the interlocking complementary profiles as the slider is moved in an opening direction along the zipper closure</p></div> <div data-bbox="743 850 1209 1459">A close-up photograph of a red slider on a zipper. A yellow circle highlights a notch in the slider, and a yellow arrow points to it from the label "Torpedo in notch".</div> <div data-bbox="1258 934 1404 1018"><p>Torpedo in notch</p></div>

Claim 1 Limitation	Element in Accused Product
	<p data-bbox="1182 296 1393 453">See also instructions from other infringing Takebishi bag stating "ALIGN TO NOTCH" prior to opening</p> 
<p data-bbox="204 915 708 1052">and result in separation of the interlocking complementary profiles as the slider is moved in an opening direction along the zipper closure.</p>	 <p data-bbox="1190 821 1382 947">torpedo separates complementary profiles as the slide is moved in an opening</p>

Thomas Decl. Ex. 6 at 1–4.

Based on this undisputed, substantial, reliable, and probative evidence, I find Presto has demonstrated infringement of claim 1 of the '058 patent.

2. Claim 3

Claim 5 of the '058 patent depends from claim 1 as follows:

3. A child resistant slider zipper closure system according to claim 1 wherein:

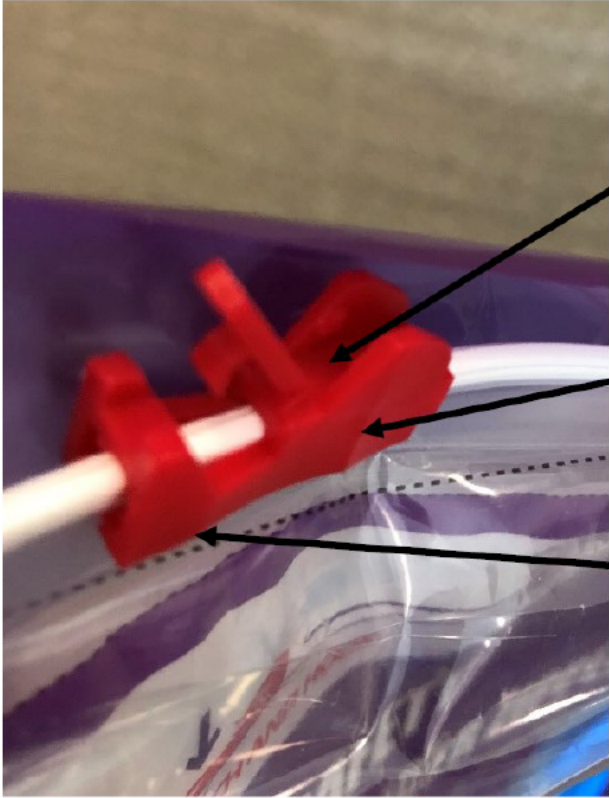
- (a) the slider includes a base having a top member and a bottom member; the bottom member including first and second legs;
 - (i) the base adapted to move along top edges of the tracks with the first and second legs straddling the tracks;

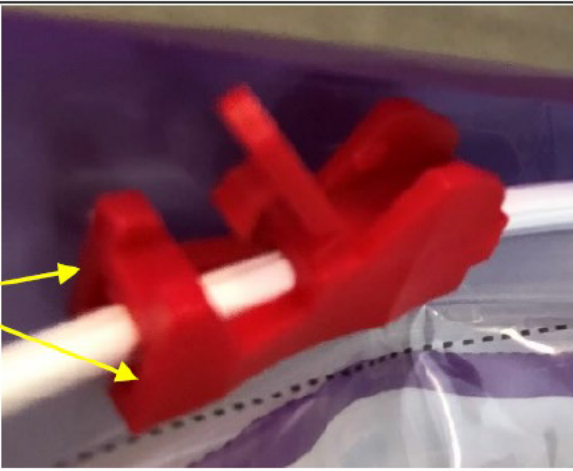
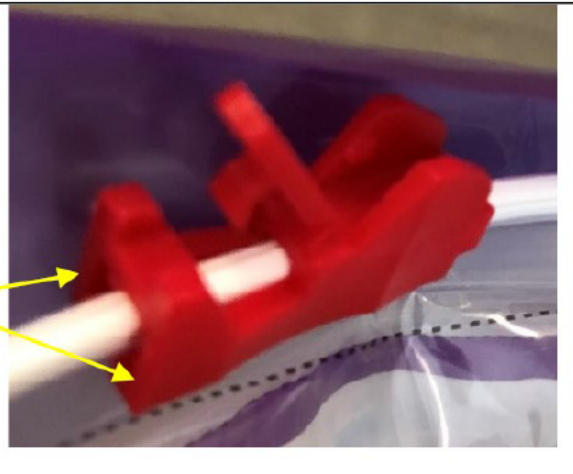
(ii) the tab extending from the top member of the base and spaced above the first and second legs of the base; the tab being constructed and arranged to flex relative to the base about a pivot axis in a direction toward and away from the first and second legs; and

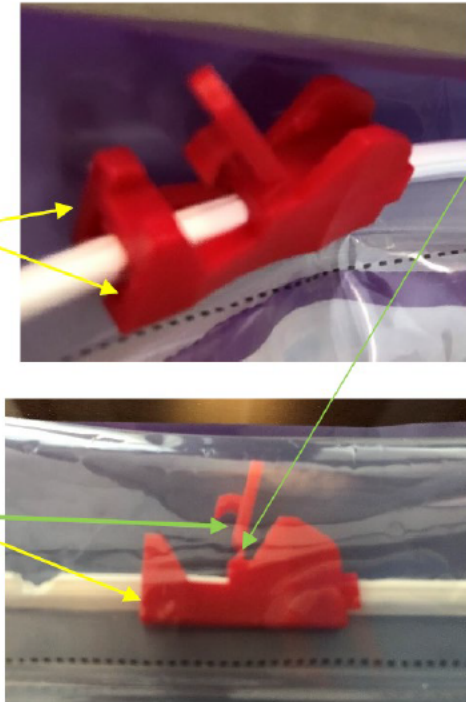
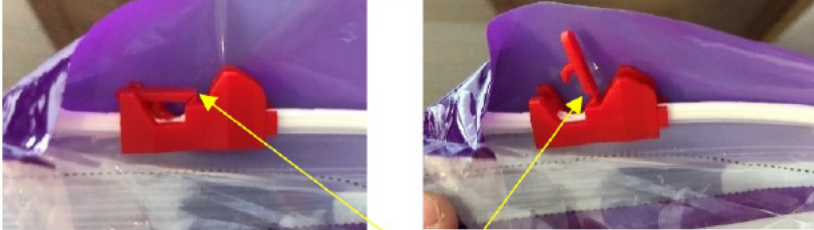
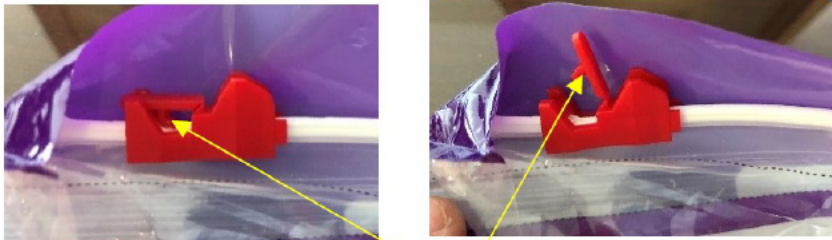
(iii) the torpedo extending from a bottom surface of the tab and flexing toward and away from the first and second legs with flexing of the tab.

The Thomas Declaration shows the additional limitation of claim 3 of the '058 patent in the accused products:

Table 17. '058 Claim 3 Infringement Chart

Claim 3 Limitation	Element in Accused Product
A child resistant slider zipper closure system according to claim 1 wherein:	For claim 1, see Table 16.
wherein: (a) the slider includes a base having a top member and a bottom member;	 <div data-bbox="1224 1066 1403 1167">top member</div> <div data-bbox="1224 1283 1349 1356">base</div> <div data-bbox="1224 1440 1403 1541">bottom member</div>

Claim 3 Limitation	Element in Accused Product	
<p>the bottom member including first and second legs;</p>	<p>first and second legs</p>	
<p>(i) the base adapted to move along top edges of the tracks with the first and second legs straddling the tracks;</p>	<p>slider base is on the top edges of the tracks with the first and second legs straddling the tracks</p>	

Claim 3 Limitation	Element in Accused Product
(ii) the tab extending from the top member of the base and spaced above the first and second legs of the base;	 <p data-bbox="1252 285 1406 447">tab extends from top member</p> <p data-bbox="586 537 732 663">first and second legs</p> <p data-bbox="586 804 743 968">tab spaced above legs</p>
the tab being constructed and arranged to flex relative to the base about a pivot axis in a direction toward and away from the first and second legs;	 <p data-bbox="586 1297 873 1434">tab flexes about pivot axis toward and away from legs</p> <p data-bbox="959 1308 1117 1381">pivot axis</p>
and (iii) the torpedo extending from a bottom surface of the tab and flexing toward and away from the first and second legs with flexing of the tab.	 <p data-bbox="699 1755 1317 1839">Torpedo extends from bottom surface of tab and flexes with the flexing of the tab</p>

Thomas Decl. Ex. 6 at 7–8.

