

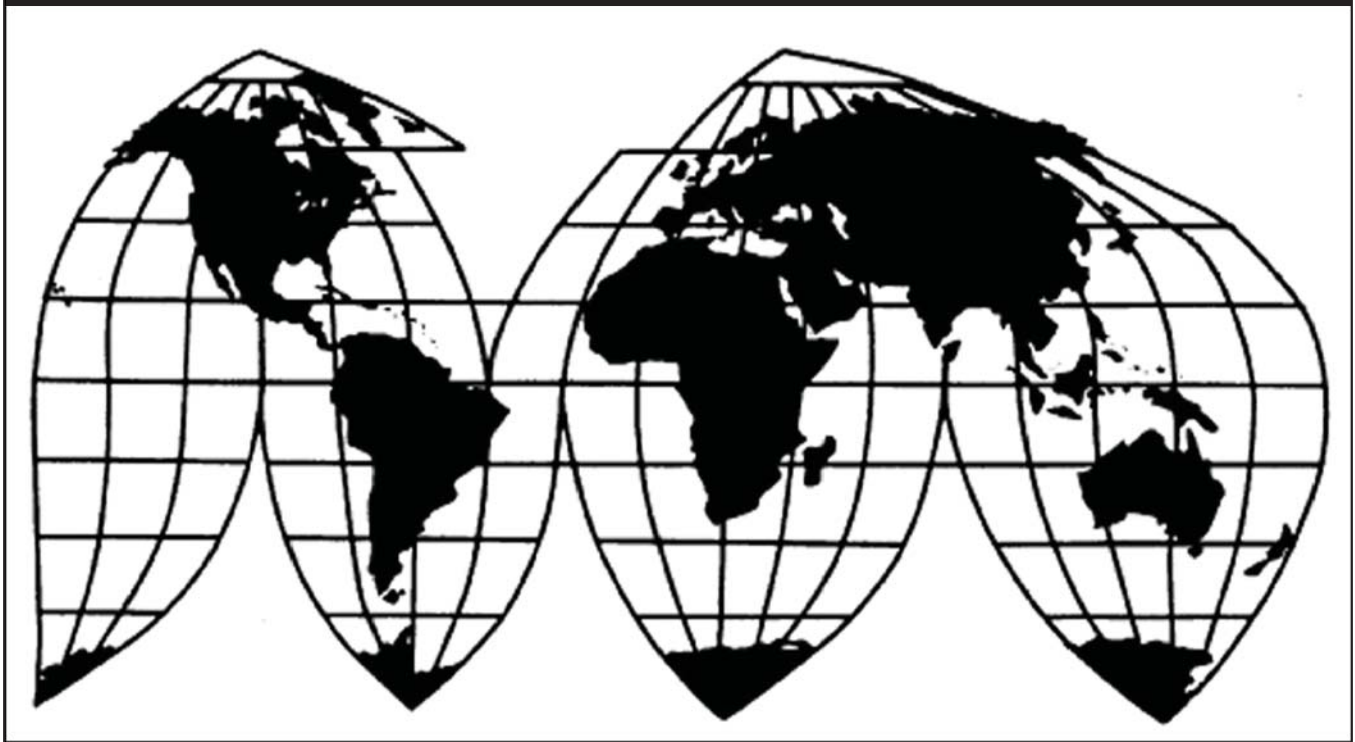
In the Matter of
**Certain Protective Cases and
Components Thereof**

Investigation No. 337-TA-780

Publication 4405

July 2013

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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In the Matter of

Certain Protective Cases and Components Thereof

Investigation No. 337-TA-780



UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN PROTECTIVE CASES AND
COMPONENTS THEREOF**

Investigation No. 337-TA-780

**NOTICE OF THE COMMISSION'S FINAL DETERMINATION; ISSUANCE OF
A GENERAL EXCLUSION ORDER AND CEASE AND DESIST ORDERS;
TERMINATION OF THE INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 in this investigation and has (1) issued a general exclusion order prohibiting importation of infringing protective cases and components thereof and (2) issued cease and desist orders direct to domestic respondents.

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

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 30, 2011, based on a complaint filed by Otter Products, LLC of Fort Collins, Colorado ("Otter"). 76 *Fed. Reg.* 38417 (June 30, 2011). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain protective cases and components thereof by reason of infringement of some or all of the claims of United States Patent Nos. D600,908 ("the D908 patent"); D617,784 ("the D784 patent"); D615,536 ("the D536 patent"); D617,785 ("the D785 patent"); D634,741 ("the D741 patent"); D636,386 ("the D386 patent"); and claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, and 44 of United States Patent No.

7,933,122 (“the ’122 patent”); and United States Trademark Registration Nos. 3,788,534; 3,788,535; 3,623,789; and 3,795,187. *Id.* The notice of investigation named the following respondents: A.G. Findings and Mfg. Co., Inc. of Sunrise, Florida (“A.G. Findings”); AFC Trident Inc. of Chino, California (“AFC Trident”); Alibaba.com Hong Kong Ltd. of Hangzhou, China (“Alibaba.com”); Anbess Electronics Co. Ltd. of Shenzhen, China (“Anbess”); Cellairis Franchise, Inc. of Alpharetta, Georgia (“Cellairis”); Cellet Products of Sante Fe Springs, California (“Cellet”); DHgate.com of Beijing, China (“Dhgate.com”); Griffin Technology, Inc. of Nashville, Tennessee (“Griffin”); Guangzhou Evotech Industry Co., Ltd. of Guangdong, China (“Guangzhou Evotech”); Hard Candy Cases LLC of Sacramento, California (“Hard Candy”); Hoffco Brands, Inc. of Wheat Ridge, Colorado (“Hoffco”); Hong Kong Better Technology Group Ltd. of Shenzhen, China (“Better Technology Group”); Hong Kong HJJ Co. Ltd. of Shenzhen, China (“HJJ”); Hypercel Corporation of Valencia, California (“Hypercel”); InMotion Entertainment of Jacksonville, Florida (“InMotion”); MegaWatts Computers, LLC of Tulsa, Oklahoma (“MegaWatts”); National Cellular of Brooklyn, New York (“National Cellular”); OEMBargain.com of Wantagh, New York (“OEMBargain.com”); One Step Up Ltd. of New York, New York (“One Step Up”); Papaya Holdings Ltd. of Central, Hong Kong (“Papaya”); Quanyun Electronics Co., Ltd. of Shenzhen, China (“Quanyun”); ShenZhen Star & Way Trade Co., Ltd. of Guangzhou City, China (“Star & Way”); Sinatech Industries Co., Ltd. of Guangzhou City, China (“Sinatech”); SmileCase of Windsor Mill, Maryland (“SmileCase”); Suntel Global Investment Ltd. of Guangzhou, China (“Suntel”); TheCaseInPoint.com of Titusville, Florida (“TheCaseInPoint”); TheCaseSpace of Fort Collins, Colorado (“TheCaseSpace”); Topter Technology Co., Ltd. of Guangdong, China (“Topter”); and Trait Technology (Shenzhen) Co., Ltd. of Shenzhen, China (“Trait Technology”). *Id.* With respect to accused products by Respondent Griffin, Otter asserted only the ’122 patent.

On August 3, 2011, the ALJ issued an ID granting Otter leave to amend the complaint and notice of investigation to add Global Cellular, Inc. of Alpharetta, Georgia (“Global Cellular”) as a respondent. *See* Order No. 3 (August 3, 2011). The Commission determined not to review the order. *See* Notice of Commission Determination not to Review an Initial Determination Granting Complainant’s Motion to Amend the Complaint and Notice of Investigation to Add a Respondent (August 18, 2011).

The following respondents were terminated from the investigation based on settlement agreements, consent orders, or withdrawal of allegations from the complaint: One Step Up, InMotion, Hard Candy, DHGate.com, Alibaba.com, A.G. Findings, Cellairis, Global Cellular, AFC Trident, Better Technology Group, and OEMBargain.com. The following respondents were found in default: Anbess, Guangzhou Evotech, Hoffco, HJJ, Sinatech, Suntel, Trait Technology, Papaya, Quanyun, Topter, Cellet, TheCaseSpace, MegaWatts, Hypercel, Star & Way, SmileCase, TheCaseInpoint, and National Cellular (collectively “Defaulting Respondents”). Griffin is the only remaining respondent not found in default, and the only respondent that appeared before the Commission.

On June 29, 2012, the ALJ issued his final ID, finding a violation of section 337 by Griffin and the Defaulting Respondents. Specifically, the ALJ found that the Commission has subject matter jurisdiction: *in rem jurisdiction* over the accused products and *in personam* jurisdiction over the respondents. ID at 45-46. The ALJ also found that the importation requirements of section 337 (19 U.S.C. §§ 1337(a)(1)(B), (C)) have been satisfied. *Id.* at 38-45. Regarding infringement, the ALJ found that the Defaulting Respondents' accused products infringe the asserted claims of the asserted patents and the asserted trademarks. *Id.* at 62-88. The ALJ further found that Griffin's accused products, the Griffin survivor for iPad 2 and Griffin Explorer for iPhone 4, literally infringe the asserted claims of the '122 patent but that the Griffin Survivor for iPhone 4 and Griffin Survivor for iPod Touch do not literally infringe the asserted claims of the '122 patent. *Id.* at 64-78. The ALJ concluded that an industry exists within the United States for the asserted patents and trademarks as required by 19 U.S.C. § 1337(a)(2). *Id.* at 89-108.

On July 16, 2012, Otter filed a petition for review of the ID. That same day, the Commission investigative attorney filed a petition for review. On July 17, 2012, Griffin filed a petition for review (the Commission granted Griffin's motion for leave to file its petition one day late). On July 24, 2012, the parties filed responses to the petitions for review.

On August 30, 2012, the Commission determined to review a single issue in the final ID and requested briefing on the issue it determined to review, and on remedy, the public interest and bonding. *77 Fed. Reg.* 54924 (Sept. 6, 2012). Specifically, the Commission determined to review the finding that the accused Griffin Survivor for iPod Touch does not literally infringe the asserted claims of the '122 patent.

On September 14, 2012, the parties filed written submissions on the issue under review, remedy, the public interest, and bonding. On September 21, 2012, the parties filed reply submissions.

Having examined the record of this investigation, including the ALJ's final ID, the Commission has determined to reverse the ALJ's finding that the accused Griffin Survivor for iPod Touch does not literally infringe the asserted claims of the '122 patent. The Commission adopts the ALJ's findings in all other respects.

Having found a violation of section 337 in this investigation, the Commission has determined that the appropriate form of relief is: (1) a general exclusion order prohibiting the unlicensed entry of protective cases and components thereof covered by the claim of the D908 patent, the D784 patent, the D536 patent, the D785 patent, the D741 patent, or the D386 patent, or one or more of claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, and 44 of the '122 patent; or that infringe one or more of U.S. Trademark Reg. Nos. 3,788,534, 3,788,535, 3,623,789, or 3,795,187; (2) cease and desist orders prohibiting domestic respondents Cellet, Hoffco, Hypercel, MegaWatts, National Cellular, SmileCase, TheCaseInPoint, and TheCaseSpace from conducting any of the following activities in the United States, including via internet activity: importing,

selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for, protective cases and components thereof covered by the D908 patent, the D784 patent, the D536 patent, the D785 patent, the D741 patent, or the D386 patent, or one or more of claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, and 44 of the '122 patent; or that infringe one or more of U.S. Trademark Reg. Nos. 3,788,534, 3,788,535, 3,623,789, or 3,795,187; and (3) a cease and desist order prohibiting Griffin from conducting any of the following activities in the United States, including via internet activity: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for, protective cases and components thereof covered by one or more of claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, and 44 of the '122 patent.

The Commission has also determined that the public interest factors enumerated in section 337(d), (f), and (g) (19 U.S.C. §§ 1337(d), (f), and (g)) do not preclude issuance of the general exclusion order or cease and desist orders. Finally, the Commission has determined that for Griffin, a bond in the amount of 12.45 percent of entered value for tablet cases and no bond for non-tablet cases is required to permit temporary importation during the period of Presidential review (19 U.S.C. § 1337(j)) of its infringing protective cases and components thereof. For Defaulting Respondents, the Commission has determined that a bond of 331.80 percent of entered value for tablet cases and 245.53 percent of entered value for non-tablet cases is required to permit temporary importation during the period of Presidential review (19 U.S.C. § 1337(j)) of protective cases and components thereof that are subject to the orders. For all other infringing products, the Commission has determined that a bond of 100 percent of entered value is required to permit temporary importation during the period of Presidential review (19 U.S.C. § 1337(j)) of protective cases and components thereof that are subject to the general exclusion order. The Commission's orders and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, and in sections 210.42-46 and 210.50 of the Commission's Rules of Practice and Procedure, 19 C.F.R. §§ 210.42-46, 210.50.

By order of the Commission.



Lisa R. Barton
Acting Secretary to the Commission

Issued: October 31, 2012

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN PROTECTIVE CASES AND
COMPONENTS THEREOF**

Inv. No. 337-TA-780

GENERAL EXCLUSION ORDER

The Commission has determined that there is a violation of Section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the unlawful importation and sale of certain protective cases and components thereof that are covered by United States Patent Nos. D600,908 (“the D908 patent”); D617,784 (“the D784 patent”); D615,536 (“the D536 patent”); D617,785 (“the D785 patent”); D634,741 (“the D741 patent”); D636,386 (“the D386 patent”); and claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, and 44 of United States Patent No. 7,933,122 (“the ’122 patent”); and that infringe United States Trademark Registration Nos. 3,788,534; 3,788,535; 3,623,789; and 3,795,187.

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 to prevent circumvention of an exclusion order limited to products of named persons and because there is a pattern of violation of section 337 and it is difficult to identify the source of infringing products. Accordingly, the Commission has determined to issue a general exclusion order prohibiting the unlicensed importation of protective cases and components thereof.

The Commission has also determined that the public interest factors enumerated in 19 U.S.C. § 1337(d) do not preclude issuance of the general exclusion order. With respect to bonding, there shall be a bond in the amount of 12.45 percent of the entered value for covered tablet cases of Griffin Technology, Inc. of Nashville, Tennessee (“Griffin”) and no bond for covered Griffin non-tablet cases imported during the period of Presidential review. There shall be a bond in the amount of 331.80 percent of the entered value for covered tablet cases and a bond in the amount of 245.53 percent of the entered value for covered non-tablet cases imported during the period of Presidential review for the following defaulting respondents: Anbess Electronics Co. Ltd. of Schenzhen, China; Cellet Products of Sante Fe Springs, California; Guangzhou Evotech Industry Co., Ltd. of Guangdong, China; Hoffco Brands, Inc. of Wheat Ridge, Colorado; Hong Kong HJJ Co. Ltd. of Shenzhen, China; Hypercel Corporation of Valencia, California; MegaWatts Computers, LLC of Tulsa, Oklahoma; National Cellular of Brooklyn, New York; Papaya Holdings Ltd. of Central, Hong Kong; Quanyun Electronics Co., Ltd. of Shenzhen, China; ShenZhen Star & Way Trade Co., Ltd. of Guangzhou City, China; Sinatech Industries Co., Ltd. of Guangzhou City, China; SmileCase of Windsor Mill, Maryland; Suntel Global Investment Ltd. of Guangzhou, China; TheCaseInPoint.com of Titusville, Florida; TheCaseSpace of Fort Collins, Colorado; Topter Technology Co., Ltd. of Guangdong, China; and Trait Technology (Shenzhen) Co., Ltd. of Shenzhen, China (collectively, “Defaulting Respondents”). For all other infringing protective cases and components thereof imported during the period of Presidential review, there shall be a bond of 100 percent of entered value.

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

1. Protective cases and components thereof covered by the claim of the D908 patent, the D784 patent, the D536 patent, the D785 patent, the D741 patent, or the D386 patent, or one or more of claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, and 44 of the '122 patent; or that infringe one or more of U.S. Trademark Reg. Nos. 3,788,534, 3,788,535, 3,623,789, or 3,795,187, are excluded from entry into the United States for consumption, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, for the remaining terms of the patents and until the trademarks have been abandoned, canceled, or rendered invalid or unenforceable except under license of the owner or as provided by law.

2. Notwithstanding paragraph 1 of this Order, the aforesaid protective cases and components thereof are entitled to entry into the United States for consumption, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, under no bond for covered Griffin non-tablet cases, a bond in the amount of 12.45 percent of entered value for covered Griffin tablet cases, a bond in the amount of 331.80 percent of entered value for covered tablet cases of Defaulting Respondents, a bond in the amount of 245.53 percent of entered value for covered non-tablet cases of Defaulting Respondents, and a bond in the amount of 100 percent of entered value for all other covered infringing products pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337(j), and the Presidential Memorandum for the United States Trade Representative of July 21, 2005 (70 *Fed. Reg.* 43251), from the day after this Order is received by the United States Trade Representative and until such time as the United States Trade Representative notifies the Commission that this Order is

approved or disapproved but, in any event, not later than sixty (60) days after the date of receipt of this Order.

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

4. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to protective cases and components thereof that are imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.

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

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

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

By order of the Commission.

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

Lisa R. Barton
Acting Secretary to the Commission

Issued: October 31, 2012

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

In the Matter of

**CERTAIN PROTECTIVE CASES AND
COMPONENTS THEREOF**

Inv. No. 337-TA-780

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT Respondent, Cellet Products, cease and desist from conducting any of the following activities in the United States, including via the internet: importing, selling, marketing, advertising, distributing, and transferring (except for exportation), of protective cases and components thereof that are covered by United States Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386; or claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, and 44 of United States Patent No. 7,933,122 (“the ’122 patent”); or that infringe United States Trademark Registration Nos. 3,788,534; 3,788,535; 3,623,789; or 3,795,187, in violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337.

I. Definitions

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Otter Products, LLC.
- (C) “Respondent” means Cellet Products of Cerritos, California.

(D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority owned or controlled subsidiaries, successors, or assigns.

(E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.

(F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.

(G) The term “covered products” shall mean protective cases and components thereof, manufactured, imported, or sold by Respondent that are covered by the claim of the U.S. Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; or D636,386; or one or more of claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, or 44 of U.S. Patent No. 7,933,122; or that infringe one or more of U.S. Trademark Reg. Nos. 3,788,534, 3,788,535, 3,623,789, or 3,795,187.

II. Applicability

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

III. Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by this Order. For the remaining term of U.S. Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386; and 7,933,122, and while U.S. Trademark Reg. Nos. 3,788,534; 3,788,535; 3,623,789; and 3,795,187 remain valid and enforceable, Respondent shall not, including via the internet:

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

IV. Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of U.S. Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386; and 7,933,122, and Trademark Reg. Nos. 3,788,534; 3,788,535; 3,623,789; and 3,795,187 licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V. Reporting

For purposes of this reporting requirement, the reporting periods shall commence on June 1 of each year and shall end on the subsequent May 31. However, the first report required under this section shall cover the period from the date of issuance of this Order through May 31, 2013. This reporting requirement shall continue in force until such time as Respondent will have truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission (a) the quantity in units and the value in dollars of covered products that Respondent has (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period. Respondents filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-780") in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202-205-2000). Any Respondent desiring to submit a document to the Commission in confidence must file the

original and a public version of the original with the Office of the Secretary and serve a copy of the confidential version on Complainant's counsel.¹

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

VI. Record-keeping and Inspection

(A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

(B) For the purpose of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

¹ Complainant must file a letter with the Secretary identifying the attorney to receive the reports or bond information. The designated attorney must be on the protective order entered in the investigation.

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

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

(B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII (A) of this Order, a copy of the Order upon each successor; and

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

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the date of expiration of U.S. Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386; and 7,933,122, and until U.S. Trademark Reg. Nos. 3,788,534; 3,788,535; 3,623,789; and 3,795,187 have been abandoned, canceled, or rendered invalid or unenforceable.

VIII. Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of this Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX. Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.75, including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, 19 U.S.C. § 1337(f), and any other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if Respondent fails to provide adequate or timely information.

X. Modification

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

XI. Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative as delegated by the President, 70 *Fed Reg* 43251 (July 21, 2005), subject to Respondent posting a bond in the amount of 331.80 percent of entered value for covered tablet cases and 245.53 percent of entered value for covered non-tablet cases. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the general exclusion order issued by the Commission, and are not subject to this bond provision.

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

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

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

By Order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', is written over a large, horizontal, oval-shaped scribble.

Lisa R. Barton
Acting Secretary to the Commission

Issued: October 31, 2012

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

In the Matter of

**CERTAIN PROTECTIVE CASES AND
COMPONENTS THEREOF**

Inv. No. 337-TA-780

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT Respondent, MegaWatts Computers, LLC, cease and desist from conducting any of the following activities in the United States, including via the internet: importing, selling, marketing, advertising, distributing, and transferring (except for exportation), of protective cases and components thereof that are covered by United States Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386; or claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, and 44 of United States Patent No. 7,933,122 (“the ’122 patent”); or that infringe United States Trademark Registration Nos. 3,788,534; 3,788,535; 3,623,789; or 3,795,187, in violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337.

I. Definitions

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Otter Products, LLC.
- (C) “Respondent” means MegaWatts Computers, LLC of Tulsa, Oklahoma.

(D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority owned or controlled subsidiaries, successors, or assigns.

(E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.

(F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.

(G) The term “covered products” shall mean protective cases and components thereof, manufactured, imported, or sold by Respondent that are covered by the claim of the U.S. Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; or D636,386; or one or more of claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, or 44 of U.S. Patent No. 7,933,122; or that infringe one or more of U.S. Trademark Reg. Nos. 3,788,534, 3,788,535, 3,623,789, or 3,795,187.

II. Applicability

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

III. Conduct Prohibited

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

For the remaining term of U.S. Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386; and 7,933,122, and while U.S. Trademark Reg. Nos. 3,788,534; 3,788,535; 3,623,789; and 3,795,187 remain valid and enforceable, Respondent shall not, including via the internet:

(A) import or sell for importation into the United States covered products;

(B) market, distribute, sell, or otherwise transfer (except for exportation), in the United States imported covered products;

(C) advertise imported covered products; or

(D) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV. Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of U.S. Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386; and 7,933,122, and Trademark Reg. Nos. 3,788,534; 3,788,535; 3,623,789; and 3,795,187 licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V. Reporting

For purposes of this reporting requirement, the reporting periods shall commence on June 1 of each year and shall end on the subsequent May 31. However, the first report required under this section shall cover the period from the date of issuance of this Order through May 31, 2013. This reporting requirement shall continue in force until such time as Respondent will have truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission (a) the quantity in units and the value in dollars of covered products that Respondent has (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period. Respondents filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-780") in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202-205-2000). Any Respondent desiring to submit a document to the Commission in confidence must file the

original and a public version of the original with the Office of the Secretary and serve a copy of the confidential version on Complainant's counsel.¹

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

VI. Record-keeping and Inspection

(A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

(B) For the purpose of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

¹ Complainant must file a letter with the Secretary identifying the attorney to receive the reports or bond information. The designated attorney must be on the protective order entered in the investigation.

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

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

(B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII (A) of this Order, a copy of the Order upon each successor; and

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

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the date of expiration of U.S. Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386; and 7,933,122, and until U.S. Trademark Reg. Nos. 3,788,534; 3,788,535; 3,623,789; and 3,795,187 have been abandoned, canceled, or rendered invalid or unenforceable.

VIII. Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of this Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX. Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.75, including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, 19 U.S.C. § 1337(f), and any other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if Respondent fails to provide adequate or timely information.

X. Modification

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

XI. Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative as delegated by the President, 70 *Fed Reg* 43251 (July 21, 2005), subject to Respondent posting a bond in the amount of 331.80 percent of entered value for covered tablet cases and 245.53 percent of entered value for covered non-tablet cases. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the general exclusion order issued by the Commission, and are not subject to this bond provision.

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

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

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

By Order of the Commission.



Lisa R. Barton
Acting Secretary to the Commission

Issued: October 31, 2012

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

In the Matter of

**CERTAIN PROTECTIVE CASES AND
COMPONENTS THEREOF**

Inv. No. 337-TA-780

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT Respondent, Griffin Technology Inc., cease and desist from conducting any of the following activities in the United States, including via the internet: importing, selling, marketing, advertising, distributing, and transferring (except for exportation), of protective cases and components thereof that are covered by claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, and 44 of United States Patent No. 7,933,122 (“the ‘122 patent”) in violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337.

I. Definitions

As used in this Order:

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

(B) “Complainant” shall mean Otter Products, LLC.

(C) “Respondent” means Griffin Technology, Inc. of Nashville, Tennessee.

(D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority owned or controlled subsidiaries, successors, or assigns.

(E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.

(F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.

(G) The term “covered products” shall mean protective cases and components thereof, manufactured, imported, or sold by Respondent that are covered by one or more of claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, or 44 of U.S. Patent No. 7,933,122.

II. Applicability

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

III. Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by this Order. For the remaining term of U.S. Patent No. 7,933,122, Respondent shall not, including via the internet:

(A) import or sell for importation into the United States covered products;

(B) market, distribute, sell, or otherwise transfer (except for exportation), in the United States imported covered products;

(C) advertise imported covered products; or

(D) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV. Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of U.S. Patent No. 7,933,122 licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V. Reporting

For purposes of this reporting requirement, the reporting periods shall commence on June 1 of each year and shall end on the subsequent May 31. However, the first report required under this section shall cover the period from the date of issuance of this Order through May 31, 2013. This reporting requirement shall continue in force until such time as Respondent will have truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

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

filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-780") in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures*, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000). Any Respondent desiring to submit a document to the Commission in confidence must file the original and a public version of the original with the Office of the Secretary and serve a copy of the confidential version on Complainant's counsel.¹

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

VI. Record-keeping and Inspection

(A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

¹ Complainant must file a letter with the Secretary identifying the attorney to receive the reports or bond information. The designated attorney must be on the protective order entered in the investigation.

(B) For the purpose of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

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

(B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII (A) of this Order, a copy of the Order upon each successor; and

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

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the date of expiration of U.S. Patent No. 7,933,122.

VIII. Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of this Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX. Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.75, including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, 19 U.S.C. § 1337(f), and any other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if Respondent fails to provide adequate or timely information.

X. Modification

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

XI. Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative as

delegated by the President, 70 *Fed Reg* 43251 (July 21, 2005), subject to Respondent posting a bond in the amount of 12.45 percent of entered value for covered tablet cases and no bond for covered non-tablet cases. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the general exclusion order issued by the Commission, and are not subject to this bond provision.

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

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

The bond is to be released in the event the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved, or

not disapproved, by the United States Trade Representative, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By Order of the Commission.

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

Lisa R. Barton
Acting Secretary to the Commission

Issued: October 31, 2012

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

In the Matter of

**CERTAIN PROTECTIVE CASES AND
COMPONENTS THEREOF**

Inv. No. 337-TA-780

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT Respondent, TheCaseInPoint.com, cease and desist from conducting any of the following activities in the United States, including via the internet: importing, selling, marketing, advertising, distributing, and transferring (except for exportation), of protective cases and components thereof that are covered by United States Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386; or claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, and 44 of United States Patent No. 7,933,122 (“the ’122 patent”); or that infringe United States Trademark Registration Nos. 3,788,534; 3,788,535; 3,623,789; or 3,795,187, in violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337.

I. Definitions

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Otter Products, LLC.
- (C) “Respondent” means TheCaseInPoint.com of Titusville, Florida.

(D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority owned or controlled subsidiaries, successors, or assigns.

(E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.

(F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.

(G) The term “covered products” shall mean protective cases and components thereof, manufactured, imported, or sold by Respondent that are covered by the claim of the U.S. Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; or D636,386; or one or more of claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, or 44 of U.S. Patent No. 7,933,122; or that infringe one or more of U.S. Trademark Reg. Nos. 3,788,534, 3,788,535, 3,623,789, or 3,795,187.

II. Applicability

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

III. Conduct Prohibited

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

For the remaining term of U.S. Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386; and 7,933,122, and while U.S. Trademark Reg. Nos. 3,788,534; 3,788,535; 3,623,789; and 3,795,187 remain valid and enforceable, Respondent shall not, including via the internet:

(A) import or sell for importation into the United States covered products;

(B) market, distribute, sell, or otherwise transfer (except for exportation), in the United States imported covered products;

(C) advertise imported covered products; or

(D) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV. Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of U.S. Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386; and 7,933,122, and Trademark Reg. Nos. 3,788,534; 3,788,535; 3,623,789; and 3,795,187 licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V. Reporting

For purposes of this reporting requirement, the reporting periods shall commence on June 1 of each year and shall end on the subsequent May 31. However, the first report required under this section shall cover the period from the date of issuance of this Order through May 31, 2013. This reporting requirement shall continue in force until such time as Respondent will have truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission (a) the quantity in units and the value in dollars of covered products that Respondent has (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period. Respondents filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-780") in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202-205-2000). Any Respondent desiring to submit a document to the Commission in confidence must file the

original and a public version of the original with the Office of the Secretary and serve a copy of the confidential version on Complainant's counsel.¹

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

VI. Record-keeping and Inspection

(A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

(B) For the purpose of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

¹ Complainant must file a letter with the Secretary identifying the attorney to receive the reports or bond information. The designated attorney must be on the protective order entered in the investigation.

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

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

(B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII (A) of this Order, a copy of the Order upon each successor; and

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

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the date of expiration of U.S. Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386; and 7,933,122, and until U.S. Trademark Reg. Nos. 3,788,534; 3,788,535; 3,623,789; and 3,795,187 have been abandoned, canceled, or rendered invalid or unenforceable.

VIII. Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of this Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX. Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.75, including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, 19 U.S.C. § 1337(f), and any other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if Respondent fails to provide adequate or timely information.

X. Modification

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

XI. Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative as delegated by the President, 70 *Fed Reg* 43251 (July 21, 2005), subject to Respondent posting a bond in the amount of 331.80 percent of entered value for covered tablet cases and 245.53 percent of entered value for covered non-tablet cases. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the general exclusion order issued by the Commission, and are not subject to this bond provision.

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

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

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

By Order of the Commission.

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

Lisa R. Barton
Acting Secretary to the Commission

Issued: October 31, 2012

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

In the Matter of

**CERTAIN PROTECTIVE CASES AND
COMPONENTS THEREOF**

Inv. No. 337-TA-780

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT Respondent, Hoffco Brands, Inc. d/b/a Celltronix, cease and desist from conducting any of the following activities in the United States, including via the internet: importing, selling, marketing, advertising, distributing, and transferring (except for exportation), of protective cases and components thereof that are covered by United States Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386; or claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, and 44 of United States Patent No. 7,933,122 (“the ’122 patent”); or that infringe United States Trademark Registration Nos. 3,788,534; 3,788,535; 3,623,789; or 3,795,187, in violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337.

I. Definitions

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Otter Products, LLC.
- (C) “Respondent” means Hoffco Brands, Inc. d/b/a Celltronix of Wheat Ridge, Colorado.

(D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority owned or controlled subsidiaries, successors, or assigns.

(E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.

(F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.

(G) The term “covered products” shall mean protective cases and components thereof, manufactured, imported, or sold by Respondent that are covered by the claim of the U.S. Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; or D636,386; or one or more of claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, or 44 of U.S. Patent No. 7,933,122; or that infringe one or more of U.S. Trademark Reg. Nos. 3,788,534, 3,788,535, 3,623,789, or 3,795,187.

II. Applicability

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

III. Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by this Order. For the remaining term of U.S. Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386; and 7,933,122, and while U.S. Trademark Reg. Nos. 3,788,534; 3,788,535; 3,623,789; and 3,795,187 remain valid and enforceable, Respondent shall not, including via the internet:

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

IV. Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of U.S. Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386; and 7,933,122, and Trademark Reg. Nos. 3,788,534; 3,788,535; 3,623,789; and 3,795,187 licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V. Reporting

For purposes of this reporting requirement, the reporting periods shall commence on June 1 of each year and shall end on the subsequent May 31. However, the first report required under this section shall cover the period from the date of issuance of this Order through May 31, 2013. This reporting requirement shall continue in force until such time as Respondent will have truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission (a) the quantity in units and the value in dollars of covered products that Respondent has (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period. Respondents filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-780") in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures*, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000). Any Respondent desiring to submit a document to the Commission in confidence must file the

original and a public version of the original with the Office of the Secretary and serve a copy of the confidential version on Complainant's counsel.¹

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

VI. Record-keeping and Inspection

(A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

(B) For the purpose of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

¹ Complainant must file a letter with the Secretary identifying the attorney to receive the reports or bond information. The designated attorney must be on the protective order entered in the investigation.

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

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

(B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII (A) of this Order, a copy of the Order upon each successor; and

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

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the date of expiration of U.S. Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386; and 7,933,122, and until U.S. Trademark Reg. Nos. 3,788,534; 3,788,535; 3,623,789; and 3,795,187 have been abandoned, canceled, or rendered invalid or unenforceable.

VIII. Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of this Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX. Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.75, including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, 19 U.S.C. § 1337(f), and any other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if Respondent fails to provide adequate or timely information.

X. Modification

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

XI. Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative as delegated by the President, 70 *Fed Reg* 43251 (July 21, 2005), subject to Respondent posting a bond in the amount of 331.80 percent of entered value for covered tablet cases and 245.53 percent of entered value for covered non-tablet cases. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the general exclusion order issued by the Commission, and are not subject to this bond provision.

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

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

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

By Order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', enclosed within a large, loopy oval shape.

Lisa R. Barton
Acting Secretary to the Commission

Issued: October 31, 2012

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

In the Matter of

**CERTAIN PROTECTIVE CASES AND
COMPONENTS THEREOF**

Inv. No. 337-TA-780

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT Respondent, National Cellular cease and desist from conducting any of the following activities in the United States, including via the internet: importing, selling, marketing, advertising, distributing, and transferring (except for exportation), of protective cases and components thereof that are covered by United States Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386; or claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, and 44 of United States Patent No. 7,933,122 (“the ’122 patent”); or that infringe United States Trademark Registration Nos. 3,788,534; 3,788,535; 3,623,789; or 3,795,187, in violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337.

I. Definitions

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Otter Products, LLC.
- (C) “Respondent” means National Cellular of Brooklyn, New York.

(D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority owned or controlled subsidiaries, successors, or assigns.

(E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.

(F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.

(G) The term “covered products” shall mean protective cases and components thereof, manufactured, imported, or sold by Respondent that are covered by the claim of the U.S. Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; or D636,386; or one or more of claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, or 44 of U.S. Patent No. 7,933,122; or that infringe one or more of U.S. Trademark Reg. Nos. 3,788,534, 3,788,535, 3,623,789, or 3,795,187.

II. Applicability

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

III. Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by this Order. For the remaining term of U.S. Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386; and 7,933,122, and while U.S. Trademark Reg. Nos. 3,788,534; 3,788,535; 3,623,789; and 3,795,187 remain valid and enforceable, Respondent shall not, including via the internet:

(A) import or sell for importation into the United States covered products;

(B) market, distribute, sell, or otherwise transfer (except for exportation), in the United States imported covered products;

(C) advertise imported covered products; or

(D) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV. Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of U.S. Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386; and 7,933,122, and Trademark Reg. Nos. 3,788,534; 3,788,535; 3,623,789; and 3,795,187 licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V. Reporting

For purposes of this reporting requirement, the reporting periods shall commence on June 1 of each year and shall end on the subsequent May 31. However, the first report required under this section shall cover the period from the date of issuance of this Order through May 31, 2013. This reporting requirement shall continue in force until such time as Respondent will have truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission (a) the quantity in units and the value in dollars of covered products that Respondent has (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period. Respondents filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-780") in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202-205-2000). Any Respondent desiring to submit a document to the Commission in confidence must file the

original and a public version of the original with the Office of the Secretary and serve a copy of the confidential version on Complainant's counsel.¹

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

VI. Record-keeping and Inspection

(A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

(B) For the purpose of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

¹ Complainant must file a letter with the Secretary identifying the attorney to receive the reports or bond information. The designated attorney must be on the protective order entered in the investigation.