Based on this undisputed, substantial, reliable, and probative evidence, I find Presto has demonstrated infringement of claim 3 of the '058 patent.

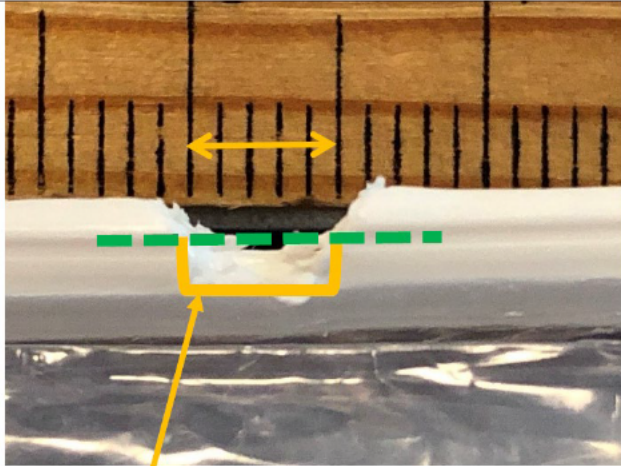
3. Claim 5

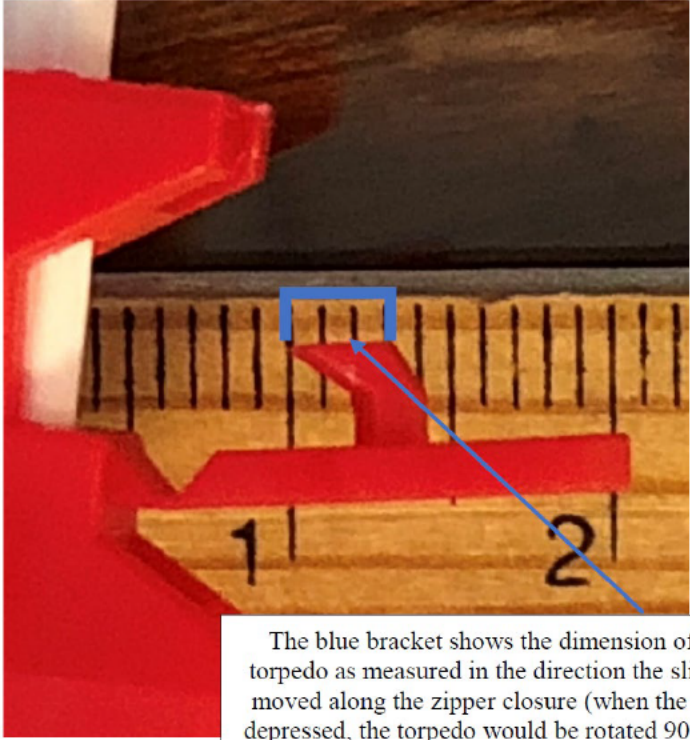
Claim 5 of the '058 patent depends from claim 1 as follows:

5. A child resistant slider zipper closure system according to claim 1 wherein:
 - (a) the notch has a length longer than a length of the torpedo.

The Thomas Declaration shows the additional limitation of claim 5 of the '058 patent in the accused products:

Table 18. '058 Claim 5 Infringement Chart

Claim 5 Limitation	Element in Accused Product
5. A child resistant slider zipper closure system according to claim 1 wherein:	For claim 1, see Table 16.
(a) the notch has a length longer than a length of the torpedo.	 <p>The yellow bracket shows the dimension of the notch between the complementary interlocking profiles (which are approximately midway up the track, as shown by the dotted green line) as measured in the direction the slider is moved along the zipper closure. The dimension is measured at 5 mm.</p>

Claim 5 Limitation	Element in Accused Product
	 <p data-bbox="846 892 1404 1129">The blue bracket shows the dimension of the torpedo as measured in the direction the slider is moved along the zipper closure (when the tab is depressed, the torpedo would be rotated 90° from its current position, but it has been flipped up to better show the torpedo). As shown, the dimension is 3 mm.</p>

Thomas Decl. Ex. 6 at 7–8.

Based on this undisputed, substantial, reliable, and probative evidence, I find Presto has demonstrated infringement of claim 5 of the '058 patent.


4. Claim 8

Claim 8 of the '058 patent depends from claim 1 as follows:

8. A child resistant slider zipper closure system according to claim 1 wherein:
 - (a) the male track includes a male profile, the female track includes a female profile, and the male and female profiles have complementary cross-sections for interlocking and for unlocking.

The Thomas Declaration shows the additional limitation of claim 8 of the '058 patent in the accused products:

Table 19. '058 Claim 8 Infringement Chart

Claim 8 Limitation	Element in Accused Product
8. A child resistant slider zipper closure system according to claim 1 wherein:	For claim 1, see Table 16.
(a) the male track includes a male profile, the female track includes a female profile, and the male and female profiles have complementary cross-sections for interlocking and for unlocking.	<div data-bbox="646 682 961 848" style="border: 1px solid black; padding: 5px; display: inline-block;">Complementary male and female interlocking profiles</div> 

Thomas Decl. Ex. 6 at 9.

Based on this undisputed, substantial, reliable, and probative evidence, I find Presto has demonstrated infringement of claim 8 of the '058 patent.

V. DOMESTIC INDUSTRY

In patent-based proceedings under section 337, a complainant bears the burden of establishing that an industry “relating to the articles protected by the patent . . . exists or is in the process of being established” in the United States. *See* 19 U.S.C. § 1337(a)(2); *John Mezzalingua Assocs., Inc. v. Int’l Trade Comm’n*, 660 F.3d 1322, 1331 (Fed. Cir. 2011) (affirming the Commission’s determination that a complainant had failed to meet its burden to establish satisfaction of the domestic industry requirement). 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 and Components Thereof*, Inv. No. 337-TA-586, USITC Pub. 4120, Comm'n Op. at 12–14, 2009 WL 5134139 (Dec. 2009).

The technical prong requires that the complainant practice the patented invention in the United States. *Crocs, Inc. v. Int'l Trade Comm'n*, 598 F.3d 1294, 1306–07 (Fed. Cir. 2010). The test for determining whether the technical prong is met through the practice of the patent “is essentially same as that for infringement, i.e., a comparison of domestic products to the asserted claims.” *Alloc, Inc. v. Int'l Trade Comm'n*, 342 F.3d 1361, 1375 (Fed. Cir. 2003).

The economic prong requires, with respect to the products protected by patent, either (a) significant investment in plant and equipment; (b) significant employment of labor or capital; or (c) substantial investment in exploitation of the patent(s), including engineering, research and development, or licensing activities. 19 U.S.C. § 1337(a)(3).


A. Technical Prong

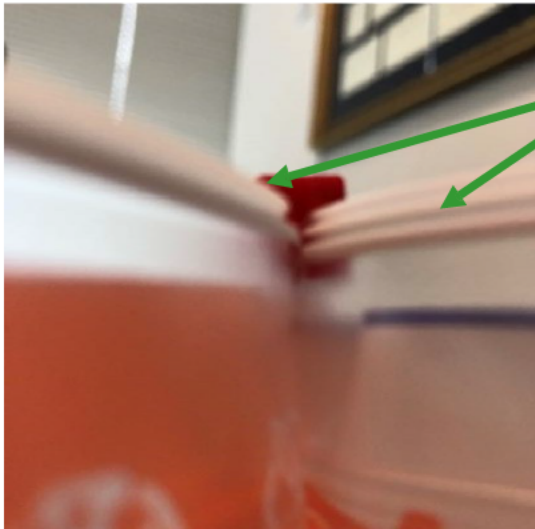

Presto seeks a finding that the domestic industry products are protected by one claim of each of the asserted patents. *See* Memo. at 48. I evaluate that evidence below.

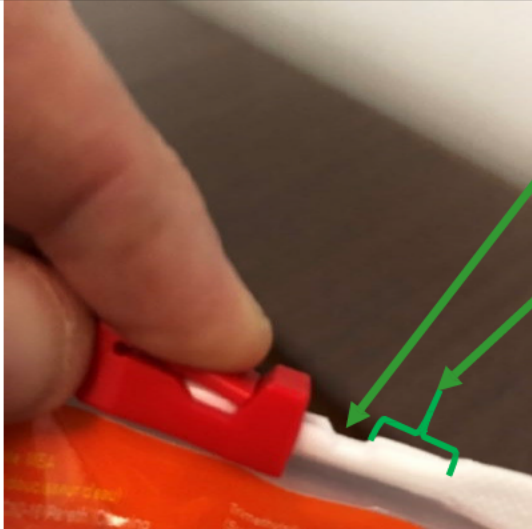
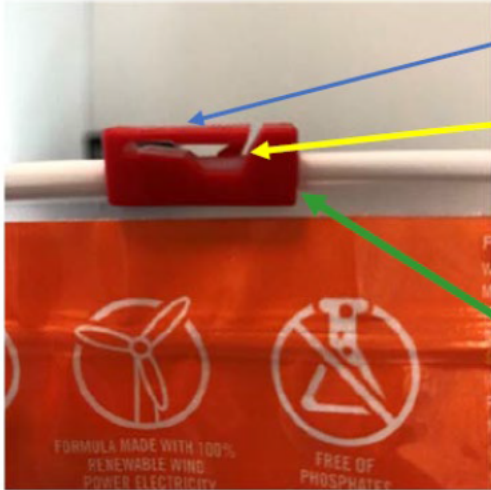
1. U.S. Patent No. 9,505,531


In support of the pending motion, Presto submitted the Declaration of Toby Thomas, which included a claim chart showing how claim 1 of the '532 patent reads on the domestic industry products:

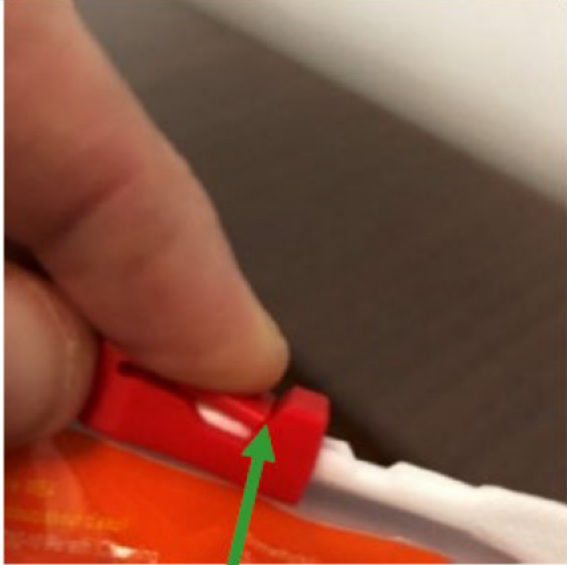
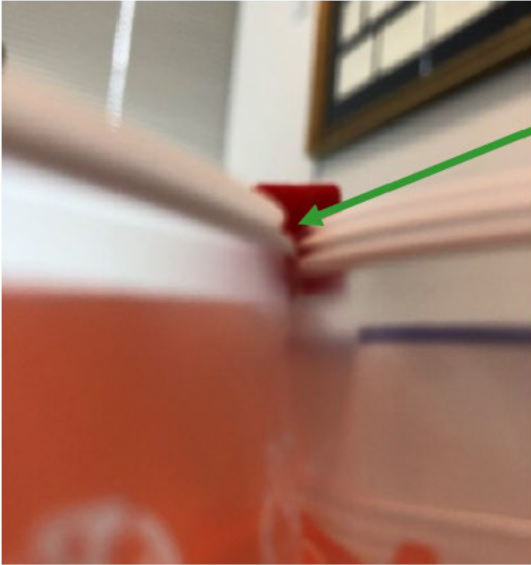
Table 20. '531 Claim 1 Domestic Industry Chart

Claim 1 Limitation	Element in Domestic Industry Product
1. A child resistant slider zipper closure system comprising:	 <p data-bbox="1149 682 1354 831">Package is a Child-Guard® child resistant zipper closure</p>

Claim 1 Limitation	Element in Domestic Industry Product
<p data-bbox="203 283 527 493">(a) a reclosable zipper closure with a male track and a female track having complementary profiles for interlocking and unlocking;</p>	<div data-bbox="570 291 1101 816"></div> <div data-bbox="570 869 1112 1411"></div> <div data-bbox="1187 296 1422 667"><p data-bbox="1198 342 1411 583">A reclosable zipper closure with a male track and a female track having complementary profiles for interlocking and unlocking.</p></div>

Claim 1 Limitation	Element in Domestic Industry Product
(b) a notch defined by the complementary profiles; the notch being spaced from an end of the slider zipper closure system; and	 <p data-bbox="1201 325 1421 462">A notch defined by the complementary profiles</p> <p data-bbox="1193 483 1412 556">notch is spaced from the end</p>
(c) a slider being slidably located on the zipper closure, the slider including a flexible tab with a torpedo;	 <p data-bbox="1120 882 1315 945">flexible tab</p> <p data-bbox="1153 966 1315 1029">torpedo</p> <p data-bbox="1177 1176 1372 1375">a slider being slidably located on the zipper closure.</p>

Claim 1 Limitation	Element in Domestic Industry Product
when the slider is moved into a vicinity of the notch,	<div data-bbox="703 279 1263 840"></div> <div data-bbox="703 888 1057 1045">tab and torpedo positioned over the notch</div>

Claim 1 Limitation	Element in Domestic Industry Product
the tab being selectively moveable into a position to be between the male track and female track	 <p data-bbox="732 894 1089 1146">tab selectively moved down with torpedo into notch and pulled into profiles</p>
and result in separation of the interlocking complementary profiles as the slider is moved in an opening direction along the zipper closure.	 <p data-bbox="1154 1213 1377 1381">profiles are separated as slider moved along zipper closure</p>


Thomas Decl. Ex. 1 at 19-1 to 19-4.

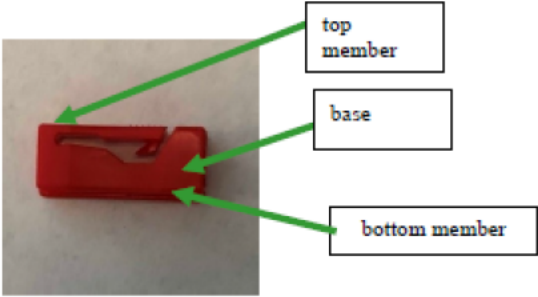
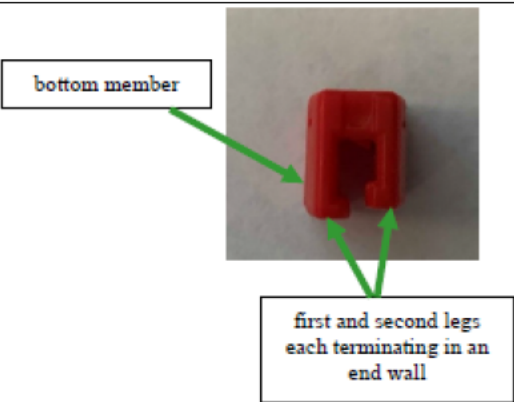
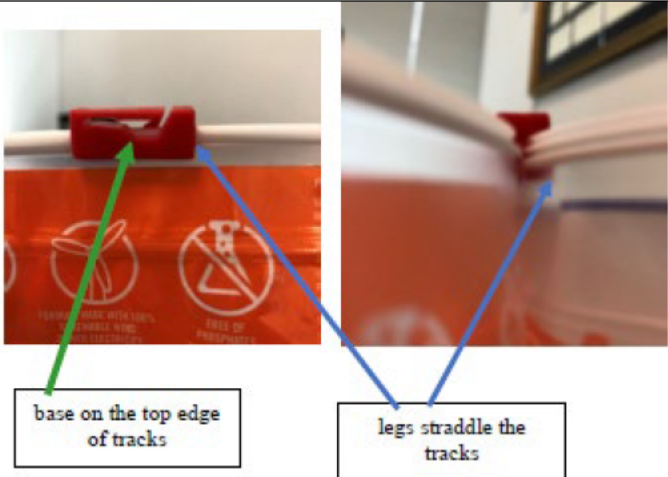
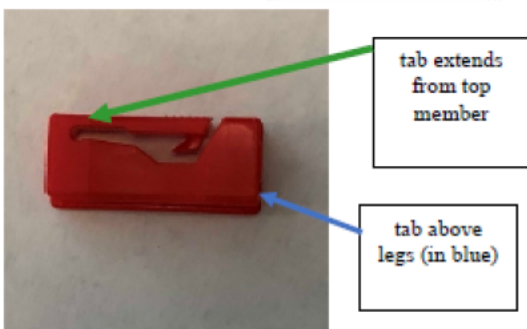
Based on this undisputed, substantial, reliable, and probative evidence, I find Presto has demonstrated that the domestic industry products are protected by claim 1 of the '531 patent.