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

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

(B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII (A) of this Order, a copy of the Order upon each successor; and

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

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the date of expiration of U.S. Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386; and 7,933,122, and until U.S. Trademark Reg. Nos. 3,788,534; 3,788,535; 3,623,789; and 3,795,187 have been abandoned, canceled, or rendered invalid or unenforceable.

VIII. Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of this Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX. Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.75, including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, 19 U.S.C. § 1337(f), and any other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if Respondent fails to provide adequate or timely information.

X. Modification

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

XI. Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative as delegated by the President, 70 *Fed Reg* 43251 (July 21, 2005), subject to Respondent posting a bond in the amount of 331.80 percent of entered value for covered tablet cases and 245.53 percent of entered value for covered non-tablet cases. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the general exclusion order issued by the Commission, and are not subject to this bond provision.

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

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

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

By Order of the Commission.



Lisa R. Barton
Acting Secretary to the Commission

Issued: October 31, 2012

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

In the Matter of

**CERTAIN PROTECTIVE CASES AND
COMPONENTS THEREOF**

Inv. No. 337-TA-780

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT Respondent, TheCaseSpace, cease and desist from conducting any of the following activities in the United States, including via the internet: importing, selling, marketing, advertising, distributing, and transferring (except for exportation), of protective cases and components thereof that are covered by United States Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386; or claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, and 44 of United States Patent No. 7,933,122 (“the ’122 patent”); or that infringe United States Trademark Registration Nos. 3,788,534; 3,788,535; 3,623,789; or 3,795,187, in violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337.

I. Definitions

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Otter Products, LLC.
- (C) “Respondent” means TheCaseSpace of Fort Collins, Colorado.

(D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority owned or controlled subsidiaries, successors, or assigns.

(E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.

(F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.

(G) The term “covered products” shall mean protective cases and components thereof, manufactured, imported, or sold by Respondent that are covered by the claim of the U.S. Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; or D636,386; or one or more of claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, or 44 of U.S. Patent No. 7,933,122; or that infringe one or more of U.S. Trademark Reg. Nos. 3,788,534, 3,788,535, 3,623,789, or 3,795,187.

II. Applicability

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

III. Conduct Prohibited

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

For the remaining term of U.S. Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386; and 7,933,122, and while U.S. Trademark Reg. Nos. 3,788,534; 3,788,535; 3,623,789; and 3,795,187 remain valid and enforceable, Respondent shall not, including via the internet:

(A) import or sell for importation into the United States covered products;

(B) market, distribute, sell, or otherwise transfer (except for exportation), in the United States imported covered products;

(C) advertise imported covered products; or

(D) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV. Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of U.S. Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386; and 7,933,122, and Trademark Reg. Nos. 3,788,534; 3,788,535; 3,623,789; and 3,795,187 licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V. Reporting

For purposes of this reporting requirement, the reporting periods shall commence on June 1 of each year and shall end on the subsequent May 31. However, the first report required under this section shall cover the period from the date of issuance of this Order through May 31, 2013. This reporting requirement shall continue in force until such time as Respondent will have truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission (a) the quantity in units and the value in dollars of covered products that Respondent has (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period. Respondents filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-780") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000). Any Respondent desiring to submit a document to the Commission in confidence must file the

original and a public version of the original with the Office of the Secretary and serve a copy of the confidential version on Complainant's counsel.¹

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

VI. Record-keeping and Inspection

(A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

(B) For the purpose of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

¹ Complainant must file a letter with the Secretary identifying the attorney to receive the reports or bond information. The designated attorney must be on the protective order entered in the investigation.

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

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

(B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII (A) of this Order, a copy of the Order upon each successor; and

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

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the date of expiration of U.S. Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386; and 7,933,122, and until U.S. Trademark Reg. Nos. 3,788,534; 3,788,535; 3,623,789; and 3,795,187 have been abandoned, canceled, or rendered invalid or unenforceable.

VIII. Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of this Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX. Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.75, including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, 19 U.S.C. § 1337(f), and any other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if Respondent fails to provide adequate or timely information.

X. Modification

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

XI. Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative as delegated by the President, 70 *Fed Reg* 43251 (July 21, 2005), subject to Respondent posting a bond in the amount of 331.80 percent of entered value for covered tablet cases and 245.53 percent of entered value for covered non-tablet cases. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the general exclusion order issued by the Commission, and are not subject to this bond provision.

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

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

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

By Order of the Commission.

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

Lisa R. Barton
Acting Secretary to the Commission

Issued: October 31, 2012

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

In the Matter of

**CERTAIN PROTECTIVE CASES AND
COMPONENTS THEREOF**

Inv. No. 337-TA-780

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT Respondent, Hypercel Corp. d/b/a Naztech Technologies, cease and desist from conducting any of the following activities in the United States, including via the internet: importing, selling, marketing, advertising, distributing, and transferring (except for exportation), of protective cases and components thereof that are covered by United States Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386; or claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, and 44 of United States Patent No. 7,933,122 (“the ’122 patent”); or that infringe United States Trademark Registration Nos. 3,788,534; 3,788,535; 3,623,789; or 3,795,187, in violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337.

I. Definitions

As used in this Order:

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

(B) “Complainant” shall mean Otter Products, LLC.

(C) “Respondent” means Hypercel Corp. d/b/a Naztech Technologies of Valencia, California.

(D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority owned or controlled subsidiaries, successors, or assigns.

(E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.

(F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.

(G) The term “covered products” shall mean protective cases and components thereof, manufactured, imported, or sold by Respondent that are covered by the claim of the U.S. Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; or D636,386; or one or more of claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, or 44 of U.S. Patent No. 7,933,122; or that infringe one or more of U.S. Trademark Reg. Nos. 3,788,534, 3,788,535, 3,623,789, or 3,795,187.

II. Applicability

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

III. Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by this Order. For the remaining term of U.S. Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386; and 7,933,122, and while U.S. Trademark Reg. Nos. 3,788,534; 3,788,535; 3,623,789; and 3,795,187 remain valid and enforceable, Respondent shall not, including via the internet:

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

IV. Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of U.S. Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386; and 7,933,122, and Trademark Reg. Nos. 3,788,534; 3,788,535; 3,623,789; and 3,795,187 licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V. Reporting

For purposes of this reporting requirement, the reporting periods shall commence on June 1 of each year and shall end on the subsequent May 31. However, the first report required under this section shall cover the period from the date of issuance of this Order through May 31, 2013. This reporting requirement shall continue in force until such time as Respondent will have truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission (a) the quantity in units and the value in dollars of covered products that Respondent has (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period. Respondents filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-780") in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202-205-2000). Any Respondent desiring to submit a document to the Commission in confidence must file the

original and a public version of the original with the Office of the Secretary and serve a copy of the confidential version on Complainant's counsel.¹

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

VI. Record-keeping and Inspection

(A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

(B) For the purpose of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

¹ Complainant must file a letter with the Secretary identifying the attorney to receive the reports or bond information. The designated attorney must be on the protective order entered in the investigation.

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

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

(B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII (A) of this Order, a copy of the Order upon each successor; and

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

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the date of expiration of U.S. Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386; and 7,933,122, and until U.S. Trademark Reg. Nos. 3,788,534; 3,788,535; 3,623,789; and 3,795,187 have been abandoned, canceled, or rendered invalid or unenforceable.

VIII. Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of this Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX. Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.75, including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, 19 U.S.C. § 1337(f), and any other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if Respondent fails to provide adequate or timely information.

X. Modification

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

XI. Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative as delegated by the President, 70 *Fed Reg* 43251 (July 21, 2005), subject to Respondent posting a bond in the amount of 331.80 percent of entered value for covered tablet cases and 245.53 percent of entered value for covered non-tablet cases. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the general exclusion order issued by the Commission, and are not subject to this bond provision.

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

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

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

By Order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', enclosed within a large, loopy oval shape.

Lisa R. Barton
Acting Secretary to the Commission

Issued: October 31, 2012

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

In the Matter of

**CERTAIN PROTECTIVE CASES AND
COMPONENTS THEREOF**

Inv. No. 337-TA-780

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT Respondent, SmileCase, cease and desist from conducting any of the following activities in the United States, including via the internet: importing, selling, marketing, advertising, distributing, and transferring (except for exportation), of protective cases and components thereof that are covered by United States Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386; or claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, and 44 of United States Patent No. 7,933,122 (“the ’122 patent”); or that infringe United States Trademark Registration Nos. 3,788,534; 3,788,535; 3,623,789; or 3,795,187, in violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337.

I. Definitions

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Otter Products, LLC.
- (C) “Respondent” means SmileCase of Windsor Mill, Maryland.

(D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority owned or controlled subsidiaries, successors, or assigns.

(E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.

(F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.

(G) The term “covered products” shall mean protective cases and components thereof, manufactured, imported, or sold by Respondent that are covered by the claim of the U.S. Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; or D636,386; or one or more of claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, or 44 of U.S. Patent No. 7,933,122; or that infringe one or more of U.S. Trademark Reg. Nos. 3,788,534, 3,788,535, 3,623,789, or 3,795,187.

II. Applicability

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

III. Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by this Order. For the remaining term of U.S. Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386; and 7,933,122, and while U.S. Trademark Reg. Nos. 3,788,534; 3,788,535; 3,623,789; and 3,795,187 remain valid and enforceable, Respondent shall not, including via the internet:

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

IV. Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of U.S. Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386; and 7,933,122, and Trademark Reg. Nos. 3,788,534; 3,788,535; 3,623,789; and 3,795,187 licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V. Reporting

For purposes of this reporting requirement, the reporting periods shall commence on June 1 of each year and shall end on the subsequent May 31. However, the first report required under this section shall cover the period from the date of issuance of this Order through May 31, 2013. This reporting requirement shall continue in force until such time as Respondent will have truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission (a) the quantity in units and the value in dollars of covered products that Respondent has (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period. Respondents filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-780") in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202-205-2000). Any Respondent desiring to submit a document to the Commission in confidence must file the

original and a public version of the original with the Office of the Secretary and serve a copy of the confidential version on Complainant's counsel.¹

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

VI. Record-keeping and Inspection

(A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

(B) For the purpose of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

¹ Complainant must file a letter with the Secretary identifying the attorney to receive the reports or bond information. The designated attorney must be on the protective order entered in the investigation.

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

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

(B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII (A) of this Order, a copy of the Order upon each successor; and

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

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the date of expiration of U.S. Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386; and 7,933,122, and until U.S. Trademark Reg. Nos. 3,788,534; 3,788,535; 3,623,789; and 3,795,187 have been abandoned, canceled, or rendered invalid or unenforceable.

VIII. Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of this Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX. Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.75, including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, 19 U.S.C. § 1337(f), and any other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if Respondent fails to provide adequate or timely information.

X. Modification

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

XI. Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative as delegated by the President, *70 Fed Reg* 43251 (July 21, 2005), subject to Respondent posting a bond in the amount of 331.80 percent of entered value for covered tablet cases and 245.53 percent of entered value for covered non-tablet cases. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the general exclusion order issued by the Commission, and are not subject to this bond provision.

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

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

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

By Order of the Commission.



Lisa R. Barton
Acting Secretary to the Commission

Issued: October 31, 2012

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served by hand upon, the Commission Investigative Attorney, Rett Snotherly, Esq., and the following parties as indicated on **October 31, 2012**.



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

On Behalf of Complainant Otter Products LLC:

Louis S. Mastriani, Esq.
ADDUCI MASTRIANI & SCHAUMBERG LLP
1133 Connecticut Avenue, 12th Floor
Washington, DC 20036

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

On Behalf of Respondent Griffin Technology, Inc.:

Jason L. Hornkohl, Esq.
HORNKOHL INTELLECTUAL PROPERTY LAW PLLC
7950 Saddle Ridge Trace
Nashville, TN 37221

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

Respondents:

Cellet Products
14530 Anson Ave.
Santa Fe Springs, CA 90670

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

Hoffco Brands, Inc.
d/b/a Celltronix
4860 Ward Road
Wheat Ridge, CO 80033

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

Hypercel Corporation
d/b/a Naztech Technologies
28010 Industry Drive
Valencia, CA 91355

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

**CERTAIN PROTECTIVE CASES AND COMPONENTS
THEREOF**

Inv. No. 337-TA-780

Certificate of Service – Page 2

Respondents (cont.):

TheCaseInPoint.com
793 Marian Court
Titusville, FL 32780

- Via Hand Delivery
- Via Overnight Delivery
- Via First Class Mail
- Other: _____

TheCaseSpace
215 East Foothills Parkway #D-003
Fort Collins, CO 80525

- Via Hand Delivery
- Via Overnight Delivery
- Via First Class Mail
- Other: _____

MegaWatts Computers, LLC
350 I South Sheridan Road
Tulsa, OK 74145

- Via Hand Delivery
- Via Overnight Delivery
- Via First Class Mail
- Other: _____

National Cellular
5620 I st Avenue, Third Floor
Brooklyn, NY 11220

- Via Hand Delivery
- Via Overnight Delivery
- Via First Class Mail
- Other: _____

SmileCase
3226 Ridgeway Place
Windsor Mill, MD 21244

- Via Hand Delivery
- Via Overnight Delivery
- Via First Class Mail
- Other: _____

PUBLIC VERSION

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

In the Matter of

**CERTAIN PROTECTIVE CASES AND
COMPONENTS THEREOF**

Investigation No. 337-TA-780

COMMISSION OPINION

This investigation is before the Commission for a final determination on the issue under review, remedy, the public interest, and bonding. The presiding administrative law judge (“ALJ”) issued an initial determination (“ID”) that respondents violated section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in connection with United States Patent Nos. D600,908 (“the D908 patent”); D617,784 (“the D784 patent”); D615,536 (“the D536 patent”); D617,785 (“the D785 patent”); D634,741 (“the D741 patent”); D636,386 (“the D386 patent”); claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, and 44 of United States Patent No. 7,933,122 (“the ’122 patent”); and United States Trademark Registration Nos. 3,788,534 (“the ’534 mark”); 3,788,535 (“the ’535 mark”); 3,623,789 (“the ’789 mark”); and 3,795,187 (“the ’187 mark”). *See 77 Fed. Reg.* 54924 (Sept. 6, 2012). The ALJ found that each respondent, including Griffin Technology, Inc. of Nashville, Tennessee (“Griffin”), violated section 337. Griffin was only accused of infringing the ’122 patent. The Commission determined not to review the ID except for certain aspects related to Griffin. The Commission has determined to reverse the ALJ’s finding that the accused Griffin Survivor for iPod Touch does not infringe the asserted claims of the ’122 patent. The Commission has adopted the ALJ’s

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findings in all other respects.

The Commission issues herewith a general exclusion order prohibiting the entry of unlicensed infringing protective cases and components thereof for consumption in the United States. The Commission has also determined to issue cease and desist orders directed to Griffin and the domestic defaulting respondents. The Commission finds that the public interest factors set out in sections 337(d), (f), and (g) do not preclude issuance of the remedial orders. For Griffin infringing products, the Commission sets a bond in the amount of 12.45 percent of the entered value for tablet cases and no bond for non-tablet cases of infringing products imported during the period of Presidential review. For Defaulting Respondents' infringing products, the Commission sets a bond in the amount of 331.80 percent of the entered value for tablet cases and 245.53 percent of the entered value for non-tablet cases of products imported during the period of Presidential review. For all other infringing products, the Commission sets a bond of 100 percent of entered value for products imported during the period of Presidential review.

I. BACKGROUND

A. Procedural History

The Commission instituted this investigation on June 30, 2011, based on a complaint filed by Otter Products, LLC of Fort Collins, Colorado ("Otter"). *76 Fed. Reg.* 38417 (June 30, 2011). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain protective cases and components thereof by

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reason of infringement of various claims of the '122, D908, D784, D536, D785, D741, and D386 patents; and the '534, '535, '789 and '187 marks. *Id.* The notice of investigation named the following respondents: A.G. Findings and Mfg. Co., Inc. of Sunrise, Florida (“A.G. Findings”); AFC Trident Inc. of Chino, California (“AFC Trident”); Alibaba.com Hong Kong Ltd. of Hangzhou, China (“Alibaba.com”); Anbess Electronics Co. Ltd. of Schenzhen, China (“Anbess”); Cellairis Franchise, Inc. of Alpharetta, Georgia (“Cellairis”); Cellet Products of Sante Fe Springs, California (“Cellet”); DHgate.com of Beijing, China (“DHgate.com”); Griffin Technology, Inc. of Nashville, Tennessee (“Griffin”); Guangzhou Evotech Industry Co., Ltd. of Guangdong, China (“Guangzhou Evotech”); Hard Candy Cases LLC of Sacramento, California (“Hard Candy”); Hoffco Brands, Inc. of Wheat Ridge, Colorado (“Hoffco”); Hong Kong Better Technology Group Ltd. of Shenzhen, China (“Better Technology Group”); Hong Kong HJJ Co. Ltd. of Shenzhen, China (“HJJ”); Hypercel Corporation of Valencia, California (“Hypercel”); InMotion Entertainment of Jacksonville, Florida (“InMotion”); MegaWatts Computers, LLC of Tulsa, Oklahoma (“MegaWatts”); National Cellular of Brooklyn, New York (“National Cellular”); OEMBargain.com of Wantagh, New York (“OEMBargain.com”); One Step Up Ltd. of New York, New York (“One Step Up”); Papaya Holdings Ltd. of Central, Hong Kong (“Papaya”); Quanyun Electronics Co., Ltd. of Shenzhen, China (“Quanyun”); ShenZhen Star & Way Trade Co., Ltd. of Guangzhou City, China (“Star & Way”); Sinatech Industries Co., Ltd. of Guangzhou City, China (“Sinatech”); SmileCase of Windsor Mill, Maryland (“SmileCase”); Suntel Global Investment Ltd. of Guangzhou, China (“Suntel”); TheCaseInPoint.com of Titusville, Florida (“TheCaseInPoint”); TheCaseSpace of Fort Collins, Colorado

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("TheCaseSpace"); Topter Technology Co., Ltd. of Guangdong, China ("Topter"); and Trait Technology (Shenzhen) Co., Ltd. of Shenzhen, China ("Trait Technology"). *Id.* Respondent Griffin was alleged only to infringe the asserted claims of the '122 patent.

On August 3, 2011, the ALJ issued an ID granting Otter leave to amend the complaint and notice of investigation to add Global Cellular, Inc. of Alpharetta, Georgia ("Global Cellular") as a respondent. *See* Order No. 3 (August 3, 2011). The Commission determined not to review the ID.¹

On August 29, 2011, the ALJ issued an ID terminating the investigation as to respondents One Step Up and InMotion based upon a settlement agreement and consent order stipulation. *See* Order No. 8 (August 29, 2011). On September 14, 2011, the ALJ issued an ID terminating the investigation as to respondent Hard Candy based upon a consent order stipulation. *See* Order No. 11 (September 14, 2011). On September 22, 2011, the ALJ issued IDs terminating the investigation as to respondents DHGate.com and Alibaba.com based upon settlement agreements. *See* Order Nos. 13 & 14 (September 22, 2011). On November 2, 2011, the ALJ issued an ID terminating the investigation as to respondent A.G. Findings based upon a settlement agreement. *See* Order No. 16 (November 2, 2011). The Commission determined not to review any of those IDs.²

¹ *See* Notice of Commission Determination not to Review an Initial Determination Granting Complainant's Motion to Amend the Complaint and Notice of Investigation to Add a Respondent (August 18, 2011).

² *See* Notice of Commission Determination Not to Review an Initial Determination Granting a Joint Motion to Terminate the Investigation as to Respondents One Step Up Ltd. and

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On November 8, 2011, the ALJ issued an ID finding respondents Anbess, Guangzhou Evotech, Hoffco, HJJ, Sinatech, Suntel, Trait Technology, Papaya, Quanyun, Topter, and Cellet in default. *See* Order No. 17 (November 8, 2011). The Commission determined not to review.³

On November 29, 2011, the ALJ issued IDs terminating respondents Cellairis, Global Cellular, and AFC Trident based upon settlement agreements. *See* Order Nos. 19 & 20. The Commission determined not to review.⁴

On December 22, 2011, the ALJ issued an ID finding respondents MegaWatts and TheCaseSpace in default. *See* Order No. 21 (December 22, 2011). The Commission determined not to review.⁵

InMotion Entertainment Based upon Consent Order Stipulation and Settlement Agreement (September 19, 2011); Notice of Commission Determination Not to Review an Initial Determination Granting a Joint Motion to Terminate the Investigation as to Respondent Hard Candy Cases LLC d/b/a Gumdrop LLC Based upon Consent Order Stipulation; Issuance of Consent Order (October 6, 2011); Notice of Commission Determination Not to Review an Initial Determination Granting a Joint Motion to Terminate the Investigation as to Respondent Alibaba.com Hong Kong Ltd. on the Basis of a Settlement Agreement (October 17, 2011); Notice of Commission Determination Not to Review an Initial Determination Granting a Joint Motion to Terminate the Investigation as to Respondent DHGATE.com on the Basis of a Settlement Agreement (October 24, 2011); Notice of Commission Determination Not to Review an Initial Determination Granting a Joint Motion to Terminate the Investigation as to Respondent A.G. Findings and Mfg. Co., Inc., d/b/a Ballistic on the Basis of a Settlement Agreement (November 22, 2011).

³ *See* Notice of Commission Determination Not to Review an Initial Determination Finding Certain Respondents in Default (December 5, 2011).

⁴ *See* Notice of Commission Determination Not to Review Two Initial Determinations Granting Joint Motions to Terminate the Investigation as to Respondents Cellairis Franchise, Inc., Global Cellular, Inc. and AFC Trident, Inc. Based Upon Settlement Agreements (December 21, 2011).

⁵ *See* Notice of Commission Determination Not to Review an Initial Determination Granting Election of Default and Motion for Entry of Default to Respondents TheCaseSpace and

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On December 30, 2011, the ALJ issued an ID terminating respondents Better Technology Group and OEMBargain.com from the investigation pursuant to 19 C.F.R. § 210.21(a)(1). *See* Order No. 23 (December 30, 2011). The Commission determined not to review.⁶

On February 9, 2012, the ALJ issued an ID finding respondents Hypercel, Star & Way, SmileCase, and TheCaseInPoint in default. *See* Order No. 25 (February 9, 2012). The Commission determined not to review.⁷

In sum, 11 respondents were terminated from the investigation based on settlement agreements, consent orders, or withdrawal of allegations against them. The following respondents were found in default: Anbess, Guangzhou Evotech, Hoffco, HJJ, Sinatech, Suntel, Trait Technology, Papaya, Quanyun, Topter, Cellet, TheCaseSpace, MegaWatts, Hypercel, Star & Way, SmileCase, TheCaseInpoint, and National Cellular (collectively, “the Defaulting Respondents”). Griffin is the only remaining respondent not found in default, and the only respondent that appeared before the Commission.

The ALJ held an evidentiary hearing from April 9, 2012 through April 11, 2012, and thereafter received post-hearing briefing from the parties.

On June 29, 2012, the ALJ issued his final ID, finding a violation of section 337 by

Megawatts Computers, LLC (January 13, 2012).

⁶ *See* Notice of Commission Determination Not to Review an Initial Determination Granting Complainant’s Motion to Terminate the Investigation as to Respondents Hong Kong Better Technology Group Ltd. and OEMBargain.com Under Commission Rule (210.21(a)(1) (January 24, 2012).

⁷ *See* Notice of Commission Determination Not to Review an Initial Determination Finding Certain Respondents in Default (March 3, 2012).

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Griffin and the Defaulting Respondents. Specifically, the ALJ found that the Commission has subject matter jurisdiction: *in rem jurisdiction* over the accused products and *in personam* jurisdiction over the respondents. ID at 45-46. The ALJ also found that the importation requirements of section 337 (19 U.S.C. §§ 1337(a)(1)(B), (C)) have been satisfied. *Id.* at 38-45. Regarding infringement, the ALJ found that the Defaulting Respondents' accused products infringe the asserted claims of the asserted patents and the asserted trademarks. *Id.* at 62-88. The ALJ further found that the Griffin Survivor for iPad 2 and Griffin Explorer for iPhone 4, literally infringe the asserted claims of the '122 patent but that the Griffin Survivor for iPhone 4 and Griffin Survivor for iPod Touch do not literally infringe the asserted claims of the '122 patent. *Id.* at 64-78. The ALJ finally concluded that an industry exists within the United States for the asserted patents and trademarks as required by 19 U.S.C. § 1337(a)(2). *Id.* at 89-108.

The ID included the ALJ's recommended determination on remedy and bonding. The ALJ recommended that in the event the Commission finds a violation of section 337, the Commission should issue a general exclusion order directed to the infringing articles. *Id.* at 118. The ALJ found that there has been a widespread pattern of unauthorized use of the asserted patents and that certain business conditions exist that warrant a general exclusion order. *Id.* at 116. The ALJ also recommended issuance of cease and desist orders directed to certain Defaulting Respondents, recommending that the cease and desist orders should encompass the Defaulting Respondents' internet activities as well. *Id.* at 120. Regarding Griffin, the ALJ found that the record evidence establishes that it has commercially significant amounts of infringing

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protective cases in inventory in the United States and recommended issuing a cease and desist order directed to those infringing products. *Id.* With respect to the amount of bond that should be posted during the period of presidential review, the ALJ recommended that if the Commission finds a violation of section 337, it should set a bond in the amount of 331.80 percent of the entered value for tablet cases and 195.12 percent of the entered value for non-tablet cases for infringing products of the Defaulting Respondents. For Griffin's infringing products, the ALJ recommended setting a bond in the amount of 12.45 percent of the entered value for tablet cases and no bond for non-tablet cases imported during the period of Presidential review.

On July 16, 2012, Otter filed a petition for review of the ID, challenging the ALJ's findings that the accused Griffin Survivor for iPhone 4 and Survivor for iPod Touch, SmileCase's HTC EVO 4G, and Trait Technology's iPhone 4 protective cases do not infringe the asserted claims of the '122 patent. *See* Complainant Otter Products, LLC's Petition for Review. Specifically, Otter argued that the ALJ erroneously construed the claim term "groove," leading to the allegedly incorrect infringement findings. *Id.* at 1-2. That same day, the Commission investigative attorney ("IA") filed a petition for review, asking the Commission to review the ALJ's finding that the Griffin Survivor for the iPod Touch does not infringe the asserted claims of the '122 patent. *See* Petition for Review by the Office of Unfair Import Investigations of the Final Initial Determination. On July 17, 2012, Griffin filed a petition for review, challenging the ALJ's finding that Griffin's Survivor for iPad 2 and Explorer for iPhone 4 cases infringe the

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asserted claims of the '122 patent.⁸ *See* Respondent Griffin Technology, Inc.'s Petition for Review.

On July 24, 2012, the parties filed responses to the petitions for review. *See* Complainant Otter Products, LLC's Response to the Petitions for Review of Respondent Griffin Technology, Inc. and the Office of Unfair Import Investigations; Office of Unfair Import Investigations' Response to the Petitions for Review File by the Private Parties; Respondent Griffin Technology, Inc.'s Response to Otter's and the Staff's Petitions for Review.

On August 30, 2012, the Commission determined to review a single issue in the final ID and requested briefing on the issue it determined to review, and on remedy, the public interest and bonding. *77 Fed. Reg.* 54924 (Sept. 6, 2012). Specifically, the Commission determined to review the finding that the accused Griffin Survivor for iPod Touch does not literally infringe the asserted claims of the '122 patent. In its notice of review, the Commission asked the parties the following questions:

1. Does the '122 patent teach that the shape identified as "switch opening" and the shapes identified as "grooves" are mutually exclusive?
2. Is the feature identified in the '122 patent as a "switch opening" identical to the feature in the Griffin Survivor for iPod Touch Mr. Anders identified as a "groove"? *See* CX-1 at page 52 (reproduced in ID at 69).
3. Does the "groove" limitation, as construed by the ALJ, read on the tab/groove features identified by Mr. Anders and located at the top portion of the Survivor for the iPod

⁸ The Commission granted Griffin's motion for leave to file its petition one day late.

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Touch?

On September 14, 2012, the parties filed written submissions on the issue under review, remedy, the public interest, and bonding. *See* Complainant Otter Products, LLC's Submission on the Issues Under Review and on Remedy, the Public Interest, and Bonding ("Otter Br."); Brief of the Office of Unfair Import Investigations on the Issues Under Review, Remedy, the Public Interest and Bonding ("IA Br."); Respondent Griffin Technology, Inc.'s Response to the Notice Of Commission Determination ("Griffin Br."). On September 21, 2012, the parties filed reply submissions.

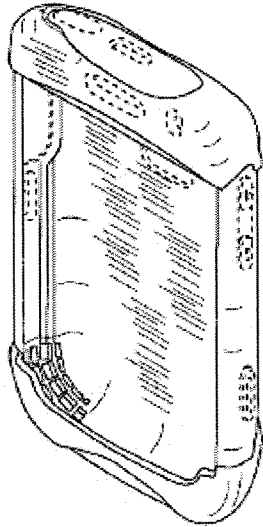
B. Patents, Marks, and Technology at Issue

The technology at issue in this investigation relates to protective casings for the iPad and iPhone. The '122 patent, entitled "Protective Enclosure for a Computer" issued on April 26, 2011. The patent names as inventors Curtis R. Richardson, Alan Morine, Brian Thomas, Jamie Lee Johnson, and Jason Michael Thompson. The '122 patent relates generally to protective enclosures for computers and more specifically relates to "a three-layer protective enclosure that provides resistance to water, dust, dirt, and bump protection for sensitive computers." '122 patent, abstract. The enclosure includes a flexible and cushioning front cover made of soft membrane material and an interior hard shell that provides rigidity. '122 patent, col. 1, ll. 24-27, 40-47. Otter owns the patent and has asserted claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, and 44 in this investigation.

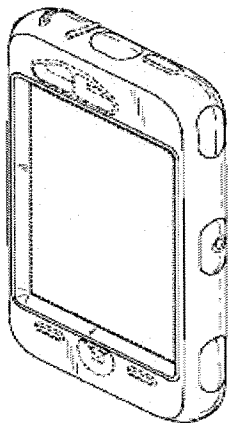
The D908 design patent, entitled "Case" issued on September 29, 2009. The patent names as inventors Curtis R. Richardson and Jamie L. Johnson. A representative figure from the

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patent is shown below:



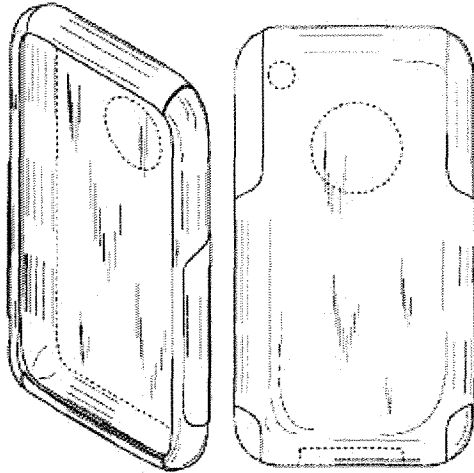
The D784 design patent, entitled “Case” issued on June 15, 2010. The patent names as inventors Curtis R. Richardson and Alan V. Morine. A representative figure from the patent is shown below:



The D536 design patent, entitled “Case” issued on May 11, 2010. The patent names as

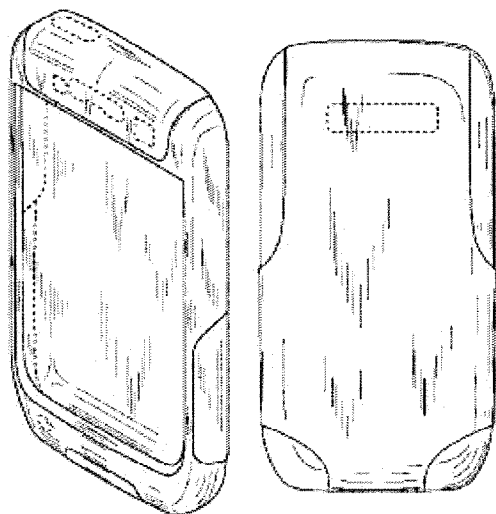
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inventors Curtis R. Richardson, John H. Loudenslager, Jamie L. Johnson, W. Travis Smith, and Alan V. Morine. A representative figure from the patent is shown below:

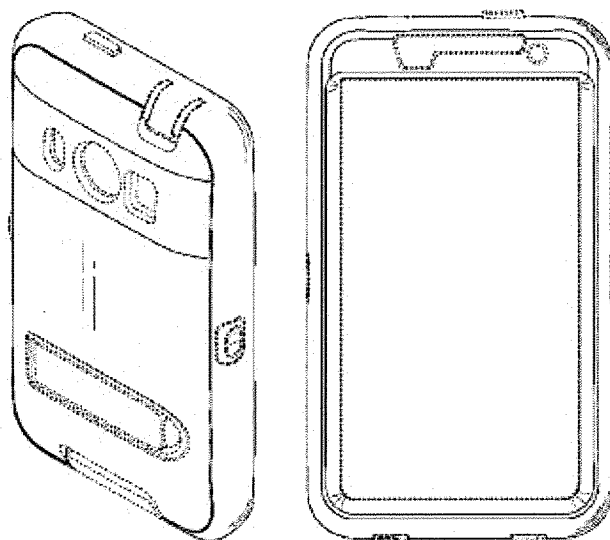


The D785 design patent, entitled “Case” issued on June 15, 2010. The patent names as inventors Curtis R. Richardson, John H. Loudenslager, Jamie L. Johnson, and Stephen Willes. A representative figure from the patent is shown below:

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The D741 design patent, entitled “Case” issued on March 22, 2011. The patent names as inventors Curtis R. Richardson, Jamie L. Johnson, Jonathan Watt, and W. Travis Smith. A representative figure from the patent is shown below:

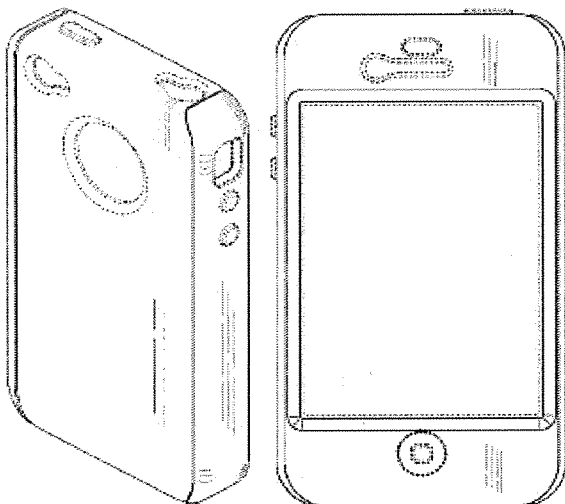


The D386 design patent, entitled “Case” issued on April 19, 2011. The patent names as

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inventors Curtis R. Richardson, Jamie L. Johnson, Alan V. Morine, Stephen Willes, and W.

Cameron Magness. A representative figure from the patent is shown below:



United States Trademark Registration No. 3,788,534 is registered to Otter. The trademark is shown below:

OTTERBOX

United States Trademark Registration No. 3,788,535 is registered to Otter. The trademark is shown below:

OTTER BOX

United States Trademark Registration No. 3,623,789 is registered to Otter. The trademark is shown below:

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DEFENDER SERIES

United States Trademark Registration No. 3,795,187 is registered to Otter. The trademark is shown below:

IMPACT SERIES

C. Products at Issue

The products at issue in this investigation are protective cases for the iPad, iPod, and iPhone. ID at 31. Otter accuses the following Griffin protective cases of infringing the asserted claims of the '122 Patent: (1) the Griffin Survivor for the iPhone 4; (2) the Griffin Survivor for the iPod Touch; (3) the Griffin Survivor for iPad 2; and (4) the Griffin Explorer for the iPhone 4.⁹ *Id.*

⁹ Otter does not accuse Griffin of infringing any of the asserted design patents or the asserted trademarks. For products of the Defaulting Respondents, Otter accused the following products of infringing the asserted design patents: (1) the D784 patent: (a) Hong Kong HJJ Defender Shock Proof Case for iPod Touch; (b) Trait Tech Defender Silicon Hard Plastic Case for iPod Touch; (c) Trait Tech iPhone 3G 3GS Defender; (d) The SmileCase Defender Case for iPhone 3G/3GS; (e) Topter iPhone 3G/3GS Defender; (f) CaseSpace iPhone 3G Vault; (g) MegaWatts Defender Case for iPhone 3G/3GS; (h) National Cellular iPhone 3G Armor Defender; (i) CaseinPoint Otterbox Defender; (j) Papaya iPhone 4G Defender Silicon and Plastic; (k) the Sinatech iPhone 4 otter box; (l) Shenzhen Star & Way 4G; (m) Quanyun 4G Defender Mobile; and (n) Anbess iPhone 3G/3GS Defender; (2) the D741 patent: (a) Hong Kong HJJ Defender for Evo 4G; (b) Shenzhen Star & Way 4G Hard Plastic + Silicone Case Defender for Evo 4G; (c) the Anbess Hoster Clip Case for HTC EVO 4G; and (d) SmileCase Defender Case for HTC EVO 4G; (3) the D908 patent: (a) Hong Kong HJJ Defender Silicone Case for iPhone 3G; (b) Trait Tech Otterbox Impact Silicon Case Cover for Blackberry; (c) Anbess Otter Silicon Case for BlackBerry Curve 8520; (d) Cellet 3G Pguard; and (e) Hypercel Naztech XS

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II. VIOLATION ISSUE UNDER REVIEW

The Commission determined to review the ALJ's finding that the accused Griffin Survivor for iPod Touch does not literally infringe the asserted claims of the '122 patent.

A. Applicable Law

Direct infringement of a patent under 35 U.S.C. § 271(a) consists of making, using, offering to sell, or selling a patented invention without consent of the patent owner or importing a patented invention into the United States without consent of the patent owner. Section 337 prohibits "the 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).

Each patent claim element or limitation is considered material and essential to an infringement determination. *See London v. Carson Pirie Scott & Co.*, 946 F.2d 1534, 1538 (Fed. Cir. 1991). Literal infringement of a claim occurs when every limitation recited in the claim

Silicon Cover for Apple iPhone; (4) the D386 patent: Hong Kong HJJ Defender Silicone Case for iPhone 4; (5) the D536 patent: Topter iPhone Mobile; and (6) D785 patent: (a) Shenzhen Star & Way BB9700 Commuter Defender; and (b) Anbess Defender Case for BlackBerry Bold 9700. CX-1 at pp. 194-243.

Otter accused the following products of infringing the asserted trademarks: (1) Anbess, Hypercel, MegaWatts, national Cellular, Papaya, Quanyun, Shenzhen Star, Sinatech, CaseInPoint, CaseSpace, Topter, and Trait Technology of infringing the OtterBox and Otter Box marks; (2) Anbess, Guangzhou Evotech, Hypercel, Megawatts, National Cellular, Papaya, Quanyun, Shenzhen Star, SmileCase, Suntel Global, CaseInPoint, CaseSpace, Topter, and Trait Technology of infringing the Defender Series mark; and (3) Hypercel, Megawatts, National Cellular and Shenzhen Star of infringing the Impact Series mark. Otter Prehearing Brief at 194-200. *See ID* at 32-36 for a complete listing of the products of the Defaulting Respondents accused of infringement.

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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); *Southwall Tech. v. Cardinal IG Co.*, 54 F.3d 1570, 1575 (Fed Cir. 1995). In a section 337 investigation, the complainant bears the burden of proving infringement of the asserted patent claims by a preponderance of the evidence. *Certain Flooring Products*, Inv. No. 337-TA-443, Commission Notice of Final Determination of No Violation of Section 337, 2002 WL 448690 at 59, (March 22, 2002); *Enercon GmbH v. Int'l Trade Comm'n*, 151 F.3d 1376 (Fed. Cir. 1998).

B. The '122 Patent and Construction of the Claim Term "Groove"

Otter asserted claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, and 44 of the '122 patent in this investigation. The claim term implicated, "groove," is common to all the asserted claims and so for brevity we set forth only independent claim 1 below:

1. A protective enclosure for a computer comprising:

a flexible membrane that is molded to fit over at least a front portion of said computer that allows interactive access to controls on said front portion of said computer;

a hard shell cover that fits over said flexible membrane and said computer and that is formed to provide openings that allow a user to access said flexible membrane to have interactive access to said controls of said computer, said hard shell cover providing rigidity to said protective enclosure, said hard shell cover comprising a front shell formed to a rigid shape of a front portion of said computer and a back shell formed to a rigid shape of a rear portion of said computer;

a stretchable cushion layer that is disposed over said hard shell cover that has sufficient elasticity to substantially conform [*sic*] to said hard shell cover and provide cushioning to said protective enclosure, said stretchable cushion layer exposing at least a portion

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of said hard shell cover and having a tab disposed to fit into a corresponding **groove** in said hard shell cover.

'122 patent, col. 14, l. 55 – col. 15, l. 7 (emphasis added).

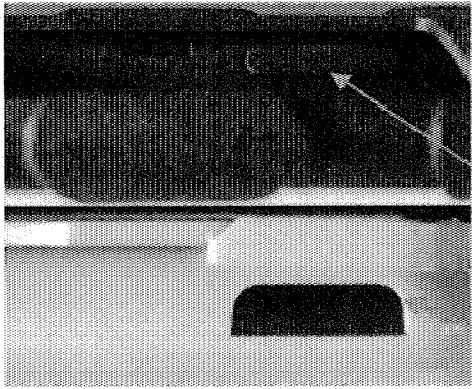
The ALJ construed the claim term “groove” to mean “a long narrow, cut or furrow,” largely adopting the construction proposed by Griffin and the IA. ID at 60. In construing the claim term, the ALJ noted Otter’s position that “groove” does not require construction because an artisan of ordinary skill would recognize that “‘groove’ may be any shape, as long as a tab on the stretchable cushion fits into the groove on the hard shell.” *Id.* at 49. The ALJ disagreed with Otter, stating that Otter’s proposed construction replaces the claim term “groove” with anything that can receive the tab but that “while a groove is a type of feature, it does not encompass all types of features and the plain language of the claims requires a specific feature — namely, a groove.” *Id.* at 50. Importantly, the ALJ found that the intrinsic evidence supports his construction and does not support Otter’s proposed construction. Specifically, the ALJ found that all of the depictions and descriptions of “groove” in the specification depict the groove as a long and narrow cut. *Id.* at 55 (citing FIGs. 12, 13, 15-17; '122 patent, col. 10, ll.11-24; col. 13, ll. 45-66; col. 14, ll. 6-15). The Commission determined not to review the ALJ’s construction of the claim term “groove.”

2. The ALJ’s Finding that the Griffin Survivor for the iPod Touch Does Not Infringe the Asserted Claims of the '122 Patent

The ALJ found that the structure on the right side of the Griffin Survivor for the iPod Touch that Mr. Anders identified as meeting the tab/groove limitation does not meet the

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limitation. ID at 70. The ALJ observed that Mr. Anders identified “a tab on the right side of the stretchable cushion layer that fits into a corresponding “groove” in the hard shell cover.” *Id.* (citing CX-1 at 52 (below)).



CX-1 at 52. The ALJ stated that “[o]n close inspection, the ‘tab’ Mr. Anders identified is a ‘switch pad’ and the hole is an opening for the iPod’s controls” and that “[t]his is identical to the structure identified in the ’122 Patent [as] the ‘switch pad’ and ‘opening.’” *Id.* (citing ’122 patent, Figure 13). The ALJ further stated that the “tab covers the volume up and down buttons on the phone and needs to be able to press down to activate the buttons, so the ‘tab’ is capable of moving through the ‘groove’ and does not ‘fit into the corresponding groove’ as the claim requires.” *Id.* The ALJ added that “the ‘groove’ covers a substantial portion of the depth of the case and is therefore not ‘narrow.’” *Id.*

3. The Commission’s Determination Regarding Whether the Griffin Survivor for the iPod Touch Infringes the Asserted Claims of the ’122 Patent

The IA filed a petition for review stating that in applying the correct construction of “groove” to the Griffin Survivor for the iPod Touch, the ALJ erred. IA Pet. at 8. The IA pointed

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to the ALJ's statement that "the identified 'tab' . . . is a 'switch pad' and the 'groove' is an opening for the iPod's controls" and that "this is identical to the structure identified in the '122 patent as the 'switch pad' and 'opening.'" *Id.* (citing ID at 70). The IA argued that if a component meets a properly construed claim limitation, "the fact that the component may serve other functions is immaterial." *Id.* (citing *Amstar Corp. v. Envirotech Corp.*, 730 F.2d 1476, 1482 (Fed. Cir. 1984) ("Modification by mere addition of elements of functions, whenever made, cannot negate infringement without disregard of the long-established, hornbook law expressed in *Cochrane v. Deener*, 94 U.S. 780, 786 (1876)."). According to the IA, the evidence showed that "the identified groove is a 'long, narrow cut or furrow' and that the identified tab is 'disposed to fit' in the groove as the former fits snugly in the groove." *Id.* (citing Anders Direct Witness at 52). The IA also stated that the ALJ's finding that "the 'groove' is not narrow because 'it covers a substantial portion of the depth of the case' is incorrect." *Id.* The IA emphasized that "for an opening to be narrow it must be substantially longer than it is wide" and that it has nothing to do with "the depth of the opening as the ID concludes." *Id.* at 8-9. The IA concluded that the ALJ's finding to the contrary was in error. *Id.* at 9.

We agree with the IA that the ALJ erred in his application of the construction of the claim term "groove" to the accused Griffin Survivor for iPod Touch. Specifically, the only record evidence on point was the testimony of Mr. Anders, who testified that "an elongated tab on the right side of the stretchable cushion layer that fit into a corresponding elongated groove on the hard shell cover" meets the tab/groove limitation as construed. CX-1 at 52. Thus, the record

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evidence supports a finding that the accused Griffin Survivor for iPod Touch infringes the asserted claims of the '122 patent.

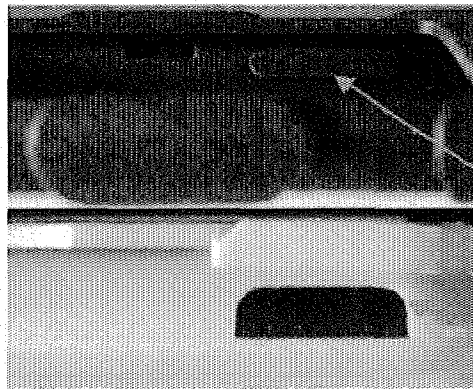
The only reason the ALJ gave for the finding that the accused Griffin Survivor for iPod Touch does not infringe the asserted claims of the '122 patent was the finding that it failed to meet the “groove/tab” limitation. ID at 70. In reaching his conclusion, the ALJ compared the accused products to embodiments in the patents. The ALJ stated:

On close inspection, the “tab” Mr. Anders identified is a “switch pad” and the hole is an opening for the iPod’s controls. This is identical to the structure identified in the '122 Patent [as] the “switch pad” and “opening.” (JX-1 at Figure 13). This tab covers the volume up and down buttons on the phone and needs to be able to press down to activate the buttons, so the “tab” is capable of moving through the “groove” and does not “fit into the corresponding groove” as the claim requires. Finally, the “groove” covers a substantial portion of the depth of the case is therefore not “narrow.”

ID at 70. In other words, because the ALJ found, in part, that certain features of the accused device look like features in the patent not specifically labeled “grooves,” he concluded that they could not meet the groove limitation, and effectively re-constructed the claim term. However, the proper infringement analysis requires the ALJ to consider whether components in the accused device meet the claim limitations as construed. *Markman*, 52 F.3d at 976 (noting that after construing the claims of the patent, a factual determination must be made as to whether the properly construed claims read on the accused devices). It appears that the ALJ’s comparison of the accused product to embodiments in the patent contributed to his error that the accused Griffin Survivor for iPod Touch does not infringe the asserted claims of the '122 patent.

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The record evidence, however, shows that the features in the accused Griffin Survivor for iPod Touch that Otter's expert, Mr. Anders, identified as meeting the "tab/groove" limitation satisfy the limitation (see CX-1 at 52 below). The mere fact that the feature may also resemble a feature described in the '122 patent as "switch pad" and "switch opening" does not change the fact that the feature meets the claim limitation. Importantly, the '122 patent does not disclose or even suggest that the "switch opening" cannot be a groove. The patent simply teaches that switch opening 1330 (along with similar openings 128, 130, and 132) "allow access" to the controls of a computer by a corresponding structure on the stretchable cushion layer. '122 patent (JX-001) col. 6:18-20, 6:26-28, 6: 33-35, 7:25-26, 8:55-64, 9:53-55, and 10:66-11:3. The Federal Circuit has explained that different terms used in the claims and the specification of a patent are not necessarily mutually exclusive, particularly when one of the terms is not a claim term. *See Thorner v. Sony Computer Entm't Am. LLC*, 669 F.3d 1362, 1367-68 (Fed. Cir. 2012).



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CX-1 at 52.

As the IA also correctly notes, simply because a tab is “capable of moving through” a groove does not establish that the tab does not fit snugly in the groove as the ALJ found. IA Br. at 6 (citing ID at 70). The IA correctly observes that “*every* tab must be able to move through the groove in order for the two features to engage with one another when the case is being assembled.” *Id.* (emphasis in original). The Commission further agrees with the IA that the ALJ erred in finding that the feature identified by Mr. Anders as a groove does not constitute a groove because “it covers a substantial portion of the depth of the case.” ID at 70. As the IA correctly states, “[i]n order for an opening to be narrow it must be substantially longer than it is wide — it has nothing to do with the depth of the case as the ID concludes.” IA Br. at 6.

The Commission finds that the ALJ erred in applying the construed claim term to the structure on the right side of the accused Griffin Survivor for iPod Touch. Significantly, the only record evidence supports a finding that the accused Griffin Survivor for iPod Touch infringes the asserted claims of the ’122 patent. Accordingly, the Commission reverses the ALJ’s determination to the contrary.

III. REMEDY

1. General Exclusion Order

Where a violation of section 337 has been found, the Commission must consider the issues of remedy, the public interest, and bonding. The Commission has “broad discretion in selecting the form, scope, and extent of the remedy.” *Viscofan, S.A. v. U.S. Int’l Trade Comm’n*,

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787 F.2d 544, 548 (Fed. Cir. 1986). The Commission may issue an exclusion order excluding the goods of the person(s) found in violation (a limited exclusion order) or, if certain criteria are met, against all infringing goods regardless of the source (a general exclusion order). 19 U.S.C. § 1337(g) gives the Commission the authority to issue exclusion orders directed to defaulting respondents.

The statutory authority of the Commission to issue a general exclusion order is codified in 19 U.S.C. § 1337(d)(2), which provides in relevant part:

(d) Exclusion of articles from entry

* * *

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

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

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

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

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general exclusion orders and requires that certain conditions be met before one is issued.”

Certain Agricultural Tractors Under 50 Power Takeoff Horsepower, Inv. No. 337-TA-380, Comm’n Op. (Mar. 12, 1997).

The Commission recently observed that “[w]hile the Commission has in the past considered analysis based on the *Spray Pumps* factors when evaluating whether the statutory criteria are satisfied, we now focus principally on the statutory language itself in light of recent Federal Circuit decisions.” See *Certain Ground Fault Circuit Interrupters and Products Containing Same*, Inv. No. 337-TA-615, Comm’n Op. at 25-26 (Mar. 27, 2009) (citing *Certain Airless Spray Pumps and Components Thereof*, Inv. No. 337-TA-90, USITC Pub. 119, Comm’n Op. at 18-19, (Nov. 1981)). This passage in *Circuit Interrupters* specifically references the Commission’s earlier opinion in *Hydraulic Excavators*, in which the Commission stated that “[c]onsideration of some factual issues or evidence examined in *Spray Pumps* may continue to be useful for determining whether the requirements of Section 337(d)(2) have been met. However, we do not view *Spray Pumps* as imposing additional requirements beyond those identified in Section 337(d)(2).” *Certain Hydraulic Excavators & Components Thereof*, Inv. No. 337-TA-582, Comm’n Op. at 16-18 (Feb. 3, 2009). Thus, in *Circuit Interrupters* and *Hydraulic Excavators*, the Commission did not apply the *Spray Pumps* factors as such in determining whether a general exclusion order should issue.

The Commission agrees with the ALJ and the IA that the facts of this investigation support issuance of a general exclusion order under both 19 U.S.C. §§ 1337(d)(2)(A) and (B). See ID at 113-118; IA Br. at 10. Indeed the ALJ made several factual findings that support a

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general exclusion order under either 19 U.S.C. §1337(d)(2)(A) or (B). *See* ID at 113-118. With respect to “whether a general exclusion order is necessary to prevent circumvention of an exclusion order limited to products of named persons” under 19 U.S.C. §1337(d)(2)(A), as the IA notes, the ALJ found that “(1) [[

]] (2) infringing activities continued by entities [[

]]; and (3) [[

]] IA Br. at 10 (citing ID at 113-118). The

ALJ further found that respondents named in this investigation appear to have changed product boxing. ID at 115. In addition, [[]], Otter’s Brand Protection Specialist, testified that “companies selling infringing protective cases frequently change their names in order to avoid detection.” [[]] Tr. at 147-49. [[]] further testified that “despite his efforts to identify and have removed listings for infringing products on websites like Alibaba, eBay, and Amazon, the number of such listings has not decreased, but rather the names of the companies selling the products simply change.” [[]] Tr. at 151. [[]] added that “identification of infringers has become more difficult as sellers have become more savvy in avoiding detection, particularly with respect to searches performed by [[]] on these websites.” *Id.* [[]] Tr. at 151; CX-1 at ¶¶ 17-22. This supports a finding that a general exclusion order is necessary to prevent circumvention of a limited exclusion order. Indeed, the Commission has issued a general exclusion order on similar evidence. *See, e.g., Certain Inkjet Cartridges with Printheads & Components Thereof*, Inv. No. 337-TA-723, Comm’n Op. at 24 (Dec. 1, 2011) (public version)).

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The evidence also supports issuance of a general exclusion order under 19 U.S.C. §1337(d)(2)(B) because it shows that “there is a pattern of violation of this section and it is difficult to identify the source of infringing products.” With respect to the pattern of violation, the ALJ found that there are a significant number of manufacturers producing infringing products and that it would be easy for even more suppliers to enter the market. ID at 115-16. Concerning difficulty in identifying the source of the infringing products, as the IA notes, the ALJ made the factual findings that

- (1) several retailers have [[]] suppliers of potentially infringing cases and that it was easy for them to find new suppliers;
- (2) many companies claiming to be manufacturers are actually just brokers;
- (3) the entities shipping the product and identified on the label are often not the entities from which the cases are ordered and
- (4) the lack of any source-identifying packaging for many potentially infringing cases.

Id. (citing ID at 114-18).

The Commission adopts the ALJ’s recommendation and issues a general exclusion order in this investigation. Under the order, protective cases and components thereof covered by the claim of the D908 patent, the D784 patent, the D536 patent, the D785 patent, the D741 patent, or the D386 patent, or one or more of claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, and 44 of the ’122 patent or that infringe one or more of U.S. Trademark Reg. Nos. 3,788,534, 3,788,535, 3,623,789, or 3,795,187, are excluded from entry into the United States for consumption, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, for the remaining terms of the patents and until the trademarks have been

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abandoned, canceled, or rendered invalid or unenforceable except under license of the owner or as provided by law.

2. Cease and Desist Orders

The Commission also accepts the ALJ's recommendation and issues cease and desist orders under 19 U.S.C. §1337(f) and (g) directed to Griffin and the defaulting domestic respondents.

The Commission generally issues cease and desist orders “when there is a commercially significant amount of infringing imported product in the United States that could be sold so as to undercut the remedy provided by an exclusion order.” *See, e.g., Certain Laser Bar Code Scanners and Scan Engines, Components Thereof, and Products Containing Same*, Inv. No. 337-TA-551, Comm’n Op. (Pub. Version) at 22 (June 14, 2007). The record evidence shows that Griffin has a commercially significant inventory of infringing products in the United States. CX-183C; CX-391C; CX-401C. The evidence also shows that the domestic defaulting respondents maintain websites that accept sales orders for infringing products. CX-036; CX-039; CX-045; CX-047; CX-049; CX-061; CX-065; CX-067. Thus, cease and desist orders directed to Griffin and the domestic defaulting respondents that extend to their internet activities are warranted. The domestic defaulting respondents are Cellet, Griffin, Hoffco, Hypercel, MegaWatts, National Cellular, SmileCase, CaseInPoint, and CaseSpace. Otter asserted only the ’122 patent against Griffin. Thus, the cease and desist order directed to Griffin will cover only products that infringe the asserted claims of the ’122 patent.

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VI. THE PUBLIC INTEREST

Sections 337(d), (f), and (g) of the Tariff Act of 1930, as amended, direct the Commission to consider certain public interest factors before issuing a remedy. These public interest factors include the effect of any remedial order on the “public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers.” 19 U.S.C. § 1337(d), (f), and (g).

The IA and Otter argue that the public interest factors are not implicated in this investigation. The IA states that “[t]here is no evidence that U.S. demand for the protective cases cannot be met by Complainant and other non-infringing models offered by others” and adds that protective cases are not the type of products that raise any particular public interest concerns. IA Br. at 12 (citing *Certain Ink JetPrint Cartridges and Components Thereof*, Inv. No. 337-TA-446, Comm’n Op. at 14, USITC Pub. 3549 (Oct. 2002) (noting that relief has been denied in only three investigations due to public interest factors, and that those investigations involved fuel-efficient automobiles, atomic research, and medical supplies)). The IA and Otter point out that the public interest favors the protection of U.S. intellectual property rights by excluding infringing imports. *Id.* (citing *Certain Two-Handle Centerset Faucets and Escutcheons, and Components Thereof*, Inv. No. 337-TA-422, Comm’n Op. at 9 (July 2000)). Griffin’s submission is silent on the public interest.

The Commission agrees with the IA and Otter that the public interest factors are not implicated in this investigation. In particular, no evidence exists that United States demand for protective cases cannot be met by Otter and non-infringing models offered by others. Moreover,

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there is no evidence in the record to suggest that the remedial orders might have any adverse impact on the public health and welfare, competitive conditions in the U.S. economy, production of like or directly competitive products in the United States or U.S. consumers. The Commission thus finds that the public interest factors set out in sections 337(d), (f), and (g) do not preclude issuance of the general exclusion order.

VII. BOND

During the 60-day period of Presidential review, imported articles otherwise subject to remedial orders are entitled to conditional entry under bond. 19 U.S.C. § 1337(j)(3). The amount of the bond is specified by the Commission and must be an amount sufficient to protect the complainant from any injury. *Id.*; 19 C.F.R. § 210.50(a)(3). The Commission frequently sets the bond by attempting to eliminate the difference in sales prices between the patented domestic product and the infringing product based upon a reasonable royalty. *Certain Microsphere Adhesives, Process For Making Same, and Products Containing Same, Including Self-Stick Repositionable Notes*, Inv. No. 337-TA-366, USITC Pub. No. 2949, Comm'n Op. at 24 (Jan. 1996). In cases where the Commission does not have sufficient evidence upon which to base a determination of the appropriate amount of the bond, the Commission has set a 100% bond. *See Certain Sortation Systems, Parts Thereof, and Products Containing Same*, Inv. No. 337-TA-460, Comm'n Op. at 21 (Mar. 2003). However, Complainant bears the burden of establishing the need for a bond amount in the first place. *Certain Rubber Antidegradants, Components Thereof, and Prods. Containing Same*, Inv. No. 337-TA-533, Comm'n Op. at 39-40 (July 21, 2006).

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The ALJ recommended that if the Commission imposes a remedy following a finding of violation, it should set a bond in the amount of 331.80 percent of the entered value for tablet cases and 195.12 percent of the entered value for non-tablet cases for infringing products of the Defaulting Respondents. For Griffin's infringing products, the ALJ recommended setting a bond in the amount of 12.45 percent of the entered value for tablet cases and no bond for non-tablet cases imported during the period of Presidential review. *Id.* The ALJ recommended those bond amounts based on price differentials, finding that the record evidence included sufficient price information to establish a bond amount based on price differentials. *Id.*

Otter and the IA generally support the ALJ's recommendation with respect to the Defaulting Respondents. Otter, however, argues that the bond for the entered value of Defaulting Respondents' non-tablet cases should be set at 245.53 percent instead of the 195.12 percent that the ALJ recommended. Otter Br. at 51. Otter explains that the ALJ adopted the bond amount it requested but, due to the ALJ's finding that some of Defaulting Respondents' products do not infringe the asserted patents, it has now recalculated the price differential using the same methodology employed before the ALJ, resulting in the new bond amount.

With respect to Griffin, the IA supports the ALJ's bond amount while Otter argues that Griffin should be subjected to the same bond amount that Defaulting Respondents are held to. According to Otter, the "ALJ's singular recommendation of a separate, lower bond for Griffin lacks legal support" and that even in "multi-respondent investigations where direct price comparisons are not possible because of the number of Respondents and number of accused products for each Respondent, the Commission has set bond at the same rate for all respondents."

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Otter Br. at 55-56 (citing *Certain Ink Cartridges*, Inv. No. 337-TA-565, Comm'n Op. at 63).

Griffin did not comment on bonding.

The Commission finds that the ALJ correctly calculated the bond amount based on price differentials and adopts his recommendation except with respect to Defaulting Respondents' non-tablet cases. For those cases, the Commission sets the bond amount at 245.53 percent of entered value instead of the 195.12 percent that the ALJ recommended. As Otter notes, the ALJ accepted the methodology Otter used in arriving at a bond amount and adopted the bond amount Otter requested. However, given the ALJ's finding that some of Defaulting Respondents' products did not infringe, Otter eliminated the non-infringing products and recalculated the bond amount based on the same methodology. We find this revised bond amount appropriate.

With respect to Griffin, contrary to Otter's assertion and as the IA notes, the Commission, as part of a general exclusion order, has set different bond amounts for different entities when warranted by the record evidence. *See, e.g., Certain Foam Footwear*, 337-TA-567, Comm'n Op. at 9 (Aug. 2, 2011); *Certain Coaxial Cable Connectors and Components Thereof and Products Containing Same*, 337-TA-650, Notice of Issuance of a General Exclusion Order at 2 (Sept. 13, 2011). The evidence shows that Griffin's products are priced higher than those of the Defaulting Respondents, and are priced comparably to Otter's products. *See* CX-183 at 116. Thus, as the IA observes, "requir[ing] Griffin to post a bond amount of several multiples of entered value when Griffin cases are sold at comparable prices to Otter would simply defy the entire purpose of the bond." IA Reply Submission at 5. The record evidence supports the ALJ's recommended bond for Griffin.

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Although the ALJ recommended a general exclusion order, he did not comment on a bond amount for products belonging to non-respondents. Given that the record does not contain sufficient evidence upon which to base a determination of the appropriate amount of the bond for products of non-respondents, the Commission follows its usual practice and sets a bond of 100 percent of entered value for infringing products of non-respondents imported during the period of Presidential review.

VIII. CONCLUSION

For the reasons set forth above, the Commission reverses the ALJ's finding that accused Griffin Survivor for iPod Touch does not infringe the asserted claims of the '122 patent. The Commission determines that the appropriate remedy for the violation found in this case is a general exclusion order and cease and desist orders. The Commission finds that the public interest factors set out in sections 337(d), (f), and (g) do not preclude issuance of these remedial orders. For defaulting respondents, the Commission sets a bond in the amount of 331.80 percent of the entered value for tablet cases and 245.53 percent of the entered value for non-tablet cases for infringing products imported during the period of Presidential review. For Griffin's infringing products, the Commission sets a bond in the amount of 12.45 percent of the entered value for tablet cases and no bond for non-tablet cases imported during the period of Presidential review. For all other infringing products, the Commission sets a bond of 100 percent of entered value of products imported during the period of Presidential review.

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By order of the Commission.

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

Lisa R. Barton
Acting Secretary to the Commission

Issued: **NOV 19 2012**

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **COMMISSION OPINION** has been served by hand upon, the Commission Investigative Attorney, Rett Snotherly, Esq., and the following parties as indicated on **November 19, 2012**.



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

On Behalf of Complainant Otter Products LLC:

Louis S. Mastriani, Esq.
ADDUCI MASTRIANI & SCHAUMBERG LLP
1133 Connecticut Avenue, 12th Floor
Washington, DC 20036

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

On Behalf of Respondent Griffin Technology, Inc.:

Jason L. Hornkohl, Esq.
HORNKOHL INTELLECTUAL PROPERTY LAW PLLC
7950 Saddle Ridge Trace
Nashville, TN 37221

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

Respondents:

Cellet Products
14530 Anson Ave.
Santa Fe Springs, CA 90670

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

Hoffco Brands, Inc.
d/b/a Celltronix
4860 Ward Road
Wheat Ridge, CO 80033

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

Hypercel Corporation
d/b/a Naztech Technologies
28010 Industry Drive
Valencia, CA 91355

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

**CERTAIN PROTECTIVE CASES AND COMPONENTS
THEREOF**

Inv. No. 337-TA-780

Certificate of Service – Page 2

Respondents (cont.):

TheCaseInPoint.com
793 Marian Court
Titusville, FL 32780

- Via Hand Delivery
- Via Overnight Delivery
- Via First Class Mail
- Other: _____

TheCaseSpace
215 East Foothills Parkway #D-003
Fort Collins, CO 80525

- Via Hand Delivery
- Via Overnight Delivery
- Via First Class Mail
- Other: _____

MegaWatts Computers, LLC
350 I South Sheridan Road
Tulsa, OK 74145

- Via Hand Delivery
- Via Overnight Delivery
- Via First Class Mail
- Other: _____

National Cellular
5620 I st Avenue, Third Floor
Brooklyn, NY 11220

- Via Hand Delivery
- Via Overnight Delivery
- Via First Class Mail
- Other: _____

SmileCase
3226 Ridgeway Place
Windsor Mill, MD 21244

- Via Hand Delivery
- Via Overnight Delivery
- Via First Class Mail
- Other: _____

Public List:

Heather Hall
Lexis-Nexis
9443 Springboro Pike
Miamisburg, OH 45342

- Via Hand Delivery
- Via Overnight Delivery
- Via First Class Mail
- Other: _____

Kenneth Clair
Thomson West
1100 13th Street, NW, Suite 200
Washington, DC 20005

- Via Hand Delivery
- Via Overnight Delivery
- Via First Class Mail
- Other: _____

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

In the Matter of

**CERTAIN PROTECTIVE CASES AND
COMPONENTS THEREOF**

Investigation No. 337-TA-780

**NOTICE OF COMMISSION DETERMINATION TO REVIEW IN PART A FINAL
INITIAL DETERMINATION FINDING A VIOLATION OF SECTION 337; SCHEDULE
FOR FILING WRITTEN SUBMISSIONS ON THE ISSUES UNDER REVIEW AND ON
REMEDY, THE PUBLIC INTEREST AND BONDING**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on June 29, 2012, finding a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in this investigation.

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

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 30, 2011, based on a complaint filed by Otter Products, LLC of Fort Collins, Colorado (“Otter”), 76 *Fed. Reg.* 38417 (June 30, 2011). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain protective cases and components thereof by reason of infringement of some or all of the claims of United States Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386; and claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, and 44 of United States Patent No. 7,933,122 (“the ’122 patent”); and United States Trademark Registration Nos. 3,788,534; 3,788,535; 3,623,789; and 3,795,187. *Id.* The notice of investigation named the following respondents:

A.G. Findings and Mfg. Co., Inc. of Sunrise, Florida (“A.G. Findings”); AFC Trident Inc. of Chino, California (“AFC Trident”); Alibaba.com Hong Kong Ltd. of Hangzhou, China (“Alibaba.com”); Anbess Electronics Co. Ltd. of Schenzhen, China (“Anbess”); Cellairis Franchise, Inc. of Alpharetta, Georgia (“Cellairis”); Cellet Products of Sante Fe Springs, California (“Cellet”); DHgate.com of Beijing, China (“Dhgate.com”); Griffin Technology, Inc. of Nashville, Tennessee (“Griffin”); Guangzhou Evotech Industry Co., Ltd. of Guangdong, China (“Guangzhou Evotech”); Hard Candy Cases LLC of Sacramento, California (“Hard Candy”); Hoffco Brands, Inc. of Wheat Ridge, Colorado (“Hoffco”); Hong Kong Better Technology Group Ltd. of Shenzhen, China (“Better Technology Group”); Hong Kong HJJ Co. Ltd. of Shenzhen, China (“HJJ”); Hypercel Corporation of Valencia, California (“Hypercel”); InMotion Entertainment of Jacksonville, Florida (“InMotion”); MegaWatts Computers, LLC of Tulsa, Oklahoma (“MegaWatts”); National Cellular of Brooklyn, New York (“National Cellular”); OEMBargain.com of Wantagh, New York (“OEMBargain.com”); One Step Up Ltd. of New York, New York (“One Step Up”); Papaya Holdings Ltd. of Central, Hong Kong (“Papaya”); Quanyun Electronics Co., Ltd. of Shenzhen, China (“Quanyun”); ShenZhen Star & Way Trade Co., Ltd. of Guangzhou City, China (“Star & Way”); Sinatech Industries Co., Ltd. of Guangzhou City, China (“Sinatech”); SmileCase of Windsor Mill, Maryland (“SmileCase”); Suntel Global Investment Ltd. of Guangzhou, China (“Suntel”); TheCaseInPoint.com of Titusville, Florida (“TheCaseInPoint.com”); TheCaseSpace of Fort Collins, Colorado (“TheCaseSpace”); Topter Technology Co., Ltd. of Guangdong, China (“Topter”); and Trait Technology (Shenzhen) Co., Ltd. of Shenzhen, China (“Trait Technology”). *Id.* With respect to accused products by Respondent Griffin, Otter asserted only the ’122 patent.