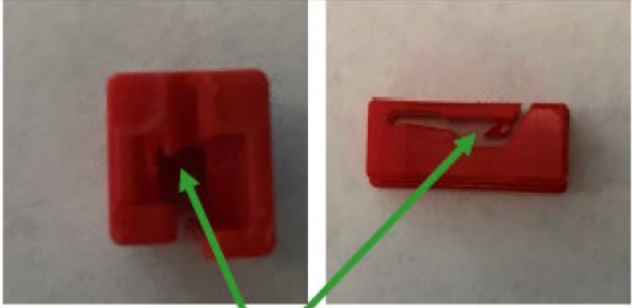

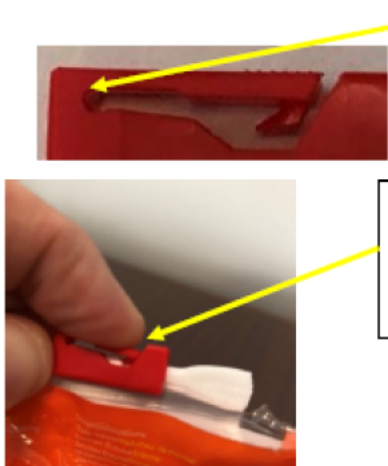
2. U.S. Patent No. 9,554,628



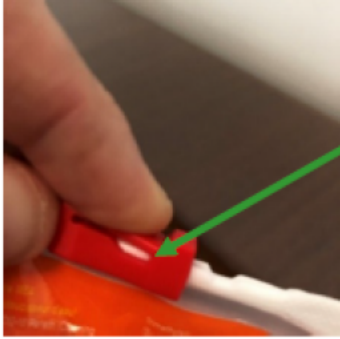
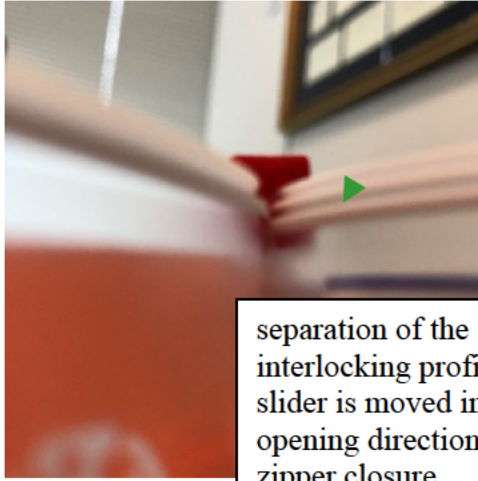
In support of the pending motion, Presto submitted the Declaration of Toby Thomas, which included a claim chart showing how claim 1 of the '628 reads on the domestic industry products:

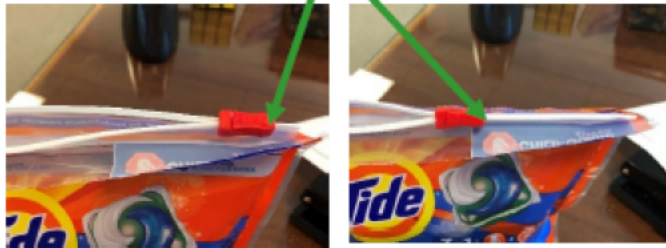

Table 21. '628 Claim 1 Domestic Industry Chart

Claim 1 Limitation	Element in Domestic Industry Product
<p>1. A slider for a zipper closure having a male track and a female track with complementary profiles for interlocking and unlocking; the slider comprising:</p>	 <p data-bbox="1218 772 1312 825">slider</p> <p data-bbox="1218 1056 1409 1276">zipper closure having a male track and a female track with complementary profiles for interlocking and unlocking.</p> <p data-bbox="1218 1591 1312 1644">slider</p>

Claim 1 Limitation	Element in Domestic Industry Product
(a) a base having a top member and a bottom member;	
the bottom member including first and second legs each terminating in an end wall;	
(i) the base adapted to move along top edges of the tracks with the first and second legs straddling the tracks;	
(b) a tab extending from the top member of the base and being spaced above the first and second legs of the base	

Claim 1 Limitation	Element in Domestic Industry Product
such that there is a cavity of open volume in between,	 <p data-bbox="917 636 1138 741">a cavity of open volume in between.</p>
the cavity being leg-free, sidewall-free, and free of other slider structure so that the open volume of the cavity extends from the end wall between the tab and the first and second legs;	 <p data-bbox="1159 783 1382 1129">the cavity being leg-free, sidewall-free, and free of other slider structure so that the open volume of the cavity extends from the end wall between the tab and the first and second legs.</p>
the tab being constructed and arranged to flex relative to the base about a pivot axis in a direction toward and away from the first and second legs;	 <p data-bbox="1159 1192 1312 1234">pivot axis</p> <p data-bbox="1110 1371 1365 1528">Tab flexes towards and away from first and second legs upon being pressed and released</p>

Claim 1 Limitation	Element in Domestic Industry Product
(c) a torpedo extending from a bottom surface of the tab and moving toward and away from the first and second legs with flexing of the tab;	<div data-bbox="722 289 1071 405">  </div> <div data-bbox="1104 289 1380 363"> <p>Torpedo on bottom surface of tab</p> </div> <div data-bbox="722 441 1010 730">  </div> <div data-bbox="1088 441 1347 667"> <p>Torpedo is integral with the tab and therefore also flexes towards and away from first and second legs upon being pressed and released</p> </div>
the torpedo being selectively moveable into a position to be between the male track and female track and result in separation of the interlocking profiles as the slider is moved in an opening direction along the zipper closure; and	<div data-bbox="747 787 1084 1123">  </div> <div data-bbox="1120 840 1339 987"> <p>torpedo moveable into position between male and female track</p> </div> <div data-bbox="743 1140 1218 1617">  </div> <div data-bbox="974 1438 1372 1638"> <p>separation of the interlocking profiles as the slider is moved in an opening direction along the zipper closure</p> </div>

Claim 1 Limitation	Element in Domestic Industry Product
(d) the first and second legs having internal surfaces spaced sufficiently close together to press the profiles into interlocking relationship as the slider is moved in a closing direction along the zipper closure.	<div data-bbox="846 302 1187 401" style="border: 1px solid black; padding: 5px; text-align: center;"> slider legs close track when moved in closing direction (right to left) </div>  <div data-bbox="857 701 1198 793" style="border: 1px solid black; padding: 5px; text-align: center;">  closing direction </div>


Thomas Decl. Ex. 2 at 20-1 to 20-8.

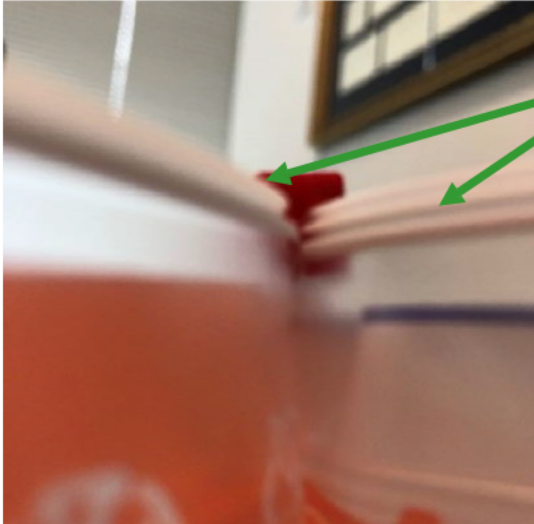

Based on this undisputed, substantial, reliable, and probative evidence, I find Presto has demonstrated that the domestic industry products are protected by claim 1 of the '628 patent.