On August 3, 2011, the ALJ issued an ID granting Otter leave to amend the complaint and notice of investigation to add Global Cellular, Inc. of Alpharetta, Georgia (“Global Cellular”) as a respondent. *See* Order No. 3 (August 3, 2011). The Commission determined not to review the order. *See* Notice of Commission Determination not to Review an Initial Determination Granting Complainant’s Motion to Amend the Complaint and Notice of Investigation to Add a Respondent (August 18, 2011).

The following respondents were terminated from the investigation based on settlement agreements, consent orders, or withdrawal of allegations from the complaint: One Step Up, InMotion, Hard Candy, DHGate.com, Alibaba.com, A.G. Findings, Cellairis, Global Cellular, AFC Trident, Better Technology Group, and OEMBargain.com. The following respondents were found in default: Anbess, Guangzhou Evotech, Hoffco, HJJ, Sinatech, Suntel, Trait Technology, Papaya, Quanyun, Topter, Cellet, TheCaseSpace, MegaWatts, Hypercel, Star & Way, SmileCase, TheCaseInpoint.com, and National Cellular (collectively “Defaulting Respondents”). Griffin is the only remaining respondent not found in default, and the only respondent that appeared before the Commission.

On June 29, 2012, the ALJ issued his final ID, finding a violation of section 337 by Griffin and the Defaulting Respondents. Specifically, the ALJ found that the Commission has subject matter jurisdiction: *in rem jurisdiction* over the accused products and *in personam* jurisdiction over the respondents. ID at 45-46. The ALJ also found that the importation requirement of section 337 (19 U.S.C. § 1337(a)(1)(B)) has been satisfied. *Id.* at 38-45.

Regarding infringement, the ALJ found that the Defaulting Respondents' accused products infringe the asserted claims of the asserted patents and the asserted trademarks. *Id.* at 62-88. The ALJ further found that Griffin's accused products, the Griffin survivor for iPad 2 and Griffin Explorer for iPhone 4, literally infringe the asserted claims of the '122 patent but that the Griffin Survivor for iPhone 4 and Griffin Survivor for iPod Touch do not literally infringe the asserted claims of the '122 patent. *Id.* at 64-78. The ALJ concluded that an industry exists within the United States for the asserted patents and trademarks as required by 19 U.S.C. § 1337(a)(2). *Id.* at 89-108.

The ID includes the ALJ's recommended determination on remedy and bonding. The ALJ recommended that in the event the Commission finds a violation of section 337, the Commission should issue a general exclusion order directed to infringing articles. *Id.* at 118. The ALJ found that there has been a widespread pattern of unauthorized use of the asserted patents and that certain business conditions exist that warrant a general exclusion order. *Id.* at 116. The ALJ also recommended issuance of cease and desist orders directed to the defaulting respondents, recommending that the cease and desist order should encompass the Defaulting Respondents' internet activities as well. *Id.* at 120. Regarding Griffin, the ALJ found that the record evidence establishes that it has commercially significant amounts of infringing protective cases in inventory in the United States and recommended issuing a cease and desist order directed to those infringing products. *Id.* With respect to the amount of bond that should be posted during the period of Presidential review, the ALJ recommended that if the Commission finds a violation of section 337, it should set a bond of 331.80 percent of entered value for tablet cases and 195.12 percent for non-tablet cases for infringing products of the Defaulting Respondents imported. For Griffin's infringing products, the ALJ recommended setting a bond of 12.45 percent for tablet cases and no bond for non-tablet cases imported during the period of Presidential review.

On July 16, 2012, Otter filed a petition for review of the ID. That same day, the Commission investigative attorney filed a petition for review. On July 17, 2012, Griffin filed a petition for review (the Commission granted Griffin's motion for leave to file its petition one day late). On July 24, 2012, the parties filed responses to the petitions for review.

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in part. Specifically, the Commission has determined to review the ALJ's finding that the accused Griffin Survivor for iPod Touch does not literally infringe the asserted claims of the '122 patent. The Commission has determined not to review any other issues in the ID.

The parties are requested to brief their positions on the issue under review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in responses to the following questions:

1. Does the '122 patent teach that the shape identified as "switch opening" and the shapes identified as "grooves" are mutually exclusive?

2. Is the feature identified in the '122 patent as a “switch opening” identical to the feature in the Griffin Survivor for iPod touch Mr. Anders identified as a “groove”? *See* CX-1 at page 52 (reproduced in ID at 69).
3. Does the “groove” limitation, as construed by the ALJ, read on the tab/groove features identified by Mr. Anders and located at the top portion of the Survivor for the iPod Touch?

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

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

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 *Fed. Reg.* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission. 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: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, OUII, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant is also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the dates that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial

orders must be filed no later than close of business on Friday, September 14, 2012. Initial submissions are limited to 100 pages, not including any attachments or exhibits related to discussion of the remedy, bonding or public interest. Reply submissions must be filed no later than the close of business on Friday, September 21, 2012. Reply submissions are limited to 50 pages, not including any attachments or exhibits related to discussion of the remedy, bonding or public interest. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-754") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000).

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 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in sections 210.42-46 and 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42-46 and 210.50).

By order of the Commission.



Lisa R. Barton
Acting Secretary to the Commission

Issued: August 30, 2012

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served by hand upon, the Commission Investigative Attorney, Rett Snotherly, Esq., and the following parties as indicated on **August 30, 2012**.



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

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() Via First Class Mail
() Other: _____

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN PROTECTIVE CASES AND
COMPONENTS THEREOF**

Inv. No. 337-TA-780

**INITIAL DETERMINATION ON VIOLATION OF SECTION 337 AND
RECOMMENDED DETERMINATION ON REMEDY AND BOND**

Administrative Law Judge Theodore R. Essex

(June 29, 2012)

Appearances:

For the Complainant Otter Products, LLC:

Louis S. Mastriani, Esq., Michael L. Doane, Esq., Daniel F. Smith, Esq., Asha Allam, Esq., and Evan H. Langdon, Esq. of Adduci, Mastriani & Schaumberg, L.L.P. of Washington, D.C.

For the Respondent Griffin Technology, Inc.:

Jason L. Hornkohl, Esq. of Hornkohl Intellectual Property Law, PLLC, of Nashville, Tennessee

For the Commission Investigative Staff:

Lynn I. Levine, Esq., Director; Anne Goalwin, Esq., Supervisory Attorney; Rett Snotherly, Esq., Investigative Attorney of the Office of Unfair Import Investigations, U.S. International Trade Commission, of Washington, D.C.

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Pursuant to the Notice of Investigation, 76 Fed. Reg. 38417 (2011), this is the Initial Determination of in the matter of *Certain Protective Cases and Components Thereof*, United States International Trade Commission Investigation No. 337-TA-780. See 19 C.F.R. § 210.42(a).

It is held that a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, has occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain protective cases and components thereof by reason of infringement of U.S. Patent Nos. D600,908; D617,784; D615,536; D617,785; D634,741; D636,386 patent; one or more of claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, and 44 of U.S. Patent No. 7,933,122; U.S. Trademark Registrations 3,788,534; 3,788,535; 3,623,789; and 3,795,187 for each of the respondents who have defaulted in this investigation – Anbess Electronics Co., Ltd.; Guangzhou Evotech Industry Co., Ltd.; Hoffco Brands, Inc. d/b/a Celltronix; Hong Kong HJJ Co., Ltd.; Sinatech Industrial Co., Ltd.; Suntel Global Investment Ltd.; Trait Technology (Shenzhen) Co., Ltd.; Papaya Holdings Ltd.; Quanyun Electronics Co., Ltd.; Topter Technology Co., Ltd.; Cellet Products; TheCaseSpace, MegaWatts, Hypercel Corporation d/b/a Naztech Technologies; Shenzhen Star & Way Trade Co., Ltd.; SmileCase; TheCaseInpoint.com; and National Cellular. The ALJ finds that a violation of Section 337 has occurred with respect the Griffin Survivor for the iPad 2 and the Griffin Explorer for the iPhone 4 imported by respondent Griffin Technology, Inc., but not with respect to the other accused cases by Griffin Technology, Inc.

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The following abbreviations may be used in this Initial Determination:

CDX	Complainant's demonstrative exhibit
CFF	Complainant's proposed findings of fact
CIB	Complainant's initial post-hearing brief
CORFF	Complainant's objections to Respondents' proposed findings of fact
COSFF	Complainant's objections to Staff's proposed findings of fact
CPX	Complainant's physical exhibit
CRB	Complainant's reply post-hearing brief
CX	Complainant's exhibit
Dep.	Deposition
JSUF	Joint Statement of Undisputed Facts
JX	Joint Exhibit
RDX	Respondent's demonstrative exhibit
RFF	Respondent's proposed findings of fact
RIB	Respondent's initial post-hearing brief
ROCF	Respondent's objections to Complainants' proposed findings of fact
ROSFF	Respondent's objections to Staff's proposed findings of fact
RPX	Respondent's physical exhibit
RRB	Respondents reply post-hearing brief
RRX	Respondent's rebuttal exhibit
RX	Respondent's exhibit
SFF	Staff's proposed findings of fact
SIB	Staff's initial post-hearing brief
SOCFF	Staff's objections to Complainants' proposed findings of fact
SORFF	Staff's objections to Respondents' proposed findings of fact
SRB	Staff's reply post-hearing brief

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Tr.	Transcript
'122 Patent	U.S. Patent No. 7,933,122
D'908 Patent	U.S. Patent No. D600,908
D'784 Patent	U.S. Patent No. D617,784
D'536 Patent	U.S. Patent No. D615,536
D'785 Patent	U.S. Patent No. D617,785,
D'741 Patent	U.S. Patent No. D634,741
D'383 Patent	U.S. Patent No. D636,383
'534 Trademark	U.S. Trademark Registration No. 3,788,534
'535 Trademark	U.S. Trademark Registration No. 3,788,535
'789 Trademark	U.S. Trademark Registration No. 3,623,789
'187 Trademark	U.S. Trademark Registration No. 3,795,187
CSDB	Complainant's Summary Determination Brief (Supplemental)
SSDB	Staff's Summary Determination Brief

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I. BACKGROUND

A. Institution and Procedural History of This Investigation

By publication of a notice in the *Federal Register* on June 30, 2011, pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, the Commission instituted Investigation No. 337-TA-780 with respect to U.S. Patent Nos. 7,933,122 (“the ’122 Patent”); D600,908 (“the D’908 Patent”); D617,784 (“the D’784 Patent”); D615,536 (“the D’536 Patent”); D617,785 (“the D’785 Patent”); D634,741 (“the D’741 Patent”); and D636,383 (“the D’383 Patent”); and U.S. Trademark Registration Nos. 3,788,534; 3,788,535; 3,623,789; and 3,795,187 to determine:

[W]hether there is a violation of subsection (a)(1)(B) and (C) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of the sale for importation, or the sale within the United States after importation of certain protective cases and components thereof that infringe the ’908 patent; the ’784 patent; the ’536 patent; the ’785 patent; the ’741 patent; the ’386 patent; one or more of claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, and 44 of the ’122 Patent; the ’534 trademark; the ’535 trademark; the ’789 trademark; and the ’187 trademark, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

76 Fed. Reg. 38417 (June 30, 2011).

The complainant is Otter Products, LLC of Fort Collins, Colorado (“Otter”). The respondents named in the original complaint are A.G. Findings and Mfg. Co., Inc. of Sunrise, Florida (“A.G. Findings”); AFC Trident Inc. of Chino, California (“AFC Trident”); Alibaba.com Hong Kong Ltd. of Hangzhou, China (“Alibaba.com”); Anbess Electronics Co. Ltd. of Schenzhen, China (“Anbess”); Cellairis Franchise, Inc. of Alpharette, Georgia (“Cellairis”); Cellet Products of

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Sante Fe Springs, California (“Cellet”); DHgate.com of Beijing, China (“DHgate.com”); Griffin Technology, Inc. of Nashville, Tennessee (“Griffin”); Guangzhou Evotech Industry Co., Ltd. of Guangdong, China (“Guangzhou Evotech”); Hardcandy Cases LLC of Sacramento, California (“Hardcandy Cases”); Hoffco Brands, Inc. of Wheat Ridge, Colorado (“Hoffco”); Hong Kong Better Technology Group Ltd. of Shenzhen, China (“Better Technology Group”); Hong Kong HJJ Co. Ltd. of Shenzhen, China (“HJJ”); Hypercel Corporation of Valencia, California (“Hypercel”); InMotion Entertainment of Jacksonville, Florida (“InMotion”); MegaWatts Computers, LLC of Tulsa, Oklahoma (“MegaWatts”); National Cellular of Brooklyn, New York (“National Cellular”); OEMBargain.com of Wantagh, New York (“OEMBargain.com”); One Step Up Ltd. of New York, New York (“One Step Up”); Papaya Holdings Ltd. of Central, Hong Kong (“Papaya”); Quanyun Electronics Co., Ltd. of Shenzhen, China (“Quanyun”); ShenZhen Star & Way Trade Co., Ltd. of Guangzhou City, China (“Star & Way”); Sinatech Industries Co., Ltd. of Guangzhou City, China (“Sinatech”); SmileCase of Windsor Mill, Maryland (“SmileCase”); Suntel Global Investment Ltd. of Guangzhou, China (“Suntel”); TheCaseInPoint.com of Titusville, Florida (“TheCaseInPoint.com”); TheCaseSpace of Fort Collins, Colorado (“TheCaseSpace”); Topter Technology Co., Ltd. of Guangdong, China (“Topter”); and Trait Technology (Shenzhen) Co., Ltd. of Shenzhen, China (“Trait Technology”). The Commission Investigative Staff of the Office of Unfair Import Investigations is also a party in this investigation. (*Id.*)

On August 3, 2011, the ALJ issued an initial determination granting Otter leave to amend

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the complaint and notice of investigation to add Global Cellular, Inc. (“Global Cellular”) as a respondent and submit one additional exhibit, Exhibit 12A, in support of the amended Complaint. (Order No. 3 (August 3, 2011).) The Commission determined not to review the order. (*See* Notice of Commission Determination not to Review an Initial Determination Granting Complainant’s Motion to Amend the Complaint and Notice of Investigation to Add a Respondent (August 18, 2011).)

On August 29, 2011, the ALJ issued an initial determination terminating the investigation as to respondents “One Step Up Ltd. d/b/a Lifeworks Technology Group LLC” and InMotion based upon a confidential Settlement Agreement and Consent Order Stipulations. (Order No. 8 (August 29, 2011).) The Commission determined not to review the order. (*See* Notice of Commission Determination Not to Review an Initial Determination Granting a Joint Motion to Terminate the Investigation as to Respondents One Step Up Ltd. and InMotion Entertainment Based upon Consent Order Stipulation and Settlement Agreement (September 19, 2011).)

On September 14, 2011, the ALJ issued an initial determination terminating the investigation as to respondent Hard Candy Cases LLC d/b/a Gumdrop LLC (“Hard Candy”) based upon a Consent Order Stipulation. (Order No. 11 (September 14, 2011).) The Commission determined not to review the order. (*See* Notice of Commission Determination Not to Review an Initial Determination Granting a Joint Motion to Terminate the Investigation as to Respondent Hard Candy Cases LLC d/b/a Gumdrop LLC Based upon Consent Order Stipulation; Issuance of

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Consent Order (October 6, 2011).)

On September 22, 2011, the ALJ issued initial determinations terminating the investigation as to respondent DHGate.com and Alibaba.com Hong Kong Ltd. based upon confidential settlement agreements. (Order No. 13 & Order No. 14 (September 22, 2011).) The Commission determined not to review the orders. (*See* Notice of Commission Determination Not to Review an Initial Determination Granting a Joint Motion to Terminate the Investigation as to Respondent Alibaba.com Hong Kong Ltd. on the Basis of a Settlement Agreement (October 17, 2011) & Notice of Commission Determination Not to Review an Initial Determination Granting a Joint Motion to Terminate the Investigation as to Respondent DHGATE.com on the Basis of a Settlement Agreement (October 24, 2011).)

On November 2, 2011, the ALJ issued an initial determination terminating the investigation as to respondent A.G. Findings and Mfg. Co., Inc. d/b/a Ballistic (“A.G. Findings”) based upon a confidential settlement agreement. (Order No. 16 (November 2, 2011).) The Commission determined not to review the orders. (*See* Notice of Commission Determination Not to Review an Initial Determination Granting a Joint Motion to Terminate the Investigation as to Respondent A.G. Findings and Mfg. Co., Inc., d/b/a Ballistic on the Basis of a Settlement Agreement (November 22, 2011).)

On November 8, 2011, the ALJ issued an initial determination finding respondents Anbess Electronics Co. Ltd., Guangzhou Evotech Industry Co., Ltd., Hoffco Brands, Inc. d/b/a Celltronix,

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Hong Kong HJJ Co., Ltd., Sinatech Industrial Co., Ltd., Suntel Global Investment Ltd., Trait Technology (Shenzhen) Co., Ltd., Papaya Holdings Ltd., Quanyun Electronics Co., Ltd., Topter Technology Co. Ltd., and Cellet Products in default. (Order No. 17 (November 8, 2011).) The Commission determined not to review that order. (*See* Notice of Commission Determination Not to Review an Initial Determination Finding Certain Respondents in Default (December 5, 2011).)

On November 29, 2011, the ALJ issued initial determinations terminating respondents Cellairis Franchise and Global Cellular and AFC Trident based upon confidential settlement agreements. (Order No. 19 & Order No. 20.) The Commission determined not to review those orders. (*See* Notice of Commission Determination Not to Review Two Initial Determinations Granting Joint Motions to Terminate the Investigation as to Respondents Cellairis Franchise, Inc., Global Cellular, Inc. and AFC Trident, Inc. Based Upon Settlement Agreements (December 21, 2011).)

On December 22, 2011, the ALJ issued an initial determination finding respondents MegaWatts Computers, LLC and TheCaseSpace in default. (Order No. 21 (December 22, 2011).) The Commission determined not to review this order. (Notice of Commission Determination Not to Review an Initial Determination Granting Election of Default and Motion for Entry of Default to Respondents TheCaseSpace and Megawatts Computers, LLC (January 13, 2012).)

On December 30, 2011, the ALJ issued an initial determination terminating respondents Hong Kong Better Technology Group Ltd. and OEMBargain.com from the investigation pursuant

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to 17 C.F.R. § 210.21(a)(1). (Order No. 23 (December 30, 2011).) The Commission determined not to review the order. (*See* Notice of Commission Determination Not to Review an Initial Determination Granting Complainant's Motion to Terminate the Investigation as to Respondents Hong Kong Better Technology Group Ltd. and OEMBargain.com Under Commission Rule (210.21(a)(1) (January 24, 2012).)

On February 9, 2012, the ALJ issued an initial determination finding respondents Hypercel Corporation d/b/a Naztech Technologies; Shenzhen Star & Way Trade Co., Ltd. d/b/a DHgate sellers Best8168 and Julyoung; SmileCase; and TheCaseInPoint.com in default. (Order No. 25 (February 9, 2012).) The Commission determined not to review the order. (*See* Notice of Commission Determination Not to Review an Initial Determination Finding Certain Respondents in Default (March 3, 2012).)

Thus, summarizing the orders above, 11 Respondents have been terminated from the investigation based on either settlement agreements with Otter or because Otter has withdrawn its allegations against them. (*See* Order Nos. 8, 11, 13, 14, 16, 19, 20 and 23.)

The following respondents remain in the investigation, but have been found in default: Anbess Electronics Co., Ltd.; Guangzhou Evotech Industry Co., Ltd.; Hoffco Brands, Inc. d/b/a Celltronix; Hong Kong HJJ Co., Ltd.; Sinatech Industrial Co., Ltd.; Suntel Global Investment Ltd.; Trait Technology (Shenzhen) Co., Ltd.; Papaya Holdings Ltd.; Quanyun Electronics Co., Ltd.; Topter Technology Co., Ltd.; Cellet Products; TheCaseSpace; MegaWatts; Hypercel

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Corporation d/b/a Naztech Technologies; Shenzhen Star & Way Trade Co., Ltd.; SmileCase; TheCaseInpoint.com; and National Cellular (collectively “Defaulting Respondents”). Griffin Technology, Inc. is the only remaining respondent that has not been found in default.

On February 3, 2012, complainant Otter Products, LLC (“Otter”), filed a Motion for Summary Determination That a Domestic Industry Exists and That There Have Been Violations of Section 337 of the Tariff Act of 1930 (Amended) By the Defaulting Respondents and Complainants’ Request for a General Exclusion Order. (Motion Docket No. 780-030.) Otter seeks a determination that a domestic industry exists, that there has been a violation of Section 337 and for entry of a general exclusion order.

On February 29, 2012, the Commission Investigative Staff (“Staff”) filed a response supporting the motion in part. Motion No. 780-030 remains pending and is resolved by this final initial determination.

On March 16, 2012, the ALJ issued initial determinations granting Otter’s motions for summary determination that respondent Griffin had met the importation requirement of Section 337 and Griffin had failed to bring forth any disputed issues of material fact on Griffin’s defense of invalidity. (Order No. 28 & 29.) The Commission determined not to review those orders. (*See* Notice of Commission Determination Not to Review an Initial Determination Granting Complainant’s Motion for Summary Determination that It has Established the Importation Requirement of Section 337 as to Respondent Griffin Technology, Inc. (April 10, 2012); Notice of

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Commission Determination Not to Review an Initial Determination Granting Complainant's Motion for Summary Determination Regarding Respondent's Affirmative Defense of Invalidity as to United States Patent No. 7,933,122 (April 11, 2012).)

On April 9-11, 2012, the ALJ conducted the evidentiary hearing in this investigation.

On April 25, 2012, Otter filed an additional supplement to its motion for summary determination for violation as to the Defaulting Respondents that supersedes its original brief.

B. The Parties

1. Otter Products

Complainant Otter Products, LLC is a Colorado corporation with its principal place of business at 209 South Meldrum Street, Fort Collins, Colorado 80521. (CX-2C at Q/A 102.) Otter designs, manufactures, and sells several lines of device-specific cases to protect a number of popular mobile handsets and portable computing devices. (*Id.* at Q/A 10.)

2. Griffin

Respondent Griffin Technology, Inc. is a Tennessee corporation with its principal place of business at 2030 Lindell Avenue, Nashville, Tennessee 37023. (CX-183C at 9:21-10:10.) Griffin designs, imports, and sells protective cases. (*Id.*)

3. Anbess

Respondent Anbess is a Chinese corporation with its principal place of business located at 1F, Block B, Building 4, Cui Fend Hao Yuan, Shui Jing, Bu Ji, Long Gang, Shenzhen, GD 518112,

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China. (Complaint ¶ 16.) Anbess is engaged in sale or sale for importation of protective cases. (*Id.*)

4. Cellet Products

Cellet is a California corporation with its principal place of business located at 14530 Anson Avenue, Santa Fe Springs, California 90670. (Complaint ¶ 18.) Cellet imports protective cases and/or sells them after importation. (*Id.*)

5. Guangzhou Evotech

Guangzhou Evotech is a Chinese company with its principal place of business located at No. 28 E-05, Baoli Center Square, Jiansheda Ma Road, Guangzhou, Guangdong, China 510000. (Complaint ¶ 21.) Guangzhou Evotech imports and/or sells for importation protective cases and components thereof. (*Id.*)

6. Hoffco (Celtronnix)

Hoffco is a Colorado corporation with its principal place of business located at 4860 Ward Road, Wheat Ridge, Colorado 80033. (Complaint ¶ 23.) Hoffco imports and/or sells after importation protective cases and components thereof.

7. HJJ

Respondent HJJ is a Chinese corporation with its principal place of business located at Room 4, Block 2 West SEG Technology Park, HuaQiang North Road, Futian District, Shenzhen, China 518028. (Complaint ¶ 25.) HJJ imports and/or sells for importation certain protective cases

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and components thereof. (*Id.*)

8. Hypercel

Hypercel is a corporation with its principal place of business located at 28010 Industry Drive, Valencia, California 91355. (Complaint ¶ 26.) Hypercel imports and/or sells after importation protective cases and components thereof. (*Id.*)

9. MegaWatts

Respondent MegaWatts is a corporation with its principal place of business located at 3501 South Sheridan Road, Tulsa, Oklahoma 74145. (Complaint ¶ 28.) MegaWatts imports or sells after importation protective cases and components thereof. (*Id.*)

10. National Cellular

Respondent National Cellular is a corporation with a principal place of business located at 5620 First Avenue, Brooklyn, New York 11220. (Complaint ¶ 29.) National Cellular imports and/or sells after importation protective cases and components thereof. (*Id.*)

11. Papaya

Respondent Papaya is a Hong Kong corporation with a principal place of business located at 8/F CNT Building, 302 Queen's Road, Central, Hong Kong. (Complaint ¶ 32.) Papaya imports and/or sells for importation protective cases and components thereof. (*Id.*)

12. Quanyun

Respondent Quanyun is a Chinese corporation with a principal place of business located at

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Floor 1, Workshop No. 1, Weihua Industrial Areas, Tongsheng Community, Dalang Street, Baoan District, Shenzhen, China 518000. (Complaint ¶ 33.) Quanyun imports and/or sells for importation protective cases and components thereof. (*Id.*)

13. Star & Way

Respondent Star & Way is a Chinese trading company with a principal place of business located at Guangzhou Chaoshanglong Company, Room 901, No. 43-3 Shiheng Street, Shuiyin Road, Tianhe District, Guangzhou City, China 510000. (Complaint ¶ 34.) Star & Way imports and/or sells for importation protective cases and components thereof. (*Id.*)

14. Sinatech Industrial

Respondent Sinatech Industrial is a Chinese company with a principal place of business located at Room 3005 #570, FangCun, LiWan District, Guangzhou City, China. (Complaint ¶ 35.) Sinatech Industrial imports and/or sells for importation protective cases and components thereof. (*Id.*)

15. SmileCase

Respondent SmileCase is a Maryland company with a principal place of business located at 3226 Ridgeway Place, Windsor Mill, Maryland 21244. (Complaint ¶ 36.) SmileCase imports and/or sells after importation protective cases and components thereof. (*Id.*)

16. Suntel Global

Respondent Suntel Global is a Chinese company with a principal place of business located

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at 2F-D5 Jian Fa Square #111, Ji Chang Road, Baiyun District, Guangzhou, China. (Complaint ¶ 37.) Suntel Global imports and/or sells for importation protective cases and components thereof. (*Id.*)

17. CaseInPoint

Respondent CaseInPoint is a Florida company with a principal place of business located at 793 Marian Court, Titusville, Florida 32780. (Complaint ¶ 38.) CaseInPoint imports and/or sells after importation protective cases and components thereof. (*Id.*)

18. CaseSpace

Respondent CaseSpace is a Colorado corporation with a principal place of business located at 215 East Foothills Parkway # D-003, Fort Collins, Colorado 80525. (Complaint ¶ 39.) CaseSpace imports and/or sells after importation protective cases and components thereof. (*Id.*)

19. Topter

Respondent Topter is a Chinese corporation with a principal place of business located at 2nd Floor, Building B, Jinkajin Industrial Zone, Minying Industrial Park, Shuitian Village, Shenzhen, Guangdong, China. (Complaint ¶ 40.) Topter imports and/or sells for importation protective cases and components thereof. (*Id.*)

20. Trait Technology

Respondent Trait Technology is a Chinese corporation with a principal place of business located at 416 – 419RM, 305# Sufa Building, Huafa North Road, Futian District, Shenzhen, China.

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(Complaint ¶ 41.) Trait Technology imports and/or sells for importation protective cases and components thereof. (*Id.*)

C. The Asserted Patents and Trademarks

1. U.S. Patent No. 7,933,122

U.S. Patent No. 7,933,122 (“the ’122 Patent”) issued to Richardson et. al. on April 26, 2011, as a result of Application No. 12/251,161, filed on October 14, 2008. (SMF ¶ 1.1.) This application was a continuation-in-part of U.S. Patent Application, Serial No. 12/134,120, filed on June 5, 2008, which was abandoned. (SMF ¶ 1.2.) Otter became the owner of the ’122 Patent by assignment made on March 30, 2009, which was recorded on January 5, 2010. (SMF ¶ 1.3.)

The asserted claims of the ’122 Patent are claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, and 44. These claims read as follows (disputed terms are bolded):

1. A protective enclosure for a computer comprising:

a flexible membrane that is molded to fit over at least a front portion of said computer that allows interactive access to controls on said front portion of said computer;

a hard shell cover that fits over said flexible membrane and said computer and that is formed to provide openings that allow a user to access said flexible membrane to have interactive access to said controls of said computer, said hard shell cover providing rigidity to said protective enclosure, said hard shell cover comprising a front shell formed to a rigid shape of a front portion of said computer and a back

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shell formed to a rigid shape of a rear portion of said computer; a stretchable cushion layer that is disposed over said hard shell cover that has sufficient elasticity to substantially conform to said hard shell cover and provide cushioning to said protective enclosure, said stretchable cushion layer exposing at least a portion of said hard shell cover and having a tab disposed to fit into a corresponding **groove** in said hard shell cover.

5. The protective enclosure of claim 1 wherein said computer comprises a handheld computer.

6. The protective enclosure of claim 1 wherein said computer comprises a tablet computer.

7. The protective enclosure of claim 1 wherein said computer comprises an ultramobile computer.

13. The protective enclosure of claim 1, said front shell and said back shell having a snap connection connecting said front shell and said back shell.

15. The protective enclosure of claim 1, said back shell being at least partially captured by said front shell.

17. The protective enclosure of claim 1, at least one portion of said hard shell protruding through said stretchable cushion layer.

19. The protective enclosure of claim 1, said at least a portion of said hard shell cover being exposed through said stretchable cushion layer being a touch screen opening.

20. A protective enclosure for a computer comprising:

a hard shell cover that fits over said computer and that is formed to provide openings that allow access to controls of said computer, said hard shell cover comprising a front shell formed to a rigid shape of a front portion of said computer and a back shell formed to a rigid shape of a rear portion of said computer;

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a stretchable cushion layer that is disposed over said hard shell cover that has sufficient elasticity to stretch over said hard shell cover and substantially conform to an outer surface of said hard shell cover to cushion said hard shell cover and absorb shocks that would otherwise be transmitted to said computer, said stretchable cushion layer exposing at least a portion of said hard shell cover and having a tab disposed to fit into a corresponding **groove** in said hard shell cover.

21. The protective enclosure of claim 20, said front shell and said back shell having a snap connection connecting said front shell and said back shell.

23. The protective enclosure of claim 20, said back shell being at least partially captured by said front shell.

25. The protective enclosure of claim 20, at least one portion of said hard shell protruding through said stretchable cushion layer.

27. The protective enclosure of claim 20, said at least a portion of said hard shell cover being exposed through said stretchable cushion layer being a touch screen opening.

28. A protective enclosure for a computer that has a touch screen comprising:

a hard shell cover that fits over said computer and that is formed to provide at least one opening that is aligned with said touch screen, said hard shell cover comprising a front shell formed to a rigid shape of a front portion of said computer and a back shell formed to a rigid shape of a rear portion of said computer; a touch screen cover that is attached to said hard shell cover, said touch screen cover being sufficiently thin and disposed sufficiently close to said touch screen when said computer is disposed in said protective enclosure to allow activation of said touch screen through said touch screen cover;

a stretchable cushion layer that is disposed over said hard shell cover that has sufficient elasticity to stretch over said hard shell cover to substantially conform to an outer surface of said hard shell cover and cushion said hard shell cover to absorb shocks that would otherwise be transmitted to said computer, said stretchable cushion layer exposing at least a portion of said hard shell cover and having a tab disposed to fit into a corresponding **groove** in said hard shell cover.

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30. The protective enclosure of claim 28 wherein said computer comprises a handheld computer.

31. The protective enclosure of claim 28 wherein said computer comprises a tablet computer.

32. The protective enclosure of claim 28 wherein said computer comprises an ultramobile computer.

37. The protective enclosure of claim 28 wherein said touch screen cover comprises a thin layer of hard plastic.

38. The protective enclosure of claim 28, said front shell and said back shell having a snap connection connecting said front shell and said back shell.

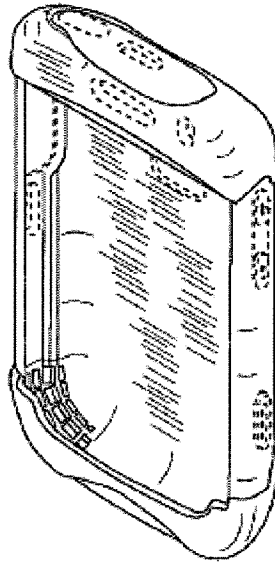
42. The protective enclosure of claim 28, at least one portion of said hard shell protruding through said stretchable cushion layer.

44. The protective enclosure of claim 28, said at least a portion of said hard shell cover being exposed through said stretchable cushion layer being a touch screen opening.