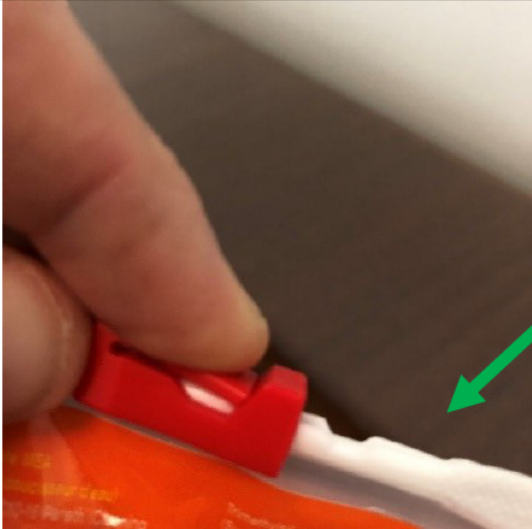

3. U.S. Patent No. 10,273,058


In support of the pending motion, Presto submitted the Declaration of Toby Thomas, which included a claim chart showing how claim 1 of the '058 patent reads on the domestic industry products:

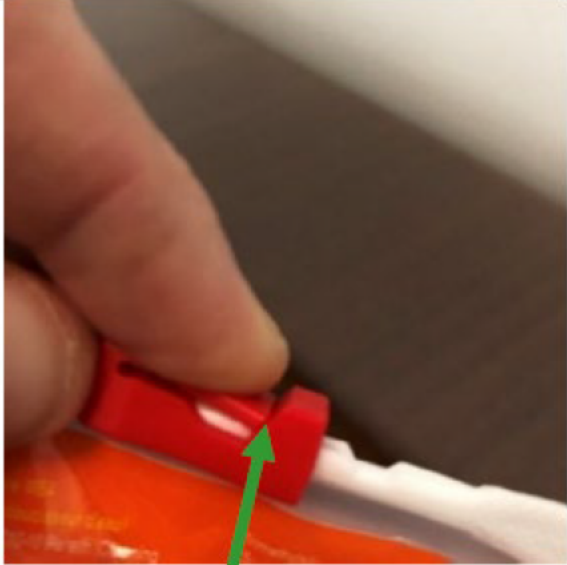
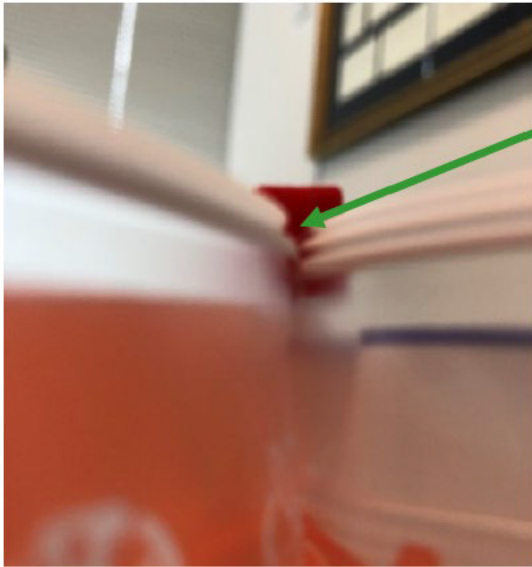
Table 22. '058 Claim 1 Domestic Industry Chart

Claim 1 Limitation	Element in Domestic Industry Product
1. A child resistant slider zipper closure system comprising:	 <p data-bbox="1149 688 1354 831">Package is a Child-Guard® child resistant zipper closure</p>

Claim 1 Limitation	Element in Domestic Industry Product
<p data-bbox="203 283 527 493">(a) a reclosable zipper closure with a male track and a female track having complementary profiles for interlocking and unlocking;</p>	<div data-bbox="571 294 1101 814"></div> <div data-bbox="571 871 1112 1411"></div> <div data-bbox="1188 298 1421 667"><p data-bbox="1198 340 1411 583">A reclosable zipper closure with a male track and a female track having complementary profiles for interlocking and unlocking.</p></div>

Claim 1 Limitation	Element in Domestic Industry Product
(b) a notch in the zipper closure; the notch being spaced from an end of the slider zipper closure system; and	 <p data-bbox="1170 428 1390 520">Notch spaced from end</p>
(c) a slider being slidably located on the zipper closure, the slider including a flexible tab with a torpedo;	 <p data-bbox="1125 877 1320 940">flexible tab</p> <p data-bbox="1154 961 1320 1035">torpedo</p> <p data-bbox="1187 1171 1382 1371">a slider being slidably located on the zipper closure.</p>

Claim 1 Limitation	Element in Domestic Industry Product
when the slider is moved into a vicinity of the notch,	<div data-bbox="703 275 1263 840"></div> <div data-bbox="703 888 1057 1045">tab and torpedo positioned over the notch</div>

Claim 1 Limitation	Element in Domestic Industry Product
<p>the tab being selectively moveable into a position to insert the torpedo between the male track and female track</p>	 <p>tab selectively moved down with torpedo into notch and pulled into profiles</p>
<p>and result in separation of the interlocking complementary profiles as the slider is moved in an opening direction along the zipper closure.</p>	 <p>profiles are separated as slider moved along zipper closure</p>

Thomas Decl. Ex. 3 at 21-1 to 21-5.

Based on this undisputed, substantial, reliable, and probative evidence, I find Presto has demonstrated that the domestic industry products are protected by claim 1 of the '058 patent.

B. Economic Prong

As discussed below, Presto has proffered substantial, reliable, and probative evidence showing that Presto satisfies the economic prong of the domestic industry requirement under section 337(a)(3)(A), (B), and (C).

1. Plant and Equipment

The evidence shows that Presto has invested in significant domestic facility space dedicated to its production of child-resistant closures. Presto has facilities in [REDACTED]

[REDACTED] Petkovsek

Aff. ¶ 18. Presto contracts [REDACTED]

[REDACTED]. Declaration of Brad Hansen Concerning the Economic Prong of Domestic Industry

(“Hansen Decl.”)⁷ ¶ 5. The [REDACTED] have about [REDACTED]

[REDACTED] for the and [REDACTED]

producing sliders for the child-resistant closures. *Id.* ¶ 8. Presto spent [REDACTED]

[REDACTED], as shown below.

⁷ The Affidavit of Bradford Hansen is attached as Exhibit 4 to the pending motion.

Project No	Project Name	2014	2015	2016	2017	2018	2019	Total
L2681-14-A14005	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	-	-	-	[REDACTED]
00007360	[REDACTED]	-	-	[REDACTED]	-	[REDACTED]	-	[REDACTED]
00007361	[REDACTED]	-	-	[REDACTED]	[REDACTED]	-	-	[REDACTED]
00007364	[REDACTED]	-	-	[REDACTED]	[REDACTED]	-	-	[REDACTED]
RCP00090	[REDACTED]	-	-	-	[REDACTED]	[REDACTED]	-	[REDACTED]
Total		[REDACTED]					-	[REDACTED]

Declaration of Sudip K. Mitra (“Mitra Decl.”)⁸ Ex. E. Because all of the equipment listed above is used exclusively for producing child-resistant closures under Presto’s authority, *id.*, I find investments in that machinery are investments related to articles protected by the asserted patents within the meaning of section 337(a)(3)(A).

Additionally, Presto assembles machines in the United States for inserting the slider devices onto the recloseable track. First Supp. Interogs, No. 6; Affidavit of John Athans (“Athans Aff.”)⁹ ¶ 8. From 2015 to 2019, Presto [REDACTED], which are then used by Presto’s customers. *Id.* I find Presto’s investment in the insertion machines is an investment in equipment related to articles protected by the asserted patents within the meaning of section 337(a)(3)(A).

⁸ The Declaration of Sudip K. Mitra is attached as Exhibit 9 to the pending motion. Mr. Mitra is counsel for Presto. Mitra Decl. ¶ 1.

⁹ The Affidavit of John Athans is attached as Exhibit 3 to the pending motion.

2. Labor and Capital

The evidence shows that Presto's suppliers [REDACTED] employ people in the United States to make authorized sliders for incorporation into the domestic industry products. Mitra Decl. Ex. F; Hansen Decl. ¶ 8. The chart below shows the number of full-time employee ("FTE") equivalents producing sliders for Presto's child-resistant closures by year and location:

Year	FTE	Location	Mfg Footprint (ft ²)
2015	[REDACTED]	[REDACTED]	[REDACTED]
2016	[REDACTED]	[REDACTED]	[REDACTED]
2017	[REDACTED]	[REDACTED]	[REDACTED]
2018	[REDACTED]	[REDACTED]	[REDACTED]
2019 (up to July 18)	[REDACTED]	[REDACTED]	[REDACTED]

Id. As can be seen from the chart above, recent [REDACTED]
[REDACTED]. I find this is an employment of labor related to articles protected by the asserted patents within the meaning of section 337(a)(3)(B).

Presto itself employs people to produce track for the domestic industry products. As explained by John Athans, Director of Converting Engineering and Development for Presto's Slide-Rite Business Unit, Presto's [REDACTED]
[REDACTED]. Athans Aff. ¶¶ 6–7. The number of Presto employees producing tack each year is shown in the chart below:

Year	FTE	Location	Mfg Footprint (ft ²)
2015	[REDACTED]	[REDACTED]	[REDACTED]
2016	[REDACTED]	[REDACTED]	[REDACTED]
2017	[REDACTED]	[REDACTED]	[REDACTED]
2018	[REDACTED]	[REDACTED]	[REDACTED]
2019 (up to July 18)	[REDACTED]	[REDACTED]	[REDACTED]

Mitra Decl. Ex. 7; Hansen Decl. ¶ 8. As can be seen from the chart above, [REDACTED]. I find this is an employment of labor related to articles protected by the asserted patents within the meaning of section 337(a)(3)(B).

3. Engineering, Research and Development, and Licensing

Presto has adduced evidence of its expenditures on engineering and research that is directly related to its child-resistant closures. Specifically, Presto adduces the following:

Year	R&D Expense		Location	
	Track	Slider/Application Equipment	Track	Slider/Application Equipment
2013	-	[REDACTED]	[REDACTED]	[REDACTED]
2014	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2016	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2017	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2018	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2019 (up to Nov. 11)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total	[REDACTED]	[REDACTED]	-	-


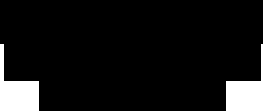

Complainant's Second Supplemental Answers to Commission Investigative Staff's First Set of Interrogatories ("Second Supp Interogs"),¹⁰ No. 8.

As shown in the charts above, Presto has [REDACTED] to child-resistant closures. I find these expenditures to be relevant under section 337(a)(3)(C).

¹⁰ Complainant's Second Supplemental Answers to Commission Investigative Staff's First Set of Interrogatories is attached as Exhibit 3 to the pending motion.

4. Presto's Domestic Investments Are Significant and Substantial

I find, based on the undisputed, substantial, reliable, and probative evidence outlined above, that Presto has met its burden to show that a domestic industry exists in the United States. Presto has shown a significant investment in plant and equipment under section 337(a)(3)(A), a significant employment of labor and capital under section 337(a)(3)(B), and a substantial investment in research, development, and engineering under section 337(a)(3)(C). The evidence demonstrates that Presto is a domestic company with minimal operations abroad and that all of its products are made domestically in the United States. Petkovsek Aff. ¶ 5; Hansen Aff. ¶ 3; Hansen Decl. ¶ 5. The chart below summarizes Presto's investments and expenditures in the articles protected by the asserted patents:

Section 337(a)(3)(A): Plant & Equipment	Section 337(a)(3)(B): Labor & Capital	Section 337(a)(3)(C): Exploitation
		

Memo. at 49.

It is further determined that the magnitude and quantity of these expenses and investments alone is significant and substantial in any context. *See Lelo Inc. v. Int'l Trade Comm'n*, 786 F.3d 879, 883 ("The plain text of § 337 requires a quantitative analysis in determining whether a petitioner has demonstrated a 'significant investment in plant and equipment' or 'significant employment of labor or capital.'"). Nevertheless, even when considering the qualitative significance of Presto's domestic expenditures in context, its investments, employments, and activities are clearly significant and substantial. *See Certain Stringed Musical Instruments and Components Thereof*, Inv. No. 337-TA-586, Comm'n Op., 2009 WL 5134139 at *16 (Dec. 2009)

(the significance of an investment depends on the industry in question and the complainant's relative size).

VI. RECOMMENDED DETERMINATION ON REMEDY AND BONDING

Presto's motion for summary determination seeks the entry of limited exclusion orders against the Dalian respondents and a general exclusion order to prevent circumvention of such orders. Memo. at 80–90. Presto also contends in its motion that there is a pattern of violation of this section and it is difficult to identify the source of infringing products. *Id.* at 90–94. Presto's motion does not address cease and desist orders, but Presto sought such relief in its Complaint. *Compare* Memo. at 80 *with* Complaint at 2, 23. Staff agrees that limited exclusion orders should be issued against the Dalian respondents and a general exclusion order covering all infringing products should be entered. *See* Staff Resp. at 43–52. Staff does not support entry of cease and desist orders because there is no evidence the Dalian respondents maintain a significant domestic inventory. *Id.* at 51 n.28.

A. General Exclusion Order

The Commission focuses principally on the statutory language of section 337 when determining whether a general exclusion order is warranted. *Certain Ground Fault Circuit Interrupters and Products Containing Same*, Inv. No. 337-TA-615, Comm'n Op. at 25 (Mar. 26, 2009) (“*Ground Fault Circuit Interrupters I*”). Under section 337(d)(2), a general exclusion order is warranted when “an exclusion order limited to products of named persons” would be circumvented or 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). Satisfaction of either criterion is sufficient for imposition of a general exclusion order. *Certain Cigarettes and Packaging Thereof*, Inv. No. 337-TA-643, Comm'n Op. at 24 (Oct. 1, 2009) (“*Cigarettes*”).

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 Circuit Interrupters & Prod. Containing Same*, Comm’n Opinion, Inv. No. 337-TA-739, Comm’n Op. at 88–89, 2012 WL 2394435 at *56 (June 8, 2012) (“*Ground Fault Circuit Interrupters IP*”) (finding a general exclusion order was appropriate based on evidence that named respondents would circumvent a limited exclusion order by changing their corporate identity). Presto has adduced evidence that a general exclusion order is necessary to prevent the respondents named in this investigation from circumventing a limited exclusion order.

a. Corporate Alter Egos

The record contains substantial, reliable, and probative evidence that the Dalian respondents are likely to use corporate alter egos to circumvent a limited exclusion order. For example, an employee of respondent Dalian Altma lists in his email signature line three corporate alter egos having the same address:

Alex Del Rio Postigo

Export Manager Europe & America



Dalian Altma Industry Co.,Ltd.

Dalian(Qingdao) Takebishi Packing Industry Co.,Ltd.

Shanghai Takebishi Packaging Material Co.,Ltd.

Add: No. 368, Ext. 5 Rongxing Road, Sonjiang District, Shanghai, China

Tel: +86-21-57839955 Fax: +86-21-67713167

Mobile: +86-13501870694

E-mail:alexdel@takebishipacking.com

[\[takebishipacking.com\]](http://takebishipacking.com)www.takebishipacking.com[\[takebishipacking.com\]](http://takebishipacking.com)

[ww \[altmaindustry.com\]](http://www.altmaindustry.com)w.altmaindustry.com[\[altmaindustry.com\]](http://altmaindustry.com)



Complaint Ex 22.

Representatives of respondent Dalian Altma entered the United States to attend trade shows in Anaheim, California, and Rosemont, Illinois, under another corporate alter ego, Takebishi (Dalian) Industrial Co., Ltd. *See* Herrington Report ¶ 14. When counsel for Presto referred to people at the Takebishi trade show booths in Anaheim and Rosemont as representatives of Dalian Altma, Dalian Altma did not dispute the assertion. *See* Complaint Ex. 22.

Moreover, an accused product that was displayed by Dalian Altma at the trade show in Anaheim in December 2017 listed five different corporate entities across China and Japan under the “Takebishi” heading:



Complaint Phys. Ex. 2. The package listed a sixth entity named Takebishi Packing America as “Coming Soon.” *Id.* The corporate entities and addresses listed on this product were the basis for naming the respondents in Presto’s Complaint. Complainants’ Unopposed Motion for Partial Termination of the Investigation Regarding Claims 6–7 of U.S. Patent No. 9,505,531 and Claims 6–7 of U.S. Patent No. 10,273,058 and Against Unserved Respondents, EDIS Doc. ID 693597, Ex. A. Presto attempted to serve each of the entities at the addresses listed on the package, but

service could not be completed for four of the entities because the address was either non-existent or incorrect. *Id.* These facts support Presto’s un rebutted assertion that four of the corporate entities and addresses listed on the accused products are nothing more than shams, or otherwise non-existent. *See* Memo. at 85.

There is also record evidence supporting a conclusion that the Dalian respondents intend to circumvent lawful enforcement of Presto’s patent rights. After Presto hand delivered a cease-and-desist letter to representatives of the Dalian respondents at a trade show in California, the Dalian respondents nevertheless brought infringing products to a second trade show in Illinois. Complaint Ex. 22. When Presto’s counsel again insisted that the Dalian respondents cease infringing activity, a representative of the Dalian respondents replied that the respondents were doing nothing wrong. *Id.* After Presto filed the Complaint and the Commission served the Notice of Investigation on the Dalian respondents, those entities never responded to explain their actions. This evidence supports a conclusion that the Dalian respondents intend to continue in their course of conduct regardless of Commission action, making circumvention likely.