2. U.S. Patent No. D600,908

U.S. Patent No. D600,908 (“the D’908 Patent”) issued to Richardson et. al. on September 29, 2009, as a result of Application No. 29/328,647, filed on November 26, 2008. (SMF ¶ 1.4.) Otter became the owner of the D’908 Patent by assignment made on December 12, 2008, which was recorded on January 5, 2009. (SMF ¶ 1.5.) A representative figure from the design patent is reproduced below:

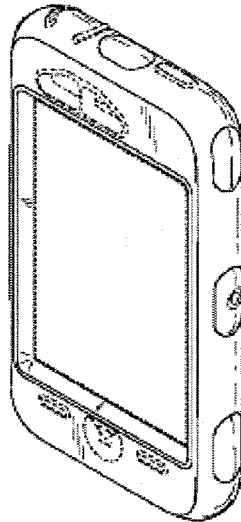
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3. U.S. Patent No. D617,784

U.S. Patent No. D617,784 (“the D’784 Patent”) issued to Richardson et al. on June 15, 2010, as a result of Application No. 29/328,650, filed on November 26, 2008. (SMF ¶ 1.6.) Otter became the owner of the D’784 Patent by assignment made on December 16, 2008, which was recorded on January 5, 2009. (SMF ¶ 1.7.) A representative figure from the design patent is reproduced below:

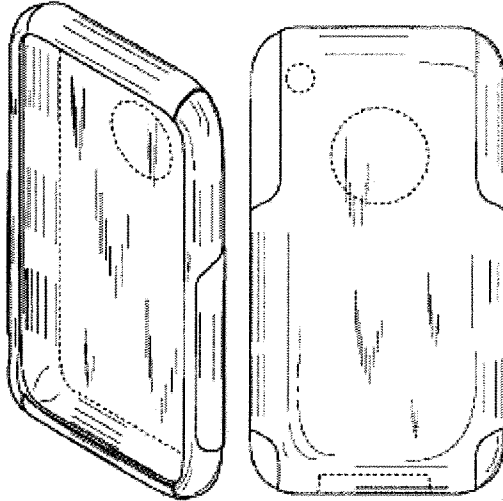
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4. U.S. Patent No. D615,536

U.S. Patent No. D615,536 (“the D’536 Patent”) issued to Richardson et al. on May 11, 2010, as a result of Application No. 29/344,276, filed on September 25, 2009. (SMF ¶ 1.8.) Otter became the owner of the D’536 Patent by assignment made on September 25, 2009, which was recorded on September 28, 2009. (SMF ¶ 1.9.) A representative figure from the design patent is reproduced below:

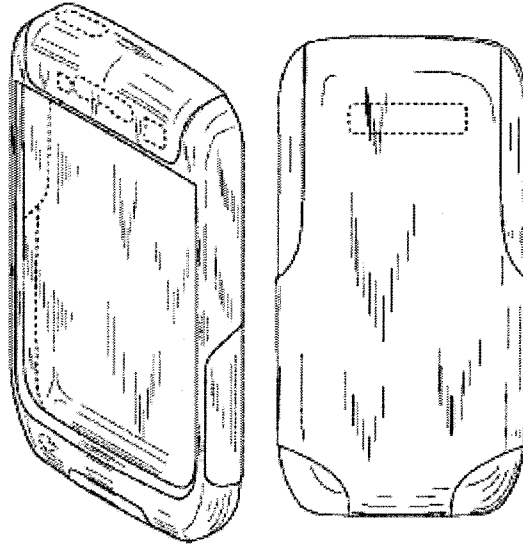
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5. U.S. Patent No. D617,785

U.S. Patent No. D617,785 (“the D’785 Patent”) issued to Richardson et al. on June 15, 2010, as a result of Application No. 29/344,693, filed on October 2, 2009. (SMF ¶ 1.10.) Otter became the owner of the D’785 Patent by assignment made on September 30, 2009, which was recorded on October 16, 2009. (SMF ¶ 1.11.) A representative figure from the design patent is reproduced below:

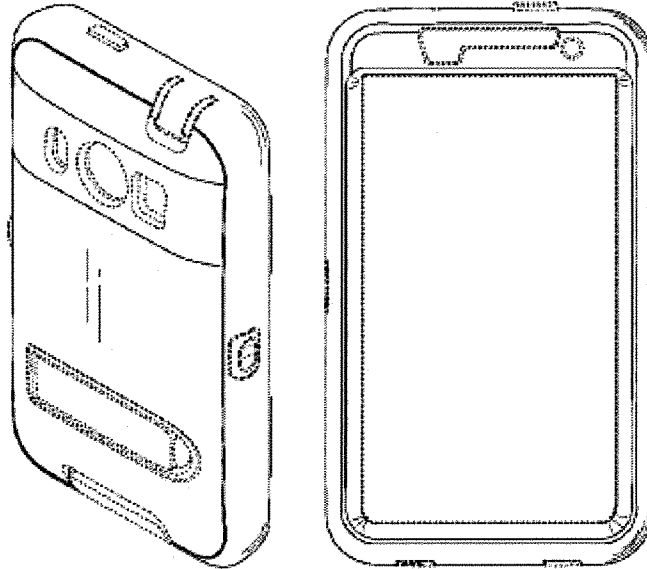
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6. U.S. Patent No. D634,741

U.S. Patent No. D634,741 (“the D’741 Patent”) issued to Richardson et al. on March 22, 2011, as a result of Application No. 29/368,655, filed on August 26, 2010. (SMF ¶ 1.12.) Otter became the owner of the D’741 Patent by assignment made on August 9, 2010, which was recorded on September 21, 2010. (SMF ¶ 1.13.) A representative figure from the design patent is reproduced below:

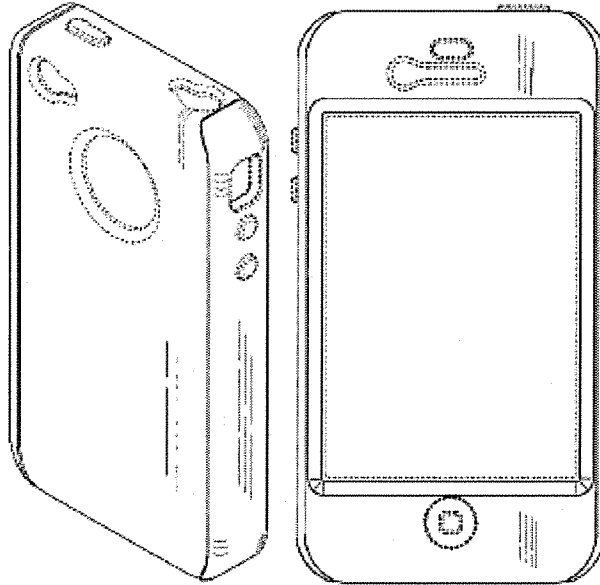
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7. U.S. Patent No. D636,386

U.S. Patent No. D636,386 (“the D’386 Patent”) issued to Richardson et al. on April 19, 2011, as a result of Application No. 29/363,727, filed on June 14, 2010. (SMF ¶ 1.14.) Otter became the owner of the D’386 Patent by assignment made on July 12, 2010, which was recorded on July 15, 2010. (SMF ¶ 1.15.) A representative figure from the design patent is reproduced below:

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8. The OtterBox® Trademark

Otter adopted and has continuously used the OtterBox Trademark since at least as early as May 11, 2010. The United States Patent and Trademark Office (USPTO) registered the OtterBox word trademark to Otter on May 10, 2010, as United States Trademark Registration No. 3,788,534. (SMF ¶ 1.16.) The trademark is shown below:

OTTERBOX

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9. The Otter Box® Trademark

Otter adopted and has continuously used the Otter Box Trademark since at least as early as May 11, 2010. The USPTO registered the Otter Box word trademark to Otter on May 10, 2010, as United States Trademark Registration No. 3,788,535. (SMF ¶ 1.17.) The trademark is shown below:

OTTER BOX

10. The Defender Series® Trademark

Otter adopted and has continuously used the Defender Series Trademark since at least as early as May 19, 2009. The USPTO registered the Defender Series word trademark to Otter on May 19, 2009, as United States Trademark Registration No. 3,623,789. (SMF ¶ 1.18.) The trademark is shown below:

DEFENDER SERIES

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11. The Impact Series® Trademark

Otter adopted and has continuously used the Impact Series Trademark since at least as early as May 25, 2010. The USPTO registered the Impact Series word trademark to Otter on May 25, 2010, as United States Trademark Registration No. 3,795,187. (SMF ¶ 1.19.) The trademark is shown below:

IMPACT SERIES

D. The Products at Issue

The products at issue in this investigation are protective cases and components thereof. *See* 76 Fed. Reg. 38417.

1. Otter

The Otter cases that Otter has put forward as domestic industry products include: (1) Otter's Defender Series for iPad; (2) Otter's Defender Series for the iPhone 3G; (3) Otter's Defender Series for the iPhone 4; (4) Otter's Defender Series for the HTC EVO 4G; (5) Otter's Impact Series protective case for iPhone 3G; (6) Otter's Commuter Series protective case for iPhone; and (7) Otter's Commuter Series protective case for Blackberry Bold 9700. Otter contends that the (1) Otter Defender Series for iPad; (2) Otter Defender Series for the iPhone 3G; (3) Otter Defender Series for the iPhone 4; and (4) Otter Defender Series for the HTC EVO 4G,

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practice the '122 Patent and "Defender Series" trademarks. Otter provided samples of these protective cases as Physical Exhibits 79, 81, 80, and 82 to the Complaint, respectively. Otter contends that the design of Otter's Defender Series for iPhone 3G is substantially the same as the design of the D'784 Patent. Otter contends that the design of Otter's Defender for HTC EVO 4G (Physical Exhibit 82 to the Complaint) is substantially the same as the design of the D'741 Patent. Otter argues that the design of Otter's Impact Series protective case for iPhone 3G (Physical Exhibit 84 to the Complaint) is substantially the same as the design of the D'908 Patent and also practices the "Impact Series" trademark. Finally, Otter argues that Otter's Commuter Series protective case for Blackberry Bold 9700 (Physical Exhibit 86 to the Complaint) is substantially the same as the design of the D'785 Patent. All of the products use Otter's Otterbox® and Otter Box® trademarks.

2. Griffin

The Griffin protective cases accused of infringement of all of the asserted claims of the '122 Patent are: (1) the Griffin Survivor for the iPhone 4; (2) the Griffin Survivor for the iPod Touch; (3) the Griffin Survivor for iPad 2; and (4) the Griffin Explorer for the iPhone 4. (CX-001C, at pp. 38-47, 50-74.)

3. Anbess

The products of respondent Anbess at issue in this investigation include Anbess Hoster Clip Case for HTC EVO 4G, and Anbess iPhone 3G/3GS Defender, Anbess Otter Silicon Case for

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BlackBerry Curve 8520, Anbess Defender Case for BlackBerry Bold 9700. (SMF ¶¶ 4.412-4.465, 4.534-4.540, 4.692-4.698.)

4. Cellet Products

The products of respondent Cellet at issue in this investigation include Cellet 3G PGuard (SMF ¶¶ 4.541-4.547.)

5. Guangzhou Evotech

The products of respondent Guangzhou Evotech at issue in this investigation include the Defender case for mobile phone. (SMF ¶ 4.744.)

6. Hoffco (Celtronnix)

The products of respondent Hoffco include Hoffco Gel Skin for iPhone 3G/3GS.

7. HJJ

The products of respondent HJJ at issue in the investigation include the HJJ Defender Case for EVO 4G; HJJ Defender Shock Proof Case for iPod Touch; HJJ Defender Silicone Case for iPhone 3G, and HJJ Defender Silicone Case for iPhone 4 4th 4G. (SMF ¶¶ 4.7-4.60; 4.520-4.526, 4.706-4.713.)

8. Hypercel

The products of respondent Hypercel at issue in this investigation include Hypercel XS Silicon Cover for Apple iPhone, “OtterBox Defender Series for BlackBerry,” “Defender Series

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BlackBerry Curve,” and “OtterBox Defender Series for Apple iPad.” (SMF ¶¶ 4.548-4.554, 4.745.)

9. MegaWatts

The products of respondent MegaWatts at issue in this investigation include MegaWatts Defender Case for iPhone 3G/3GS, “Defender Case for iPhone 3G 3GS – Black, Similar to OtterBox Defender” and “iPhone Defender.” (SMF ¶¶ 4.331-4.357, 4.746.)

10. National Cellular

The products of respondent National Cellular at issue in this investigation include: National Cellular iPhone 3G Armor Defender, “Otterbox Defender Case Blackberry 8520 Black,” “Otterbox Defender Case IPHONE 3G/3GS,” “iPhone 3G Armor-Defender.” (SMF ¶¶ 4.358-4.384, 4.749.)

11. Papaya

The cases of respondent Papaya at issue in this investigation include Papaya iPhone 4G Defender Silicon and Plastic, “Black New Defender Robot Series Hard Case for iPod Touch,” “Combo Series OtterBox Defender Hard Case Cover for iPhone 4 4G,” and “Defender Case for iPad.” (SMF ¶¶ 4.196-4.222, 4.750.)

12. Quanyun

The products of respondent Quanyun at issue in this investigation include Quanyun iPhone 4G Defender Mobile, “iPhone 4G defender mobile,” and “iPad Defender.” (SMF ¶¶ 4.385-4.411,

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4.751.)

13. Star & Way

The cases of respondent Star & Way at issue in this investigation include Star & Way 4G protective case, Star & Way Defender Case for EVO 4G, Star & Way 4G Hard Plastic + Silicone Case Defender for Evo 4G, and Star & Way BB9700 Commuter Defender. (SMF ¶¶ 4.223-4.276, 4.668-4.675, 4.699-4.705.)

14. Sinatech Industrial

The products of respondent Sinatech Industrial at issue in this investigation include Sinatech iPhone 4 Otter Box. (SMF ¶¶ 4.466-4.492.)

15. SmileCase

The products of respondent SmileCase at issue in this investigation include SmileCase Defender Case for HTC EVO 4G, SmileCase Defender Case for iPhone 3G/3GS. (SMF ¶¶ 4.142-4.195.)

16. Suntel Global

The products of respondent Suntel Global at issue in this investigation include “Defender case for mobile phone.” (SMF ¶ 4.754.)

17. CaseInPoint

The products of respondent CaseInPoint at issue in this investigation include CaseInPoint Otterbox Defender. (SMF ¶¶ 4.493-4.519.)

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18. CaseSpace

The cases of respondent CaseSpace at issue in this investigation include CaseSpace iPhone 3G Vault. (SMF ¶¶ 4.304-4.330.)

19. Topter

The cases of respondent Topter at issue in this investigation include Topter iPhone 3G/3GS Defender, and Topter iPhone Mobile. (SMF ¶¶ 4.277-4.303, 4.653-4.659.)

20. Trait Technology

The Trait Technology products at issue include the Trait Technology Hard Case Cover with Belt Clip for iPhone 4 4G, Trait Technology Defender Silicon Hard Plastic Case for Apple iPod Touch 4, Trait Technology iPhone 3G 3GS Defender, and Trait Technology Otterbox Impact Silicon Case Cover for Blackberry 8520/8530. (SMF ¶¶ 4.61-4.141, 4.527-4.533.)

II. SUMMARY DETERMINATION STANDARD

Pursuant to Commission Rule 210.18, 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 a summary determination as a matter of law.” 19 C.F.R. § 210.18(b); *see also DeMarini Sports, Inc. v. Worth, Inc.*, 239 F.3d 1314, 1322 (Fed. Cir. 2001); *Wenger Mfg., Inc. v. Coating Machinery Sys., Inc.*, 239 F.3d 1225, 1231 (Fed. Cir. 2001). The evidence “must viewed in the light most favorable to the party opposing the motion . . . with doubt resolved in favor of the

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nonmovant.” *Crown Operations Int’l, Ltd. v. Solutia, Inc.*, 289 F.3d 1367, 1375 (Fed. Cir. 2002); *see also Xerox Corp. v. 3Com Corp.*, 267 F.3d 1361, 1364 (Fed. Cir. 2001) (“When ruling on a motion for summary judgment, all of the nonmovant’s evidence is to be credited, and all justifiable inferences are to be drawn in the nonmovant’s favor.”). “Issues of fact are genuine only if the evidence is such that a reasonable [fact finder] could return a verdict for the nonmoving party.” *Id.* at 1375 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). The trier of fact should “assure itself that there is no reasonable version of the facts, on the summary judgment record, whereby the nonmovant could prevail, recognizing that the purpose of summary judgment is not to deprive a litigant of a fair hearing, but to avoid an unnecessary trial.” *EMI Group N. Am., Inc. v. Intel Corp.*, 157 F.3d 887, 891 (Fed. Cir. 1998). “Where an issue as to a material fact cannot be resolved without observation of the demeanor of witnesses in order to evaluate their credibility, summary judgment is not appropriate.” *Sandt Technology, Ltd. v. Resco Metal & Plastics Corp.*, 264 F.3d 1344, 1357 (Fed. Cir. 2001) (Dyk, J., concurring). “In other words, ‘[s]ummary judgment is authorized when it is quite clear what the truth is,’ [citations omitted], and the law requires judgment in favor of the movant based upon facts not in genuine dispute.” *Paragon Podiatry Laboratory, Inc. v. KLM Laboratories, Inc.*, 984 F.2d 1182, 1185 (Fed. Cir. 1993).

A violation of Section 337 may not be found unless supported by “reliable, probative, and substantial evidence.” 35 U.S.C. § 559; *see also Certain Sildenafil or any Pharmaceutically*

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Acceptable Salt Thereof, Such as Sildenafil Citrate and Products Containing Same, Inv. No. 337-TA-489, Com. Op. Remedy, the Public Interest, and Bonding at 4-5 (July 2004).

The Respondents found in default, and who may be found in default, have waived their right to appear, to be served with documents, and to contest the allegations at issue in the investigation. See 19 C.F.R. § 210.16(b)(3). Further, "[t]he facts alleged in the complaint will be presumed to be true with respect to the defaulting respondent." 19 C.F.R. § 210.16(c)(1).

III. IMPORTATION

Section 337(a)(1)(C) declares unlawful "the importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of articles that infringe a valid and enforceable United States trademark registered under the Trademark Act of 1946." 19 U.S.C. § 1337(a)(1)(C).

Otter must establish that the respondents' products were imported into the United States, sold for importation, or sold within the United States after importation. 19 U.S.C. § 1337(a)(1)(B). Otter argues that the accused products were manufactured abroad and were sold in the United States. (Otter. at 248-261.) Staff does not dispute the evidence and argues that Otter has satisfied the importation requirement. (Staff Resp. at 14.)

1. Griffin

The ALJ has previously granted summary determination to Otter finding that Otter had established the importation requirement with respect to Griffin. (Order No. 28.) The Commission

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determined not to review that order. (*See* Notice of Commission Determination Not to Review an Initial Determination Granting Complainant's Motion for Summary Determination that It has Established the Importation Requirement of Section 337 as to Respondent Griffin Technology, Inc. (April 10, 2012).)

2. Anbess

Otter has provided evidence of purchases in the United States of Anbess's cases, along with evidence of importation of protective cases into the United States from China. (SMF ¶¶ 6.1-6.22.)

Thus, the evidence shows that Anbess has imported, sold for importation, and/or sold after importation into the United States the accused products.

3. Cellet Products

Cellet Products' accused protective casers are marked with their country of origin. The packages for Cellet Product's cases show they were made in China. (SMF ¶ 6.24). Otter has provided evidence of purchases in the United States of Cellet Products' cases. (SMF ¶ 6.23)

Thus, the evidence shows that Cellet Products has imported, sold for importation, and/or sold after importation into the United States the accused products.

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4. Guangzhou Evotech

Otter has provided evidence of purchases in the United States of Guangzhou Evotech cases, along with evidence of importation of protective cases into the United States from Hong Kong. (SMF ¶¶ 6.25-6.29.)

Thus, the evidence shows that Guangzhou Evotech has imported, sold for importation, and/or sold after importation into the United States the accused products.

5. Hoffco (Celtronnix)

Otter has provided evidence of purchases in the United States of Hoffco cases. (SMF ¶¶ 6.30.) The accused Hoffco cases are not marked with their country of origin. However, Otter has presented undisputed evidence that [REDACTED]

[REDACTED]

[REDACTED]. (SMF ¶ 6.32.)

Thus, the ALJ finds the evidence shows that Hoffco has imported, sold for importation, and/or sold after importation into the United States the accused products.

6. HJJ

Otter has provided evidence of purchases in the United States of HJJ cases, along with evidence of importation of protective cases into the United States from Hong Kong. (SMF ¶¶ 6.33-6.44.)

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Thus, the evidence shows that Hong Kong HJJ has imported, sold for importation, and/or sold after importation into the United States the accused products.

7. Hypercel

Otter has provided evidence of purchases in the United States of Hypercel cases, along with evidence of importation of protective cases into the United States from China. (SMF ¶¶ 6.45-6.47.)

Thus, the evidence shows that Hypercel has imported, sold for importation, and/or sold after importation into the United States the accused products.

8. MegaWatts

Otter has provided evidence of purchases in the United States of MegaWatts cases, along with evidence of importation of protective cases into the United States from China. (SMF ¶¶ 6.48-6.51.)

Thus, the evidence shows that MegaWatts has imported, sold for importation, and/or sold after importation into the United States the accused products.

9. National Cellular

Otter has provided evidence of purchases in the United States of National Cellular cases, along with evidence of importation of protective cases into the United States from China. (SMF ¶¶ 6.52-6.53.)

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Thus, the evidence shows that National Cellular has imported, sold for importation, and/or sold after importation into the United States the accused products.

10. Papaya

Otter has provided evidence of purchases in the United States of Papaya cases, along with evidence of importation of protective cases into the United States from China. (SMF ¶¶ 6.54-6.60.)

Thus, the evidence shows that Papaya has imported, sold for importation, and/or sold after importation into the United States the accused products.

11. Quanyun

Otter has provided evidence of purchases in the United States of Quanyun cases, along with evidence of importation of protective cases into the United States from Hong Kong. (SMF ¶¶ 6.61-6.68.)

Thus, the evidence shows that Quanyun has imported, sold for importation, and/or sold after importation into the United States the accused products.

12. Star & Way

Otter has provided evidence of purchases in the United States of Star & Way cases, along with evidence of importation of protective cases into the United States from Hong Kong and/or China. (SMF ¶¶ 6.69 - 6.91.)

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Thus, the evidence shows that Star & Way has imported, sold for importation, and/or sold after importation into the United States the accused products.

13. Sinatech Industrial

Otter has provided evidence of purchases in the United States of Sinatech cases, along with evidence of importation of protective cases into the United States from China. (SMF ¶¶ 6.92-6.94.)

Thus, the evidence shows that Sinatech has imported, sold for importation, and/or sold after importation into the United States the accused products.

14. SmileCase

Otter has provided evidence of purchases in the United States of SmileCase cases, along with evidence of importation of protective cases into the United States from China. (SMF ¶¶ 6.95-6.98.)

Thus, the evidence shows that SmileCase has imported, sold for importation, and/or sold after importation into the United States the accused products.

15. Suntel Global

Otter has provided evidence of purchases in the United States of Suntel Global cases, along with evidence of importation of protective cases into the United States from China. (SMF ¶¶ 6.99-6.102.)

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Thus, the evidence shows that Suntel Global has imported, sold for importation, and/or sold after importation into the United States the accused products.

16. CaseInPoint

Otter has provided evidence of purchases in the United States of CaseInPoint cases, along with evidence of importation of protective cases into the United States from China. (SMF ¶¶ 6.103-6.105.)

Thus, the evidence shows that CaseInPoint has imported, sold for importation, and/or sold after importation into the United States the accused products.

17. CaseSpace

Otter has provided evidence of purchases in the United States of CaseSpace cases, along with evidence of importation of protective cases into the United States from China. (SMF ¶¶ 6.106-6.109.)

Thus, the evidence shows that CaseSpace has imported, sold for importation, and/or sold after importation into the United States the accused products.

18. Topter

Otter has provided evidence of purchases in the United States of Topter cases, along with evidence of importation of protective cases into the United States from Hong Kong. (SMF ¶¶ 6.110-6.114.)

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Thus, the evidence shows that Topter has imported, sold for importation, and/or sold after importation into the United States the accused products.

19. Trait Technology

Otter has provided evidence of purchases in the United States of Trait Technology cases, along with evidence of importation of protective cases into the United States from China. (SMF ¶¶ 6.115-6.121.)

Thus, the evidence shows that Trait Technology has imported, sold for importation, and/or sold after importation into the United States the accused products.

As set forth *supra*, the undisputed evidence shows that each Defaulting Respondent imported into the United States, sold for importation, or sold within the United States after importation the protective cases at issue. Accordingly, the ALJ finds that each of the Defaulting Respondents satisfy the importation requirement.

IV. JURISDICTION

In order to have the power to decide a case, a court or agency must have both subject matter jurisdiction and jurisdiction over either the parties or the property involved. *See Certain Steel Rod Treating Apparatus and Components Thereof*, Inv. No. 337-TA-97, Commission Memorandum Opinion, 215 U.S.P.Q. 229, 231 (1981). For the reasons discussed below, the ALJ finds the Commission has jurisdiction over this investigation.

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Section 337 declares unlawful the importation, the sale for importation, or the sale after importation into the United States of articles that infringe a valid and enforceable United States patent by the owner, importer, or consignee of the articles, if 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)(1)(B)(I) and (a)(2). Pursuant to Section 337, the Commission shall investigate alleged violations of the Section and hear and decide actions involving those alleged violations.

Griffin does not dispute that the Commission has *in personam* or subject matter jurisdiction. Griffin has fully participated in the investigation, including participating in discovery, participating in the hearing, and filing pre-hearing and post-hearing briefs. The Defaulting Respondents are in default, and thus, cannot contest the Complaints' allegations that *in personam* and subject matter jurisdiction exists. Staff does not dispute that jurisdiction exists. As set forth *supra* in Section III, the ALJ found that the importation requirement has been satisfied. Moreover, the as set forth *infra* in Sections VII and VIII, the ALJ has found infringement by a number of the Defaulting Respondents and that the domestic industry requirement has been met. Accordingly, the ALJ finds that respondents have submitted to the jurisdiction of the Commission and that the jurisdictional requirements have been met. *See Certain Miniature Hacksaws*, Inv. No. 337-TA-237, Pub. No. 1948, Initial Determination at 4, 1986 WL 379287 (U.S.I.T.C., October 15, 1986) (unreviewed by Commission in relevant part).

V. CLAIM CONSTRUCTION

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A. Legal Standard

In construing claims, the ALJ should first look to intrinsic evidence, which consists of the language of the claims, the patent's specification, and the prosecution history, as such evidence "is the most significant source of the legally operative meaning of disputed claim language." *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996); *see also Bell Atl. Network Servs., Inc. v. Covad Comm'n. Group, Inc.*, 262 F.3d 1258, 1267 (Fed. Cir. 2001). The words of the claims "define the scope of the patented invention." *Id.* "The patent specification is the primary resource for determining how an invention would be understood by persons experienced in the field." *Osram GmbH v. Int'l Trade Comm'n*, 505 F.3d 1351, 1356 (Fed. Cir. 2007). The claims themselves "provide substantial guidance as to the meaning of particular claim terms." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005), *cert. denied*, 546 U.S. 1170 (2006). It is essential to consider a claim as a whole when construing each term, because the context in which a term is used in a claim "can be highly instructive." *Id.* Claim terms are presumed to be used consistently throughout the patent, such that the usage of the term in one claim can often illuminate the meaning of the same term in other claims. *Research Plastics, Inc. v. Federal Pkg. Corp.*, 421 F.3d 1290, 1295 (Fed. Cir. 2005).

Sometimes a claim term will have a specialized meaning in a field of art, in which case it is necessary to determine what a person of ordinary skill in that field of art would understand the disputed claim language to mean, viewing the claim terms in the context of the entire patent.

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Phillips, 415 F.3d at 1312-14; *Vitronics*, 90 F.3d at 1582. Under such circumstances, the ALJ must conduct an analysis of the words of the claims themselves, the patent specification, the prosecution history, and extrinsic evidence concerning relevant scientific principles, as well as the meaning of technical terms and the state of the art. *Id.*

A patentee may deviate from the conventional meaning of claim term by making his or her intended meaning clear (1) in the specification and/or (2) during the patent's prosecution history. *Lear Siegler, Inc. v. Aeroquip Corp.*, 733 F.2d 881, 889 (Fed. Cir. 1984), *Advanced Fiber Technologies (AFT) Trust v. J & L Fiber Services, Inc.*, 674 F.3d 1365, 1374 (Fed. Cir. 2012), *Thorner v. Sony Computer Entm't Am. LLC*, 669 F.3d 1362, 1366 (Fed. Cir. 2012). If a claim term is defined contrary to the meaning given to it by those of ordinary skill in the art, the specification must communicate a deliberate and clear preference for the alternate definition. *Kumar v. Ovonic Battery Co.*, 351 F.3d 1364, 1368 (Fed. Cir. 2003). In other words, the intrinsic evidence must "clearly set forth" or "clearly redefine" a claim term so as to put one reasonably skilled in the art on notice that the patentee intended to so redefine the claim term. *Bell Atl. Network Services, Inc. v. Covad Communications Group, Inc.* 262 F.3d 1258, 1268, *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002).

When the meaning of a claim term is uncertain, the specification is usually the first and best place to look, aside from the claim itself, in order to find that meaning. *Phillips*, 415 F.3d at 1315. The specification of a patent "acts as a dictionary" both "when it expressly defines terms

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used in the claims” and “when it defines terms by implication.” *Vitronics*, 90 F.3d at 1582. For example, the specification “may define claim terms by implication such that the meaning may be found in or ascertained by a reading of the patent documents.” *Phillips*, 415 F.3d at 1323. “The construction that stays true to the claim language and most naturally aligns with the patent’s description of the invention will be, in the end, the correct construction.” *Id.* at 1316. However, as a general rule, particular examples or embodiments discussed in the specification are not to be read into the claims as limitations. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995) *aff’d*, 517 U.S. 370 (1996).

B. The ’122 Patent

The ’122 Patent is directed to a configuration for a multi-layer case for tablet computers, cell phones, and other “ultra-mobile” computers comprising a flexible front cover made of soft membrane material and an interior hard shell. (JX-001 at col. 1:24-27, 40-47) Otter argues that all the claim terms should be given their ordinary meaning; Griffin and the Staff agree to those constructions with the exception of the claim term “groove.” (CSDB at 21; SIB at 13.) Specifically, Otter argues that “groove” does not require any construction and that a person of ordinary skill in the art would understand “groove” may be any shape, as long as a tab on the stretchable cushion layer fits into the groove on the hard shell cover. (CIB at 10 (citing CX-001C, at Q/A 47-53).) Griffin argues that the specification does not define “groove” and the plain meaning of “groove” means “a long, narrow channel, furrow or depression.” (RIB at 7-8.)

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Furthermore, Griffin argues the specification indicates Otter's proposed definition is incorrect, specifically Griffin points to Fig. 13, which has a tab that mates with a "tab slot", and suggests that this figure shows that Otter did not define "groove" to mean anything a tab can slot into. (RIB at 8.) Staff argues that "groove" means "indentation or cut in a surface." (SIB at 16.) The ALJ finds that Otter's non-construction is effectively a construction that reads groove out of the claims and rewrites the claims such that any feature that can receive a tab, not just a groove, is within the scope of the claims. No evidence in the claims, specification, prosecution history nor any convincing evidence from Otter's expert support Otter's efforts to re-write and broaden its claims.

The language of the claims requires "having a tab disposed to fit into a corresponding groove in said hard shell cover." (JX-001 at claim 1.) This language in Otter's definition re-writes this clause to replace groove with anything can receive the tab. However, while a groove is a type of feature, it does not encompass all types of features and the plain language of the claims requires a specific feature – namely, a groove. Staff and Griffin do not attempt to re-write the claims to replace "groove," and instead actually accept the common definition of "groove." Contrary to what Otter suggests, Griffin and Staff are not attempting to read in limitations into the claim, but give full meaning to the terms actually used in the claims and not replace them with broader terms. Thus, the ALJ finds that the claim language supports Griffin's and Staff's construction.

The specification provides additional support for Griffin and Staff's construction. The specification references grooves in 3 places:

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FIG. 13 is an exploded assembly diagram of the protective enclosure 1200 (FIG. 12) and the electronic device 1302. As shown in FIG. 13, the electronic device 1302 fits snugly between the assembled front shell 1204 (FIG. 12) and back shell 1324. The front shell 1204 (FIG.12) and back shell 1324 latch together with a snap fit using precisely manufactured male and female snaps, such as female snaps 1338, 1342, 1336 on the front shell 1204 (FIG.12) that engage male snaps, such as male snaps 1344, 1346, 1347 on back shell 1324. In addition, ridges 1348, 1350 in the back shell 1324 fit tightly within a *groove* (not shown) in the front shell 1204 to create a tight snap fit between the front shell 1204 (FIG.12) and back shell 1324

(JX-001 at 10:11-10:24 (emphasis added))

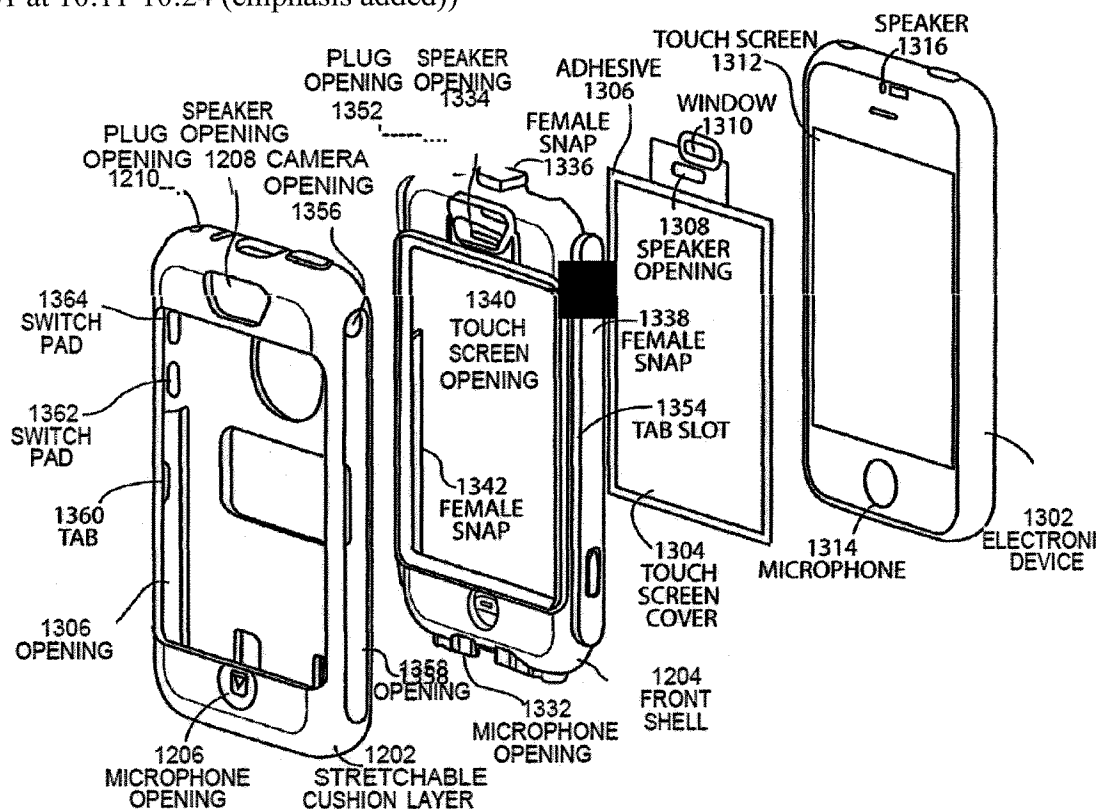


FIG. 13

FIG. 15 is an exploded close-up view of the cutaway portion of the protective enclosure 1400 that is illustrated in FIG. 14. As shown in FIG.

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15, the stretchable cushion layer **1404** (FIG. **14**) has a tab **1506** that is inserted in a *groove* **1508**. The *groove* **1508** includes hooks **1500**, **1504** that assist in holding the tab **1506** in place in the *groove* **1508**. Further, the stretchable cushion layer **1404** (FIG. **14**) includes an angled insert **1510** that is inserted in a recessed *groove* **1502**. The length and depth of the recessed *groove* **1502** and angled insert **1510** help to hold the stretchable cushion layer in position along the edge of the display screen. Although the stretchable cushion layer **1404** is shown as having a tab **1506**, and the front shell **1406** is shown as having a *groove* **1508**, the opposite type of structure could also be used. For example, the front shell **1406** could include a tab, while the stretchable cushion layer **1404** could include a *groove* that interfaces with the tab to hold the stretchable cushion layer **1404** to the front shell **1406**. Further, plugs, such as plug **164** that is illustrated in FIG. **11**, that are formed in the stretchable cushion layer **108**, illustrated in FIG. **11**, could also contain *grooves* that interface with a lip or hook, such as hook **1500**, illustrated in FIG. **15**, to hold the plug **164** in place. As indicated above, this structure can also be reversed.

(JX-001 at 13:45-13:66 (emphasis added).)