Based on the evidence of record, I find that the Dalian respondents likely will use different corporate names and addresses to circumvent exclusion orders limited to specific corporate entities. *See Ground Fault Circuit Interrupters II*, Comm’n Op. at 88–89 (a general exclusion order was appropriate based on evidence that named respondents would circumvent a limited exclusion order by changing their corporate identity); *Portable Electronic Devices*, Comm’n Op. at 5 (a general exclusion order was appropriate where there is evidence of “companies operating under fake names and fake addresses”); *Certain Pocket Lighters*, 337-TA-1142, Initial Determination at 40–43 (Feb. 12, 2020) (public version March 30, 2020, EDIS Doc. ID 706458) (“*Pocket Lighters*”) (recommending a general exclusion order where respondents would

circumvent limited exclusion orders using one or more different corporate names). These facts weigh in favor of a general exclusion order.

b. Low Barriers to Entry

Where barriers to entry into a market are low, “new business[es] can quickly spring to life and carry on the same infringing activities” as those of a named respondent. *See, e.g., Certain Toner Cartridges, & Components Thereof*, Inv. No. 337-TA-918, Comm’n Op., 2015 WL 13817122 at *4 (Oct. 1, 2015) (“*Toner Cartridges*”). In such circumstances, the persons operating a company named in a limited exclusion order can shed the named corporate form and immediately begin operations as a different entity. A general exclusion order will prevent such new entities from circumventing more limited orders. *Id.*

Here, Presto has provided evidence that the cost of manufacturing the accused product in Asia is low. *See, e.g., Athans Decl.* ¶¶ 13–14 (“I am also aware that it is less costly to manufacture the Accused Products in Asia . . .”). It is estimated that the costs to make relevant molds in China “are between one-fourth and one-half of the U.S. costs,” *Athans Decl.* ¶¶ 9–14, and the setup to begin commercial production of infringing goods in China can cost as little as \$80,000, *Petkovsek Aff.* ¶¶ 7–8. Additionally, molds for producing the accused products are portable and easily transferred between entities. *See Petkovsek Aff.* ¶ 9 (describing how molds are “easily portable or transferable”). These facts support Presto’s un rebutted assertion that the persons behind the Dalian respondents could easily circumvent limited exclusion orders by setting up new companies that continue the infringing course of conduct. These facts weigh in favor of a general exclusion order. *See, e.g., Toner Cartridges*, Comm’n Op. at 4 (noting that “if only LEOs are issued, operations could be easily replicated”).

c. Lack of Identifying Markings

A manufacturer or importer may circumvent a limited exclusion order by leaving off markings that would link the product to the entity named in the order. *Toner Cartridges*, Comm’n Op. at *5–7. Here, the record contains evidence of a product obtained from the Dalian respondents that lacks any visible origin or identification marker. *See* Complaint Phys. Ex. 1 (packaging labeled with “Blank Brand”); Herrington Report ¶ 42. Additionally, the Dalian respondents advertise their zipper closures may be incorporated into third-party packages. Herrington Report ¶ 42. Finished goods incorporating infringing closures would have no indication of their connection to the Dalian respondents. Similarly, finished packages may be sold in a “hooded” arrangement, where an infringing track and slider is obscured until the hood is torn off by a consumer. Hansen Aff. ¶ 10. This evidence supports a conclusion that an exclusion order limited to the Dalian respondents could be circumvented by goods lacking any marking that would connect the infringing articles to the Dalian respondents. *See Toner Cartridges*, Comm’n Op. at *5–7.

d. Conclusion

The record contains substantial, reliable, and probative evidence that the Dalian respondents are likely circumvent a limited exclusion order using corporate alter egos, by setting up new companies at little cost, or both. Accordingly, I find that the criteria for a general exclusion order found in section 337(d)(2)(A) are satisfied.

2. Pattern of Violation and Difficulty Identifying The Source of Infringing Goods

Section 337(d)(2)(B) allows for the issuance of a general exclusion order where there is a pattern of violation of section 337 and it is difficult to identify the source of infringing goods. 19 U.S.C. § 1337(d)(2)(B). This basis for a general exclusion order is independent from the circumvention criteria of section 337(d)(2)(A). *Cigarettes*, Comm’n Op. at 24.

a. Widespread Pattern of Violation

The record in this investigation contains undisputed, substantial, reliable, and probative evidence that infringing goods are being widely sold for importation into the United States without authorization from Presto. For example, the online marketplace Alibaba.com contains listings by non-parties Qingdao Jintiandi Plastic Packaging Co., Ltd. (“Qingdao Jintiandi”), a manufacturer based in Shandong, China; Shantou Changxing Packaging Co., Ltd. (“Changxing”), a manufacturer based in Guangdong, China; and Shenzhen Rishanhong Plastic Packaging Products Co., Ltd. (“Rishanhong”), a manufacturer based in Guangdong, China. Herrington Aff. ¶¶ 34, 70. All three companies offer plastic bags with child-resistant zipper closures on Alibaba that are identical in all material respects to the domestic industry products protected by the asserted patents. Affidavit of Paul Hardy (“Hardy Aff.”)¹¹ ¶¶ 3–4, 13–16.

The Alibaba listings by Qingdao Jintiandi advertise an “FDA” certification, a reference to the U.S. Food and Drug Administration. *See, e.g.*, https://www.alibaba.com/product-detail/Smell-Proof-Child-Resistant-Zip-Lock_62078906830.html?spm=a2700.7724838.2017115.263.395c7cd7Tm9CCCh (last visited April 21, 2020) (cited in Herrington Report ¶ 71). The Qingdao Jintiandi listings show a “Delivery” map that includes the geographic area of the United States. *Id.* Qingdao Jintiandi requires an order minimum of 100,000 bags and claims it can supply 100,000 bags per day. *Id.*

The Alibaba listings for Changxing state that 30 % of its product ships to “America” and that its plastic bags can “pass FDA,” a reference to the U.S. Food and Drug Administration. *See* <https://www.alibaba.com/product-detail/Resealable-Laminated-Foil-Child-Resistant->

¹¹ The Affidavit of Paul Hardy is attached as Exhibit 5 to the pending motion. Mr. Hardy is the Manager of International Sales for Presto. Mot. Ex. 5 ¶ 1.

[Ziplock 60704886233.html?spm=a2700.7724838.2017115.440.63ba20a1XbNRv3](https://www.ziplock.com/60704886233.html?spm=a2700.7724838.2017115.440.63ba20a1XbNRv3) (last visited April 21, 2020) (cited in Herrington Report ¶ 76). Changxing requires an order minimum of 20,000 pieces and claims it can supply 10 million bags per month. *Id.*

The Alibaba listings for Rishanhong state that its plastic bags are made from “Safety Food Grade material” and that the company has an “FDA” certification, a reference to the U.S. Food and Drug Administration. See https://www.alibaba.com/product-detail/Manufacture-Eco-friendly-smell-proofchild_62328343994.html?spm=a2700.7724838.2017115.24.63ba20a1XbNRv3&s=p (last visited April 21, 2020) (cited in Herrington Report ¶ 77). Rishanhong requires an order minimum of 10,000 bags and claims it can supply 200,000 bags per day.

Presto employees have encountered infringing products from another Chinese manufacturer, Qingdao RAJ Packaging Products Co., Ltd. (“RAJ”), at a trade show in Germany in September 2019. Herrington Report ¶ 39; Hardy Aff. ¶¶ 17–18. The sliders on the RAJ products are identical in all material respects to the domestic industry products protected by the asserted patents. Hardy Aff. ¶¶ 16–17. The RAJ website displays the logo for the U.S. Food and Drug Administration. See <https://www.rajflexpack.com/about/> (last visited April 21, 2020) (web domain cited in Herrington Report ¶ 39).

By advertising “FDA” certification, the Alibaba listings and the RAJ website demonstrate that the products offered for sale through those channels are intended for importation into the United States. I find that the evidence supports a conclusion that thousands of infringing bags are sold for importation into the United States without authorization from Presto. That is a pattern of violation of section 337.

The actions of the Dalian respondents are also part of a pattern of violation of section 337. As has been noted, Presto observed the Dalian respondents offered infringing goods at their booth

at a trade show in Anaheim, California, in 2017. I have determined above that the infringing goods offered for sale at that booth were imported in violation of section 337. Presto hand-delivered a cease-and-desist letter to the Dalian respondents at the Anaheim trade show, but less than two years later, the Dalian respondents again brought infringing products into the United States and offered them for sale at another trade show. Complaint Exs. 9 and 22; Morsheimer Decl. That was another violation of section 337. These incidents are further evidence of a pattern of violation of section 337.

b. Difficulty Identifying the Source of Infringing Goods

In my circumvention analysis above, I found that child-resistant zipper enclosures can be incorporated into finished goods without any indication of the source of an infringing track and slider. The same evidence supports a conclusion that identifying the source of imported zipper enclosures is difficult. *See Toner Cartridges*, Comm’n Op. at *5–7; *Certain Sildenafil or Any Pharmaceutically Acceptable Salt Thereof, such as Sildenafil Citrate, and Prods. Containing Same*, Inv. No. 337-TA-489, Comm’n Op. at 7–8 (July 23, 2004) (Public Vers.) (EDIS Doc. ID 210919).