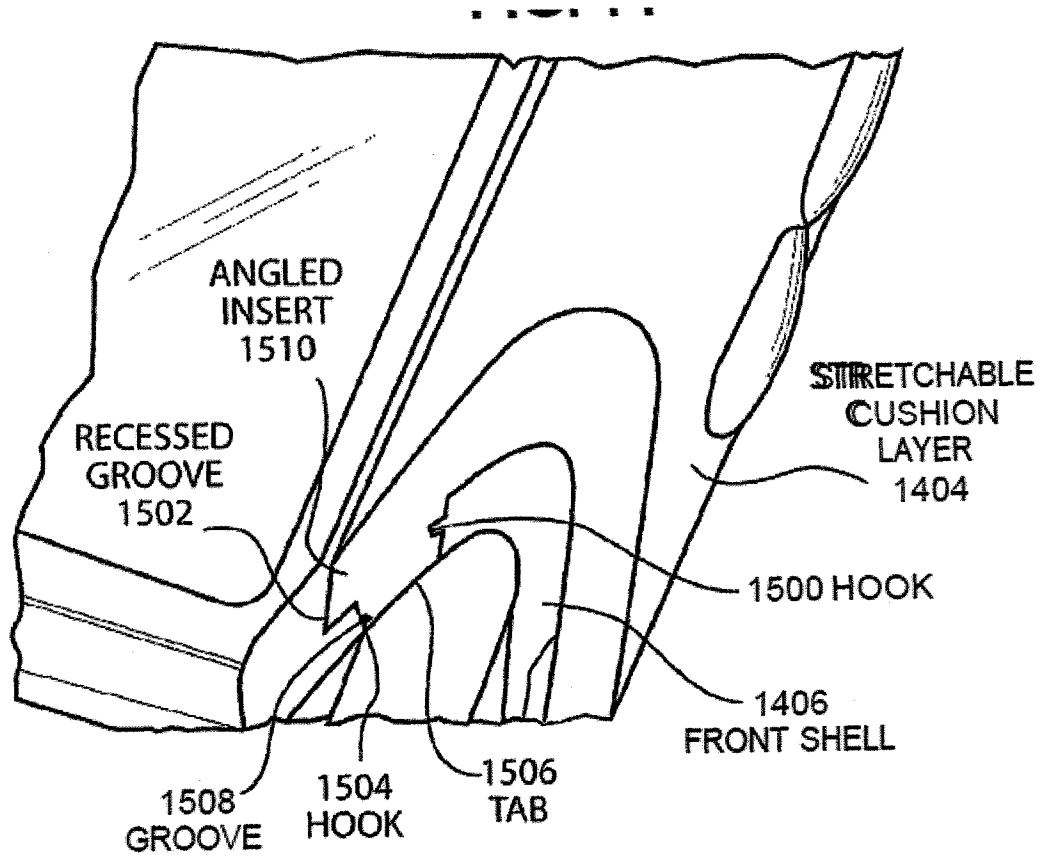


FIG. 15

...

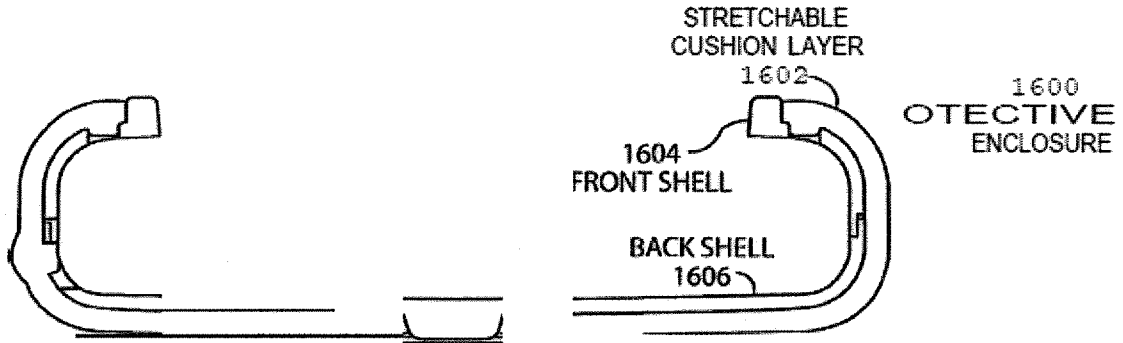


FIG. 16

FIG. 17 is a close-up view of a portion of the protective enclosure 1600 illustrated in FIG. 16. As shown in FIG. 17, the stretchable cushion layer 1602 (FIG. 16) has a tab 1702 that is inserted in a *groove* 1704. Tab 1702 helps to hold the edge of the stretchable cushion layer 1602 (FIG. 16) against the front shell 1604 (FIG. 16) in a tight configuration so that the stretchable cushion layer 1602 (FIG. 16) fits tightly against the front shell 1604 (FIG. 16). The tab 1702 fits tightly in the *groove* 1704 to hold the stretchable cushion layer 1602 (FIG. 16) in place.

(JX-001 at 14:6-14:15 (emphasis added).)

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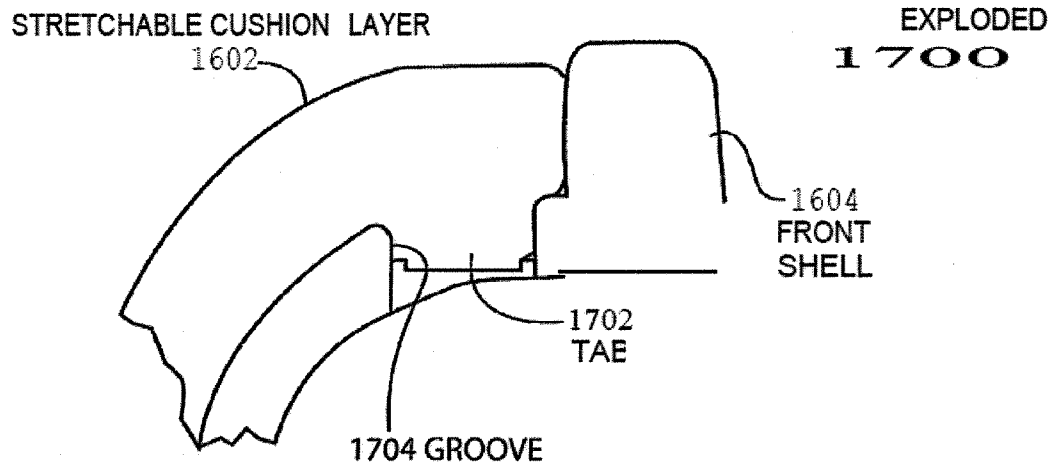


FIG. 17

(JX-001 at Fig. 17.)

The ALJ finds that all of the depictions and descriptions of “groove” are consistent with Griffin and Staff’s definition that the groove is a long and narrow cut. Indeed, the specification evidences that “groove” is not as broad as Otter contends. The specification distinguishes the “grooves” from other features such as the various openings that would meet Otter’s exceedingly broad definition of “groove.” Adopting Otter’s construction would implicitly erase the distinction the specification seems to draw between an “opening” and a “groove.” The ALJ finds that these references, together with the claim language, render Otter’s very broad construction incorrect.

While Otter correctly argues that it is improper to read limitations from the specification into the claims, the ALJ finds that neither Griffin nor the Staff has done so. (*See* CIB at 22-23); *CollegeNet, Inc. v. ApplyYourself, Inc.*, 418 F.3d 1225, 1231 (Fed. Cir. 2005).) Instead, as

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discussed above, Griffin and Staff actually attempt to give meaning to the term “groove” rather than replacing it with the broader construction that Otter suggests.

Otter does argue that the cutaway view in figure 16 is ambiguous and could be any “negative feature.” However, the remainder of the disclosure suggests that this interpretation is incorrect. In fact, the remainder of the specification suggests that the “groove” is a long narrow cut or indentation as Griffin and Staff contend. The ALJ does not find that the cutaway view in Figure 16 is ambiguous or that it suggests that any shape can be a groove. Indeed, taken as a whole, the specification suggests that the patentee used groove in its plain and ordinary meaning, as a long a narrow cut, not as a term to refer to any possible negative feature in an object.

The prosecution history further supports a more narrow construction for groove. The claims originally did not include a “groove” limitation. After a final rejection, a dependent claim requiring a “tab disposed to fit into a corresponding feature” was added, and after an interview with the examiner, that dependent claim was changed to “tab that fits into a corresponding groove” and incorporated into the independent claims, which resulted in the patent’s allowance. (JX-2 at OTRBX_254-60.) Griffin argues that the prosecution history, particularly Otter’s amendment changing “feature” to “groove” limits the definition of “groove.” (RIB at 6.) Mr. Anders testified at the hearing and Otter argues that the change had only relinquished coverage of “positive” features. (Tr. 57:19-58:1). Griffin argues that a tab fitting into a positive “feature” is nonsensical and therefore feature did not include “positive features.” (RRB at 12.)

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An interpretation of the unamended claim where a “feature” could include both “positive features” (*i.e.*, features that stick out of the hard shell case) and negative features (*i.e.*, indentations into the hard shell case) is nonsensical. The original claim language requires that the tab fit into the feature. A tab cannot fit into something that is sticking out of the case. Otter’s argument that “feature” included both positive and negative features is inconsistent with the claim language and cannot be correct.

The prosecution history is clear that the applicant amended the claim to replace the far broader term “feature” with a term for a specific type of feature – *i.e.*, a groove. There is no need to inquire whether this is enough for a prosecution history disclaimer, *see Epistar Corp. v. Int’l Trade Comm’n*, 556 F.3d 1321, 1335 (Fed. Cir. 2009), because the question is not whether the groove limitation was narrowed, but whether groove can be stretched to include any indentation or negative feature on the hard shell case. The ALJ agrees with Staff that while this portion of the prosecution history does not rise to the level of claim scope disavowal, it does serve to support the notion that a “groove” is not just any “feature” on the cushioned layer, regardless of its shape, as Otter contends. The prosecution history shows that the claims originally included any feature, but that term was replaced with the specific term “groove.” Accordingly, the ALJ finds that the prosecution history further supports Griffin’s and Staff’s construction of the term “groove.”

Finally, the ALJ considers the extrinsic evidence. A patentee may act as his own lexicographer, however, such action must take place during the prosecution of the patent and not

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by an expert after the fact. *See Phillips*, 415 F.3d at 1316. Otter's main evidence that one of ordinary skill in the art would interpret the claim term "groove" to be any shape is based on 3 pieces of evidence. First, Otter asserts that Figures 16 and 17 of the '122 Patent show a "cutaway view of the claimed groove" and that "any shaped, groove, including a circular groove, would look like the cutaway view in this embodiment." (CX-1 at Q/A 53.) While it may be true that shapes other than long and narrow grooves would look like the cutaway view in figures 16 and 17, the ALJ does not find that is sufficient to define "groove" as any negative feature. Indeed, as discussed above the rest of the specification is inconsistent with Otter's contention.

Additionally, Otter and Mr. Anders (during his counsel's efforts at the hearing to rehabilitate his testimony after cross examination) argue that U.S. Patent No. 6,201,867 ("the '867 Patent"), which was cited by the PTO during prosecution, supports its construction of "groove." (CIB at 13-15). Specifically, Otter notes that the patent describes an opening in a protective case as formed by two "antenna grooves." (*Id.* at 14.) However, the ALJ finds that Otter's last-minute extrinsic evidence of an unrelated, third-party patent, which appears to be a poor translation of its Japanese priority application is not entitled to any consideration and is not persuasive. The '867 Patent does not describe the opening as a groove. Rather, it describes two semicircular cuts that combine to form the circular opening as "grooves." (GX-4 at col 3:9-15). Furthermore, even if the '867 patentee had acted as his own lexicographer and defined "groove" in the manner Otter

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suggests, Otter did not adopt that definition. Therefore, the '867 Patent provides no support for Otter's assertion that a groove may be circular in shape or a hole.

Otter's expert, Mr. Anders, also listed a "through mortise" as a type of wood working joint where the "groove" goes all the way through the wood. (Tr. 64:17-19). While Mr. Anders called a through mortise a "groove" and both grooves and mortises are wood working joints, even Mr. Anders does not argue that all wood working joints are grooves. Therefore, the ALJ does not find this testimony persuasive.

The underpinnings of Mr. Anders's testimony are fatally flawed. For example when asked to define "groove," Mr. Anders said "the only way I can tell you what a groove is, my definition, is by giving you a series of examples." (Anders, Tr. 63:15-17). Moreover, when asked how a company would know if their product infringed Mr. Anders stated they would have to consult an expert in the field. (Anders, Tr. 88:9-17). The ALJ also notes that his observations of Mr. Anders's testimony during cross-examination demonstrated that Mr. Anders's opinion is entitled to little weight. Thus, the ALJ declines to accept Mr. Anders's definition of "groove." *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1318 (Fed. Cir. 2005) ("conclusory, unsupported assertions by experts as to the definition of a claim term are not useful to a court."); *see also Network Commerce, Inc. v. Microsoft Corp.*, 422 F.3d 1353, 1361 (Fed. Cir. 2005).

Griffin argues that the term "groove" should be given its plain and ordinary meaning, Furthermore, Griffin argues that the plain meaning of groove corresponds with its dictionary

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definition “a long narrow, channel furrow or depression”. (RIB at 7). The Staff agrees arguing that the term “groove” should be given its plain and ordinary meaning, “a long narrow furrow or channel” or “a long narrow furrow or hollow cut in a surface with a tool.” (SIB at 8.) While dictionary definitions are given relatively little weight, here the dictionary definition is consistent with the intrinsic evidence and further suggests that Otter’s interpretation is incorrect. *Phillips*, 415 F.3d at 1322. The ALJ finds that this definition best accords with the intrinsic evidence. Groove is not so broad a term as to include any possible shape within its plain meaning – no matter how many experts Otter submits to claim otherwise. *See Thorner*, 669 F.3d at 1367.

Based on wording of the claims, the specification, the prosecution history and the extrinsic evidence the ALJ finds that the term “groove” is properly construed to mean “a long narrow, cut or furrow.” The ALJ further finds that the remaining terms should be given their plain and ordinary meaning.

VI. VALIDITY AND ENFORCEABILITY

A patent is presumed valid under 35 U.S.C. § 282. Therefore, “[t]he burden of establishing invalidity of a patent or any claim thereof shall rest on the party asserting such invalidity.” *See Certain Devices for Connecting Computers Via Telephone Lines*, ITC Inv. No. 337-TA-360, Initial Determination at 2 (May 24, 1994). A mark registered on the Principal Register is presumed to be valid. 15 U.S.C. § 1057(b).

Otter has submitted certified copies of the patents-in-suit as well as the assignments of

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the '122 Patent, the D'908 Patent, D'784 Patent, D'536 Patent, D'785 Patent, D'741 Patent and D'386 Patent (collectively, the "Asserted Patents") to Otter. (*See* JX-001, CX-018, CX-008, CX-019, CX-020, CX-010, CX-021, CX-011, CX-022, CX-012, CX-013, CX-024.) Additionally, Otter has submitted certified copies of the '534, '535, '789, and '187 Trademarks (collectively, "the Asserted Trademarks"). (CX-014, CX-015, CX-016, CX-017.) The ALJ has already found that respondent Griffin has presented no evidence to create a triable issue of material fact and granted summary determination on Griffin's invalidity defense on the '122 Patent. (*See* Order No. 29.) The Commission determined not to review those orders. (*See* Notice of Commission Determination Not to Review an Initial Determination Granting Complainant's Motion for Summary Determination Regarding Respondent's Affirmative Defense of Invalidity as to United States Patent No. 7,933,122 (April 11, 2012).) No party challenges the validity of the trademarks.

Staff does not challenge the validity or enforceability of the Asserted Patents and the Asserted Trademarks. (SSDB at 7.) Furthermore, no other court of law has determined that the patents are invalid or unenforceable. (CSDB at 12.)

There is no evidence, nor any arguments, before the ALJ that either the Asserted Patents or the Asserted Trademarks are invalid and/or unenforceable. Therefore, based on the presumption of validity that has not been rebutted, the ALJ finds that the Asserted Patents and Asserted Trademarks are valid and enforceable.

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VII. INFRINGEMENT

Pursuant to the Notice of Investigation, this investigation is a patent and trademark based investigation. *See* 76 Fed. Reg. 38417-02 (June 30, 2011)

A. Utility Patent Infringement

Otter has alleged instances of infringement of the '122 Patent.

A finding of infringement or non-infringement requires a two-step analytical approach. First, the asserted patent claims must be construed as a matter of law to determine their proper scope.¹ Claim interpretation is a question of law. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995) (*en banc*), *aff'd*, 517 U.S. 370 (1996); *Cybor Corp. v. FAS Techs., Inc.*, 138 F.3d 1448, 1455 (Fed. Cir. 1998). Second, a factual determination must be made as to whether the properly construed claims read on the accused devices. *Markman*, 52 F.3d at 976.

1. Legal Standard for Infringement Determination

In a section 337 investigation, the complainant bears the burden of proving infringement of the asserted patent claims by a preponderance of the evidence. *Certain Flooring Products*, Inv. No. 337-TA-443, Commission Notice of Final Determination of No Violation of Section 337, 2002 WL 448690 at 59, (March 22, 2002); *Enercon GmbH v. Int'l Trade Comm'n*, 151 F.3d 1376 (Fed. Cir. 1998). Each patent claim element or limitation is considered material and essential to an

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

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infringement determination. *See London v. Carson Pirie Scott & Co.*, 946 F.2d 1534, 1538 (Fed. Cir. 1991). 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); *Southwall Tech. v. Cardinal IG Co.*, 54 F.3d 1570, 1575 (Fed Cir. 1995).

If the accused product does not literally infringe the patent claim, infringement might be found under the doctrine of equivalents. The Supreme Court has described the essential inquiry of the doctrine of equivalents analysis in terms of whether the accused product or process contains elements identical or equivalent to each claimed element of the patented invention. *Warner-Jenkinson Co., Inc. v. Hilton Davis Chemical Co.*, 520 U.S. 17, 40 (1997).

Under the doctrine of equivalents, infringement may be found if the accused product or process performs substantially the same function in substantially the same way to obtain substantially the same result. *Valmont Indus., Inc. v. Reinke Mfg. Co.*, 983 F.2d 1039, 1043 (Fed. Cir. 1993). The doctrine of equivalents does not allow claim limitations to be ignored. Evidence must be presented on a limitation-by-limitation basis, and not for the invention as a whole. *Warner-Jenkinson*, 520 U.S. at 29; *Hughes Aircraft Co. v. U.S.*, 86 F.3d 1566 (Fed. Cir. 1996). Thus, if an element is missing or not satisfied, infringement cannot be found under the doctrine of equivalents as a matter of law. *See, e.g., Wright Medical*, 122 F.3d 1440, 1444 (Fed. Cir. 1997); *Dolly, Inc. v. Spalding & Evenflo Cos., Inc.*, 16 F.3d 394, 398 (Fed. Cir. 1994); *London v. Carson*

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Pirie Scott & Co., 946 F.2d 1534, 1538-39 (Fed. Cir. 1991); *Becton Dickinson and Co. v. C.R. Bard, Inc.*, 922 F.2d 792, 798 (Fed. Cir. 1990).

2. The '122 Patent

a. Arguments

Otter argues that the accused products infringe independent claims 1, 20, 28 of the '122 Patent. (CSDB at 14; CIB at 24-46.). Otter relies on the opinion and analysis of Mr. Anders in proving infringement. (*Id.*) Otter argues that the charts provided by Mr. Anders where on each of the accused products the elements of the claims of the '122 Patent and, Mr. Anders's written analysis, show that each and every limitation of claims 1, 22 and 28 and of the design patents are found within the accused products. (*Id.*) Mr. Anders's analysis further shows how the accused products contain each and every limitation of dependent claims 5, 7, 13, 15, 17, 19,20, 23, 25, 27, 30, 32, 37, 38, 42, and 44 of the '122 Patent. Staff agrees that Otter has submitted substantial, reliable, and probative evidence demonstrating that accused products infringe the asserted claims. There are three exceptions: the Trait Tech for the iPhone 4, the SmileCase for the HTC EVO 4G, and Griffin's Survivor for iPhone4 do not infringe the asserted claims because the identified structures do not meet the "Tab/groove" limitations of the independent claims. (SSDB at 11-12.) Griffin argues that none of its accused products meet the "groove" limitation found in all of the asserted claims. (RIB at 5-10.) The Defaulting Respondents have not submitted any opposition and so cannot dispute Otter's allegations.

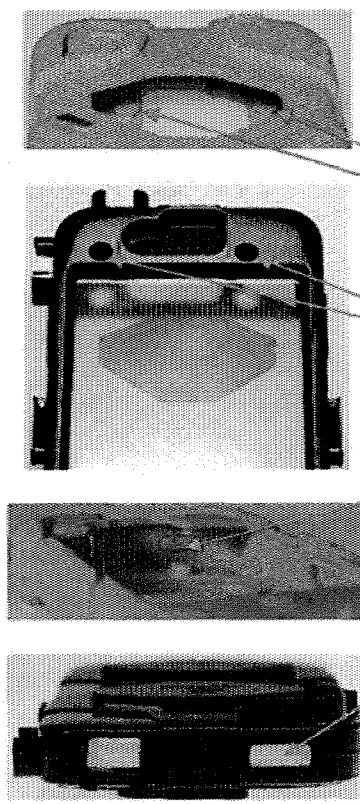
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The ALJ finds that for the majority of the accused products Otter has shown infringement. The ALJ, however, notes that there are disputes about whether certain products infringe the '122 Patent including the Griffin products and the Trait Tech for the iPhone 4 and the SmileCase for the HTC EVO 4G. The ALJ will consider those products first and then consider the remaining accused products.

b. The Griffin Survivor for the iPhone 4

The sole dispute with respect to the Griffin Survivor for iPhone 4 case is whether or not it meets the “groove” limitation of the asserted claims. Otter claims three different features meet the tab/groove limitation in the Griffin Survivor for the iPhone 4. First, Otter’s asserts that the circular openings on the front face of the inner shell of the Griffin Survivor for the iPhone 4 constitute “grooves.” (CX-1 at Q/A 79.)

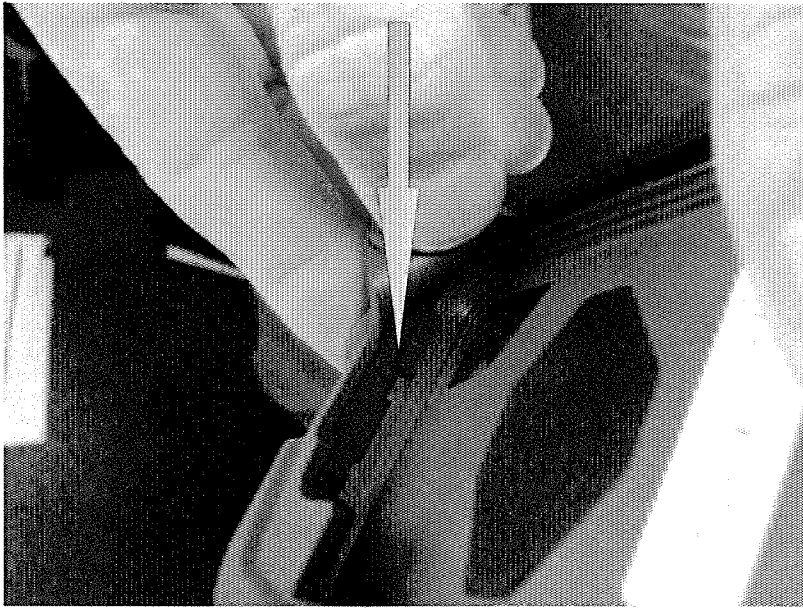
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<p>(f) said stretchable cushion layer exposing at least a portion of said hard shell cover and having a tab disposed to fit into a corresponding groove in said hard shell cover.</p>		<p>A portion of the Griffin Survivor for iPhone 4 hard shell is exposed through the stretchable cushion layer. The stretchable cushion layer has multiple tabs that fit into corresponding grooves in the hard shell cover. These include two circular tabs on the stretchable cushion layer that fit into two corresponding circular grooves on the hard shell cover. This case also has a long narrow tab on the underside of the top right portion of the stretchable cushion layer that is disposed to fit into a corresponding long narrow groove on the hard shell cover, as well as tabs on the right and left sides of the stretchable cushion layer that fit into corresponding grooves on the hard shell cover.</p> <p>Enlargements of these images are shown in Exhibit C II.A.10 of CX-198 and CX-199.</p>
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However, as Staff notes (SRB at 6) and the ALJ agrees, Otter's position that a circle is a groove should be rejected because it does not comport with the plain meaning of "groove" (a long narrow cut or furrow). Simply put this is because the circular openings are not elongated.

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A second feature that Otter asserts meets the tab/groove limitation is a tab intended to allow the user to activate a button on the iPhone 4. (CX-1 at Q/A 79.) However, the ALJ finds that, as seen below, the tab identified by Mr. Anders “is not disposed to fit” into the identified groove as the claims require:

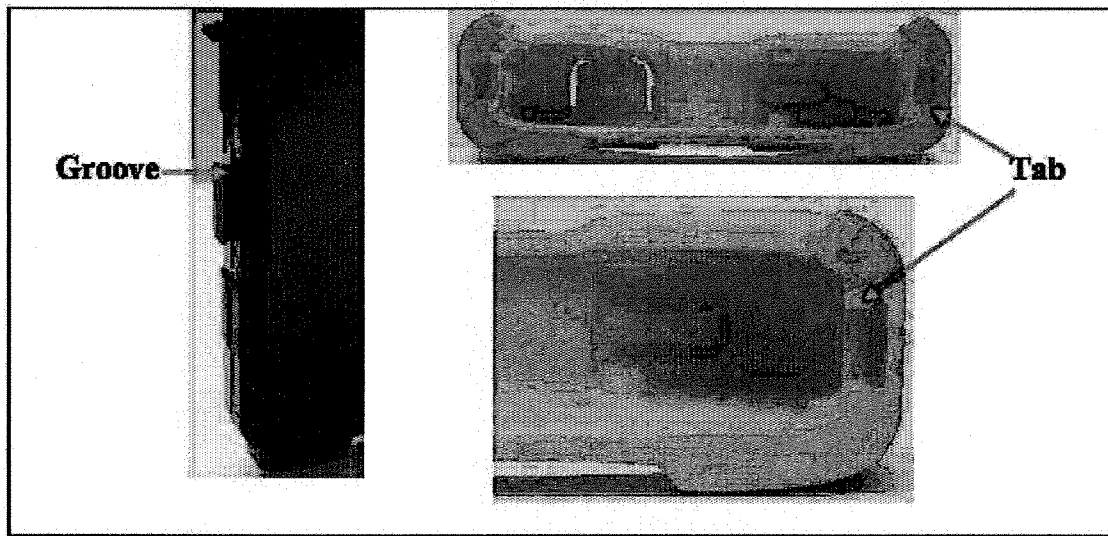


Indeed, Mr. Anders confirmed that the tab does not fit snugly into the opening in his testimony at the hearing. (Tr. 72.) Otter asserts that the Staff wrongly imports functional limitations from the specification into the claims by stating that the tab must fit tightly into the opening. (CIB at 30.) However, the claims themselves require that the tab is “disposed to fit” into the groove and the specification merely reinforces this claim language. (JX-1 at 14:13-15 (“The tab 1702 fits tightly in the groove 1704 to hold the stretchable cushion layer 1602 in place.”).) For this

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reason, the ALJ finds that the second combination of features identified by Otter does not meet the tab/groove limitation.

The third combination of features that Otter asserts meets the tab/groove limitation is alleged “grooves” on rectangular protrusions on the left and right side of the inner shell and alleged “tabs” within the openings on the cushion layer. (CX-001 at Q/A 81-86.)



CDX-004

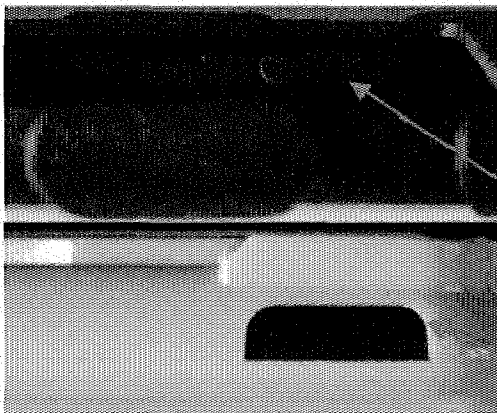
Staff argues that these “features” are “nothing more than the minimal by-products of the primary structures on which they are located.” (SIB at 15). The ALJ agrees and finds that these are not “grooves.” The alleged “grooves” cover multiple surfaces of case and are neither long nor narrow, additionally the “tab” has so little depth that it does not fit into the “groove” so much as sit on it.

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Thus, because the Griffin Survivor for iPhone 4 does not meet the “groove” limitation found in all of the asserted claims, the ALJ finds that the Griffin Survivor for the iPhone 4 does not infringe claims 1, 5, 7, 13, 17, 19-21, 25, 27-28, 30, 32, 37-38, 42, or 44 of the '122 Patent.

c. The Griffin Survivor for the iPod Touch

Otter argues that Mr. Anders has identified the features of the Griffin Survivor for the iPod Touch that meet claims 1, 5, 7, 13, 17, 19-21, 25, 27-28, 30, 32, 37-38, 42, and 44 of the '122 Patent. (CX-1 at Q/A 87-88; JPX-5.) Griffin also argues that this case does not meet the groove limitation. The Staff agrees with Otter that the Griffin Survivor for the iPod Touch infringe all of the asserted claims. The ALJ does not agree with the Staff and Otter. Mr. Anders identifies a structure combination in the Griffin Survivor for the iPod Touch that the Staff believes meets the tab/groove limitation. Specifically, there is a tab on the right side of the stretchable cushion layer that fits into a corresponding “groove” in the hard shell cover.



(CX-1 at p. 52.)

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This feature does not meet the “groove limitation”. On close inspection, the “tab” Mr. Anders identified is a “switch pad” and the hole is an opening for the iPod’s controls. This is identical to the structure identified in the ’122 Patent on the “switch pad” and “opening.” (JX-1 at Figure 13). This tab covers the volume up and down buttons on the phone and needs to be able to press down to activate the buttons, so the “tab” is capable of moving through the “groove” and does not “fit into the corresponding groove” as the claim requires. Finally, the “groove” covers a substantial portion of the depth of the case and is therefore not “narrow”.

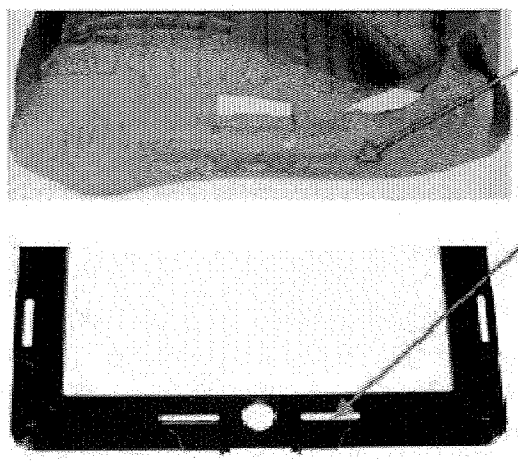
Mr. Anders also provides testimony concerning an additional combination of features that allegedly meet the “tab/groove” limitation that he has not previously expressed and that is very similar to his new opinion concerning the Griffin Survivor for the iPhone 4. (CX-1 at Q/A 88.) The lateness of the identification of this “groove” and the demeanor of his responses to cross examination about how this particular groove came to be identified undermines the credibility of this testimony. In addition, this groove suffers from a similar flaw as the groove identified for the Survivor for iPhone 4 case above. Specifically, for the Griffin Survivor for the iPod Touch, the feature identified as a “groove” is the slimmer back portion of the clearly-defined tab on the hard shell and the identified “tab” is the front portion of the groove on the cushioned layer. (CDX-6.) For the same reasons as set forth with respect to the Griffin Survivor for the iPhone 4, the ALJ finds that these features do not meet the “tab/groove” limitation.

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Thus for the above reasons the ALJ finds that the Griffin Survivor for the iPod touch does not infringe claims 1, 5, 7, 13, 17, 19-21, 25, 27-28, 30, 32, 37-38, 42, or 44 of the '122 Patent.

d. Griffin Survivor for the iPad 2

Mr. Anders argues that the Griffin Survivor for the iPad 2 infringes claims 1, 5-7, 13, 17, 19-21, 25, 27-28, 30-32, 37-38, 42, and 44 of the '122 Patent. (CX-1 at Q/A 88-90; JPX-006.) The Staff agrees that the evidence shows that the Griffin Survivor for the iPad 2 infringes all of the asserted claims. Griffin argues that accused products do not meet the “groove” limitation. The ALJ agrees with the Staff and Otter. Otter argues and the Staff agrees that there are two tabs on both the interior top and bottom of the front side of the stretchable cushion layer that fit into corresponding grooves in the hard shell cover. Additionally, Otter argues that there are also tabs on the front sides (two on each side) that fit into corresponding grooves in the hard shell cover.



(CX-001 at Q/A 89.)

The “tabs” that Otter and the Staff point out are clearly tabs, and the “grooves” are

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“narrow” and at least longer than they are wide. Griffin argues that they are distinct because they go through the surface of the case and Griffin argues that to be a “groove” they must have a bottom. However, the ALJ discerns no such limitation in the claims. Accordingly, the ALJ finds that the Griffin Survivor for iPad 2 meets the “groove” limitation.

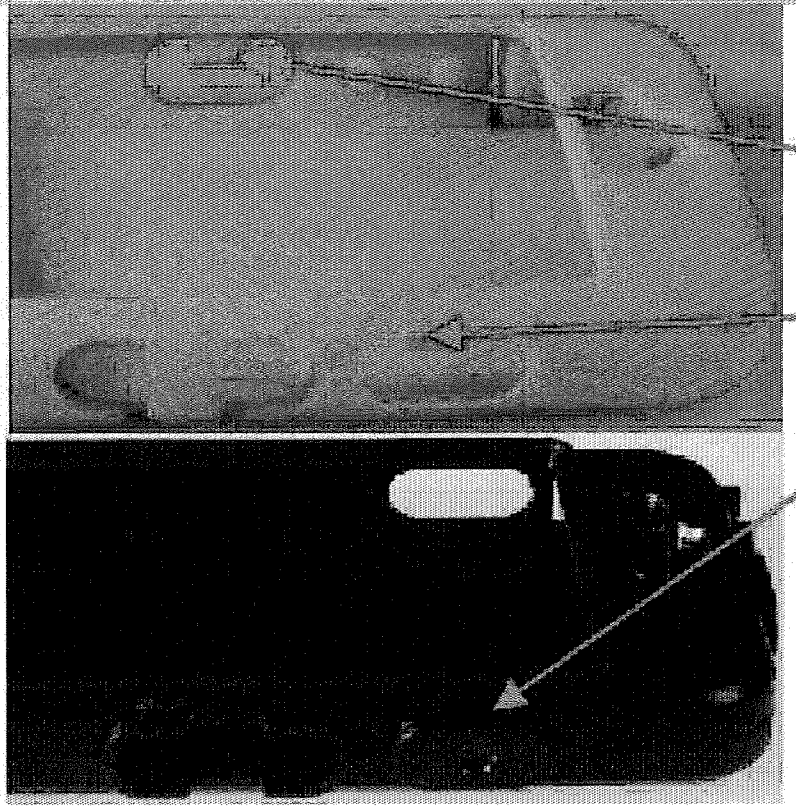
Otter presented evidence as to why the Griffin Survivor for iPad 2 meets all of the remaining limitations of the asserted claims of the '122 Patent. The ALJ finds that the evidence presented sets forth substantial, reliable and probative evidence that the Griffin Survivor for iPad 2 meets all of the remaining limitations of the asserted claims of the '122 Patent.

Thus for the above reasons the ALJ finds that the Griffin Survivor for the iPad 2 does infringe claims 1, 5-7, 13, 17, 19-21, 25, 27-28, 30-32, 37-38, 42, or 44 of the '122 Patent.

e. Griffin Explorer for the iPhone 4

Identifying the features that meet each limitation, Mr. Anders opines that the Griffin Explorer for the iPhone 4 infringes claims 20-21, 23, 25 and 27 of the '122 Patent. (CX-001 at Q/A 91; JPX-7.) The ALJ agrees and finds that the evidence supports Mr. Anders's conclusions. In particular with respect to the “tab/groove” limitation, there are four protrusions on the cushion layer and four corresponding indentations in the hard shell in which these protrusions fit.

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(CX-001 at Q/A 91.)

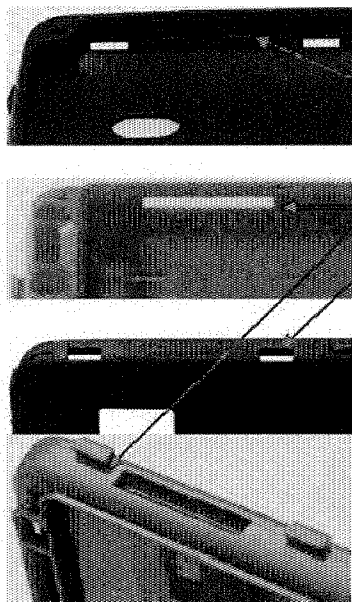
The Staff argues that these protrusions and corresponding indentation tabs meet the tab/groove limitation of the asserted claims. The ALJ agrees with the Staff. Otter presented evidence as to why the Griffin Explorer for iPhone 4 meets all of the remaining limitations of the asserted claims of the '122 Patent. (CX-001 at Q/A 91.) The ALJ finds that Otter's evidence sets forth substantial, reliable and probative evidence that the Griffin Explorer for iPhone 4 meets all of the remaining limitations of the asserted claims of the '122 Patent.

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Accordingly, the ALJ finds that that the Griffin Explorer for the iPhone 4 infringes claims 20-21, 23, 25 and 27 of the '122 Patent.

f. Trait Technology for the iPhone 4 and the Smilecase for the HTC EVO 4G

The ALJ finds that the evidence shows that the Trait Technology for the iPhone 4 and the SmileCase case for the HTC EVO 4G do not infringe the asserted claims because the structures identified by Mr. Anders do not meet the “tab/groove” limitation of the independent claims. Specifically, as shown in the first two photos below, the “tabs” identified by Mr. Anders the rectangular protrusions of the SmileCase case – are not “disposed to fit” in the corresponding identified holes as required by the claims.



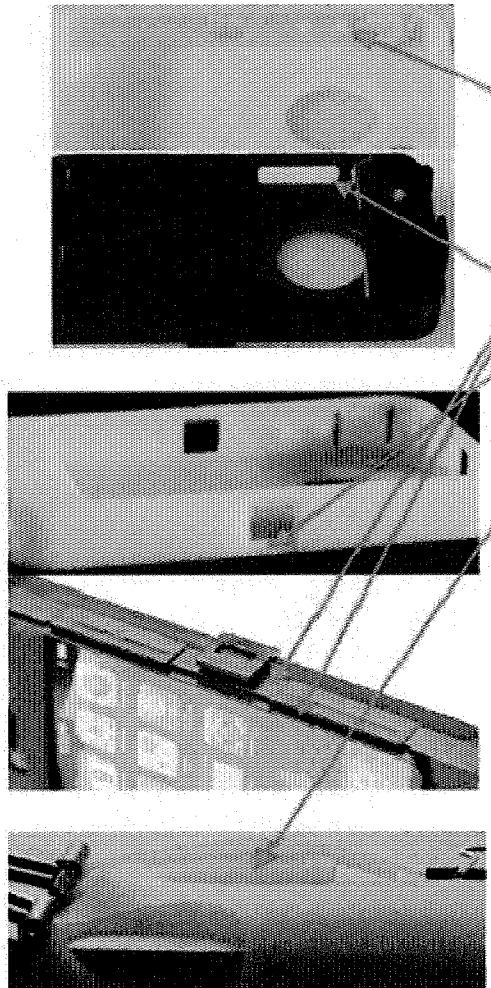
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(CX-001 at Q/A 104.) Rather, it appears that the identified protrusions on this case are merely intended to allow the user to activate buttons on the phone. Finally, the “groove” is “long” but approximately half the width of the section of the case and is therefore not “narrow.”

Mr. Anders testified that an additional combination of features allegedly meet the “tab/groove” limitation that he had not previously expressed (shown in the bottom two photos above), which is very similar to his new opinion concerning the Griffin Survivor for the iPhone 4. (CX-001 at Q/A 104.) For the same reasons as with the Griffin Survivor for the iPhone 4, the ALJ finds that the SmileCase case for the HTC EVO 4G does not infringe. The Staff argues and the ALJ agrees that these relied-upon features are nothing more than the minimal by-products of the primary structures on which they are located. In particular, the alleged “groove” is really nothing more than the slightly thinner back-end of a clearly-defined tab, and the alleged “tab” is nothing more than the outer rim of the corresponding opening.

With respect to the Trait Tech case for the iPhone 4, Mr. Anders identifies two circular protrusions and corresponding grooves (shown in the first two photos below) that he opines meet the tab/groove limitation:

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(CX-1 at Q/A 98.)

However, the evidence shows that the alleged “tabs” identified by Mr. Anders (shown in the top two photos) are not “disposed to fit” in the alleged “grooves” as required by the claim, but rather are merely intended to allow the user to activate buttons on the phone and as such correspond to “switch pads” identified in the patent. (See JX-001 at FIG. 13). Additionally, as

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with a number of other alleged “grooves” that Mr. Anders identified this “groove” is not narrow, as it is nearly as wide as the section of the case it is on and goes through the surface and is therefore a hole and not a groove.

Mr. Anders also testified that two additional combination of features meet the “tab/groove” limitation that he had not previously expressed (shown in the bottom three photos above), allegations that are very similar to his new opinion concerning the Griffin Survivor for the iPhone 4. (CX-1 at Q/A 98.) However, as with the SmileCase, the evidence shows that these relied-upon features are nothing more than the minimal by-products of the primary structures on which they are located. In particular, the alleged “grooves” are really nothing more than the slightly thinner back-end of a clearly-defined tab, and one of the alleged “tabs” (shown above in the third picture) is nothing more than the outer rim of a clearly-defined hole.

The ALJ finds that Trait Tech for the iPhone 4 and the SmileCase for the HTC EVO 4G do not infringe the claims 1, 5-7, 13, 17, 19-21, 25, 27-28, 30-32, 37-38, 42, or 44 of the ‘122 Patent.

g. The Remaining Accused Products

Otter argues that the remaining accused products infringe the asserted claims of the ‘122 Patent. Staff and Griffin do not dispute that assertion. Otter submitted evidence establishing that the remaining accused products meet all of the limitations of the asserted claims. (See CX-001 at Q/A 92-97 (HJJ Defender for HTC EVO 4G, Star & Way and Anbess cases, HJJ Defender for iPod

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Touch), 98-101, 112-119, 121-127 (Trait Technology case for iPod Touch, iPhone 3G, SmileCase for iPhone 3G, Topter for iPhone 3G, CaseSpace for iPhone 3G, MegaWatt for iPhone 3G, National Cellular for iPhone 3G, Anbess for iPhone 3G, CaseInPoint for iPhone 3G), 105-111 (Papaya for iPhone 4, Sinatech for iPhone 4, Star & Way HTC EVO 4G), 120 (Papaya iPhone 4 Defender).) The ALJ finds that the evidence submitted sets forth substantial, reliable and probative evidence that the remaining cases meet all of the remaining limitations of the asserted claims of the '122 Patent.

Thus, the ALJ finds that Otter has demonstrated by substantial, reliable, and probative evidence that the accused products with the exception of the Trait Technology for the iPhone 4, SmileCase for HTC EVO 4G, Griffin's Survivor for iPhone4, and Griffin's Survivor for iPod Touch contain each and every limitation of and infringe claims 1, 5-7, 13, 17, 19-21, 25, 27-28, 30-32, 37-38, 42, or 44 of the '122 Patent.

B. The Design Patents

1. Legal Standard

Otter has alleged instances of infringement of the D'908, D'784, D'536, D'785, D'741, and D'386 patents by the Defaulting Respondents.

The Federal Circuit in *Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665, 670 (Fed. Cir. 2008) (en banc), held that the formerly applied test – the point of novelty – was no longer the appropriate test to use in design patent infringement analysis. *Id.* at 678. Instead, the Federal

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Circuit held that the “ordinary observer,” test first articulated by the Supreme Court in *Gorham Co. v. White*, 81 U.S. 511 (1871), should be the sole test for determining infringement of a design patent. *Id.* The ordinary observer test was described in *Gorham* as follows: “[I]f, in the eye of an ordinary observer, giving such attention as a purchaser usually gives, two designs are substantially the same, if the resemblance is such as to deceive such an observer, inducing him to purchase one supposing it to be the other, the first one patented is infringed by the other.” *Gorham*, 81 U.S. at 528. The Federal Circuit further clarified that under the ordinary observer test “infringement will not be found unless the accused article ‘embod[ies] the patented design or any colorable imitation thereof.’” *Egyptian Goddess*, 543 F.3d at 670 (quoting *Goodyear Tire & Rubber Co. v. Hercules Tire & Rubber Co.*, 162 F.3d 1113, 1116-17 (Fed. Cir.1998)).

Infringement will only be found if “the accused design could not reasonably be viewed as so similar to the claimed design that a purchaser familiar with the prior art would be deceived by the similarity between the claimed and accused designs, ‘inducing him to purchase one supposing it to be the other.’” *Egyptian Goddess*, 543 F.3d at 683 (quoting *Gorham*, 81 U.S. at 528).

Similarly, in *Crocs, Inc. v. Int’l Trade Comm’n*, 598 F.3d 1294 (Fed. Cir. 2010), the Federal Circuit cautioned the lower courts against “excessive reliance on a detailed verbal description in a design infringement case,” as this could lead to an “undue emphasis on particular features of the design rather than examination of the design as a whole.” *Crocs*, 598 F.3d at 1302

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(citing *Egyptian Goddess*, 543 F.3d at 679-80).

1. The D'908 Design Patent

Otter argues and presented evidence that certain Defaulting Respondents infringe the D'908 patent. (CSDB at 117-126.) The Staff agrees and does not dispute the evidence presented. (SSDB at 12-13). Otter presented evidence comparing the HJJ's Defender Silicone Case for iPhone 3 3G, Trait Technology's Otterbox Impact Silicon Case Cover for Blackberry 8520/8530, Anbess's Otter Silicon Case for BlackBerry Curve 8520, Cellet's 3G PGuard, and Hypercel's XS Silicon Cover for Apple iPhone are substantially similar to, and thus infringe, the D'908 patent. (CX-001 at Q/A 221-227.)

The ALJ finds that Otter's evidence sets forth substantial, reliable and probative evidence that the Otter Commuter Series for HJJ's Defender Silicone Case for iPhone 3 3G, Trait Technology's Otterbox Impact Silicon Case Cover for Blackberry 8520/8530, Anbess's Otter Silicon Case for BlackBerry Curve 8520, Cellet's 3G PGuard, and Hypercel's XS Silicon Cover for Apple iPhone protective case protective case infringes the design of the D'908 Patent. In particular, the ALJ finds that Mr. Anders's testimony and the supporting photographic claim charts demonstrate that there is no disputed issue of fact that HJJ's Defender Silicone Case for iPhone 3 3G, Trait Technology's Otterbox Impact Silicon Case Cover for Blackberry 8520/8530, Anbess's Otter Silicon Case for BlackBerry Curve 8520, Cellet's 3G PGuard, and Hypercel's XS Silicon Cover for Apple iPhone are substantially similar to, and thus infringe, the D'908 patent. (CX-001

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at Q/A 221-227). Thus the ALJ finds that Hong Kong HJJ's Defender Silicone Case for iPhone 3G, Trait Technology's Otterbox Impact Silicon Case Cover for Blackberry 8520/8530, Anbess's Otter Silicon Case for BlackBerry Curve 8520, Cellet's 3G PGuard, and Hypercel's XS Silicon Cover for Apple iPhone infringe the D'908 patent.

Additionally, the ALJ finds that Paragraph 123, along with Exhibit 121 and Physical Exhibit 121 to Otter's original complaint establish that respondent Hoffco's Gel Skin for iPhone 3G/3GS infringes the D'908 Patent. The ALJ finds that by defaulting, Hoffco waived its right to contest the infringement allegations in Otter's complaint, which should be deemed true. *See* 19 C.F.R. §§ 210.16(b)(3) and (c)(2). Thus, the ALJ also finds that the Hoffco Gel Skin for iPhone 3G/3GS infringes the D'908 Patent.

2. The D'784 Design Patent.

Otter argues and presented evidence that certain Defaulting Respondents infringe the D'784 patent. (CSDB at 127-146.) The Staff agrees and does not dispute the evidence presented. (SSDB at 12-13.) Otter presented evidence comparing the HJJ Defender Shock Proof Case for iPod Touch, Trait Technology Defender Silicon Hard Plastic Case for iPod Touch 4, Trait Technology iPhone 3G 3GS Defender, SmileCase Defender Case for iPhone 3G/3GS, Papaya iPhone 4G Defender Silicon and Plastic, Star & Way 4G Protective Case, Topter iPhone 3G/3GS Defender, CaseSpace iPhone 3G Vault, MegaWatts Defender Case for iPhone 3G/3GS, National Cellular iPhone 3G Armor Defender, Quanyun iPhone 4G Defender Mobile, Anbess iPhone

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3G/3GS Defender, Sinatech iPhone 4 Otter Box, and CaseInPoint Otterbox Defender infringe the D'784 patent. (CX-001 at Q/A 186-213.)

The ALJ finds that Otter's evidence sets forth substantial, reliable and probative evidence that the HJJ Defender Shock Proof Case for iPod Touch, Trait Technology Defender Silicon Hard Plastic Case for iPod Touch 4, Trait Technology iPhone 3G 3GS Defender, SmileCase Defender Case for iPhone 3G/3GS, Papaya iPhone 4G Defender Silicon and Plastic, Star & Way 4G Protective Case, Topter iPhone 3G/3GS Defender, CaseSpace iPhone 3G Vault, MegaWatts Defender Case for iPhone 3G/3GS, National Cellular iPhone 3G Armor Defender, Quanyun iPhone 4G Defender Mobile, Anbess iPhone 3G/3GS Defender, Sinatech iPhone 4 Otter Box, and CaseInPoint Otterbox Defender are substantially similar to the design in the D'784 Patent and infringe the D'784 Patent.

3. The D'536 design patent.

Otter argues and presents evidence that certain Defaulting Respondents infringe the D'536 Patent. (Otters Motion at 146-149.) The Staff agrees and does not dispute the evidence presented. (SSDB at 12-13). Otter presented evidence comparing the Topter iPhone Mobile to the design claimed in the D'536 Patent. (CX-001 at Q/A 231-233.)

The ALJ finds that Otter's evidence sets forth substantial, reliable and probative evidence that the Topter iPhone Mobile is substantially similar to and infringe the D'536 Patent. (CX-001 at Q/A 233.).

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4. The D'741 design patent.

Otter argues and presented evidence that certain Defaulting Respondents infringe the D'741 patent. (CSDB at 149-155). The Staff agrees and does not dispute the evidence presented. (SSDB at 12-13.) Otter presented evidence comparing the HJJ Defender Case for EVO 4G, SmileCase Defender Case for HTC EVO 4G, Star & Way 4G Hard Plastic + Silicone Case Defender for Evo 4G, and the Anbess Holster Clip Case for HTC EVO 4G to the design claimed in the D'741 Patent. (CX-001 at Q/A 214-220.)

The ALJ finds Otter's evidence sets forth substantial, reliable and probative evidence that the HJJ Defender Case for EVO 4G, SmileCase Defender Case for HTC EVO 4G, Shenzhen Star & Way 4G Hard Plastic + Silicone Case Defender for Evo 4G, and the Anbess Holster Clip Case for HTC EVO 4G are substantially similar to and infringe the D'741 Patent. (CX-001 at Q/A 216-220.)

5. The D'785 design patent.

Otter argues and presents evidence that certain Defaulting Respondents infringe the D'785 Patent. (CSDB at 155-160). The Staff agrees and does not dispute the evidence presented. (SSDB at 12-13). Otter presented evidence comparing the Anbess Defender Case for BlackBerry Bold 9700 and the Star & Way BB9700 Commuter Defender protective cases infringe the design of the D'785 Patent. (CX-001 at Q/A 234-237.)

The ALJ finds that Otter's evidence sets forth substantial, reliable and probative evidence

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that the Anbess Defender Case for BlackBerry Bold 9700 and the Star & Way BB9700 Commuter Defender are substantially similar to and infringe the D'785 Patent. (CX-001 at Q/A 236-237.)

6. The D'386 design patent.

Otter argues HJJ Defender Silicone case for iPhone 4 protective case infringes the D'386 Patent. (CSDB at 160-162.) The Staff agrees. (SSDB at 12-13). HJJ has not contested this evidence. Otter presented evidence comparing the HJJ Defender Silicone Case for iPhone 4 4th 4G protective case to the design of the D'386 Patent. (CX-001 at Q/A 228-230.)

The ALJ finds that Otter's evidence sets forth substantial, reliable and probative evidence that the Otter Commuter Series for HJJ Defender Silicone Case for iPhone 4 4th 4G protective case protective case infringes the design of the D'386 Patent. In particular, the ALJ finds that Mr. Anders's testimony and the supporting photographic claim charts demonstrate that the HJJ Defender Silicone Case for iPhone 4 4th 4G protective case is substantially similar to and practices the design of the D'386 Patent. (CX-001 at Q/A 230.)

C. Trademark Infringement

1. Legal Standard for Trademark Infringement

Otter has alleged instances of infringement of the "OtterBox," "Otter Box", "Defender Series" and "Impact Series" Trademarks. Respectively, Trademark Registration Nos. 3,788,534, 3,788,535, 3,623,789, and 3,795,187.

"To prove trademark infringement, a plaintiff must show both that it has a valid,

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protectable trademark and that the defendant's use of a 'reproduction, counterfeit, copy, or colorable imitation,' 15 U.S.C. § 1114(1), creates a likelihood of confusion." *Petro Shopping Centers, L.P. v. James River Petroleum, Inc.*, 130 F.3d 88, 91 (4th Cir. 1997); *see also Gruner + Jahr USA Publ'g v. Meredith Corp.*, 991 F.2d 1072, 1075 (2d Cir. 1993). As discussed above, a federal registration is prima facie evidence of the validity of the registered mark, the registrant's ownership of the mark, and the registrant's exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the certificate, subject to any conditions or limitations stated in the certificate. Otter obtained federal registrations issued by the United States Patent and Trademark Office for each of the marks at issue. (Exhs. A15-18.) These registrations are indisputable, prima facie evidence of the validity of the asserted marks, as well as the exclusive rights of Otter to use them in commerce in connection with the goods identified in the registration certificates. *See* 15 U.S.C. § 1057(b).

The test for infringement of federal statutory trademark infringement is whether the accused mark is "likely to cause confusion, or to cause mistake or to deceive." *Certain Digital Multimeters and Products with Multimeter Functionality*, Inv. No. 337-TA-588, Initial Determination at 11 (January 14, 2008) nonreviewed by Commission Notice dated February 12, 2008. For purposes of determining whether there is a likelihood of confusion, the Commission has adopted the following factors set forth in the Restatement of Torts § 729, including:

- (a) the degree of similarity between the designation and the trademark or trade

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name in

- (i) appearance,
 - (ii) pronunciation of the words used;
 - (iii) verbal translation of the pictures or designs involved; or
 - (iv) suggestion;
- (b) the intent of the actor in adopting the designation;
- (c) the relation in use and manner of marketing between the goods and services marketed by the actor and those marketed by the other; and
- (d) the degree of care likely to be exercised by purchasers.

Id.

2. The OtterBox® and Otter Box® Trademarks Have Been Used in a Manner Likely to Confuse Consumers.

Otter presented evidence that shows that defaulting respondents Anbess, Hypercel, MegaWatts, National Cellular, Papaya, Quanyun, Star & Way, Sinatech, CaseinPoint, CaseSpace, Topter, and Trait Technology each used the OtterBox or Otter Box trademarks or confusingly similar marks in commerce. (*See* SMF ¶¶ 4.714-4.725.) The Staff agrees and does not dispute the evidence. (SSDB at 13). The ALJ finds that Otter has shown a likelihood of confusion. First, because the accused infringers use marks identical or nearly identical to the OtterBox and Otter Box trademarks, there is a high degree of similarity between the accused and registered trademarks. (*See, e.g.*, SMF ¶ 4.714 (OtterBox case); ¶ 4.715 (OtterBox Defender

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Series for Apple iPhone4); ¶ 4.725 (Otter Box Defender Hard Case for iPhone 4 and OtterBox Defender Case for iPhone 4).) Moreover, the products of the accused infringers that use the mark are cell-phone and iPad protective cases, the exact class of products on which Otter sells its products bearing the OtterBox® and Otter Box® trademarks. (See SMF ¶¶ 4.714 -4.725).

Indeed, Otter has demonstrated actual confusion or mistake by consumers relating to the unauthorized use of the OtterBox® and Otter Box® trademarks. Otter presented evidence of actual confusion. Specifically, that the customer-service department at Otter has [REDACTED]

[REDACTED]. (SMF ¶ 4.732). The ALJ finds that the returns and reports of counterfeit cases demonstrate the reality that (a) consumers are actually confused or deceived by the counterfeit products in the market and (b) the OtterBox and Otter Box trademarks are suffering real damage as a result of inferior products being sold that bear these trademarks. Thus, the ALJ finds that the OtterBox and Otter Box trademarks have been infringed by the Defaulting Respondents.

3. The Defender Series® Trademark Has Been Used in a Manner Likely to Confuse Consumers

Otter presented evidence shows that each of the defaulting respondents accused of infringing the Defender Series trademark: Anbess, Guangzhou Evotech, Hypercel, MegaWatts, National Cellular, Papaya, Quanyun, Star & Way, SmileCase, Suntel Global, CaseInPoint, CaseSpace, Topter, and Trait Technology infringe the Defender Series Trademark. (See SMF

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¶¶ 4.743-4.758.) The Staff agrees and does not dispute this evidence. (SSDB at 13). All of the documented unauthorized uses of the Defender Series® trademark, or confusingly similar marks, are in conjunction with cell-phone or iPad protective cases. (SMF ¶¶ 4.742-4.766.) Finally, the prevalent use of the Defender Series mark on products nearly identical to those sold by Otter leaves little doubt that sellers thereof intend to deceive customers. *See Hair Irons*, Inv. No. 337-TA-637, Order No. 14, at 22. Accordingly, the ALJ finds that Otter has shown a likelihood of confusion the Defaulting Respondents infringe the Defender Series® trademark.

4. The Impact Series® Trademark has Been Used in a Manner Likely to Confuse Consumers

Otter presented substantial, reliable, and probative evidence that each defaulting respondent accused of infringing the Impact Series—Hypercel, MegaWatts, National Cellular, and Shenzhen Star—has used the trademark or a confusingly similar mark on cell-phone or iPad protective cases. (*See generally*, SMF ¶¶ 4.767-4.770.) The Staff agrees and does not dispute the evidence presented. (SSDB at 13). As discussed above with the Defender Series® trademark, the class of products bearing the Impact Series® mark sold by Otter is identical to the class of products bearing the infringing marks, in that all of the documented unauthorized uses of the Impact Series® trademark, or confusingly similar marks, are in conjunction with cell-phone or iPad protective cases. (SMF ¶¶ 4.767-4.774.) The ALJ finds that the likelihood of confusion or mistake as to the source of products is particularly acute for the many counterfeit products that infringe *both* the OtterBox *and* the Impact Series trademarks. (*See, e.g.*, SMF ¶¶ 4.767-4.769.)

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Finally, the prevalent use of the Impact Series® mark on products nearly identical to those sold by Otter demonstrates that sellers thereof intend to deceive customers. *See Hair Irons*, Inv. No. 337-TA-637, Order No. 14, at 22. Accordingly the ALJ finds that the widespread use of Otter’s Impact Series trademark, or confusingly similar marks, is highly likely to cause consumer confusion, mistake, or deceit.

VIII. DOMESTIC INDUSTRY

In patent proceedings under Section 337, a complainant must establish 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). Under Commission precedent, the domestic industry requirement of Section 337 consists of two prongs, a “technical prong” and an “economic prong.” *Certain Video Graphic Display Controllers*, Inv. No. 337-TA-412, Initial Determination at 9 (May 17, 1999).

A. Technical Prong

1. Legal Standard

In order to satisfy the technical prong, the complainant must show that it practices the patents-in-suit in the United States. *Crocs, Inc. v. Int’l Trade Comm’n*, 598 F.3d 1294, 1306-1307 (Fed. Cir. 2010). The test for determining whether the technical prong is met through the practice of the patent “is essentially the same as that for infringement, *i.e.*, a comparison of domestic products to the asserted claims.” *Alloc v. Int’l Trade Comm’n*, 342 F.3d 1361, 1375 (Fed. Cir.

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2003). Commission precedent only requires that there be one claim of the asserted patent for which there is a domestic industry, not a domestic industry for each patent claim asserted. *Certain Microsphere Adhesives*, Inv. No. 337-TA-336, Comm. Op. at 16 (January 16, 1996). The test for determining whether the technical prong is met through the practice of a trademark is plain use of the trademark on products and packaging. 19 C.F.R. § 210.18; *see Hair Irons*, Inv. No. 337-TA-637, Initial Determination, at 5.

2. Arguments

Otter argues that its Defender Series for iPad, Defender Series for iPhone 3G, Defender Series for iPhone 4, and Defender Series for HTC EVO 4G, meet the technical prong of the domestic industry requirement. (CSDB at 172- 225.) Specifically, Otter argues that its Defender Series for iPad, Defender Series for iPhone 3G, Defender Series for iPhone 4, and Defender Series for HTC EVO 4G are covered by the '122, D'784, D'741, D'908, D'386, D'536, and D'785 Patents. (*Id.*) Additionally, Otter argues that its protective cases practice the OtterBox® and Otter Box® trademarks, that its “Defender Series” cases practice the Defender Series® Trademark, and that its “Impact Series” cases practice the Impact Series® Trademark. (*Id.*) In support of its argument, Otter submitted the direct witness statement of Mr. Anders who conducted a limitation by limitation analysis of the domestic industry products. He opined that: (1) Defender Series for iPad, Defender Series for iPhone 3G, Defender Series for iPhone 4, and Defender Series for HTC EVO 4G practice the '122 Patent; (2) the Otter Defender Series for HTC EVO 4G practices the

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D'741 Patent; (3) the Otter Impact Series for iPhone 3G practices the D'908 patent; (4) the Otter Impact Series for the iPhone 4 for the D'386 Patent; (5) the Otter Commuter Series for iPhone 3G practices the D'536 Patent; and (6) the Otter Commuter Series for Blackberry Bold 9700 practices the D'785 Patent. (*Id.*) Additionally, Otter has presented evidence that its cases are identified, named, labeled with, advertised, offered for sale and sold under the OtterBox®/ Otter Box® mark, that the “Defender Series” cases are identified, labeled, advertised, offered for sale, and sold in packaging that displays the Defender Series® word mark, and that Otters “Impact Series” cases are identified, labeled, advertised, offered for sale, and sold in packaging that prominently displays the Impact Series® word mark. (*Id.* at 173.)

Staff generally agrees arguing that Otter has submitted undisputed evidence which demonstrates that their Defender Series for iPad practices at least claims 1, 20 and 28 of the '122 Patent. (SSDB at 14.) Staff also agrees that the Otter Defender Series for the iPhone 3G practices claims 1, 20, 28 of the '122 Patent. (SSDB at 14.) Staff argues that there is a genuine issue of material fact as to whether the Otter Defender Series for the iPhone 4 meets the tab/groove limitation of claims 1, 20 and 28 of the '122 Patent. (SSDB at 14-15.) Similarly, Staff argues that there is a genuine issue of material fact as to whether the Otter Defender Series for the HTC EVO 4G meets the tab/groove limitation of claim 1, 20, 28 of the '122 Patent. (SSDB at 15.) Staff agrees that there is no genuine issue of material fact that the domestic products practice the asserted design patents. (SSDB at 16.) Additionally, Staff agrees that there is no genuine issue of

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material fact that the domestic products include the asserted trademarks on their packaging. (*Id.*)

Neither Griffin nor the Defaulting Respondents dispute that Otter satisfies the technical prong.

3. Analysis

a. Otter Defender Series for iPad

The Otter Defender Series for iPad protective case is a protective case for an Apple iPad that consists of a flexible membrane covering in part a hard plastic shell and includes a tab on the flexible membrane that fits securing into a groove on the hard plastic shell. (CX-001 at Q/A 68-71.) Otter submitted evidence comparing the Otter Defender Series for iPad protective case to independent claims 1, 20, and 28. (*Id.* at Q/A 71.)

The ALJ finds the evidence sets forth substantial, reliable and probative evidence that the Otter Defender Series for iPad protective case practices the independent claims of the '122 Patent. In particular, the ALJ finds that the Otter Defender Series for iPad protective case meets each and every limitation as construed by the ALJ, Staff or Otter. Specifically, under the “groove” limitation as construed by the ALJ, the Otter Defender Series for iPad protective case has the requisite flexible membrane molded to fit over the front portion of the computer and allow access to the controls, and a hard shell cover with a front and back that fits rigidly over the flexible membrane. (CX-001 at Q/A 71.) As note *supra*, the only disagreement with respect to whether a “groove” is whether it can have any shape at all or whether it must be long and narrow. However,

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even under the ALJ's construction of groove, the evidence shows that the Otter Defender Series for iPad meets the "groove" limitation as it identifies a part of the hard shell case that meets the limitation as construed by the ALJ. (CX-001 at Q/A 71; CPX-001 (JPX-001); CX-197 Exhibit B.II.A.9.)

b. Otter Defender Series for iPhone 4

The Otter Defender Series for iPhone 4 protective case is a protective case for an Apple iPhone 4 that consists of a flexible membrane covering in part a hard plastic shell and includes a tab on the flexible membrane that fits securing into a groove on the hard plastic shell. (CX-001 at Q/A 72.) Otter submitted evidence comparing the Otter Defender Series for iPhone 4 protective case to independent claims 1, 20, and 28. (*Id.* at Q/A 72.)

The ALJ finds that Otter has set forth substantial, reliable and probative evidence that the Otter Defender Series for iPhone 4 protective case practices the independent claims of the '122 Patent. In particular, the ALJ finds that the Otter Defender Series for iPhone 4 protective case meets each and every limitation as construed by the ALJ, Staff or Otter, including the "groove" limitation as construed by the ALJ because the Otter Defender Series for iPhone 4 protective case has the requisite flexible membrane molded to fit over the front portion of the computer and allow access to the controls, a hard shell cover with a front and back that fits rigidly over the flexible membrane. (CX-001 at Q/A 72.) As discussed *supra*, the only disagreement is whether a "groove" can have any shape at all or whether it must be long and narrow. However, even under

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the ALJ's construction of groove, the evidence shows that the Otter Defender Series for iPhone 4 meets the "groove" limitation as it identifies a part of the hard shell case that following inspection by the ALJ meets the limitation as construed by the ALJ. (CX-001 at Q/A 72; CPX-002 (JPX-002); CX-197 Exhibit B.II.B.18.)

c. Otter Defender Series for iPad

The Otter Defender Series for iPad protective case is a protective case for an Apple iPad that consists of a flexible membrane covering in part a hard plastic shell and includes a tab on the flexible membrane that fits securing into a groove on the hard plastic shell. (CX-001 at Q/A 68-71.) Otter submitted evidence comparing the Otter Defender Series for iPad protective case to independent claims 1, 20, and 28. (*Id.* at Q/A 71.)

The ALJ finds that Otter's evidence sets forth substantial, reliable and probative evidence that the Otter Defender Series for iPad protective case practices the independent claims of the '122 Patent. In particular, the ALJ finds that the Otter Defender Series for iPad protective case meets each and every limitation as construed by the ALJ, Staff or Otter, including the "groove" limitation as construed by the ALJ because the Otter Defender Series for iPad protective case has the requisite flexible membrane molded to fit over the front portion of the computer and allow access to the controls, a hard shell cover with a front and back that fits rigidly over the flexible membrane. (CX-001 at Q/A 71.) As discussed *supra*, the only disagreement is whether a "groove" can have any shape at all or whether it must be long and narrow. However, even under the ALJ's

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construction of groove, the evidence shows that the Otter Defender Series for iPad meets the “groove” limitation as it identifies a part of the hard shell case that following inspection by the ALJ meets the “groove” limitation as construed by the ALJ. (CX-001 at Q/A 71; CPX-001 (JPX-001); CX-197 Exhibit B.II.A.9.)

d. Otter Defender Series for iPhone 3G

The Otter Defender Series for iPhone 3G protective case is a protective case for an Apple iPhone 3G that consists of a flexible membrane covering in part a hard plastic shell and includes a tab on the flexible membrane that fits securing into a groove on the hard plastic shell. (CX-001 at Q/A 73.) Otter submitted evidence comparing the Otter Defender Series for iPhone 3G protective case to independent claims 1, 20, and 28. (*Id.* at Q/A 73.)

The ALJ finds that the evidence sets forth substantial, reliable and probative evidence that the Otter Defender Series for iPhone 3G protective case practices the independent claims of the '122 Patent. In particular, the ALJ finds that the Otter Defender Series for iPhone 3G protective case meets each and every limitation as construed by the ALJ, Staff or Otter, including the “groove” limitation as construed by the ALJ as the Otter Defender Series for iPhone 3G protective case has the requisite flexible membrane molded to fit over the front portion of the computer and allow access to the controls, a hard shell cover with a front and back that fits rigidly over the flexible membrane. (CX-001 at Q/A 73.) As discussed *supra*, the only disagreement is whether a “groove” can have any shape at all or whether it must be long and narrow. However,

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even under the ALJ's construction of groove, the evidence shows that the Otter Defender Series for iPhone 3G meets the "groove" limitation because the report identifies a part of the hard shell case that following inspection by the ALJ meets the limitation as construed by the ALJ. (CX-001 at Q/A 73; CPX-003 (JPX-003); CX-197 Exhibit B.II.C.9.)

e. Otter Defender Series for HTC EVO 4G Meets All the Limitations of Claims 1, 20, and 28 of the '122 Patent

The Otter Defender Series for HTC EVO 4G protective case is a protective case for an HTC EVO 4G that consists of a flexible membrane covering in part a hard plastic shell and includes a tab on the flexible membrane that fits securing into a groove on the hard plastic shell. (CX-001 at Q/A 74.) Otter's submitted evidence comparing the Otter Defender Series for HTC EVO 4G protective case to independent claims 1, 20, and 28. (*Id.* at Q/A 74.)

The ALJ finds that the evidence sets forth substantial, reliable and probative evidence that the Otter Defender Series for HTC EVO 4G protective case practices the independent claims of the '122 Patent. In particular, the ALJ finds that the Otter Defender Series for HTC EVO 4G protective case meets each and every limitation as construed by the ALJ, Staff or Otter, including the "groove" limitation as construed by the ALJ because the Otter Defender Series for HTC EVO 4G protective case has the requisite flexible membrane molded to fit over the front portion of the computer and allow access to the controls, a hard shell cover with a front and back that fits rigidly over the flexible membrane. (CX-001 at Q/A 74.) Under any construction of groove, Otter has provided substantial, reliable and probative evidence that the Otter Defender Series for HTC EVO

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4G meets the “groove” limitation because the report identifies a part of the hard shell case that following inspection by the ALJ meets the limitation as construed by the ALJ. (CX-001 at Q/A 74; CPX-004 (JPX-004); CX-197 Exhibit B.II.D.9.)

f. Otter’s Protective Cases Practice the D’784 Patent

Otter submitted evidence comparing the Otter Defender Series for iPhone 3G protective case to practices the design of the D’784 Patent. (CX-001 at Q/A 177.)