I have also already discussed record evidence that the Dalian respondents are likely to circumvent a limited exclusion order by using alternative corporate entities. Those same facts support a conclusion that identifying the source of infringing zipper closures is difficult. *Pocket Lighters*, Initial Determination at 40–43, 46–47.

In addition, Presto’s motion included evidence from five Alibaba website addresses that offered infringing products for sale. Hardy Aff. ¶ 3. However, when the URLs in the record were visited on April 21, 2020, only the first link was still active; the other four product listings had

been taken down. The quick removal of online evidence after an importer catches wind of legal proceedings makes it difficult to identify the source of infringing goods.

c. Conclusion

In sum, Presto has established by substantial, reliable, and probative evidence a pattern of violation of section 337 by sources that are difficult to identify. *See* 19 U.S.C. § 1337(d)(2)(B); *see also Pocket Lighters*, Initial Determination at 40–47 (recommending a general exclusion order based on widespread unauthorized online sales and difficulty in identifying the source of infringing goods). I therefore recommend a general exclusion order issue in this investigation should the Commission find a violation of section 337.

B. Limited Exclusion Orders

After a respondent has been found in default, a complainant may file with the Commission “a declaration that it is seeking immediate entry of relief against the respondent[s] in default.” 19 C.F.R. § 210.16(c)(1). The facts alleged in the Complaint will be considered true with respect to the defaulting respondent. *Id.*

As noted above, the only remaining respondents—the Dalian respondents—are in default. *See* Order No. 7 (Oct. 30, 2019) (finding Dalian Respondents in default), *aff’d*, Notice of a Commission Determination Not to Review an Initial Determination Finding The Dalian Respondents in Default (Nov. 26, 2016). Following the direction of 19 C.F.C. § 210.16(c), I presume the facts alleged against the Dalian respondents in the Complaint to be true, and those facts demonstrate a violation of section 337. The condition precedent for limited exclusion orders set by statute and regulation has been satisfied. *See* 19 U.S.C. § 1337(d), (g)(1); 19 C.F.R. § 210.16(c)(1). Accordingly, should the Commission find a violation in this investigation, I

recommend that the Commission issue limited exclusion orders directed to each of the Dalian respondents.

C. Cease and Desist Orders

Under section 337(f)(1), the Commission may issue a cease and desist order in addition to, or instead of, an exclusion order. *See* 19 U.S.C. § 1337(f)(1). Presto's Complaint in this investigation requests cease and desist orders against the named respondents. Complaint ¶ 4 and p. 23. However, Presto's motion for summary determination makes no mention of cease and desist orders. Staff notes that such orders are generally issued when, with respect to the imported infringing goods, respondents maintain commercially significant inventories in the United States or have significant domestic operations that could undercut a remedial exclusion order. *See* Staff Resp. at 51 n.28 (citing *Certain Electric Skin Care Devices, Brushes and Chargers Therefor, and Kits Containing the Same*, Inv. No. 337-TA-959, Comm'n Op. at 26 (Feb. 13, 2017)). Staff does not view the evidence of record to indicate that cease and desist orders are appropriate here.

I find that Presto's failure to address cease and desist orders in its motion for summary determination is a strong indication that such orders are unnecessary to preserve an effective remedy for Presto. Additionally, no party has identified evidence that the Dalian respondents have a domestic inventory of infringing goods that would undermine exclusion orders. Accordingly, I do not recommend entry of cease and desist orders.

D. Bond

When the Commission determines to issue a remedy, the President has 60 days to determine if the remedy should not take effect for policy reasons. 19 U.S.C. § 1337(j)(2). During that 60-day period, any articles slated for exclusion are entitled to entry under bond at a rate set by

the Commission. *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 protected product price and the infringing product price. *See Microsphere Adhesives, Processes for Making Same, and Prods. Containing Same, Including Self-Stick Repositionable Notes*, Inv. No. 337-TA-366, USITC Pub. 2949, Comm’n Op. at 24 (Dec. 8, 1995). In other cases, the Commission has turned to alternative approaches, especially when a reasonable royalty rate could be ascertained. *See, e.g., Certain Integrated Circuit Telecomm. Chips and Prods. Containing Same, Including Dialing Apparatus*, Inv. No. 337-TA-337, USITC Pub. No. 2670, Comm’n Op., 1993 WL 13033517 at *27-28 (August 1993). A 100-percent bond has been required when no effective alternative existed. *See, e.g., Certain Flash Memory Circuits and Prods. Containing Same*, Inv. No. 337-TA-382, USITC Pub. No. 3046, Comm’n. Op. at 26–27 (July 1997) (imposing a 100-percent bond when price comparison was not practical and the proposed royalty rate was without adequate support in the record).

Presto requests that the bond in this investigation be set at 100 percent, arguing that there is a “lack of reliable pricing data from Respondents” and “no reasonable royalty exists upon which to base a bond amount.” Memo. at 97–98. Staff agrees, noting the lack of reliable evidence because “Dalian Respondents have defaulted without entering an appearance or providing any discovery.” Staff Resp. at 52–53.

There was no discovery from respondents in this investigation as all respondents were either terminated or found in default without participating in discovery. *See* Order Nos. 7 and 10. The record therefore lacks reliable evidence upon which to base a bond amount. Therefore, to

ensure that the complainant is protected “from any injury” if a respondent attempts to import accused articles during the Presidential review period, I recommend that the bond amount be set at 100 percent of the entered value of the accused products.

VII. INITIAL DETERMINATION AND ORDER

It is my initial determination that Presto’s Motion No. 1171-006 for summary determination of domestic industry, violation, and remedy is granted. I have determined that a violation of section 337 of the Tariff Act of 1930, as amended, has occurred in the importation into the United States, and the sale for importation, of certain child resistant closures and slider devices that infringe claims 1, 3, 5, and 8-10 of U.S. Patent No. 9,505,531; claims 1, 4, 6–8, 11, 12, 15, and 19 of U.S. Patent No. 9,554,628; and claims 1, 3, 5, and 8 of U.S. Patent No. 10,273,058.

Further, I recommend that the Commission issue a general exclusion order. If no general exclusion order is issued, I recommend that limited exclusion orders be issued against respondents Dalian Takebishi Packing Industry Co., Ltd., of Dalian, China, and Dalian Altma Industry Co., Ltd., of Dalian, Liaoning, China. I do not recommend cease and desist orders be entered against any respondent. I recommend that a 100-percent bond be established for importation during the Presidential review period.

All other motions pending in this investigation, if any, are denied as moot in view of this initial determination.

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

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

PUBLIC VERSION

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.

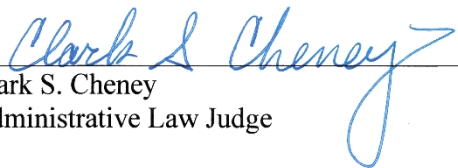
Pursuant to 19 C.F.R. § 210.42(h), this Initial Determination shall become the determination of the Commission unless a party files a petition for review pursuant to 19 C.F.R. § 210.43(a) or the Commission, pursuant to 19 C.F.R. § 210.44, orders on its own motion a review of the Initial Determination 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 to the statement a copy of a **joint** proposed public version of this document indicating with red brackets any portion asserted to contain confidential business information.¹² 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

¹² 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).

PUBLIC VERSION

parties' submission concerning the public version of this document should not be filed with the Commission Secretary.


Clark S. Cheney
Administrative Law Judge

Issued: April 21, 2020

**CERTAIN CHILD RESISTANT CLOSURES WITH SLIDER
DEVICES HAVING A USER ACTUATED INSERTABLE
TORPEDO FOR SELECTIVELY OPENING THE
CLOSURES AND SLIDER DEVICES THEREFOR**

Inv. No. 337-TA-1171

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served via EDIS upon the Commission Investigative Attorney, **Megan Wantland, Esq.**, and the following parties as indicated, on **May 21, 2020**.



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

On Behalf of Complainant Reynolds Presto Products Inc.:

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- ☐ Via Hand Delivery
- ☐ Via Express Delivery
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