The ALJ finds that the evidence sets forth substantial, reliable and probative evidence that the Otter Defender Series for iPhone 3G protective case practices the design of the D’784 Patent. In particular, the ALJ finds that the expert testimony and the supporting photographic claim charts demonstrate that the Otter Defender Series for iPhone 3G is substantially similar to (indeed, it is practically identical to) and practices the design of the D’784 Patent. (CX-001 at Q/A 177.)

g. Otter’s Protective Cases Practice the D’741 Patent

Otter submitted evidence comparing the Otter Defender Series for HTC EVO 4G protective case to practices the design of the D’741 Patent. (CX-001 at Q/A 178.)

The ALJ finds that the evidence sets forth substantial, reliable and probative evidence that the Otter Defender Series for HTC EVO 4G protective case practices the design of the D’741 Patent. In particular, the ALJ finds that the expert testimony and the supporting photographic claim charts demonstrate that the Otter Defender Series for HTC EVO 4G is substantially similar to (indeed, it is practically identical to) and practices the design of the D’741 Patent. (CX-001 at

Q/A 178.)

h. Otter's Protective Cases Practice the D'908 Patent

Otter submitted evidence comparing the Otter Impact Series for iPhone 3G protective case to practices the design of the D'908 Patent. (CX-001 at Q/A 179.)

The ALJ finds that the evidence sets forth substantial, reliable and probative evidence that the Otter Impact Series for iPhone 3G protective case practices the design of the D'908 Patent. In particular, the ALJ finds that the expert testimony and the supporting photographic claim charts demonstrate that the Otter Impact Series for iPhone 3G is substantially similar to and practices the design of the D'908 Patent. (CX-001 at Q/A 179.)

i. Otter's Protective Cases Practice the D'386 Patent

Otter submitted evidence comparing the Otter Impact Series for iPhone 4 protective case to practices the design of the D'386 Patent. (CX-001 at Q/A 180.)

The ALJ finds that the evidence sets forth substantial, reliable and probative evidence that the Otter Impact Series for iPhone 4 protective case practices the design of the D'386 Patent. In particular, the ALJ finds that the expert testimony and the supporting photographic claim charts demonstrate that the Otter Impact Series for iPhone 4 is substantially similar to and practices the design of the D'386 Patent. (CX-001 at Q/A 180.)

j. Otter's Protective Cases Practice the D'536 Patent

Otter submitted evidence comparing the Otter Commuter Series for iPhone 3G protective

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case to practices the design of the D'536 Patent. (CX-001 at Q/A 181.)

The ALJ finds that the evidence sets forth substantial, reliable and probative evidence that the Otter Commuter Series for iPhone 3G protective case practices the design of the D'536 Patent. In particular, the ALJ finds that the expert testimony and the supporting photographic claim charts demonstrate that the Otter Commuter Series for iPhone 3G is substantially similar to and practices the design of the D'536 Patent. (CX-001 at Q/A 181.)

k. Otter's Protective Cases Practice the D'785 Patent

Otter submitted evidence comparing the Otter Commuter Series for Blackberry Bold 9700 protective case to practices the design of the D'536 Patent. (CX-001 at Q/A 182.)

The ALJ finds that the evidence sets forth substantial, reliable and probative evidence that the Otter Commuter Series for Blackberry Bold 9700 protective case practices the design of the D'785 Patent. In particular, the ALJ finds that the expert testimony and the supporting photographic claim charts demonstrate that the Otter Commuter Series for Blackberry Bold 9700 is substantially similar to and practices the design of the D'785 Patent. (CX-001 at Q/A 182.)

l. Otter's Protective Cases Practice the OtterBox® and Otter Box® Trademarks

Otter has offered evidence that all of Otter's protective cases use the OtterBox® and Otter Box® trademarks. (See SMF ¶¶ 5.204-5.208, 5.186, 5.189.) Accordingly, the ALJ finds that the undisputed facts establish that Otter uses the OtterBox® and Otter Box® trademarks.

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**m. Otter's Protective Cases Practice the Defender Series®
Trademark**

Otter has offered evidence that all of Otter's "Defender Series" protective cases are identified, labeled, advertised, offered for sale, and sold in packaging that prominently displays the Defender Series work mark in multiple locations. (See SMF ¶¶ 5.210-5.213.) Accordingly, the ALJ finds that the undisputed facts establish that Otter uses the Defender Series® trademark.

**n. Otter's Protective Cases Practice the Impact Series®
Trademark**

Otter has offered evidence that all of Otter's protective cases use the Impact Series® trademark. (See SMF ¶¶ 5.204-5.208, 5.214-5.218.) Accordingly, the ALJ finds that the undisputed facts establish that Otter uses the Impact Series® trademarks.

4. Summary

The ALJ agrees with Otter and Staff that Otter has met its burden of showing that its domestic industry products practice the Asserted Patents and/or Asserted Trademarks. Therefore, the ALJ finds that Otter has satisfied the technical prong of the domestic industry requirement.

B. Economic Prong

1. Legal Standard

In patent based proceedings under section 337, a complainant must establish 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). Under Commission precedent, the

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domestic industry requirement of Section 337 consists of a “technical prong” and an “economic prong.” The “technical prong” of the domestic industry requirement is satisfied when the complainant’s activities relate to an article “protected by the patent.” The “economic prong” of the domestic industry requirement is satisfied when the economic activities set forth in subsections (A), (B), and/or (C) of subsection 337(a)(3) have taken place or are taking place with respect to the protected articles. *Certain Data Storage Systems and Components Thereof*, Inv. No. 337-TA-471, Initial Determination Granting EMC’s Motion No. 471-8 Relating to the Domestic Industry Requirement’s Economic Prong (unreviewed) at 3 (Public Version, October 25, 2002); *see also Certain Printing and Imaging Devices and Components Thereof*, Inv. No. 337-TA-690, Commission Op. at 25 (February 17, 2011) (“*Printing and Imaging Devices*”). Summary determination may be granted with respect to the technical prong while reserving for trial proof of the technical prong. *See Certain Microcomputer Controllers, Components Thereof, and Products Containing Same*, Inv. 337-TA-331, Initial Determination Granting Summary Determination on Economic Prong (January 8, 1992). With respect to the “economic prong,” 19 U.S.C. § 1337(a)(2) and (3) provide, in full:

(2) Subparagraphs (B), (C), (D), and (E) of paragraph (1) apply only if an industry in the United States, relating to the articles protected by the patent, copyright, trademark, mask work, or design concerned, exists or is in the process of being established.

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

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mask work, or design concerned—

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

Id.

Given that these criteria are in the disjunctive, satisfaction of any one of them will be sufficient to meet the domestic industry requirement. *Certain Integrated Circuit Chipsets and Products Containing Same*, Inv. No. 337-TA-428, Order No 10 at 3, Initial Determination (Unreviewed) (May 4, 2000), citing *Certain Variable Speed Wind Turbines and Components Thereof*, Inv. No. 337-TA-376, Commission Op. at 15, USITC Pub. 3003 (Nov. 1996). The Commission has embraced a flexible, market-oriented approach to domestic industry, favoring case-by-case determination “in light of the realities of the marketplace” that encompass “not only the manufacturing operations” but may also include “distribution, research and development and sales.” *Certain Dynamic Random Access Memories*, Inv. No. 337-TA-242, USITC Pub. 2034, Commission Op. at 62 (Nov. 1987) (“*DRAMs*”).

Congress enacted 19 U.S.C. § 1337(a)(3) in 1988 as part of the Omnibus Trade and Competitiveness Act. *See Certain Plastic Encapsulated Integrated Circuits*, Inv. No. 337-TA-315, USITC Pub. No. 2574 (Nov. 1992), Initial Determination at 89 (October 16, 1991) (unreviewed in relevant part). The first two sub-paragraphs codified existing Commission practice. *See id.* at 89;

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see also Certain Male Prophylactic Devices, Inv. No. 337-TA-546, Commission Op. at 39 (June 29, 2007). Under Commission precedent, these requirements could be met by manufacturing the articles in the United States, *see, e.g., DRAMs*, Commission Op. at 61, or other related activities, *see Schaper Mfg. Co. v. U.S. Int'l Trade Comm'n*, 717 F.2d 1368, 1373 (Fed. Cir. 1983) (“[I]n proper cases, ‘industry’ may encompass more than the manufacturing of the patented item. . . .”).

In addition to subsections (A) and (B), there is also subsection (C). “In amending section 337 in 1988 to include subsection (C), Congress intended to liberalize the domestic industry requirement so that it could be satisfied by all ‘holders of U.S. intellectual property rights who are engaged in activities genuinely designed to exploit their intellectual property’ in the United States.” *Certain Multimedia Display and Navigation Devices and Systems and Components Thereof, and Products Containing Same*, Inv. No. 337-TA-694, Commission Op. at 7 (August 8, 2011) (quoting *Certain Digital Processors and Digital Processing Systems, Components Thereof, and Products Containing Same*, Inv. No. 337-TA-559, Final Initial Determination at 93 (unreviewed in relevant part) (May 11, 2007)). Thus, “[u]nlike sub-parts (A) and (B), sub-part (C) of section 337(a)(3) ‘does not require actual production of the article in the United States if it can be demonstrated that substantial investment and activities of the type enumerated are taking place in the United States.’” *Certain Personal Data and Mobile Communications Devices and Related Softwares*, No. 337-TA-710, Order 102: ID on Economic Prong at 4 (April 6, 2011) (unreviewed in relevant part) (“*Personal Data and Mobile Communications Devices*”) (quoting H.R. Rep. No.

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100-40, pt. 1, at 157 (1987)).

In *Printing and Imaging Devices*, the Commission held that “under the statute, whether the complainant's investment and/or employment activities are ‘significant’ is not measured in the abstract or absolute sense, but rather is assessed with respect to the nature of the activities and how they are ‘significant’ to the articles protected by the intellectual property right.” *Printing and Imaging Devices*, Commission Op. at 26. The Commission further stated 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 whether an investment is ‘substantial’ or ‘significant’ is context dependent. (*Id.* at 31.)

Indeed, the Commission has emphasized that “there is no minimum monetary expenditure that a complainant must demonstrate to qualify as a domestic industry under the ‘substantial investment’ requirement” of section 337(a)(3)(C). *Certain Stringed Musical Instruments and Components Thereof*, Inv. No. 337-TA-586, Commission Op. at 25 (May 16, 2008). Moreover, the Commission has stated that a complainant need not “define or quantify the industry itself in absolute mathematical terms.” *Id.* at 26.

2. The Parties’ Positions

Otter argues that it meets the economic prong of the domestic industry requirement under subsection (A) for each of the Asserted Patents and Asserted Trademarks. (CSDB at 236.) Otter also asserts that it meets the economic prong of the domestic industry requirement under

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subsection (B). (CSDB at 241.) Additionally Otter argues that the previously discussed investments would satisfy the economic prong of the domestic industry requirement under section 338(a)(3)(C). (CSDB at 246.)

Staff argues that Otter has provided sufficient evidence showing that its expenditures are either “substantial” or “significant.” (Staff Resp. at 19.) All of Otters revenues are derived from sales of its protective cases and Otter has provided revenue amounts for each of the protected patents and trademarks. (*Id.*) Staff argues that Otter has satisfied the economic prong of the domestic industry for each of the asserted patents and trademarks under Section 337(a)(3)(A) and (B). Staff declined to analyze Otter’s assertion that Otter satisfies the domestic industry requirement under section 337(a)(3)(C), as Otter satisfies the requirement of section 337(a)(3)(A) and (B).

3. Otter’s Evidence of Investments in Plant and Equipment

Specifically, Otter has presented undisputed evidence that it has made significant investments in plant space and utilities. Otter’s investment was [REDACTED] in 2010 of which [REDACTED] was allocated to product centered activities. (SMF ¶ 5.292.) From January 1 to December 31, 2010, Otter’s investment in the United States in equipment for Otter’s company wide use was [REDACTED] of which [REDACTED] was for “product-centered activities”. (SMF ¶¶ 5.83-5.86, 5.301.) Otter’s equipment expenditures for its product-centered activities for 2010 was [REDACTED], combined with the investment in United

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States equipment, Otter's total 2010 investment in equipment in the United States was [REDACTED]. (SMF ¶¶ 5.88-5.89, 5.91.) Between January 1, 2011 and July 31 2011, Otter's total investment in plant space and utilities for that plant space in the US was approximately [REDACTED] of which [REDACTED] was for "product-centered activities". (SMF ¶¶ 5.87, 5.91.) From January 1 through July 31, 2011, Otter's investment in the United States in equipment for Otter's company-wide use, was [REDACTED] of which [REDACTED] was for "product centered activities". (SMF ¶¶ 5.94, 5.309.) As of July 31, 2011, Otter's investment in the United States for equipment for its product centered activities was [REDACTED]. (SMF ¶¶ 5.310-5.311.) Combined with the allocated companywide figure, Otter's total estimated investment in equipment in the United States for its product-centered activities, from January to July of 2011, was [REDACTED]. (SMF ¶ 5.312). From January 1 2010 to July 31, 2011, Otter's investments in plant and equipment was [REDACTED] for the '122 Patent, [REDACTED] for the D'784 Patent, [REDACTED] for the D'741 Patent, [REDACTED] for the D'908 Patent, [REDACTED] for the D'386 Patent, [REDACTED] D'785 Patent, [REDACTED] for the OtterBox®/Otter Box®, [REDACTED] for the Defender Series® and [REDACTED] for the Impact Series®. (SMF ¶ 5.312).

4. Otter's Investments in Labor

Otter provides undisputed evidence that it has made significant investment in its U.S. workforce that services its domestic facilities. (*Id.*) As of December 31, 2010, Otter employed a total of [REDACTED] for its product centered activities in the United States, who it considers part

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of Otter's domestic industry. (SMF ¶ 5.314.) The total compensation, including wages/salary and employee benefits, paid in 2010 to Otter's employees involved in "product centered activities" was [REDACTED]. (SMF ¶¶ 5.314, 5.315, 5.318, 5.319-5.334.) Specifically, [REDACTED] was for the '122 Patent, [REDACTED] was for the D'784 Patent, [REDACTED] was for the D'741 Patent, [REDACTED] was for the D'908 Patent, [REDACTED] was for the D'386 Patent, [REDACTED] was for the D'785 Patent, [REDACTED] was for the OtterBox®/Otter Box®, [REDACTED] was for the Defender Series®, and [REDACTED] was for the Impact Series®. (SMF ¶ 5.316.) The total compensation, including wages/salary and employee benefits paid to Otter's employees involved in product centered activities as of May 31, 2011, was [REDACTED], of which [REDACTED] was for the '122 Patent, [REDACTED] was for the D'784 Patent, [REDACTED] was for the D'741 Patent, [REDACTED] was for the D'908 Patent, [REDACTED] was for the D'386 Patent, [REDACTED] was for the D'536 Patent, [REDACTED] was for the D'785 Patent, [REDACTED] was for the OtterBox®/Otter Box® trademarks, [REDACTED] was for the Defender Series® trademark, and [REDACTED] was for the Impact Series® trademark. (SMF ¶¶ 5.317, 5.336-5.350, 5.351, 5.352.)

Otter provides undisputed evidence that its expenditures to support its departments' activities, including its "product centered activities," reduce its net income by [REDACTED] when Otter's gross profit and net income are compared. (SMF ¶ 5.364.) Total COGS (cost of goods sold) expenses were [REDACTED] and Total Expense was [REDACTED]. (SMF ¶¶ 5.361-5.365.) Additionally, Otter has provided evidence that [REDACTED] of its employees engage in "product

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centered activities”, which are activities other than sales. (SMF ¶ 5.365). Therefore, Otter has spent more than [REDACTED] of its gross revenues on “product centered activities.” (SMF ¶ 5.365.)

5. Conclusion

Otter has expended:

- an average of [REDACTED] in plant and equipment;
- an average of [REDACTED] on employing more than [REDACTED] between January 1, 2010 and May 31, 2011, in the U.S. that are dedicated to the domestic industry products.

Otter has presented evidence that its company-wide activities, including its product-centered activities, reduce Otter’s net income by approximately [REDACTED] when Otter’s gross profit and net income are compared. (SMF ¶ 5.361-5.364.) For example, while Otter does have a Sales department, more than [REDACTED] in the United States work in departments with no sales responsibilities such as Quality, Purchasing, Warehouse, Marketing, Web, Customer Service, Product Development, Research and Development, Facilities, and Project Management. (SMF ¶ 5.365.) Otter also presented evidence that its efforts, activities and investments in its protective cases are essential to its customers and irrevocably intertwined with the products practicing the asserted intellectual property. (SMF ¶ 5.359); *Printing & Imaging Devices*, at 26 (“whether the complainant’s investment and/or employment activities are ‘significant’ is not measured in the abstract or in an absolute sense, but rather is assessed with

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respect to the nature of the activities and how they are ‘significant’ to the articles protected by the intellectual property right.”)

Accordingly, based on the evidence discussed above, the ALJ finds that Otter has satisfied the economic prong of the domestic industry requirement of section 337(a)(3)(A) and (B). The ALJ finds that the undisputed evidence demonstrates that Otter’s investments in plant and equipment and labor are significant within the meaning of the statute and that Otter has demonstrated that these investments explained above are related to the articles protected by the intellectual property rights at issue in this investigation.²

² The ALJ declines to address whether Otter has satisfied the Domestic Industry requirement. The ALJ notes, however, that Otter did not provide sufficient explanation about what expenditures are related to research and development and simply relied on its arguments made toward sections (A) and (B).

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CONCLUSIONS OF LAW

1. The Commission has personal jurisdiction over the parties, and subject-matter jurisdiction over the accused products.
2. The importation or sale requirement of section 337 is satisfied.
3. The Defaulting Respondents' Accused Products literally infringe the asserted claims of the Asserted Patents and the Asserted Trademarks.
4. The Griffin Survivor for iPad 2 and Griffin Explorer for iPhone 4 literally infringe the asserted claims of the '122 Patent. However, the Griffin Survivor for iPhone 4 and Griffin Survivor for iPod Touch do not literally infringe the asserted claims of the '122 Patent.
5. The Asserted Claims of the Asserted Patents are valid and enforceable.
6. The Asserted Trademarks are valid and enforceable.
7. It has been established that a domestic industry exists for the Asserted Patents and Asserted Trademarks.
8. It has been established that a violation exists of section 337 with respect to the Asserted Patents and Asserted Trademarks by the Defaulting Respondents.
9. It has been established that a violation exists of section 337 by respondent Griffin with respect to '122 Patent.

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IX. INITIAL DETERMINATION AND ORDER

Based on the foregoing, it is the Initial Determination of this ALJ that a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, has occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain protective cases and components thereof by reason of infringement of one or more of the D'908 Patent; the D'784 Patent; the D'536 Patent; the D'785 Patent; the D'741 Patent; the D'386 Patent; one or more of claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, and 44 of the '122 Patent; the '534 Trademark; the '535 Trademark; the '789 Trademark; and the '187 Trademark. Further, this Initial Determination, together with the record of the hearing in this investigation consisting of:

- (1) the transcript of the hearing, with appropriate corrections as may hereafter be ordered, and
- (2) the exhibits received into evidence in this investigation, as listed in the attached exhibit lists in Appendix A,
- (3) Motion Docket No. 780-030 and the exhibits thereto;

are CERTIFIED to the Commission. In accordance with 19 C.F.R. § 210.39(c), all material found to be confidential by the undersigned under 19 C.F.R. § 210.5 is to be given *in camera* treatment.

The Secretary shall serve a public version of this ID upon all parties of record and the confidential version upon counsel who are signatories to the Protective Order (Order No. 1.) issued in this investigation, and upon the Commission investigative attorney.

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RECOMMENDED DETERMINATION ON REMEDY AND BOND

The Commission's Rules provide that subsequent to an initial determination on the question of violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, the administrative law judge shall issue a recommended determination containing findings of fact and recommendations concerning: (1) the appropriate remedy in the event that the Commission finds a violation of section 337, and (2) the amount of bond to be posted by respondents during Presidential review of Commission action under section 337(j). *See* 19 C.F.R. § 210.42(a)(1)(ii).

I. REMEDY

A. General Exclusion Order

Under Section 337(d), the Commission may issue either a limited or a general exclusion order. A limited exclusion order instructs the U.S. Customs and Border Protection ("CBP") to exclude from entry all articles that are covered by the patent at issue and that originate from a named respondent in the investigation. A general exclusion order instructs the CBP to exclude from entry all articles that are covered by the patent at issue, without regard to source.

A general exclusion order may issue in cases where (a) a general exclusion from entry of articles is necessary to prevent circumvention of an exclusion order limited to products of named respondents; or (b) there is a widespread pattern of violation of Section 337 and it is difficult to identify the source of infringing products. 19 U.S.C. § 1337(d)(2). The statute essentially codifies Commission practice under *Certain Airless Paint Spray Pumps and Components Thereof*, Inv. No.

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337-TA-90, Commission Opinion at 18-19, USITC Pub. 119 (Nov. 1981) (“*Spray Pumps*”). See *Certain Neodymium-Iron-Boron Magnets, Magnet Alloys, and Articles Containing the Same*, Inv. No. 337-TA-372 (“*Magnets*”), Commission Opinion on Remedy, the Public Interest and Bonding at 5 (USITC Pub. 2964 (1996)) (statutory standards “do not differ significantly” from the standards set forth in *Spray Pumps*). In *Magnets*, the Commission confirmed that there are two requirements for a general exclusion order: a “widespread pattern of unauthorized use;” and “certain business conditions from which one might reasonably infer that foreign manufacturers other than the respondents to the investigation may attempt to enter the U.S. market with infringing articles.” The focus now is primarily on the statutory language itself and not an analysis of the *Spray Pump* factors. *Ground Fault Circuit Interrupters and Products Containing Same*, Inv. No. 337-TA-615, Comm’n Op. at 25 (March 9, 2009); *Hydraulic Excavators and Components Thereof*, Inv. No. 337-TA-582, Comm’n Op. at 16-17 (January 21, 2009).

Otter argues that a general exclusion order prohibiting the entry of all infringing protective cases and components thereof is warranted. (CIB at 262-290.)

1. Widespread Pattern of Unauthorized Use

Otter argues that there is a widespread pattern of unauthorized use as evidenced by (1) the unauthorized importation of infringing articles by identified foreign manufacturers; (2) the unauthorized importation of infringing articles by unidentified foreign manufacturers; (3) the unauthorized sale after importation within the United States of infringing articles; and (4) the

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continuation of infringing activities despite Otter's ongoing enforcement efforts. (CIB at 262-290.)

Staff agrees arguing that Otter has presented evidence showing a widespread pattern of unauthorized use and difficulty in identifying the sources of infringing products. (SSDB at 23-24.) Staff initially took the position that Otter did not submit sufficient evidence to establish that a general exclusion order was necessary to prevent circumvention to the products of named persons. (*Id.*) In response to Otter's additional evidence presented at the hearing, indicating a likelihood of circumvention, Staff now believes that the requirements of Section 337 (d)(2)(a). (SRB at 14-15).

The evidence shows that there is a widespread pattern of unauthorized use:

- A default judgment was entered against the Defaulting Respondents. (*See* Order Nos. 17, 21, 25)
- There are a significant number of manufactures retailers apparently infringing the products, including products were manufactured by entities named respondents named in the original complaint and who appear to have changed product boxing and/or importation product. (SMF ¶¶ 7.344-7.346.)
- Otter has identified over [REDACTED] having more than [REDACTED] listings for potentially infringing products. (SMF ¶¶ 7.344-7.346.)
- Any foreign supplier with an injection molding machine could enter the industry. (SMF ¶¶ 7.7.1-7.9.)
- Several retailers admitted to having [REDACTED] suppliers of potentially infringing cases and that it was easy to find new suppliers. (SMF ¶¶ 7.17-40.)

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- [REDACTED] testified that there are a commercially significant number of molding companies in Shenzhen, China, who, if provided with full documentation, could manufacture the hard plastic portion and outer silicon cover of its protective cases. (SMF ¶¶ 7.33-737.)
- Otter presented evidence that [REDACTED]. (SMF ¶ 7.149.)
- Otter's Customer Service department has [REDACTED]. (See SMF ¶¶ 4.742.)
- Several entities have engaged in tactics that make it difficult to identify the true source of the online sale and/or distribution of infringing activities, including creating multiple websites and corporate identities. (SMF ¶¶ 7.186-7.203.)
- Continued infringing activities have occurred [REDACTED]. (SMF ¶¶ 7.317-7.350.)

Based on the foregoing, the ALJ finds that the evidence shows there has been a widespread pattern of unauthorized use of the asserted patents.

2. Business Conditions

Otter argues that certain business conditions exist that warrant a general exclusion order: (1) the established demand and high profitability in the U.S. market; (2) the availability of marketing and distribution networks; and (3) the difficulty of identifying sources of infringing products. (CSDB at 274-278.) Staff agrees. (SSDB at 23-24.)

The evidence shows that certain business conditions exist that warrant a general exclusion order:

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- A strong demand for cases that practice one or more of Otter's asserted patents or trademarks, with Otter having domestic sales of more than [REDACTED] [REDACTED] from January 1 to December 31, 2010. (SMF ¶¶7.136.)
- The importation and sale of infringing products can be extremely profitable with [REDACTED] and [REDACTED] [REDACTED]. (SMF ¶¶ 7.80-7.53).
- Preexisting and extensive domestic marketing and distribution networks, which allow foreign manufacturers to widely distribute cell phone cases throughout the United States. (See SMF ¶¶ 7.49-7.59, 7.121-7.126.)
- The emergence of large online marketplaces, such as Amazon and EBay, which provide both foreign manufacturers and domestic retailers a dedicated, flexible way to sell to consumers. (See SMF ¶¶ 7.129-7.133, 7.45, 7.54, 7.58, 7.59.)
- Difficulty in identifying the sources of infringing products because many companies that claim they manufacture the cases are just brokers and the true manufacturer can only be determined by visiting the factory in China. (See SMF ¶ 7.400.)
- Difficulty in identifying the sources of infringing products because the entity that ships the product and is identified on the label is often not the entity that the case was ordered from. (See SMF ¶ 7.408.) Additionally, many of the shipments only identify the shipping company and not the manufacturer. (See SMF ¶ 7.408.)
- Difficulty in identifying suppliers because at least certain retailers use multiple suppliers that sometimes change with every order. (See SMF ¶¶ 7.414-7.421.) Some retailers admit that the companies they buy from in China are simply wholesalers, many of whom will not disclose the manufactures the use. (See SMF ¶¶ 7.423-7.426.)
- Difficulty in identifying suppliers because of the lack of identifying packaging. Most cases are packaged in a generic, clear plastic, packaging, a

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poly bag, because it is cheap and reduces the cost of the cases. (*See* SMF ¶¶ 7.429, 7.431, 7.438-7.488.)

Accordingly, based on the evidence presented above, the ALJ finds that the issuance of a general exclusion order is warranted in this investigation for products that infringe on claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, and 44 of the '122 Patent and the D'908 Patent, D'784 Patent, the D'536 Patent, the D'785 Patent, the D'741 Patent, the D'386 Patent, the "OtterBox", "Otter Box", "Defender Series" and "Impact Series" trademarks.

3. Public Interest

No party in its briefing to the ALJ discusses the Public Interest factors.

Based on the evidence presented in the briefing, the ALJ finds no indication that a general exclusion order would place an undue burden on public health and welfare or competitive conditions in the United States or on U.S. customers.

B. Limited Exclusion Orders

Under Section 337(d), the Commission may issue either a limited or a general exclusion order. A limited exclusion order directed to respondents' infringing products is among the remedies that the Commission may impose, as is a general exclusion order that would apply to all infringing products, regardless of their manufacturer. *See* 19 U.S.C. § 1337(d).

In the event that a general exclusion order is not granted, Otter seeks a limited exclusion order against each of the Defaulting Respondents and Griffin. (CIB at 294.) The ALJ agrees that a limited exclusion order against the Defaulting Respondents is appropriate with respect to the

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Asserted Patents and Asserted Trademarks. The ALJ further recommends that a limited exclusion order is also appropriate against Griffin limited to the products that infringe the asserted claims of the '122 Patent.

C. Cease and Desist Orders

The Commission may issue a cease and desist order against “any person violating [Section 337], or believed to be violating this section.” 19 U.S.C. § 1337(f). A cease and desist order is warranted “when there is a ‘commercially significant’ amount of infringing, imported product in the United States that could be sold so as to undercut the remedy provided by an exclusion order.” *Certain Semiconductor Chips with Minimized Chip Package Size*, Inv. No. 337-TA-432, Recommended Determination on Remedy and Bond (Public Version), at 7 (October 1, 2001); *see also Integrated Circuit Telecommunication Chips*, Inv. No. 337-TA-337 (June 30, 1993); *Flash Memory Circuits*, Inv. No. 337-TA-382 (June 2 & 26, 1997); *Agricultural Tractors Under 50 Power Take-Off Horsepower*, Inv. No. 337-TA-380 (February 25, 1997).

Otter argues that cease and desist orders are warranted against each of the domestic respondents because they have commercially significant inventories in the United States. (CIB at 292-293.) Additionally, Otter argues that the cease and desist order should encompass the Internet activities of Griffin and the defaulting domestic Respondents. (CIB at 293).

The Staff agrees that cease and desist orders should be issued against the defaulting

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domestic respondents. (SRB at 25). Additionally, Staff agrees that a cease and desist order should be entered against Griffin if Griffin is found in violation of Section 337. (*Id.*)

Otter presented undisputed evidence that domestic respondent Griffin has a commercially significant amount of infringing protective cases in inventory in the United States. (SMF ¶¶ 7.504, 7.505.) In addition, the domestic Respondents that have defaulted—Cellet, Hoffco, Hypercel, MegaWatts, National Cellular, SmileCase, CaseInPoint, and CaseSpace—are presumed as a matter of law to have a commercially significant amount of infringing protective cases in the United States. *Toner Cartridges*, Inv. No. 337-TA-740, Order No. 26 (June 1, 2011) (“Defaulting domestic respondents are presumed to have a commercially significant inventory.”) (citing *Certain Video Game Systems, Accessories, & Components Thereof*, Inv. No. 337-TA-473, Comm’n Op., at 2 (December 24, 2002)). Thus, based on the evidence presented above, the ALJ finds that each of the domestic respondents Cellet, Griffin, Hoffco, Hypercel, MegaWatts, National Cellular, SmileCase, CaseInPoint, and CaseSpace have commercially significant domestic inventories of the accused products. Accordingly, the ALJ recommends that a cease and desist order issue against Cellet, Griffin, Hoffco, Hypercel, MegaWatts, National Cellular, SmileCase, CaseInPoint, and CaseSpace. Moreover, the ALJ further recommends that any such cease and desist order encompass the internet activities of these respondents.³ See *Hardware Logic Emulation Systems & Components Thereof*, Inv. No. 337-TA-383, Comm’n Op. on

³ The ALJ recommends that a cease and desist order issue only for the infringing Griffin products.

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Remedy, the Pub. Interest and Bonding, at 20 (April 1, 1998).

D. Bonding

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

When reliable price information is available, the Commission has often sent the bond to eliminate the differential between the domestic product and the imported, infringing product. *See Certain Microsphere Adhesives, Processes for Making Same, and Products Containing Same, Including Self-Stick Repositionable Notes*, Inv. No. 337-TA-336, Comm'n Op. at 24 (1995).

Otter initially argued that a single bond rate be set for each of the Respondents. (CIB at 295-296.) Otter requested a bond of \$42.38 per protective case. (*Id.*) Staff argued that the bond was inappropriately high because Otter averaged its most expensive and cheapest cases together to reach its average price. (SSDB at 26-27.) Staff argued that the bond should be calculated by equalizing the price Otter's cheapest cases to that of respondents' cases. (*Id.* at 27).

In its reply brief in support of its motion for summary determination, Otter modified its proposed bond computations, separating the bond analysis for tablet and non-tablet cases. (Otter Posthearing Brief, App'x. A-6 at 8). Otter argues for a bond of 331.80% for tablet cases and

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195.12% for non-tablet cases. (*Id.*) Staff agrees except with respect to Griffin. (SRB at 16.) Staff argues that bond should be 12.45% for Griffins tablet cases, which sell at 79.99 where Otter's sell at 89.95 and no bond should be set for Griffins cell phone cases. (*Id.*)

The ALJ agrees with Staff finds that there sufficient reliable price information to set a bond based on price differential. Therefore, the ALJ recommends a bond of 331.80% for tablet cases from respondents other than Griffin, 195.12% for non-tablet cases other than Griffin's. The ALJ further recommends that a bond of 12.45% for Griffin's Tablet cases and no bond for Griffin's non-tablet cases during the Presidential review period. *Certain Foam Footwear*, Inv. No. 337-TA-567, Comm'n Op. at 10 (August 2, 2011) (public version).

II. CONCLUSION

In accordance with the discussion of the issues contained herein, it is the RECOMMENDED DETERMINATION ("RD") of the ALJ that the Commission should issue a general exclusion order against products that infringe the Asserted Patents and Asserted Trademarks. Should the Commission decide not to issue a general exclusion order, then the ALJ recommends the issuance of limited exclusion orders against each of the Defaulting Respondents and Griffin.

The Commission should also issue a cease and desist order directed toward respondents Cellet, Griffin, Hoffco, Hypercel, MegaWatts, National Cellular, SmileCase, CaseInPoint, and CaseSpace who currently maintain significant inventories of Accused Products in the United

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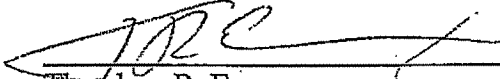
States that prohibits the sale of any commercially significant quantities of the Accused Products.

Furthermore, if the Commission imposes a remedy following a finding of violation, a bond during the Presidential Review Period should be set at a 331.80% of the entered value of the imported infringing tablet cases from respondents other than Griffin, 195.12% of entered value of the imported non-tablet cases other than Griffin's, and a bond of 12.45% of the entered value of the imported infringing Griffin Tablet cases and no bond on the imported infringing Griffin's cell phone cases.

Within seven days of the date of this document, each party shall submit to the office of the Administrative Law Judge a statement as to whether or not it seeks to have any portion of this document deleted from the public version. The parties' submissions must be made by hard copy by the aforementioned date.

Any party seeking to have any portion of this document deleted from the public version thereof must submit to this office (1) a copy of this document with red brackets indicating any portion asserted to contain confidential business information by the aforementioned date and (2) a list specifying where said redactions are located. The parties' submission concerning the public version of this document need not be filed with the Commission Secretary.

SO ORDERED.


Theodore R. Essex
Administrative Law Judge

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **INITIAL DETERMINATION ON VIOLATION OF SECTION 337 AND RECOMMENDED DETERMINATION ON REMEDY AND BONDING** has been served by hand upon, the Commission Investigative Attorney, **Rett Snotherly, Esq.**, and the following parties as indicated on **July 10, 2012**.



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